Unions, Courts, and Parties: Judicial Repression and Labor Politics in Late Nineteenth-Century America

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In the middle of the 1890s, amid the worst depression of the nineteenth century and in the wake of a series of major industrial defeats, the American union movement came close to establishing a labor party. At its annual convention in December of 1894, the American Federation of Labor (AFL) debated a "Political Programme" which sought to commit the unions to independent political action. The program had been referred back to the federation's affiliates by the previous year's convention, and most unions came to the 1894 convention mandated to vote in favor of it. But AFL President Samuel Gompers and his allies were strongly opposed to the program, and, with the help of some procedural machinations, they prevailed on the AFL to reject any foray into party politics. However, it was more than just procedural machinations which produced this result, for just one year later, delegates voted overwhelmingly for a resolution that declared that "party politics whether democratic, republican, socialistic, prohibition, or any other, should have no place in the convention of the A.F. of L."[1] Subsequent conventions repeatedly confirmed the AFL's opposition to any form of partisan political action (whether that be through the establishment of a labor party or through

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involve- ment in one of the existing parties). In spite of the efforts of a substantial minority of delegates, the union movement became firmly wedded to a doctrine that was variously known as "pure-and-simple unionism," "voluntarism," or "business unionism."

How are we to explain this outcome? Why did the American union movement set its face against involvement in any form of partisan politics? These and related questions about "American Exceptionalism" have been the subject of a long-standing debate. The most common answers have focused on socioeconomic factors like the standard of living or the ethnic heterogeneity of the working class, or on ideological factors like the prevalence of liberal individualism. More recent answers, however, have been skeptical about the importance of relatively stable socioeconomic and ideological factors since they are unable to explain *changes* in labor's attitude to politics. Because of this, and because of the influence of the "new institutionalism," explanations which focus on political factors have come to the fore instead. In particular, a number of political scientists and historians have focused on the special role which courts play in the United States, and on the emergence of systematic judicial hostility toward organized labor. At the core of their explanation is what I will call the "court repression thesis."[2]

These authors have made a strong and increasingly influential case, but it seems to me that their case suffers from a number of serious problems. In what follows I will first set out the basic argument of the court repression thesis in Section 1. Then I will discuss some problems with this argument in Sections 2 and 3. Finally, in Section 4, I will consider some different political factors which may provide a more promising basis on which to build an explanation for the American union movement's attitude toward politics.

1. THE COURT REPRESSION THESIS

According to the advocates of the court repression thesis, American unions and their leaders were not initially hostile to political action. On the contrary, prior to the 1890s they had frequently turned to the legislative process in order to advance a wide range of goals.[3] In the late nineteenth century, organized labor was subject to a long wave of intense judicial hostility, a hostility which had become unmistakable by the 1890s, and one which would not be reversed until the 1930s.

The most startling feature of this new judicial hostility was the development of a new doctrine of civil conspiracy and the concomitant deployment of labor injunctions. Labor injunctions enabled the courts to directly suppress strikes by issuing sweeping prohibitions against unionists on pain of imprisonment for contempt of court. In the 1894 Pullman strike, for example, Eugene Debs and the other leaders of the American Railways Union were arrested for breaching a blanket injunction which prohibited them from sending telegrams or communicating in any other way with workers in order to encourage them to strike or to aid their efforts to do so.[4]

There is some dispute about how much of a rupture with past judicial practice this entailed. Conviction for criminal conspiracy had been a persistent problem for unions in the early nineteenth century. But, according to traditional accounts, this ceased to pose a major threat after 1842, when the Massachusetts case of *Commonwealth v. Hunt* established that workers could legally organize and strike. However, according to Hattam, there was greater continuity of judicial repression. She emphasizes the fact that prosecutions for criminal conspiracy reappeared after the Civil War and that the courts repeatedly undermined union-backed legislative efforts to end criminal conspiracy prosecutions by construing the ongoing prohibition on "intimidation" so broadly that it might include almost any action which striking workers might take.[5]

Nevertheless, all agree that, with the widespread deployment of labor injunctions, a new wave of judicial hostility broke over the unions in the 1890s. By the beginning of the twentieth century the use of injunctions had become so widespread that many of the basic forms of collective action—like consumer boycotts—on which even the most conservative unions relied had been effectively outlawed. Forbath,[6] who has gone to a good deal of trouble to build up an overall picture of the use of injunctions, concludes that they were not only issued "in virtually every railroad strike [and] in most strikes in which industrial unionism, 'amalgamation,' or 'federation' was at issue," but also "in most major organising and recognition strikes, boycotts, closed shop or sympathy strikes or anti-union/open-shop lockouts of significant magnitude."

Judicial hostility did not just undermine organized labor's ability to act in industrial disputes, it also undermined the broader social reforms which unions had sought to achieve through the legislative process. Time and again, labor-backed reforms that passed through state legislatures were undermined by the courts. New laws would either be struck down entirely through judicial review, or they would be interpreted in such a way as to vitiate the legislature's original intention.[7] For example, laws governing working hours had been considered by the unions to be among the most important of the reforms which they sought. These laws were repeatedly held to be unconstitutional by state supreme courts unless they were strictly limited to "dependents" like women and children.

To make matters even worse, the courts could also add to their legal arsenal by taking laws which had been passed with labor backing and interpreting them in ways that were inimical to the unions.[8] The Sherman Anti-Trust Act, for example, was intended to curb the monopoly power of large corporations, but in 1893 the courts applied it to combinations of workers.[9] Likewise, injunctions were issued against the railroad unions in 1888 on the basis of the Interstate Commerce Act, in spite of the fact that Congress had considered, and specifically rejected, an attempt to apply the act to labor.[10]

According to the court repression thesis, this wave of judicial hostility changed union attitudes toward politics. As the cumulative impact of court interventions

made itself felt, union leaders and activists became increasingly skeptical about the effectiveness of political action. The courts, so the thesis goes, effectively placed labor's goals beyond the influence of politics. As a result, when this became clear in the 1890s, many union leaders began to view political action as futile. The only way to achieve anything, it seemed, was to strengthen the economic position of workers in the marketplace by building the strongest possible organizations in order to force concessions directly from employers. This was pure-and-simple unionism. Making a virtue out of necessity, the unions embraced it.[11]

Thus, according to the court repression thesis, the rejection of political action by Gompers and his allies at the AFL's 1894 convention was largely a response to the incentives established by the actions of the courts. It was not merely the fact of judicial hostility that is said to have established these incentives: Unions faced some degree of judicial hostility in most countries. Rather, it was the particular structure of the American state and the role of the courts within it that was important. Whereas in Britain, parliamentary sovereignty ensured that courts would ultimately defer to the will of the legislature, thus giving unions an incentive to seek some control over the legislature, in the United States, the separation of powers enabled the courts to obstruct or override the decisions of the legislature.[12]

So how are we to explain the AFL's attitude toward labor politics? In summary, the court repression thesis offers an answer built around three propositions.

1. Unions were initially sympathetic to political action.
2. But during the 1890s they were subject to a wave of judicial hostility at the hands of unusually powerful courts.
3. This led them to opt for apolitical pure-and-simple unionism.

In what follows I want to consider a number of problems with this answer, but I do not propose to dispute every facet of it. The problem with the court repression thesis does not lie in its account of judicial developments (Proposition 2), but rather in its account of union attitudes to politics and of the effect which judicial developments had on them (Propositions 1 and 3).

I should also make clear that I will focus on only one aspect of the argument which advocates of the court repression thesis have developed. Advocates like Forbath and Hattam have offered a rich and nuanced interpretation of the role of the judiciary in the shaping of the American labor movement, and there are many aspects of their argument which I will not touch on. Here I want to limit myself to the question of the union movement's attitude toward involvement in politics.

2. UNION ATTITUDES TOWARD POLITICS

The characterization of the development of union attitudes toward politics offered by the court repression thesis is misleading in a number of respects. To understand why this is so, it is important to recognize that the attitude of the AFL

and its leaders was not simply one of being either for or against political action. Rather, the attitude of the AFL varied along at least two dimensions.

One dimension concerned the *type of goals* that should be pursued through political action. Most of the goals the AFL discussed cluster into one of two categories. On one hand were "negative goals" like anti-conspiracy and anti-injunction legislation. On the other hand were "positive goals" like the eight-hour day and factory legislation governing working conditions.

A negative goal has two defining features. First, it seeks relief from a problem which has emerged because of the actions of the state, and hence it seeks to stop the state from using its authority against the interests of labor. Second, it is concerned with the unions' core interest in maintaining their capacities as organizations; that is, it is not concerned with the substantive ends of unionism (like better working conditions) but rather with the maintenance of the organizational means to achieve such ends.

A positive goal has the opposite two defining features. First, it seeks to address a problem that has emerged independently of the actions of the state, and hence it seeks to encourage the state to use its authority in the interests of labor. The state is addressed as a potential ally in the solution of a problem rather than as the source of a problem. Second, it is concerned with the substantive ends of the union movement, rather than with the defensive task of maintaining the organizational means.

A second dimension on which the AFL's attitude toward politics varied concerned the *type of political action* which should be undertaken. On one hand, political action could be limited to pressure group politics. This would principally involve lobbying those in power, although it would also extend to advising workers to vote for labor's friends and punish its enemies, while carefully keeping the unions themselves out of the electoral arena and refusing to identify the labor movement with any political party. On the other hand, political action could be extended to include union participation in partisan politics. This would involve competing in elections either by backing an established political party or by forming an independent labor party.[13]

Otherwise, there is confusion about which distinctions are being referred to. Advocates of the court repression thesis tend to elide these distinctions, and it is this which makes their account of union attitudes to politics misleading, for union attitudes along these two dimensions do not necessarily vary in tandem.

Let me begin by looking in more detail at union attitudes to types of goals. It is true that the AFL did come to reject the use of political action in pursuit of positive goals, and to limit itself to a narrowly defined set of negative goals.[14] Indeed, eventually this rejection became so radical that the AFL actually *opposed* most social legislation, including even legislation to limit working hours.[15]

However, this shift in attitude became clearly apparent only in the early years of the twentieth century, somewhat later than the court repression thesis suggests. Arguably, it was not unambiguously entrenched until 1914, when the AFL ruled

out the pursuit of a general eight-hour day through legislation.[16] In any case, there was no such shift at the AFL's key 1894 convention. If anything, the opposite took place.

The "Political Programme" proposed a significant expansion of the AFL's commitment to positive political goals. Unsurprisingly, then, it generated vigorous questioning and debate which in some cases led to the rejection of particular proposals. Advocates of the court repression thesis tend to focus on this questioning as evidence of growing support for a less political strategy, while failing to note the underlying agreement on the need to pursue a wide range—indeed an unprecedentedly wide range—of positive goals through political action.

The debate on plank 4 of the Political Programme provides one example of this. The plank called for "sanitary inspection of workshop, mine and home," and a number of delegates sought to delete reference to the home in order to defend its "sanctity" and "privacy" from government interference. But none of the delegates disputed the proposal that the AFL should seek legislation for the sanitary inspection of the workplace, and ultimately the original plank was passed, including its reference to the home.[17]

Perhaps the best example is provided by the celebrated debate on plank 10, which called for "the collective ownership by the people of all means of production and distribution." After hours of debate, the opponents of this plank prevailed, and the convention voted to replace it with a plank calling for "the abolition of the monopoly system of land holding." But note that not only was this itself a positive political demand, but also that, without any opposition, the convention had already passed planks 8 and 9, which called respectively for "municipal ownership of street cars, water works, gas and electric plants" and "the nationalization of telegraphs, telephones, railroads and mines."[18] Far from being a retreat from positive political goals, the outcome of the 1894 convention marks the high point of the AFL's commitment to the pursuit of positive goals through political action.

So, with respect to the type of goals, the AFL does shift from a more to a less political attitude by abandoning the pursuit of positive goals and limiting itself to negative ones, but it does this a decade or so later than the court repression thesis suggests. Indeed, just as judicial repression is really beginning to bite in the early 1890s, the AFL makes its broadest ever commitment to political action in pursuit of positive goals.

Let me turn now to union attitudes toward different types of political action. Along this second dimension, the claim of the court repression thesis that previously political unions moved in the 1890s toward a more apolitical stance is especially misleading. There is no doubt that the question of whether or not to become involved in partisan politics was a central question at the 1894 convention.[19] Equally, it is clear that (with some help from rulings by the Chair) the 1894 convention rejected both partisan politics in general and independent labor politics in particular, and that subsequent conventions continued to reject them thereafter.

However, contrary to the court repression thesis, this rejection of any kind of partisan politics was not a new development; rather, it was simply the reaffirmation of a long-standing position.[20]

Indeed, it was a position which key leaders of the AFL had adopted before either the AFL or its predecessor, the Federation of Trades and Labor Unions (FOTLU), had been founded. The leaders like Gompers, Strasser, and McGuire who played the central role in defeating the call for independent labor politics in 1894 had been wrestling with the question of what role partisan politics should play in the union movement for much of the 1870s. They confronted this question both as socialist activists and as leaders of their own unions.

As socialist activists they had been schooled in the debates of Marx's International Workingmen's Association. These debates centered on the question of whether a union-based economic strategy or a party-based political strategy should predominate, and many of those who later played a leading role in the AFL became protagonists of the first position. In particular, Samuel Gompers began participating in these debates in 1873 and soon became closely aligned with the protagonists of the union-based strategy. He seems to have been especially influenced by a pamphlet written in 1873 by the German Social Democrat Carl Hillman. Hillman's pamphlet emphasized the value of pursuing practical objectives through trade unions and argued that "it is a fatal error to subordinate the trade union movement directly to the purely political party movement."[21]

The conflicts engendered by these debates spilled over into the unions. Samuel Gompers and Adolf Strasser, for example, sought to put the union-based strategy into practice in the cigar makers' union. In 1877 they warded off an attempt to subordinate the union to the organizational form called for by the protagonists of the party-based strategy, and in 1879 they succeeded in passing a resolution declaring that no union local "shall be permitted to aid, cooperate or identify itself with any political party whatsoever."[22]

Thus, for many of the key union leaders who came together in 1881 to form the FOTLU, opposition to union involvement in partisan politics was already a well-established orthodoxy. It is hardly surprising, therefore, that this orthodoxy was reflected in the stance adopted by the new federation. At its very first meeting, the newly appointed Legislative Committee, which was established for the purpose of lobbying and was effectively the federation's executive, unanimously resolved that none of its members "should publicly advocate the claims of any of the parties."[23]

This anti-partisan orthodoxy was reinforced almost immediately by a series of conflicts within the cigar makers' union and between the FOTLU and the Knights of Labor.[24] With one exception, it remained the position of both the FOTLU and the AFL right up to 1893, when the debate over the political program was launched.

The exception occurred in 1886. This was the year when the FOTLU reorganized itself as the AFL, and the founding convention of the AFL resolved to "urge a most generous support to the independent political movement of the workingmen."[25] Amid a rash of experiments with independent labor politics in the wake of the "Great Upheaval," even Gompers had suspended his opposition to partisan political action and had thrown his support into the Central Labor Union's campaign to elect Henry George as mayor of New York.[26]

There was, however, a good deal of ambivalence within the AFL about this new stance on partisan politics. The welcoming address to the 1886 convention was a blunt statement in favor of maintaining the traditional opposition to union involvement in partisan politics. The original motion before the convention called for the formation of an independent labor party, but, as we have seen, the resolution that passed limited itself to urging "a most generous support to the independent political movement." It prefaced this with an acknowledgment that "this subject has, in the past, been a prolific source of dissension and trouble in the ranks of the workingmen."[27]

By the following year, the old anti-partisan orthodoxy was already reasserting itself. Gompers disassociated himself from the attempt to establish a United Labor Party to capitalize on Henry George's impressive showing in New York, and the AFL reverted to pressure group politics.[28] Thereafter, the AFL and its leadership made plain their rejection of partisan politics in general and independent labor politics in particular year after year.[29]

Thus, the outcome of the AFL's 1894 debate (reconfirmed more emphatically in 1895) was simply the reaffirmation of a long-standing orthodoxy with deep roots in the organization. The decision to reject partisan politics did not mark a new departure; rather, it marked the rejection of pressure for a new departure and a cementing in place of the AFL's traditional attitude toward types of political action.

The court repression thesis claims that unions shifted from a pro-political to an anti-political attitude in the 1890s, but, as we have seen, union attitudes toward politics varied along at least two dimensions, and they did not vary in tandem. What implications does this have for the court repression thesis?

With respect to the type of goals, unions did indeed shift from a more to a less political stance as they abandoned the pursuit of most positive goals and limited themselves to negative goals. However, they did so somewhat later than the 1890s, and only after first moving in the opposite direction. This creates a problem of timing for the court repression thesis, though it is arguably not a serious one. Perhaps it just took a decade or so for the unions to fully appreciate the consequences of the new wave of court repression.

With respect to the type of political action, however, unions did not shift from a more to a less political stance: They had long been committed to a less political stance. In the 1890s, they simply reaffirmed this long-standing position by

continuing to oppose partisan political action and by continuing to favor a more limited pressure group approach. Here, then, there is a serious problem of timing for the court repression thesis. If union opposition to partisan politics was firmly entrenched well before the new wave of court repression became apparent, then there is no longer a prima facie case for claiming that it was court repression which caused that opposition.

Of course this in itself is not sufficient to show that judicial hostility played *no* role in labor's rejection of partisan politics. It could be that the effects of court repression simply reinforced a long-established predilection.

3. THE EFFECTS OF COURT REPRESSION

So what were the effects of court repression? According to the court repression thesis, judicial hostility led unions to reject the option of political action, both because courts had unusually wide-ranging powers that gave them the final say on most of the political issues that were of importance to unions, and because, in exercising these powers, the courts were immune to political influence. These basic constitutional features of the American state established a structure of constraints and opportunities—a "political opportunity structure"—that made it rational for unions to repudiate political action and opt instead for pure-and-simple unionism.[30] Since the courts made the decisions that mattered, and the courts were immune to political influence, it would have been futile and foolish for unions to expend any effort on seeking to exercise political influence. Or so argue the advocates of the court repression thesis.[31]

There are a number of problems with the argument advanced by advocates of the court repression thesis. One problem is that it overstates the constraints and understates the opportunities that confronted the unions. By emphasizing the extent to which courts were immune to the effects of political action, the court repression thesis presents the American state as a political opportunity structure without political opportunities. In fact, the American courts were susceptible to the effects of political action in a number of ways.

First, many judicial decisions rest on statutory interpretation rather than on constitutional interpretation (or judicial review). In these cases the legislature in question merely has to clarify its intentions if it wants to overturn the decision of the court. Some of the most important anti-labor decisions which courts made in the late 1880s and early 1890s were of this sort. For example, the authority on which the federal courts relied in order to issue injunctions during the Pullman strike rested largely on their interpretation of the Interstate Commerce Act and the Sherman Anti-Trust Act. Congress could have overturned these interpretations, but for many years it did not even attempt to do so, and, when Congress did finally address the issue in the Clayton Act of 1914, its intentions were deliberately left ambiguous, enabling the courts to sustain their original interpretation.[32] Here then, the root problem for labor was not that the courts were immune to political

influence, but rather that labor was unable to exercise sufficient influence over the legislature.

Second, even where judicial decisions do rest on constitutional interpretation, there are various ways in which both the "political" branches of government (that is, the legislature and the executive) and popular opinion more generally can bring pressure to bear on the courts. In principle these decisions can be overturned by constitutional amendment, or even by altering the size or the jurisdiction of the relevant court. But in practice, it is the ongoing need of the courts to maintain their legitimacy which is most likely to allow political influences to be brought to bear. These influences can affect not only how a court decides a case but also whether it will hear the case at all. The courts have to tend their legitimacy with special care because they are almost always dependent on others to implement their decisions. Thus, when issues become sufficiently emotionally charged or when they are subject to sustained political counterattack, the courts tend to retreat.[33]

These pressures are likely to be particularly acute during periods of social and political turmoil or when the courts make controversial decisions on matters that are the subject of partisan conflict.[34] Thus, in the crisis of the 1930s, the effect of overwhelming congressional support for the Norris-LaGuardia and Wagner Acts along with Roosevelt's battle with the Supreme Court showed that political pressure could be made to prevail over even the most recalcitrant court.[35] This legislative and executive pressure was powerfully augmented by the pressure of public opinion. The 1936 election was seen in part as a plebiscite in which people were asked to choose between the New Deal and its political and judicial opponents. The Court responded to Roosevelt's landslide victory by reversing its opposition to state and federal labor laws and to other pieces of New Deal legislation, a process which it began even *before* the president's 1937 court-packing plan had been disclosed.[36]

To be sure, the 1930s were an unusually tumultuous period, but the 1890s were also such a period. Then too, the United States simultaneously experienced a deep economic depression, widespread social unrest, and political realignment. The difference, in the 1890s, was not that constitutional judicial review was immune to political pressure, but rather that the courts were rarely subject to political pressure to act in the interests of labor.[37] During the Pullman strike, for example, the courts were not acting contrary to the wishes of the executive; they were acting in concert with the executive. Indeed, in many respects it was the executive branch that was the initiator. President Cleveland and Attorney General Olney called on the courts to rule as they did, and they sent military forces to enforce their rulings.[38] Likewise, there were many cases where it was legislative hostility or legislative passivity that enabled the courts to continue to act unchecked.[39] Even when making rulings based on constitutional interpretation, political pressure could be brought to bear on the courts, but in the 1890s, it was rarely labor that exerted that pressure.

Third, and perhaps most striking, the courts were susceptible to political influence through the selection and replacement of judges. By the late nineteenth century, most state judges were actually elected, and subject to reelection, just like politicians.[40] The election of state judges first became widespread in the 1840s and 1850s.[41] By the 1880s and 1890s these elections were keenly fought and attracted a particularly high turnout. In fact, however, it was often the party conventions that exercised the real power by choosing which candidates to nominate in the first place. Later, in the early twentieth century, the introduction of direct primaries, nonpartisan ballots, vetting by bar associations, and other Progressive reforms weakened the control exercised by parties. Even after these reforms, party affiliations remained crucial. Indeed, the vast majority of successful candidates were politicians turned judges. More than 70 percent had previously held at least one nonjudicial political office, and most had held two or more such offices.[42]

Moreover, even when judges were not directly elected, they were still appointed by politicians and hence susceptible to political pressure. The most important example of this was in the federal courts, where the Constitution stipulates that judges are to be appointed by the president, but only with the consent of the Senate. Studies of appointments to the federal courts in the late nineteenth century show that partisan considerations were every bit as important as they were in state-based judicial elections. Between 1877 and 1899 96 percent of all appointees were from the same party as the president who appointed them, and almost 90 percent had been actively involved in politics as presidential electors, delegates to party conventions, or party organizers.[43]

With respect to the selection of judges, many American courts were actually more susceptible to political influence than were courts in countries like Britain and Australia.[44] This raises intriguing questions about the attitude of American unions toward political action. Whether through election or appointment, partisan politics played the key role in judicial selection. In these circumstances electoral mobilization and other forms of partisan political action offered the unions immediate and important advantages.

Overall, then, courts were susceptible to political influences in a number of ways. They were susceptible to legislative and executive pressure, to electoral mobilization, and to the demands of partisan politics. None of this is to deny that it could be difficult to influence the courts through political action. The courts were certainly not *as* susceptible to political influences as were legislatures and executives. The point here is simply that meaningful opportunities for unions to influence the courts through political action did exist. American unions did *not* find themselves facing a political opportunity structure without political opportunities.

Of course the fact that there were opportunities to influence the courts through political action does not in itself mean that unions had an incentive to do so.

Whether or not the unions had an incentive to make use of these opportunities also depended on the *importance* which they attached to particular goals and on the *cost* of any alternative strategy for achieving them. Note that there are two consequences that follow from this way of thinking about labor's incentives.

The first concerns the relevance of the main cross-national comparative argument which advocates of the court repression thesis invoke. As we have already seen, this argument revolves around a comparison between political institutions in the United States and in Britain.[45] In both countries the courts were hostile to the interests of labor, but in each the relationship between the legislature and the courts was different. Whereas in Britain the doctrine of parliamentary sovereignty meant that legislative victories could be used to override the courts, in the United States the separation of powers and judicial review enabled the courts to override legislative victories.

The comparison with Britain does establish that political action was a cheaper strategy to pursue in Britain than in the United States. But how did this affect the incentives facing American unions? Political action may have been more costly to American unions than it was to their British counterparts, and yet may still have been less costly than any alternative strategy that was available to them *in the United States*. Presuming that the goals that they were pursuing were important enough, they would then still have an incentive to engage in political action. Thus the question we need to answer is not whether a particular strategy was cheaper in Britain, but whether there was an alternative strategy that was cheaper in the United States.

The second consequence to note is that a union's incentive to engage in political action will depend in part on the type of goals that it is pursuing; and hence that the effects of repression need not necessarily be the same for both positive and negative goals. In considering the incentives facing the unions we will need, therefore, to consider these two types of goals separately.

In the case of negative goals, unions have a particularly strong incentive to engage in political action, simply because of the nature of these goals. Negative goals are of the utmost importance to the unions since they deal with core organizational interests. If no progress is made toward the achievement of these goals, then the very ability of unions to function is thrown in doubt. Political action is the only way that unions can hope to achieve negative goals, since it is the state (including the courts) which is the source of the difficulties which need to be overcome in order to achieve them. There is no alternative strategy for dealing with state repression, let alone a cheaper one. In short, if unions have negative goals they have a strong incentive to pursue them, and in order to pursue them they must engage in political action. John McBride, who replaced Gompers as AFL president in 1895, placed recognition of this at the center of his annual report:

> As an organization we may decide to leave politics alone, but unfortunately for the interests of the organization and its members politics will not let us alone, hence we are

compelled not from a sentimental but from a purely business standpoint to consider and act politically.[46]

When court repression forces unions to pursue negative goals, it gives them a strong incentive to engage in political action.

Note, however, that while court repression forced all unions to pursue negative goals, it did not affect all unions in quite the same way. In particular it had a harsher effect on industrial unions than on craft unions. Industrial unions were heavily dependent on successful industrial action in order to gain and retain the membership of unskilled workers. Unlike the craft unions, they could not offer services to retain their members, because these services depended on high dues that only skilled workers could afford. Moreover, the success of industrial unions typically depended on precisely the kind of mass industrial action and secondary boycotts which most galled the courts.[47] Unlike the craft unions, they could not hope that a shortage of workers with the appropriate skills might strengthen their position in the labor market. By placing many of the means for successful industrial action beyond the bounds of the law, court action threatened to *disable* craft unions, but it threatened to *destroy* industrial unions.[48] This differential impact of repression had two important consequences.

First, unions that had been destroyed could not be represented in the central councils of the union movement. By helping to destroy some industrial unions, court repression weakened the influence of those within the AFL who had the strongest interest in political action, and ensured that the craft unions, which had always dominated the AFL and its leadership, continued to do so. The effect of judicial repression was not the only reason that industrial unions had a special incentive to engage in political action. These unions also had an independent incentive because of both their needs and their resources. They needed to engage in political action because their inability to control the supply of skills meant that their power in the labor market usually was too weak to achieve their goals on their own, and they had the resources to engage in political action because their large potential membership represented a large number of potential votes.[49]

Second, the differential impact of court repression meant that, while many industrial unionists felt that they had nothing left to lose, craft unionists invariably did still have something to lose. They might have lost their ability to engage in effective industrial action, but they still had the organization itself.[50] The full consequences of this will become clear in Section 4. What is important to note here, however, is that court repression still gave these craft unionists an incentive to engage in political action. In principle, the fact that they had something to lose could have altered this incentive. In principle, it could have given craft unionists an incentive to adopt a submissive apolitical posture. It could only do this if an attempt to politicize the issue of court repression would have been likely to provoke the court to make further attacks which would in turn have led to the dissolution of the craft unions themselves.[51] However, this was not in fact the case. The

courts repeatedly insisted that they were not opposed to the existence of unions per se,[52] and as we saw earlier, the politicization of an issue was likely to make the courts more cautious rather than more belligerent.

Therefore, in spite of its differential impact, court repression gave all unionists a strong incentive to engage in political action. Indeed, they had an incentive not just to engage in political action in general but to engage in partisan politics in particular, for each new episode of repression made it ever more apparent that the pressure group politics to which the AFL had long limited itself were failing to provide the unions with sufficient political leverage. This failure created an incentive to take stronger measures and move toward partisan political action. Occasional changes in union attitudes toward partisan politics bear this out. Each of the periods when the AFL's anti-partisan orthodoxy came under strain followed intense episodes of judicial repression which, accompanied by other forms of state repression, had forced negative goals to the fore.

When the whole New York union movement plunged into independent labor politics in the 1886 campaign to elect Henry George as mayor, they did so in direct response to judicial interventions in the Theiss Music Hall boycott which threatened the ability of the unions to use one of their key industrial tactics. In his speeches in support of labor's campaign, Gompers was quite explicit about the connection with judicial repression: "To those who have misconstrued the law, imprisoned our brothers, indicted our fellows and held the menace of the penitentiary over our heads, to those let us show that we cannot be clubbed into submission." Comparable motivations were at work in many of the other cities where unionists engaged in independent labor politics that year.[53]

Similarly, as we have seen, the pressure for a move toward independent labor politics that built up in 1893 and 1894 followed closely in the wake of a series of repressive judicial interventions in major industrial disputes. The strongest advocates of partisan political action in 1894 were those from the Chicago area who had most keenly felt the wave of judicial and military repression during the early 1890s. Citing the urgent need to deal with this repression, these unionists plunged into partisan politics locally, although nationally, of course, the AFL resisted this temptation.[54]

Moreover, eventually, despite remaining rhetorically wedded to apolitical pure-and-simple unionism, the AFL was itself forced into partisan politics in 1908 following a series of judicial rulings which seemed to outlaw almost any action which a union might take during an industrial dispute. In the 1905 Chicago printers' strike, an injunction against the eminently conservative and respectable Typographical Union had prohibited "peaceful picketing, any moral suasion whatsoever" and any "attempt by the printers to induce non-union printers to join the union."[55] Recognizing that its long-standing efforts to convince Congress to pass anti-injunction legislation had come to nought,[56] the AFL leadership responded by drawing up a "Bill of Grievances" and making an unprecedented

effort to use labor votes to influence the outcome of the 1906 midterm congressional elections.[57] Arguably this was still just within the boundaries of pressure group politics, but a series of court cases which came to a head in 1908 drew the AFL into political action that was unmistakably partisan.

The most important of these were the Danbury Hatters' case and the Buck's Stove case, both of which had been brought as test cases by militant employers' organizations.[58] In the Danbury Hatters' case, unions found that even the organization of a consumer boycott was outlawed. In the Buck's Stove case, the AFL's top officeholders, including Gompers himself, were sentenced to jail terms (although the appeals went on for so long that they ultimately avoided jail because the statute of limitations had expired). At the same time, the Supreme Court overturned state legislation which had outlawed "yellow dog" contracts, thereby making it legal for employers to ask workers to sign contracts which stipulated that they would be fired if they joined a union. Gompers and his colleagues responded to these rulings by leading the AFL into a de facto alliance with the Democratic Party. Since the Republican Party had effectively controlled Congress and the presidency since 1896 and its attitude toward the AFL's demands for legislative relief ranged from indifference to hostility, Gompers sought to take the AFL into the 1908 presidential election on the side of the Democrats.[59] In spite of years of rhetoric about the prejudicial effects of partisan political action, the stalwarts of the AFL felt they had little choice.

Thus there seems to have been a strong incentive to engage not just in political action but in partisan political action in response to continuing court repression. Indeed, more than this, there was probably an incentive to move toward independent labor politics. In the late nineteenth century, support for the two main parties was finely balanced both federally and in a number of states, so the prospect of holding the balance of power held out the possibility of substantial influence in key areas. As a result, support for union-backed legislation from Republican and Democratic politicians was strongest where there had been a large vote for an independent labor party.[60] Arguably, then, independent labor politics was the best way to maximize labor's influence. In any case, court repression certainly did not preclude independent labor politics, for court repression had the opposite effect to that claimed by the court repression thesis. By forcing negative goals to the fore, it gave unions an incentive to engage in partisan political action of one sort or another in order to maximize their political influence in the hope of protecting the ability of their organizations to engage in industrial action.

In the case of positive goals, the effect of court repression is less clear. At the AFL's 1894 convention, Adolf Strasser, Gompers's mentor from the cigar makers' union, seemed to appeal directly to a version of the court repression thesis in a debate about a plank in the political program which called for a "legal eight-hour workday."[61] Referring to the use of judicial review to overturn previous legislation, Strasser argued that

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

Here, then, a leading unionist explicitly argues that continual judicial obstruction gives unions an incentive to avoid political action in the case of positive goals and instead seek these goals through direct bargaining with employers: the pure-and-simple approach.[62]

But is this really the effect of court repression? Positive goals certainly did not have the same immediate organizational importance as negative goals. Nor was political action the only way to achieve them. Unlike negative goals, it was certainly possible for them to be achieved through direct bargaining with employers. Nevertheless, there are several reasons to doubt that court repression did in fact give unions an incentive to desist from political action in the case of positive goals.

First, Strasser's approach depends exclusively on the organizational strength of the unions and their ability to utilize industrial weapons like the strike and the boycott. This in turn requires judicial tolerance of labor organizations and their industrial strategies, but judicial tolerance is precisely what was lacking. As we have seen in discussing negative goals, it is precisely in order to achieve it that political action was most urgently required. Strasser's apolitical strategy presumes the existence of an industrial relations environment that could be achieved only if political action was taken. But in an environment where there is already a strong incentive to undertake political action, the cost of undertaking political action in pursuit of positive goals may well be less than would otherwise be the case. The cost of running an election campaign just to win an eight-hour day would be enormous, but if an election campaign had to be run anyway, the cost of including the eight-hour day in the platform would be negligible.

Second, Strasser's approach does not consider the possibility that political action in pursuit of an eight-hour day might have secondary benefits for unions. There might, for example, be an incentive to engage in political action in pursuit of positive goals just in order to improve the chances of achieving negative ones. If a political campaign is necessary anyway in order to deal with court repression, then there might well be an incentive to widen the alliance of those opposed to the courts by including middle-class reformers and other proponents of positive social goals as well as those with an immediate organizational interest in the maintenance of union strength.[63] When judicial obstacles to both positive and negative goals finally did fall in the 1930s, they fell together.[64]

Third, there is conflicting evidence at the state level. Unions at the state level typically faced judicial repression that was at least as bad and often worse than that experienced by unions at a federal level,yet many state federations of labor continued to engage in political action in support of positive political goals. If

judicial repression gave federal unions an incentive to desist from political action in pursuit of positive goals, why did similar or worse repression not give state unions an incentive to similarly desist?[65]

There are, then, reasons to doubt whether court repression gave unions an incentive to desist from political action in the case of positive goals. But the case against the court repression thesis does not depend on these doubts.

Advocates of the court repression thesis are particularly fond of citing Strasser's argument against the eight-hour plank as powerful supporting evidence for their thesis.[66] For example, Skocpol moves directly from a discussion of Strasser's intervention to conclude that "interaction with a court-dominated state thus strengthened opponents to labor politics within the U.S. trade union movement." Likewise, Hattam draws on Strasser's argument to conclude that "the option of pursuing workers' interests through a labor party, or its equivalent, was no longer viable in the United States. . . . Short of revolutionary transformation, there was little incentive for workers to mobilise politically, as hard won political victories were continually obstructed by the courts."

In drawing these conclusions, the advocates of the court repression thesis make two mistakes, each of which highlights one of the main problems with the argument about the effects of court repression.[67] First, they mistakenly take Strasser's rhetorical exaggeration about the constitution and the power of the courts literally. We have seen that the courts are not immune to political pressure and that there are a number of ways to exercise this pressure, all of which are well short of revolutionary transformation. Second, they elide the distinction between positive and negative goals and mistakenly generalize Strasser's argument against political action in pursuit of positive goals to an argument against any political action.[68] Whether or not court repression gave unions an incentive to desist from engaging in political action in pursuit of positive goals, we have seen that it certainly did give them an incentive to engage in political action on other grounds. By forcing unions to take up negative goals, judicial repression pushed them toward some form of political action. More particularly, given the failure of pressure group politics, it pushed them toward partisan political action. In short, far from giving the unions an incentive to desist from political action, court repression gave them a strong incentive to engage in both political action in general and partisan politics in particular.

4. FEAR OF DISSENSION

If there was such a strong incentive to engage in partisan politics, why did so many unionists resist it? The short answer is that these unionists feared that, bad as things were, they could get even worse. Dissension, disruption, dissolution, and destruction. Over and over again these were the fears voiced by Gompers and his allies. They were voiced in public and in private.[69] They were voiced before, during, and after the AFL's great debate in 1894.[70] Gompers himself set the tone for

this debate in his presidential report where he placed these fears at the center of his argument against partisan politics, urging the convention "to steer our ship of labor safe from that channel whose waters are strewn with shattered hopes and unions destroyed."[71]

It was not just Gompers who voiced these fears. Delegate after delegate raised similar fears as the debate unfolded. Delegate Macarthur feared the "spectre of disintegration." Delegate Weismann feared "tremendous disruption." Delegate Lennon feared "the disruption of organisation." Delegate McGuire thought that forming a party was "suicidal." Delegate Strasser feared it would "split up the labor movement." Delegate Hysell feared the loss of "a large proportion of the membership." Delegate Pomeroy foresaw "dissension" and "disruption." Delegate Daley foresaw unions which had "gone to pieces." Delegate Mahon feared that partisan politics would "destroy this great machine." Delegate Croke feared the introduction of a "disease" that would "kill the association." Delegate Hart feared that the unions would be "torn asunder." And delegate O'Sullivan felt simply that he had to "defend trades unionism."[72]

These fears made no sense to those unionists whose organizations had already been destroyed in the wake of court repression. These unionists had an unequivocal interest in political action. Since effective political action was a prerequisite for their organizational existence, nothing could counterbalance the incentive to engage in partisan politics which court repression had given them. The response of Eugene Debs and other leaders of the American Railroad Union to the collapse of their organization in the wake of sweeping judicial intervention in the Pullman strike provides a paradigm case. Addressing more than 100,000 people on his release from jail, Debs emphasized that use of the ballot was the only course left open to workers. He threw all his energy into supporting the populist party and eventually gathered together the remnants of the ARU into a new social democratic political movement. To Debs, this shift to partisan politics was simply "a matter of grim necessity."[73] Others who had sought to establish more inclusive industrial unions tended to agree. They too had felt the kind of pressures that had destroyed the ARU—especially during the large steel and mining strikes of the early 1890s—though their unions had not always collapsed in such a spectacular fashion. Support for independent labor politics within the AFL came disproportionately from these industrial unionists.[74]

However, as we saw earlier, for the majority of unionists in the AFL, while court repression had threatened to disable their organizations, it had not threatened their ongoing existence. These unionists still had something to lose, and they were fearful of losing it. In particular they were fearful that involvement in partisan politics would produce the kind of dissension which would lead to the destruction of their unions. Two sources of dissension were thought likely to produce this result. One concerned dissension among union activists, and the other concerned dissension among ordinary workers.

At the activist level many unionists feared the consequences of left-wing factionalism. The political loyalties of union activists were divided between various reform movements and ideologies. There were anarchists, single taxers, populists, Knights of Labor, socialists, and pure-and-simple unionists, as well as those who were Democrats or Republicans. Tensions between these groups were ever present, and opponents of partisan politics argued that the establishment of a labor party would simply produce a destructive outbreak of factional fighting as each struggled to gain control of the party. Recent history seemed to support this contention. The United Labor Party, which was founded in New York to build on Henry George's strong showing in the mayoral election of 1886, quickly disintegrated when single taxers and socialists fought each other for control. Similar struggles undermined labor parties in Chicago, Detroit, and elsewhere.[75] This pattern seemed to be repeating itself in 1894. Independent labor politics was constantly undermined by factional struggles, even, as in Chicago, where support was strongest.[76] Gompers privately thought that this was "not an unmixed evil" since it at least had the benefit of providing the AFL with an object lesson about what not to do.[77] He foretold consequences "too portentous for contemplation" should the union movement commit itself to a similar strategy nationally.[78] Factionalism certainly helped to undermine these early attempts to establish local labor parties. It also undoubtedly spilled over into the unions, weakened them, and sometimes led to the establishment of rival union organizations. But why did Gompers and his allies fear that these conflicts threatened to destroy the unions? The answer lies in the "either-or" mentality that underpinned the attitude of key figures in the 1894 debate.

According to this mentality, the union-based and the party-based strategies for achieving labor's goals were mutually exclusive. The actual positions adopted by protagonists of the two strategies were not usually posed in quite such stark terms. Gompers, for example, still spoke in the early 1890s as though a union-based strategy might lay the ground for the eventual pursuit of independent labor politics. But underlying these positions was a deep-seated assumption that, for the foreseeable future, labor could have a union-based strategy or a party-based strategy, but not both. In the minds of leaders like Gompers and Strasser, this assumption was of such long standing and had been reinforced by so much personal experience that, by 1894, it had become an unchallengeable dogma.

The either-or mentality had its roots in an American version of the debate between Marx and Lassalle over the relative importance of economic and political organization which took place in the early 1870s.[79] As we saw in Section 2, this conflict took on an organizational form. The protagonists of a union-based strategy formed the nucleus of what eventually became the AFL, and the protagonists of a party-based strategy formed the nucleus of what eventually became the Socialist Labor Party (SLP). The conflict was reinforced by increasingly bitter factional struggles within the Cigar Makers' Union in the early 1880s, between

the unions and the Knights of Labor in the mid-1880s, and between the leaders of AFL and the SLP in the late 1880s and early 1890s.[80]

Thus it was Socialist Party factionalism above all else that worried Gompers and his allies. For these leaders, the socialist-backed Political Programme and its proposal to establish an independent labor party were just the latest attempt to subordinate the unions to a party, and this, they were sure, would destroy them. Indeed, in part the 1894 debate was driven by a twenty-year-old intra-socialist sectarianism. Strasser acknowledged this explicitly. He insisted that there was "a vast difference between socialism and socialists," and he attacked the political program as the work of men "who have been fighting the trades union movement in the United States for over 20 years." But it was not just Strasser. The miners' leader, John McBride, noted wryly that "the very delegates that assailed socialism and claim to being pure and simple trades unionists, every one are confessed socialists."[81]

In any case, by 1894 the either-or mentality had become a kind of common sense for many delegates. Trying to "mix trades unionism in politics" was like trying to "mix oil and water."[82] The consequence of this either-or mentality was that many delegates opposed the Political Programme on the grounds that it would enable socialist factionalism to overtly or covertly undermine the unions.[83] In response, the proponents of the Political Programme were forced to spend much of their time defending their bona fides as unionists.[84] Not all the opponents of the Political Programme were "anti-socialist socialists" like Strasser, but all of them feared that support for the Political Programme and the labor party it proposed would foster factionalism among activists—and especially socialist factionalism—that could destroy union organizations.

The either-or mentality also helps to explain why, in spite of the incentives generated by court repression, the argument that partisan politics is necessary in order to achieve the AFL's key *negative* goals was not more prominent in the 1894 debate. On one side of the debate, the socialists focused on the need to seek legislative power in order to socialize the means of production. On the other side, their opponents focused on the need to maintain strong union organizations by pursuing the immediate needs of workers. The either-or mentality predisposed both to see these as the only alternatives. Thomas Morgan, the socialist who was the leading proponent of independent labor politics, saw the need for a partisan political strategy but did not even include anti-injunction relief in his proposed political program. Adolf Strasser, his leading opponent, saw the need for anti-injunction legislation and moved an amendment to include it in the program, but he did not see the need for a partisan political strategy to pursue it.[85] A tantalizing opportunity to find common ground was missed. Only two delegates made any attempt to occupy this ground. Delegate Brentell of the iron and steel workers' union contrasted the claim that partisan politics will disrupt unions with the observation that unions are already being broken up by political repression against which

organization alone is powerless. Similarly, delegate Penna of the miners' union argued that "we are trade unionists first, last and all the time, but . . . [t]here is one class of privations we can remove by trades unionism. There is another class that can only be removed by political action, and we cannot remove anything by politics without going into politics."[86] Both Brentell and Penna represented unions in industries where the destructive effect of repression had been felt to the full, and fear that partisan politics could generate further disruption made little sense. Their voices were drowned in the dominant either-or mentality that informed so much of the debate.

At the activist level, then, many union leaders feared the consequences of left-wing factionalism. At the level of ordinary workers, they feared a different source of dissension. The vast majority of workers did not adhere to any of the left-wing reform ideologies. Their political loyalties, like those of most other citizens, were divided between the Democratic and Republican parties. As a result, many union leaders feared that, if they adopted any kind of partisan political position, their organizations would be consumed by conflict between workers with opposing party loyalties, and would be treated as hostile either by members who were Democrats or by members who were Republicans, or by both.

Year after year, Gompers issued warnings to this effect and urged that, before any involvement in partisan politics could be considered, it was first necessary "to wean our fellow-workers from their affiliation from the dominant political parties."[87] A number of his opponents recognized these dangers as well. The leader of the Knights of Labor, Terrence Powderly, consistently sought to ban electoral activity for fear that it would exacerbate divisions within the Knights. John McBride, who defeated Gompers to become AFL president in 1895, seems to have had similar concerns.[88]

The threat which party loyalty posed to union organization was also repeatedly raised by the opponents of independent labor politics in the AFL's 1894 debate.[89] Gompers and his allies did not only fear that party loyalties would cause dissension if the unions entered partisan politics; they also feared that this dissension could destroy the unions. They feared this because of the intensity of party loyalties and the priority which workers gave to them. Gompers and his allies noted that "our fellow-workers have to too large an extent been partisans first and wage-workers after."[90] They concluded that if workers were forced to decide between party loyalty and union solidarity, party loyalty would prevail and the unions would collapse.

Note, however, that while Gompers emphasizes the problem which party loyalty creates for any strategy of partisan political action, it also creates problems for his own preferred strategy of pressure group politics. If involvement in partisan politics could not wean workers from their loyalty to the dominant parties, how could pressure group politics do so? And if pressure group politics could not do this, how could its strategy of rewarding labor's friends and punishing its enemies

be effective? If a Republican worker would not vote for an independent labor party, it is surely even less likely that he would be prepared to vote for a Democrat, as this strategy supposes he might. Moreover, the pressure group strategy of rewarding friends and punishing enemies not only would be ineffective but also would antagonize party loyalists, just as partisan politics would. As the AFL's failure in the 1906 and 1908 elections showed, its earlier failure to challenge party loyalties made it difficult for the unions to effectively pursue *any* political strategy.

Union leaders attributed the intensity and priority of party loyalty to the fact that it was rooted in particularly potent forms of identity. Delegate Pomeroy,[91] for example, highlighted the connection between party loyalty and the identities forged during the Civil War:

> I want to get a carpenter to join the trades union movement. . . . This carpenter is a Grand Army man, and nearly all carpenters who are old enough are Grand Army men, and he is a Republican. He says, "I am perfectly willing to join the trades union as such, but I will not join a political party in opposition to my ideas." He is wrong perhaps; we may all agree that he is wrong, but we want him in the trades union, and you cannot get him in if he has to desert his party and adopt the policy of a new political party . . . advocating against everything for which he fought during the war. The Democrat is the same.

More important still was the connection between party loyalty on one hand and national origin and religious identity on the other. This connection led Delegate MacArthur[92] to dispute the relevance of the British experience of labor politics. "They are homogeneous and we are heterogeneous," he said, "and it makes all the difference." British unionists "can be got to hold together on political questions. But it is not so in America . . . we have all nationalities in our unions, men who stand together to a unit on wages and conditions . . . but if you mix politics, even a suspicion of them, the spectre of disintegration arises right there and stays there." Indeed, according to Secretary McCraith of the printers' union,[93] "The average voter casting his ballot is not a free man, but a one idead, corked up zealot" who is obsessed with "the questions that were fought over in the days of [Queens] Mary and Elizabeth."

Zealots! Activists who were socialist zealots, and ordinary members who were Democratic and Republican zealots. Union leaders feared that each had the capacity to unleash dissension that would destroy the unions. Whether or not their fears were well founded is a separate question. Here I simply want to establish that these *were* their fears and that these fears were enough to counterbalance the incentive which court repression gave them to engage in partisan politics.

5. COURTS AND PARTIES

The court repression thesis claims that the wave of judicial hostility that struck unions in the 1890s led them to abandon political action, and that this in turn helps to explain the AFL's attitude toward labor politics in 1894 and at subsequent

conventions. Careful examination of the institutional incentives facing unionists and the record of what they said and did suggests that there are a number of problems with this claim.

Because it elides the distinction between types of political goals and types of political action, the court repression thesis offers a misleading account of the development of union attitudes toward politics. In the wake of renewed court repression, the AFL did eventually restrict the type of political goals which it pursued, but its attitude toward different types of political action did not change at all. The AFL had long been opposed to involvement in partisan politics and in favor of restricting itself to pressure group politics. In the 1890s, it simply reaffirmed that position.

The court repression thesis is right to emphasize the fact that unions were subject to a new wave of judicial repression in the 1890s, but it is wrong about the effects of this repression. According to the court repression thesis, since the courts had the final say on the political decisions that most mattered to unions, and since they were largely immune to external political influence, the unions had an incentive to repudiate political action. In fact, however, the opposite was the case. Contrary to the court repression thesis, the unions had both opportunities to exercise political influence over the courts and a strong incentive to use them.

The unions had these opportunities because the courts were susceptible to political pressure both directly, through the selection of judges and their need to maintain legitimacy, and indirectly, through legislative and executive pressure. The unions had an incentive to use these opportunities because court repression had forced them to pursue goals which concerned their core organizational interests and which could be achieved only through political action. Moreover, because of the ongoing failure of pressure group politics, court repression gave the unions an incentive to engage not just in political action but in partisan political action in particular.

In spite of these incentives, the AFL resisted involvement in partisan politics. Political factors played a key role in this decision, but it was party loyalty and left-wing factionalism, and not the courts, which played this role. Indeed, fear of the dissension that might arise from these sources was so great that it outweighed the incentive to engage in partisan politics which court repression had generated. Late nineteenth century America is frequently characterized as a "state of courts and parties;[94] however, it is not the courts but the parties which help to explain the AFL's attitude toward politics.

NOTES

1. American Federation of Labor, "Report of Proceedings of the Fifteenth Annual [1895] Convention of the American Federation of Labor" held at New York, New York, 9-17 December, in *Proceedings of the American Federation of Labor 1893, 1894, 1895, 1896* (Bloomington, IL: Pantagraph Printing and Stationery Company, 1905): 100.

2. Versions of this thesis appear in Leon Fink, "Labor, Liberty and the Law: Trade Unionism and the Problem of Constitutional Order," *Journal of American History* 24, no. 3 (December 1987); William E. Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge, MA: Harvard University Press, 1991); William E. Forbath, "Courts, Constitutions, and Labor Politics in England and America: A Study of the Constitutive Power of Law," *Law and Social Inquiry* 16, no. 1 (Winter 1991); Victoria C. Hattam, "Institutions and Political Change: Working Class Formation in England and the United States, 1820-1896," in Sven Steinmo et al., eds., *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge, UK: Cambridge University Press, 1992); Victoria C. Hattam, *Labor Visions and State Power: The Origins of Business Unionism in the United States* (Princeton, NJ: Princeton University Press, 1993); and Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Belknap Press, 1992).

3. Forbath, *Law and the Shaping*, 3; Hattam, *Labor Visions and State Power*, 8-9.

4. United States Strike Commission, "Report on the Chicago Strike of June-July 1894," in *Executive Documents of the Senate of the United States for the 3rd Session of the 53rd Congress 1894-95* 2, no. 7 (Washington, DC: Government Printing Office, 1895): XL; Almont Lindsey, *The Pullman Strike: The Story of a Unique Experiment and of a Great Labor Upheaval* (Chicago: University of Chicago Press, 1948): 160-3 and 274-5.

5. Hattam, "Institutions and Political Change," 157-63; Hattam, *Labor Visions and State Power*, 38-9, 65-9, 139-57. In one Pennsylvania case in 1881, for example, the presence of a brass band was found to be an act of intimidation within the terms of the existing act.

6. Forbath, *Law and the Shaping*, 61-2, 193-8.

7. Forbath, *Law and the Shaping*, 37-58, 177-87, has compiled a list which shows that, from 1885 to 1900, the courts undermined far more labor-backed legislation than they upheld. Hattam, *Labor Visions and State Power*, 152-3, provides a similar list for Pennsylvania and New York.

8. Forbath, *Law and the Shaping*, 69-71 and 95-7.

9. Hovenkamp argues that Congress may have intended the act to apply to labor as well. See Herbert Hovenkamp, *Enterprise and American Law, 1836-1937* (Cambridge, MA: Harvard University Press, 1991): 229. But according to Perlman, few thought that it did at the time. See Selig Perlman, *A History of Trade Unionism in the United States* (New York: Macmillan, 1923): 154.

10. Gompers himself makes this point to the U.S. Strike Commission established in the wake of the Pullman dispute. See United States Strike Commission, *Report on the Chicago Strike*, 188-205; and Stuart B. Kaufman and Peter J. Albert, eds., *Unrest and Depression, 1891-94*, vol. 3 of *The Samuel Gompers Papers* (Urbana: University of Illinois Press, 1989): 576. These developments are also raised by a couple of delegates during the AFL's 1894 debate on the political program. See American Federation of Labor, *An Interesting Discussion on a Political Programme at the [1894] Denver Convention of the American Federation of Labor* (New York: American Federation of Labor, 1895): 30-1.

11. Similar conclusions are drawn by Martin Shefter in "Trade Unions and Political Machines: The Organization and Disorganization of the American Working Class in the Late Nineteenth Century," in Ira Katznelson and Aristide Zolberg, eds., *Working Class Formation* (Princeton, NJ: Princeton University Press, 1986); and by Kim Voss in *The Making of American Exceptionalism* (Ithaca, NY: Cornell University Press, 1993), although Shefter focuses on a broader range of instruments of state repression and Voss focuses on state acquiescence in the face of employer repression.

12. This comparison with Britain is developed at length by Hattam in "Institutions and Political Change," 166-71; and in *Labor Visions and State Power*, 180-203. In particular, Hattam highlights the different reception which courts gave to the repeal of conspiracy law in the two countries. In both countries unionists sought legislation which would give them immunity from prosecution for criminal conspiracy, and in both cases these political efforts were successful. Britain passed legislation in 1871 which it strengthened in 1875. Similar legislation was enacted in Pennsylvania in 1869 and in New York in 1870. But while the legislation was similar, the way that the courts applied it was very different. Whereas the British courts deferred to the will of Parliament, the U.S. courts interpreted the new law in such a way as to undermine its effect. The American unionists did not just give up; rather, they pressed the legislature to pass a better, more tightly worded law. This is indeed what happened in 1881, in 1882, and again in 1887 in New York and in 1872, 1876, and 1891 in Pennsylvania. But the courts continued to convict unionists for criminal conspiracy, until finally they did abandon the criminal conspiracy doctrine, only to shift to the widespread use of injunctions based on the Sherman Anti-Trust Act, the Interstate Commerce Act, and a new doctrine of civil conspiracy. The overall effect was that union organizations continued to be vulnerable. The consequence, according to Hattam, was that the two union movements drew different conclusions about the fruitfulness of political activity. See also Forbath, "Courts, Constitutions, and Labor Politics."

13. Gompers himself often made this distinction. See, for example, Kaufman and Albert, *Unrest and Depression, 1891-94*: 143; and American Federation of Labor, *Report of Proceedings of the Sixteenth Annual [1896] Convention of the American Federation of Labor* held at Cincinnati, Ohio, 14-21 December, in *Proceedings of the American Federation of Labor 1893, 1894, 1895, 1896* (Bloomington, IL: Pantagraph Printing and Stationery Company, 1905): 20-1.

14. The AFL's persistent efforts to achieve ever greater immigration restrictions represent the one major exception to this. See Gwendolyn Mink, *Old Labor and New Immigrants in American Political Development: Union, Party and State, 1875-1920* (Ithaca, NY: Cornell University Press, 1986); and Robin Archer, "Why Is There No Labor Party? Class and Race in the United States and Australia," in Rick Halpern and Jonathan Morris, eds., *American Exceptionalism? US Working Class Formation in an International Context* (London: Macmillan, 1997).

15. Skocpol, *Protecting Soldiers and Mothers*, 206-17. The AFL was only prepared to accept social legislation for "dependent" workers like women, children, and government employees.

16. Michael Rogin, "Voluntarism: The Political Functions of an Antipolitical Doctrine," *Industrial and Labor Relations Review* 15, no. 4 (July 1962): 530-4; and Skocpol, *Protecting Soldiers and Mothers*, 210-2.

17. American Federation of Labor, *An Interesting Discussion*, 21-5. This relatively short but intense debate is worth further attention in its own right, for it reveals much about various delegates' attitudes toward family life and the relationship between individuals and the state. It also reveals a widespread sense of superiority toward less respectable unskilled and insecure workers and their families.

18. American Federation of Labor, *An Interesting Discussion*, 25-62. The advocates of the court repression thesis also highlight some remarks by the Cigar Makers' leader, Adolph Strasser, which certainly do foreshadow the radical rejection of positive political goals which emerged in the early twentieth century. See American Federation of Labor, *An Interesting Discussion*, 19-20. But, again, these remarks are not indicative of the attitude of the convention as a whole. I will consider Strasser's remarks in greater detail below.

19. American Federation of Labor, *An Interesting Discussion*, 4-13 and 62-4.

20. The evidence which follows draws principally on reports of the Proceedings of the American Federation of Labor and its predecessor, and on the excellent collection of documents which Stuart Kaufman and his collaborators have published in the various volumes of *The Samuel Gompers Papers*.

21. See Stuart B. Kaufman, ed., *The Making of a Union Leader, 1850-86*, vol. 1 of *The Samuel Gompers Papers* (Urbana: University of Illinois Press, 1986): 22, 28, and 83-4; and Samuel Gompers, *Seventy Years of Life and Labor*, vol. 1 (New York: E. P. Dutton, 1925): 75.

22. Kaufman, *The Making of a Union Leader, 1850-86*, 71-2 and 139.

23. Ibid., 235. The resolution went on to say "that this shall not preclude the advocacy to office of a man who is pledged purely and directly to labor measures." So here from the outset is the pressure group conception of politics: opposition to any involvement in partisan politics alongside legislative lobbying and a limited electoral strategy of supporting labor's friends and punishing its enemies, the same conception which Gompers defends in his Presidential Report to the AFL's 1894 convention. American Federation of Labor, "Report of Proceedings of the Fourteenth Annual [1894] Convention of the American Federation of Labor" held at Denver, Colorado, 10-18 December, in *Proceedings of the American Federation of Labor 1893, 1894, 1895, 1896* (Bloomington, IL: Pantagraph Printing and Stationery Company, 1905): 14.

24. The question of what relationship the unions should have to political parties was at the center of the factional conflicts in the cigar makers' union. For documentary evidence of this, see Kaufman, *The Making of a Union Leader, 1850-86*, 247-74. For the conflict with the Knights see ibid., 275-86.

25. American Federation of Labor, "Report of the Sixth Annual Convention of the Federation of Organized Trades and Labor Unions of the United States and Canada" and "Report of Proceedings of the First Annual [1886] Convention of the American Federation of Labor" held at Columbus, Ohio, 8-12 December, in *Proceedings of the American Federation of Labor 1881, 1882, 1883, 1884, 1885, 1886, 1887, and 1888* (Bloomington, IL: Pantagraph Printing and Stationery Company, 1905): 16.

26. The New York State Workingmen's Assembly (of which Gompers was president) also endorsed nine other Democrat and Republican politicians and called for the defeat of one Republican. See Kaufman, *The Making of a Union Leader, 1850-86*, 446-7. In the light of this, Kaufman interprets Gompers' support for George as merely an extension of the pressure group strategy of endorsing the friends of labor and calling for the defeat of its enemies. But Gompers himself did not see it this way. Speaking to a mass meeting of tobacco workers, he made it clear that while he had always opposed independent political action by unions in the past, he now thought that the time had come for workers to select as well as vote for candidates. See Stuart Bruce Kaufman, *Samuel Gompers and the Origins of the American Federation of Labor: 1848-1896* (Westport, CT: Greenwood Press, 1973): 142; and Kaufman, *The Making of a Union Leader, 1850-86*, 433-44.

27. American Federation of Labor, *Proceedings of the [1886] Convention*, 16; Kaufman, *The Making of a Union Leader, 1850-86*, 387 and 453-6.

28. See Stuart B. Kaufman, ed., *The Early Years of the American Federation of Labor, 1887-90*, vol. 2 of *The Samuel Gompers Papers* (Urbana: University of Illinois Press, 1987): 45; and American Federation of Labor, "Report of Proceedings of the Second Annual [1887] Convention of the American Federation of Labor" held at Baltimore, Maryland, 13-17 December, in *Proceedings of the American Federation of Labor 1881, 1882, 1883, 1884, 1885, 1886, 1887, and 1888* (Bloomington, IL: Pantagraph Printing and Stationery Company, 1905): 26, 29-30.

29. For evidence of this see the annual proceedings of the AFL. For 1888 see p. 13, for 1889 see p. 23, for 1890 see pp. 12-21, for 1891 see p. 40, and for 1892 see pp. 12-3 and 29. The AFL's rejection of partisan politics was strongly reinforced by a debate in 1889 and 1890 about the affiliation of the New York Central Labor Federation. On one level, the debate was about whether the Socialist Labor Party, as a party, should be allowed to affiliate to a union organization. This question drew the delegates into explicit discussion of the relevance of independent labor politics. For a useful collection of documents on this dispute, including extracts of a verbatim report of the 1890 convention debate, see Kaufman, *The Early Years of the American Federation of Labor, 1887-90*, especially 386-408.

30. On the concept of a "political opportunity structure," see Herbert P. Kitschelt, "Political Opportunity Structures and Political Protest: Anti-Nuclear Movements in Four Democracies," *British Journal of Political Science* 16, no. 1 (January 1986); and Sidney Tarrow, *Power in Movement: Social Movements, Collective Action and Politics* (Cambridge, UK: Cambridge University Press, 1994).

31. This argument is set out particularly clearly by Hattam in "Institutions and Political Change," 166; and *Labor Visions and State Power*, 74-5. Similar arguments can be found in Forbath, *Law and the Shaping*, xi and 97; and Skocpol, *Protecting Soldiers and Mothers*, 226-9. Note that the argument does not discriminate between different types of political action. If it is right, then neither pressure group politics nor partisan politics would be worth pursuing because the courts are said to be immune to political influences whatever their source.

32. See Fink, "Labor, Liberty and the Law," 916; and Daniel R. Ernst, *Lawyers Against Labor: From Individual Rights to Corporate Liberalism* (Urbana: University of Illinois Press, 1995): 165-90.

33. Robert G. McCloskey, *The American Supreme Court* (Chicago: University of Chicago Press, 1960): 111 and 151-5. For similar observations see Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (Indianapolis: Bobbs-Merrill, 1962); Jesse H. Choper, *Judicial Review and the National Political Process: A Functional Reconsideration of the Role of the Supreme Court* (Chicago: University of Chicago Press, 1980); and Walter Murphy, *Congress and the Courts: A Case Study in the American Political Process* (Chicago: University of Chicago Press, 1962). For a contrary view see William Lasser, *The Limits of Judicial Power: The Supreme Court in American Politics* (Chapel Hill: University of North Carolina Press, 1988).

34. Stuart S. Nagel, "Court-Curbing Periods in American History," *Vanderbilt Law Review* 18, no. 3 (June 1965).

35. The Norris-LaGuardia Act, which put an end to the widespread use of labor injunctions, was passed by 362–14 in the House and 75–5 in the Senate in 1932 during the last year of the Hoover administration and was upheld by the Supreme Court in 1938. See Forbath, *Law and the Shaping*, 163. The Wagner Act, which established the right of unions to organize and to bargain collectively, was passed without a roll call vote in the House and 63–12 in the Senate in 1935 and was upheld by the Supreme Court in 1937. See William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal, 1932-1940* (New York: Harper and Row, 1963): 150-52; and Kenneth Finegold and Theda Skocpol, "State, Party, and Industry: From Business Recovery to the Wagner Act in America's New Deal," in Charles Bright and Susan Harding, eds., *Statemaking and Social Movements: Essays in History and Time* (Ann Arbor: University of Michigan Press, 1984): 180.

36. Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to George Bush* (Cambridge, MA: Belknap Press, 1993): 314; and David Plotke, *Building a Democratic Political Order: Reshaping American Liberalism in the 1930s and 1940s* (Cambridge, UK: Cambridge University Press, 1996): 148-9.

37. For evidence of the significant influence which business interests exerted on high judicial officeholders in the late nineteenth century, see Philip H. Burch, *Elites in American History: The Civil War to the New Deal* (New York: Holmes and Meier, 1981): 103-10.

38. Lindsay, *The Pullman Strike*, 147-75; Philip S. Foner, *History of the Labor Movement in the United States: Vol. II* (New York: International Publishers, 1955): 266-7. Lindsay concludes that "Between the Department of Justice and the federal judiciary there seemed to be a sympathetic understanding, and almost every move initiated by the former received the hearty support of the latter," (p. 274). Both, however, were acting contrary to the wishes of Governor Altgeld of Illinois.

39. In one extraordinary case in 1902, the Colorado legislature refused to pass an eight-hour law even after the state's constitution had been amended to ensure that such a law would be constitutional. See Perlman, *History of Trade Unionism*, 214; and Forbath, *Law and the Shaping*, 47. For other examples see Melvyn Dubovsky, *The State and Labor in Modern America* (Chapel Hill: University of North Carolina Press, 1994): 13; David Montgomery, *Citizen Worker: The Experience of Workers in the United States with Democracy and the Free Market During the Nineteenth Century* (Cambridge, UK: Cambridge University Press, 1993): 153; and Forbath, *Law and the Shaping*, 49, 148-50.

40. There was, however, a strong presumption in favor of reelecting sitting judges. See James Willard Hurst, *The Growth of American Law: The Law Makers* (Boston: Little, Brown and Co., 1950): 130; and Kermit L. Hall, "Progressive Reform and the Decline of Democratic Accountability: The Popular Election of State Supreme Court Judges, 1950-1920," *American Bar Foundation Research Journal* (1984, no. 2): 362-5.

41. For the history of judicial selection see Evan Haynes, *The Selection and Tenure of Judges* (Newark, NJ: National Conference of Judicial Councils, 1944); Hurst, *The Growth of American Law*; Russell D. Niles, "The Popular Election of Judges in Historical Perspective," *The Record of the Association of the City of New York*, 21, no. 8 (November 1966); and Lawrence M. Friedman, *A History of American Law* (New York: Simon and Schuster, 1973).

42. On turnout see Hall, "Progressive Reform," 356-9 and 361. On nominations see Hurst, *The Growth of American Law*, 129-34; and Hall, "Progressive Reform," 354 and 365. On politicians turned judges see Lawrence M. Friedman, *American Law* (New York: W. W. Norton and Co., 1984): 65; and G. Alan Tarr and Mary Cornelia Porter, *State Supreme Courts in State and Nation* (New Haven, CT: Yale University Press, 1988): 55. Forbath, *Law and the Shaping*, 33-4; and Hattam, *Labor Visions and State Power*, 156, are both aware that the election of judges seems to pose a problem for the court repression thesis, but each mentions it only in passing before setting it to one side. Forbath, for example, suggests that elections were simply a vehicle that enabled professional associations of lawyers to exercise "decisive influence" over judicial selection. This ignores the lively elections of the late nineteenth century and the enduring influence of party politics in the selection process. Professional associations of lawyers did increase their influence somewhat in the early twentieth century (and again in the 1930s and 1940s), but this would not have affected union attitudes toward political action in the 1880s and 1890s.

43. Kermit L. Hall, "Children of the Cabins: The Lower Federal Judiciary, Modernization and the Political Culture, 1789-1899," *Northwestern University Law Review* 75, no. 3 (1980): 448, 456, and 464; Friedman, *A History of American Law*, 328; and Friedman, *American Law*, 65.

44. Indeed, Australian union leaders hoped to move closer to the American system. In its first platform in 1890, and again in 1892, the NSW Labor Party called for the direct election of magistrates. See Noel Ebbels, *The Australian Labor Movement 1850-1907: Historical Documents* (Sydney: Hale and Iremonger, 1983): 212 and 216.

45. Every one of the advocates of the court repression thesis appeals to this comparison. See Fink, "Labor, Liberty and the Law"; Forbath, *Law and the Shaping*; Forbath, "Courts, Constitutions, and Labor Politics"; Hattam, "Institutions and Political Change"; Hattam, *Labor Visions and State Power*; and Skocpol, *Protecting Soldiers and Mothers*.

46. American Federation of Labor, *Proceedings of the [1895] Convention*, 16.

47. Forbath, *Law and the Shaping*, 61-2.

48. The defeat of the Iron and Steel Workers' union in the 1892 Homestead strike eliminated unionism, not just at Homestead but in most of the mills in the Pittsburgh region, and the defeat of the American Railways Union in the 1894 Pullman strike led to its complete collapse. See Perlman, *A History of Trade Unionism*, 135, 196-7.

49. Gary Marks, *Unions in Politics: Britain, Germany and the United States in the Nineteenth and Early Twentieth Centuries* (Princeton, NJ: Princeton University Press, 1989): 45-48 and 204-10; Archer, "Why Is There No Labor Party?" 58-9.

50. Gompers emphasizes this in his 1892 presidential report. See American Federation of Labor, *Report of Proceedings of the Twelfth Annual [1892] Convention of the American Federation of Labor* held at Philadelphia, Pennsylvania, 12-17 December, in *Proceedings of the American Federation of Labor 1889, 1890, 1891, 1892* (Bloomington, IL: Pantagraph Printing and Stationery Company, 1906): 12.

51. German unions found themselves in a situation like this following the passage of the anti-socialist law in 1878, although the role of the courts was being played by Bismarck, who was accountable only to the unaccountable kaiser. The incentives generated by state repression in these circumstances help to explain why unions like the printers' adopted a submissive posture, detached themselves from politics, and reconstituted themselves as a mutual aid association. Note, however, that even in these circumstances, it was not long before new craft unions were formed which again established close ties to the social democratic party. See John A. Moses, *Trade Unionism in Germany from Bismarck to Hitler 1869-1933: Vol. 1. 1869-1918* (London: George Prior, 1982): 66-87; and Marks, *Unions in Politics*, 137.

52. Hovenkamp, *Enterprise and American Law*, 207; Ernst, *Lawyers Against Labor*, 165-90.

53. Foner, *History of the Labor Movement in the United States: Vol. II*, 117-9; and Leon Fink, *Workingmen's Democracy: The Knights of Labor and American Politics* (Urbana: University of Illinois Press, 1983): 25-6 and 30-1. For Gompers' speech see Kaufman, *Gompers Papers Vol. 1*, 431.

54. Perlman, *A History of Trade Unionism*, 139; Chester McArthur Destler, *American Radicalism 1865-1901* (Chicago: Quadrangle Books, 1946): 165-6.

55. See Marks, *Unions in Politics*, 72.

56. Since 1894 the AFL had lobbied every session of Congress about anti-injunction legislation. See Marks, *Unions in Politics*, 71; and Marc Karson, *American Labor Unions and Politics, 1900-1918* (Carbondale: Southern Illinois University Press, 1958): 29-30.

57. Marks, *Unions in Politics*, 71-2; Forbath, *Law and the Shaping*, 110; and Ernst, *Lawyers Against Labor*, 131.

58. For a detailed analysis of the legal and political effects of these cases see chaps. 6, 7, 8 and 9 of Ernst, *Lawyers Against Labor*. See also Mink, *Old Labor and New Immigrants*, 185-6 and 212; Marks, *Unions in Politics*, 71-3, and 202-3; and Forbath, *Law and the Shaping*, 92-4.

59. Perlman, *A History of Trade Unionism*, 198-207; Karson, *American Labor Unions and Politics*; Stephen J. Scheinberg, "Theodore Roosevelt and the A.F. of L.'s Entry into Politics, 1906-1908," *Labor History* 3 (1963); and Ernst, *Lawyers Against Labor*, 111, 135-7, and 146.

60. Foner, *History of the Labor Movement in the United States: Vol. II*, 145; Gerald Friedman, "Worker Militancy and Its Consequences: Political Responses to Labor Unrest in the United States, 1877-1914," *International Labor and Working-Class History* 40 (Fall 1991): 8-9; and Montgomery, *Citizen Worker*, 152-3.

61. American Federation of Labor, *An Interesting Discussion*, 19-21.

62. In his autobiography, *Seventy Years*, Gompers himself makes a similar point in an oft-quoted passage from a chapter titled "Learning Something of Legislation." Commenting on attempts by the Cigar Makers' Union in the early 1880s to secure legislation outlawing sweatshop production in tenements, Gompers writes, "Securing the enactment of a law does not mean the solution of the problem. . . . The power of the courts to pass on the constitutionality of a law so complicates reform by legislation as to seriously restrict the effectiveness of that method." Having twice had legislation overturned by the courts, the union decided to adopt a new strategy and place pressure on the employers directly through industrial action. In this way, he claims, "we accomplished through economic power what we had failed to achieve through legislation." Note, however, that it is not clear how much was in fact accomplished in this way since tenement production seems to have continued until new technology made it obsolete. These comments by Gompers and Strasser are repeatedly cited by advocates of the court repression thesis. For Gompers see Forbath, *Law and the Shaping*, 40-2; Hattam, "Institutions and Political Change," 164-5; Hattam, *Labor Visions and State Power*, 159-60; and Skocpol, *Protecting Soldiers and Mothers*, 227. For Strasser see Forbath, *Law and the Shaping*, 54; Forbath, "Courts, Constitutions, and Labor Politics," 17-8; Hattam, "Institutions and Political Change," 164; Hattam, *Labor Visions and State Power*, 157-8; and Skocpol, *Protecting Soldiers and Mothers*, 228-9.

63. Skocpol shows how an incentive like this helped to draw state federations of labor into support for a number of broad positive social reforms. AFL wariness of middle-class proponents of positive social reforms in the progressive era weakened not just the social reformers but also the AFL's own ability to gain the legal immunities it desperately sought. See Skocpol, *Protecting Soldiers and Mothers*, 206-27, 229-31, and 242.

64. Minimum wage regulations, the Wagner Act, and the Social Security Act were all upheld one after the other in 1937. See McCloskey, *The American Supreme Court*, 175-6.

65. Skocpol, *Protecting Soldiers and Mothers*, 233-9 and 258. Having argued in favor of the court repression thesis to explain federal union policy, Skocpol points to the different internal institutional structures of state and federal union organizations and the different interests which result to explain their different attitude toward positive political goals. See Skocpol, *Protecting Soldiers and Mothers*, 317-33 and 239-45. This is to shift from an explanation based on judicial repression and the political opportunity structure of the state, to one based on the different kinds of working-class interests which the state and federal labor organizations represented.

66. Strasser's intervention is cited over and over again. See Forbath, *Law and the Shaping*, 54; Forbath, "Courts, Constitutions, and Labor Politics," 17-8; Hattam, "Institutions and Political Change," 163-6: Hattam, *Labor Visions and State Power*, 157-8; and Skocpol, *Protecting Soldiers and Mothers*, 228-9.

67. In addition to these mistakes, they fail to note that Strasser had long opposed political action for reasons which had nothing to do with court repression. Originally a pro-political "Lassallean," he began to oppose political action around 1876. See Kaufman, *Samuel Gompers and the Origins of the American Federation of Labor*, 65. The fact that Strasser was now appealing to something like the court repression thesis does not necessarily imply that this was in fact the main reason why he opposed the political program. They also overemphasize this one piece of evidence and fail to give sufficient attention to

the fact that the majority of delegates rejected Strasser's argument and voted for the eight-hour plank.

68. Arguably, Forbath is less inclined to do this. In a footnote to an article, he seeks to distinguish his position from Hattam's by making a point which is similar to mine. See Forbath, "Courts, Constitutions and Labor Politics," 20-1. But see also Hattam, *Labor Visions and State Power*, 164-5, where she also seems to be aware of the problem.

69. This can be seen in the private correspondence of various AFL officials. See, for example, Destler, *American Radicalism*, 183; Foner, *History of the Labor Movement in the United States: Vol. II*, 290; Kaufman, *The Early Years of the American Federation of Labor, 1887-90*, 364; and Kaufman and Albert, *Unrest and Depression, 1891-94*, 585.

70. For example, for 1892 see American Federation of Labor, "Proceedings of the [1892] Convention," 13; and Kaufman and Albert, *Unrest and Depression, 1891-94*, 202-4. For 1894 see American Federation of Labor, "Proceedings of the [1894] Convention," 14, and the following paragraph. For 1896 see American Federation of Labor, "Proceedings of the [1896] Convention," 22. Recall also that this fear was voiced even when the AFL took the exceptional step of endorsing independent labor politics in 1886. On this see American Federation of Labor, "Proceedings of the [1886] Convention," 16; and Kaufman, *The Making of a Union Leader, 1850-86*, 453-4.

71. American Federation of Labor, "Proceedings of the [1894] Convention," 14.

72. American Federation of Labor, *An Interesting Discussion*, 6, 7, 8, 12, 36, 44, 46, 49, 51, and 56.

73. Eugene V. Debs, *Liberty: A Speech by Eugene V. Debs* (Terre Haute, IN: E. V. Debs and Co., 1895). Also in Eugene V. Debs, *Writings and Speeches of Eugene V. Debs* (New York: Hermitage Press, 1948); and in Leon Stein, ed., *The Pullman Strike* (New York: Arno, 1969). See also Nick Salvatori, *Eugene V. Debs: Citizen and Socialist* (Urbana: University of Illinois Press, 1982): 147-74.

74. Note especially the contributions of delegate Brentell of the iron and steel workers' union and delegate Penna of the miners' union at the AFL's 1894 convention. See American Federation of Labor, *An Interesting Discussion*, 42 and 52-4. For evidence based on the voting record of all delegates over a number of years see Marks, *Unions in Politics*, 206-7 and 235-8.

75. Kaufman, *The Early Years of the American Federation of Labor, 1887-90*, 45; Foner, *History of the Labor Movement in the United States: Vol. II*, 154-6; Richard Oestreicher, *Solidarity and Fragmentation: Working People and Class Conscience in Detroit, 1875-1900* (Urbana: University of Illinois Press, 1986): 180-7; and Fink, *Workingmen's Democracy*, 26-7.

76. Destler, *American Radicalism*, 162-211.

77. Kaufman and Albert, *Unrest and Depression, 1891-94*, 584-7.

78. American Federation of Labor, "Proceedings of the [1894] Convention," 14.

79. Christopher L. Tomlins, *The State and the Unions: Labor Relations, Law and the Organised Labor Movement in America, 1880-1960* (Cambridge, UK: Cambridge University Press, 1985): 52-7; Kaufman, *Samuel Gompers and the Origins of the AFL*, 3-55.

80. Various sources provide evidence of factional hostilities and the sectarian tone which these conflicts produced as well as the personal involvement of Gompers, Strasser, and others. On the Cigar Makers' Union see Kaufman, *The Making of a Union Leader, 1850-86*, 247-9, 272-3, and 365-7; on conflict between unions and the Knights see Kaufman, *The Making of a Union Leader, 1850-86*, 159-63 and 468; and on conflict with the SLP see Kaufman, *The Early Years of the American Federation of Labor, 1887-90*, 191ff, and 386-409; and Kaufman and Albert, *Unrest and Depression, 1891-94*, 16-7.

81. American Federation of Labor, *An Interesting Discussion*, 36, 40. McBride was neither an "SLP-socialist" nor a "Strasser-socialist." As he put it, "I am a trades unionist that never was anything else, and know nothing about the socialist party or anything in connection with the disputes."

82. American Federation of Labor, *An Interesting Discussion*, 55.

83. In a typical contribution, delegate Weismann predicted that "If we are unsuccessful to rescue [the AFL] out of the hands of these men who come here under disguise to cut the life out of the trades unions, if we let it be surrendered into their hands, disintegration will follow." See American Federation of Labor, *An Interesting Discussion*, 38. Weismann, it should be said, had his own anarchist factional axe to grind, but there are others who made similar contributions. See the remarks of delegates Lennon, Gompers, Strasser, Pomeroy, Daley, Macarthur, and O'Sullivan in American Federation of Labor, *An Interesting Discussion*, 8, 10, 20, 35-6, 47, 49, 55, and 56.

84. Although Gompers believed that the dangers he warned against were real, he did have other reasons for emphasizing them. See Kaufman, *Samuel Gompers and the Origins of the AFL*, 216-22. It was certainly convenient to paint those he opposed as anti-union. This put the proponents of independent labor politics on the defensive and forced them to defend their standing as unionists rather than enabling them to make a substantive case for partisan politics. Gompers also had a strong personal incentive to do this since his position as president was at stake.

85. American Federation of Labor, *An Interesting Discussion*, 15 and 62.

86. Ibid., 42 and 52.

87. American Federation of Labor, "Proceedings of the [1892] Convention," 13; "Proceedings of the [1894] Convention," 14. In January 1887, just weeks after Henry George's strong showing in New York, Gompers was already doubting whether the workers who voted for George had really "sever[ed] their connection with the two dominant parties." See Kaufman, *The Early Years of the American Federation of Labor, 1887-90*, 9. Every year thereafter he can be found warning against the dangers posed by workers' divergent party loyalties. See, for example, ibid., 121, 364, and 391; American Federation of Labor, "Proceedings of the [1892] Convention," 9 and 13; American Federation of Labor, "Report of Proceedings of the Thirteenth Annual [1893] Convention of the American Federation of Labor" held at Chicago, Illinois, 11-19 December, in *Proceedings of the American Federation of Labor 1893, 1894, 1895, 1896* (Bloomington, IL: Pantagraph Printing and Stationery Company, 1905): 12; American Federation of Labor, "Proceedings of the [1894] Convention," 14; and American Federation of Labor, "Proceedings of the [1896] Convention," 22.

88. On Powderly see Fink, *Workingmen's Democracy*, 24 and 26. On McBride see American Federation of Labor, "Proceedings of the [1895] Convention," 15.

89. See the remarks by delegates Macarthur, McGuire, Lennon, and Pomeroy in American Federation of Labor, *An Interesting Discussion*, 6, 12, 43, 45, and 46.

90. See Gompers' president's report in American Federation of Labor, "Proceedings of the [1893] Convention," 12. He made a similar point the previous year. See American Federation of Labor, "Proceedings of the [1892] Convention," 9.

91. American Federation of Labor, *An Interesting Discussion*, 46.

92. Ibid., 6.

93. Montgomery, *Citizen Worker*, 147.

94. Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (Cambridge, UK: Cambridge University Press, 1982).