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THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

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ENTITLED Intertwining Initiatives of Business, Labor and Government

in Three Cases of 1930s Labor Legislation

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**Intertwining Initiatives
of Business, Labor and Government
in Three Cases of 1930s Labor Legislation**

by

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INTRODUCTION

Three examples of federal labor legislation provide the means to examine the process of labor reform through the interaction, broadly, of business, labor and government. The Davis-Bacon Act (1931), the Wagner Act (1935), and the Fair Labor Standards Act (1938) all present the problem of why each could pass within the political context of their specific time periods. My purpose is then to examine each of these bills keeping in mind both the problems they had in gaining passage and the reasons why these problems never prevented them from becoming laws. In doing so, I ask as well the question of why the government was even receptive to labor legislation: Did this type of legislation relate to any economic, legal or ethical concerns of the government? And in each case, which faction of the government was most likely to respond to these concerns and then push for a bill?

In examining these three laws, I also ask if they as a combined study can show any parallels in the way business, labor and government, or different interest groups within these broad categories, worked for and against labor reform. Do they demonstrate a rise or loss in the ability of outside groups to influence legislative action? And if a particular group, such as organized labor, were to show a gain in power from alignments with the government, what influenced their ability? Finally, after looking at the three processes and drawing connections between them, is there a framework or guide that can help to

explain how political action shaped this legislation? A framework not only would help to sharpen the understanding of the three laws in this study, but would serve as a broader guide to at least provide a different structure to analyze federal labor legislation.

CHAPTER 1 THE DAVIS-BACON ACT

The Davis-Bacon Act established a prevailing rate of wages for laborers and mechanics contracted for federal construction work within their localities. The Secretary of Labor determined the prevailing wages and also resolved any disputes that might have arisen about what the prevailing rate was in a particular locality. The purpose of the law was to prevent unscrupulous contractors from hiring lower paid workers from outside the locality and thus underbidding the contractors who were paying the going rate. Before Davis-Bacon passed, the federal government had to accept the lowest bid on any contract. Davis-Bacon was designed to prevent undercutting the working man's established wages.

Although Davis-Bacon Act did not cause much controversy when it passed, it has gained some notoriety in the last fifteen years. "Davis-Bacon determinations have tended to raise wages in the construction industry, . . . [to] spread high wages to various geographical localities irrespective" of the prevailing wage rates; to "discourage or make impossible participation of nonunionized construction" on federal projects, and to also have "strengthened the position of unionized construction labor"

(1). During the 1970s and 1980s, attempts have been made to modify or change the act, and even recently, the Justice Department narrowed the prevailing wage requirement on certain federal projects to accolades from the New York Times and curses from organized labor (2). The prevailing wage law had begun to

undermine non-union labor because it favored the union scale on federal construction. Non-union labor labeled Davis-Bacon discriminatory. It also inflated construction costs and thus cost taxpayers more money. The government was required to pay the "prevailing" rate, now defined as the union scale, rather than cut costs by hiring less expensive non-union labor (3). The problem of bootleg labor which had originally prompted Davis-Bacon was no longer an issue; and the conflict between union and non-union wage, which had been irrelevant originally, made the bill more trouble than before.

1931 seems like an odd time for such potentially pro-union regulation to pass. Labor unions did not yet have the legislative support of the National Industrial Recovery Act (NIRA) or the Wagner Act to allow for full-fledged activism. In 1931 the labor movement was collapsing under the pressure of the depression. Industry leaders were politically and economically influential; but why would they, or did they even, lend their support to a bill which one representative said organized labor demanded (4)? And Herbert Hoover's administration, not usually recognized for its outstanding strides forward in labor reform, actually took the bill and wrote it so that it would pass in 1931. The problems Davis-Bacon presents then, are how did a weak labor movement push a bill through Congress; why did industry not interfere with this pro-labor bill; and why did a conservative administration embrace the bill to make it pass?

Neither pro- nor anti-labor forces rallied around Davis-Bacon. Surprisingly, major national unions did not

promote the bill until just before it passed. And even more shocking, those unions that would seem to have the most to gain from Davis-Bacon, such as the AFL's Building Trades Unions, the International Brotherhood of Electrical Workers (IBEW), the Carpenters and Joiners, and the Teamsters, had little or nothing to do with lobbying or promoting the bill to the government or to their own members. Even the leaders of the construction industry, who would also have much to gain (or possibly to lose) if a prevailing wage law were passed, were extraordinarily closed-mouthed. It was difficult to even find those few unions or business leaders who cared enough about Davis-Bacon to comment on it.

Why then was there not an uproar when the bill was first introduced? Why didn't unions embrace it and contractors denounce it? To understand the forces that pushed Davis-Bacon, it is best to first look at a brief legislative history of the bill, and then to examine the motivations and issues of those interest groups involved in the legislative process.

The impetus for the Davis-Bacon Act was a federal contract let in 1926 for a Veterans' Bureau Hospital in Northport, New York to an Alabama contractor. Rep. Robert Bacon, a New York Republican, was sufficiently motivated to draft a bill that would stop underbidding from out-of-state contractors. The Bacon bill had short hearings in the House Committee on Labor in 1927 and another version was stuck in committee in a 1928 session. It was not until the second session of the 71st Congress that the bill began to be looked at more seriously when

Elliot Sproul, an Illinois Republican, reintroduced Bacon's original 1927 bill. The House labor committee hearings in March 1930 covered all the issues of the bill, and the committee reported it favorably.

The Hoover administration then took the bill and revised it. Sen. James Davis, who as Hoover's secretary of labor had endorsed an earlier version of the bill in 1930, introduced it in the Senate; and Bacon reclaimed it in the House. The bill was shorter, eliminating a clause that would penalize contractors for disobeying the provisions, and streamlined from four longer paragraphs to two short ones (5). These changes were made to make the bill constitutionally viable as well as to satisfy industrial interests tied to the administration. Hearings were held in the House Committee on Labor and the Senate Committee on Manufacturers, both of which reported the bill favorably. The Senate had a brief debate and passed the bill in January 1931. The House debated the bill more extensively the next month, and it passed without a roll call. Hoover signed the Davis-Bacon bill on March 3, 1931.

Because Davis-Bacon only regulated the construction industry, it is vital to look at that industry to understand the dynamics of the legislation. The Depression hit construction hard, particularly in workers' wages and in employment. Builders often deflated wages and lowered rates just to receive a contract. Workers had no choice but to accept lower wages since a steady job and some wages were preferable to unemployment. Contractors who imported labor were widespread as

well. At the 1927 hearings, Bacon described what originally instigated his bill. The workers "were herded onto this job [the Northport hospital], they were housed in shacks, they were paid a very low wage, and the work proceeded. Of course, that meant that the labor conditions in that part of New York State where this hospital was to be built were entirely upset. It meant that the neighboring community was very much upset" (6). In the 1930 Hearings, Sproul cites four specific instances of imported labor (7). William Green in his 1931 testimony read a report of fifteen instances of imported labor (8). The New York Times reported in July 1930 that a Veterans' Bureau contractor in Chicago had been undercutting wages (9). This was not an isolated problem. With the onset of the Depression, the problems of cut-rate contracts and lowered rates could only increase as contractors scrambled for bids and workers scrambled for employment.

Contractors tried to maintain their competitive edge, and un- or underemployed workers were willing to work for less than the prevailing scale. The economic stability of building trade wage-earners had been completely undermined as wages were squeezed lower and lower. Total new construction dropped about 26 percent from 1929 to 1930; and in 1931, it fell to just over half its level in 1929. Wages reflected this decline in construction. In 1932, wages were 33.1 percent of 1929 wages, and by 1933, wages were 24.6 percent of what they were in 1929 (10). Although these wage statistics postdate the time when Davis-Bacon was introduced and passed, they nevertheless show

the deterioration of wages in the construction industry.

These economic indicators show the predicament of the construction industry in the early 1930s. But they alone do not tell anything about why such a bill as Davis-Bacon was passed to remedy them. It is also necessary to consider how the three players in labor reform law--labor, business and government--worked to get this bill passed. Some analyses of the law, mostly written as Davis-Bacon reemerged in the seventies, suggest that labor was wholly responsible for the bill. The support for this contention is that the law gave advantages to union labor over nonunion labor; that the problem of itinerant labor was overstated; that because the law both predated the depression and because it was not a temporary measure, the depression did not cause it; and that a racial bias prompted unions to take action.

One author, Armand Thieblot, says that, "under a prevailing wage law, union rates, at least in some areas, would be protected from nonunion wage competition" (11). Another analysis, written by Elliot Gould and George Bittlingmayer, notes that, "by stipulating that the prevailing wage be paid in a heavily unionized area, it becomes much less likely that a nonunion contractor based outside the area . . . would find it profitable to compete there" (12). The bill's philosophy preceded the depression and massive government construction programs. Before the New Deal, the building trades had one of the strongest unions; and "they had the political strength in the legislatures to secure passage of prevailing wage laws to

protect the labor standard they had been able to protect" (13). That forty-one state laws similar to Davis-Bacon had been passed in the past eighty years indicates that "prevailing wage legislation was not exclusively a product of the Depression, although those circumstances appear to have contributed to its passage on the federal level" (14).

Some evidence suggests that "the itinerant worker problem was not as severe as it was represented" and that workers were more often imported to areas with a smaller local labor force (15). Thieblot refutes "the contention that the Davis-Bacon Act was prompted by the depression wage conditions and problems of itinerant bootleg labor or contractors [because] Congress declined a suggestion that the bill be passed as special legislation or as a temporary measure to last only during the emergency of the depression" (16). Although "the mounting hardships . . . created a climate in which legislation such as a national prevailing wage law could succeed" (17). Also, these authors introduce racism as a motivation for passing this law--that northern white workers resented southern blacks taking their jobs for racial reasons.

These writers correctly assess a number of aspects of the fight for Davis-Bacon. Their conclusions, however, are colored with a convenient recent hindsight which allows them to blame unions for framing an unfair bill. They both use a quote from the single representative who opposed the bill, Henry Blanton, to show that labor was forcing the issue to Congress. They ignore the almost unanimous support from Congress. Just because

the prevailing wage philosophy predated the Depression does not then prove that unions pushed it into the Depression. Certainly unions had influence on their state legislatures and helped to push bills through. In the 1930 Hearings, Bacon submitted an extensive list of state statutes and court citations related to states' labor requirements for their construction projects (18). But unions did not have the same influence on a national and federal level as they might have on a state or municipal level. The racism issue the authors introduce could be categorized more correctly as regional or economic tensions not inherently racist. The North offered economic opportunity to workers that the South simply did not. Thieblot suggests that depressed wage conditions were not an issue since Davis-Bacon was passed as a temporary measure. But just because the measure was not temporary, it does not then follow that the depression was not influential in its passage. And the overpriced union rate of the 1970s and 1980s was established by determinations of the law, not by the provisions of the original law itself (19).

From the start of the hearings, labor unions did indeed endorse Davis-Bacon, although not as loudly nor as quickly as might be expected. Labor leaders testified for Davis-Bacon at every one of the hearings, including John Gleason of the Bricklayers, Masons and Plasterers, and AFL representatives such as Edgar Wallace; William Spencer, the secretary of the AFL's Building Trades Department; John Frey of the Metal Trades Department of the AFL; M.J. McDonough, president of the Building

Trades Department of the AFL; and even, finally, William Green, the president of the AFL. They had vociferous objections to the problems of undercut wages. McDonough best explained how contractors who brought their own labor worked to beat the system:

The contractor, who evidently comes from the South, comes in the locality . . . knowing the scales and conditions that prevail in that locality, and he figures that job at a few dollars less than the scale prevailing in that locality, thereby defeating the fair contractors in an effort to get such work. He is not satisfied with that, but brings his men in from the South and other localities, and then . . . he exploits them further, for he does not pay the wage he figured to pay, but probably pays three or four dollars less than he figured to pay, and probably less than the contractors in that locality have figured to pay (20).

Three main ideas emerged from these leaders' testimony. They felt first that the government should not aid in this practice, as Frey said in the 1930 hearings:

We have the spectacle in this country of a method under which the Government apparently can not help itself but must be a party to injuring not only the labor in the communities where the buildings are going up but other construction work, to the injury of local merchants; likewise in leaving the community with the unemployment problem in times like this very greatly intensified (21).

The federal government had a responsibility to be a model employer, especially in times of economic hardship and unemployment. Labor leaders also thought that Davis-Bacon would, as McDonough testified, "help the unemployment situation that prevails in this country today" (22). At the final hearings on Davis-Bacon, William Green finally gave the bill the AFL's "full and hearty support." He expressed the third concern of labor, that the bill would stand up as an effective piece of

legislation. "It is very difficult, of course to establish a fixed-standard wage, but this bill proposes to do the practical thing, and that is to accept the prevailing rate of wages in that community as the standard rate" (23). The position of the union leaders who testified at the hearings was that the government should not be a party to exploitation of labor; that the bill would reduce some of the problems of unemployment; and that it would be a practical law. On the whole, these labor leaders did encourage the idea of a bill to establish a prevailing rate of wages, and clearly saw an excellent opportunity to get a beneficial bill passed.

These leaders did not, however, extensively promote Davis-Bacon in the editorials of their journals or at their yearly conventions. They did not make much of an attempt to bring Davis-Bacon to either their members' or the public's attention. There was some comment on the progress of the prevailing wage bill in trade journals and in convention proceedings. Only one labor journal, the Bricklayer, Mason and Plasterer Journal, carefully followed the progress of Davis-Bacon. In March 1930 the Journal commented somewhat grandiosely that "labor has united in support of the Sproul bill, sponsored by our organization" (24). This journal is the only one that even mentioned sponsoring the bill. Whether this meant they actually worked with Congressmen to frame the bill, or whether it was a call to their members to promote the bill is not clear. What is clear is that the Bricklayers was one of the only unions to discuss Davis-Bacon in more than a cursory

manner. The editorial urged members of "the vital necessity for continuing the work of informing" Congress of their goals (25).

The bill made it through the committee, even without extensive union activism. The Journal reflected the same issues other labor representatives presented at the hearings, particularly two ideas that the Federal government should be a model employer, and that Davis-Bacon would ease some of the conditions of unemployment. "The spectacle of wage and working standards on Government work, in this critical period of unemployment, in the face of White House protests that there should be no reduction of wages, is one of the shameful pages of current history" (26). Yet in recognizing a situation that labor "should have plunged into the battle full force," support from other unions had been "mediocre" (27). There wasn't widespread support among unions, and the Bricklayers' recognized that problem.

Upon the bill's passage, the Bricklayers echoed Green's sentiments that the law would not do everything they wanted, but it was making a start. "The measure has its merits. It does declare a Government policy. Beyond question it is the will of Congress that the Government cease providing opportunities for the destructiveness of wage-cutting contractors" (28). The Journal criticized the lack of a penalty clause for contractors who violated the law; and it also was not pleased with the thirty-day period between the bill's passage and when it would take effect. This was "allowing a Roman holiday for contract letting to wage-cutting contractors" (29). The Bricklayers,

surprising though it may seem, was the only union to make a conscientious and concerted effort to see Davis-Bacon pass. The editorials closely echoed the opinions labor leaders expressed in their testimony at the hearings: The government had a responsibility to pass Davis-Bacon; it would help the economic situation; and it was a practicable bill that had government support.

Other labor organizations did take some interest in Davis-Bacon. The 1930 proceedings of the 24th Annual Convention of the Building Trades Department included a report from McDonough on the legislation, and he commented again in 1931 after the bill's passage (30). The journal of the Journeymen Plumber and Steam Fitters' Union picked up the news in March 1931 (31), and in April 1931 noted the bill's passage (32). The Electrical Worker (IBEW) also wrote an editorial in 1931 supporting Davis-Bacon (33). But as the Bricklayers' Journal pointed out, unions did not rally around the prevailing wage issue. The March 1931 issue said, "Of the International Unions the only ones to send men into Washington for work in any phase of the fight . . . were the United Brotherhood of Carpenters and Joiners and the International Brotherhood of Electrical Workers" (34). The American Federationist merely noted when the bill passed. These other labor journals focused much more frequently on unemployment insurance and the anti-injunction fight. Irving Bernstein notes that in this period the "reform issue that stirred greatest interest was unemployment insurance" (35). The Plumbers, the Carpenters and Electrical workers did offer their

support for the measure just before it passed, but they were all surprisingly quiet as Congress batted the bill around for four years.

What makes the construction trade unions' indifference to a bill that could have helped them immensely surprising is that they had a history of being one of the most well-organized trades in the country. A number of factors made the construction industry suitable to a strong trade movement. "The prevalence of small contractors, the keen competition in bidding, the local character of the industry, the early start made in it by unionism and the disinclination of building owners to support an anti-union fight" (36) contributed to a powerful labor movement in the building trades. The local character especially made possible a strong local movement, in contrast to a relatively weak and decentralized national organization (37). Because the industry was structured around a locality--the workers, the contractors, and the jobs were all in the same area--it was easier for labor to organize around their common local interests.

The hourly wages in the construction industry before the depression were higher than those prevailing in most other occupations. This was because workers had relatively strong organization, and competition was high among contractors who needed men for a particular job at a particular time. Also, a strong labor movement was able to demand hourly compensation for the two to three month period in which workers were unemployed. The industry's susceptibility to unemployment was caused by the

"highly seasonal character of the industry" and "its extreme sensitiveness to periods of depression and prosperity" (38). These "economic characteristics of the industry" (39) gave construction labor an edge in determining their wage rates. They were the same characteristics which caused the depression to hit labor even harder in bad times.

Union organization could offer no relief for these workers in spite of their strong organizational structure. Bernstein says, "The depression eroded that vital economic function of trade unions--the maintenance of wage rates in the face of falling business activity. Labor organizations fought a hopeless rear-guard action; declining rates in the nonunion sector of the economy became irresistible" (40). Labor, dependent on the prosperity of its employers, could not survive the profit crunch. The prosperity of the twenties, although it made unions relatively powerful, was not finally transferred to the worker. "The gains of advancing technology and rising productivity had gone mainly into profits rather than into real wages" (41). And once the problems of unemployment grew, union membership and dues declined (42). Although the construction unions may have been among the strongest in the nation at one time, the depression had in effect left them impotent. The structure of the industry caused the locality to become a breeding ground for competition between workers rather than cooperation. Bernstein's remarks are not specifically directed at the building trades, yet they certainly apply to the difficulties of all labor, including construction workers.

There were, then, two sides to the labor situation in construction. On one side, the building trades had a long history of strong organization, particularly on the local level. On the other side, national construction union organization in 1931 was especially weak, and economic hardships and unemployment had hit the construction trades extremely hard. It is not surprising, even in spite of their earlier strength, that unions had a hard time rallying around Davis-Bacon. Those unions who made themselves heard did indeed support the bill. But many unions did not make any comment. This silence can be related to the bill's limited relevance. The beneficiaries were centered in large cities, and they were workers for only one industry. And unions were preoccupied with more universal issues such as unemployment insurance and the elimination of yellow-dog contracts. Perhaps the one national union that did take the issue to heart, the Bricklayers, was particularly prosperous, well-organized locally, or highly in tune to the issues that affected its members. The other unions might have been too weak, too alienated from their local organizations, too preoccupied with other issues, or even financially strapped. Whatever the reason, the unions did not make Davis-Bacon a law.

If, then, the building trades were relatively quiet about Davis-Bacon, other factors must have contributed to its passage. Although industry was not usually prone to supporting labor issues, leaders of the construction industry did make themselves heard at a number of the hearings on Davis-Bacon; and

they were not in complete opposition. In the March 1930 hearings, O.W. Rosenthal, president of the Builders Association of Chicago lent almost unqualified support to the then Sproul bill (43). Another businessman, C.J. Norman, Chairman of the Board of Governors of the New York Building Trades Association, believed that the constitutionality of the bill was questionable, but nevertheless agreed with Rosenthal in a carefully qualified statement: "We believe that there should be some legislation on the subject" (44). These hearings were the only ones in which industry leaders testified on the bill. In the House debates on the bill in February 1931, Bacon submitted three endorsements from contractors (45) but there was no other mention of industry attitudes in the official records.

There was an interest among reputable contractors such as Rosenthal to promote Davis-Bacon. The industry as a whole neither lauded nor condemned the bill, however. A similar gap in coverage of Davis-Bacon exists for industrial periodicals as it did for labor periodicals. Public Works, the Contractors and Engineers Monthly, and The Constructor add nothing to the discussion of Davis-Bacon. Only one magazine, The Engineering News-Record, took an interest in Davis-Bacon for any extended period of time.

This journal gives a good overview of what representatives of the construction industry likely thought about Davis-Bacon, had they been more inclined to express it in other places. They did not like or want contractors to misuse labor: "Exploitation of labor is always objectionable, and particularly so in the

present stress of unemployment" (46). Still, these businessmen wanted to protect their industry from government interference. They recognized the problem, but did not believe legislation was the answer. "It is believed, however, that the contractors can meet the situation through their own agencies and render unnecessary further restrictive legislation" (47). They had specific objections to the regulation by the Secretary of Labor, "an official whose sympathies are naturally on the side of labor and who is not accountable for the cost of the work" (48). Even with a conservative administration in the White House, they were not willing to risk a labor secretary's natural bias.

Contractors had different opinions on the bill depending on the size and profit margin of their firms:

Sentiment among contractors is divided as to the [Sproul and Bacon] bills. Local firms meeting the competition of outside contractors bringing in cheap labor to the job generally favor some action along the lines suggested. Some large firms doubtless would oppose on the reverse grounds (49).

The small firms would have been unable to import labor like the larger firms. They would have been less able to compete in the same local markets where big firms could use cheap outside labor to underbid small firms. By allowing imported labor, the larger firms had an edge over the small ones.

Construction groups wanted an amendment that would force the department heads who let contracts to set the wage before they advertised the bids. This would have allowed the contractors to budget for a specific wage. The Associated General Contractors proposed an amendment to do that, but such an amendment was not

considered, however, because "it was felt that any change in the Senate language would endanger the final passage of the measure" (50). The industry leaders came up against resistance from the administration; the bill would not be changed according to their specifications. It would pass without any amendments.

It cannot be supposed from this evidence that the construction industry really wanted Davis-Bacon, and some more progressive leaders certainly did support the idea. Some smaller firms saw an economic advantage. But the industry as a unit was lukewarm to negative; and without their amendment, the journal commented: "'Prevailing rate of wages' is, under the best of conditions, an indefinite and intangible term. Under the proposed Davis bill it would be still more indefinite. For the good of the public as well as of an essential industry, the bill should be amended or killed" (51). The reports in the Engineering News-Record show that most contractors would have been perfectly happy without Davis-Bacon.

The labor movement, weak and ineffectual, did not embrace Davis-Bacon as a rallying issue. The construction industry, fairly powerful and influential, although at the beginning of an economic slump, did not take an inordinate amount of interest in Davis-Bacon either. These two important lobbyists for or against labor reform had little to do with the legislation's passage, which may show something about the law itself. Davis-Bacon is not the best example of an issue of broad impact to either labor or employers generally. It was limited occupationally and geographically. Yet even those specific

groups Davis-Bacon affected--the building trade unions and the contractors--showed surprising indifference to the it. The lukewarm endorsement from a few labor groups and the mixed reviews from contractors, when there were any at all, do not at all portray interest groups active in seeing a bill pass.

The push for reform from within the administrative structure is the only other possible source for Davis-Bacon's passage. This in itself seems unlikely because Herbert Hoover is not commonly linked with imposing this kind of regulation on an industry, nor did Hoover have any ties to labor interests. He was an industrial engineer, a businessman, the former Secretary of Commerce; but he was not a labor activist. His outlook was to see "such social disturbances as unemployment and labor unrest as primarily technical problems" (52). A 1921 Conference on Unemployment concluded that "the proper role of the federal government was that of an adviser, coordinator, and supporter, not an initiator," all of which were ideas in accordance with Hoover's viewpoint. (53). Hoover's administration is more often associated with laissez faire policies, especially when it came to the regulation of competitive practices within the business community. The stipulation that businesses must pay a certain rate of wages is certainly an imposed regulation. And as the evidence shows, the construction industry, which might have influenced the Hoover Administration, did not push the bill at all.

But another surprise of Davis-Bacon is that Hoover can be tied to an ideology that Davis-Bacon represented. He had two

fundamental programs to regain prosperity: maintaining wage levels and promoting construction. High wages would lead to greater consumption and therefore greater prosperity. His labor policy simply "rested on the maintenance of wages and the avoidance of strikes" (54). Linked to his idea "that wages should be maintained by industry" were the accompanying theories "that planned construction should be maintained by industry; and government agencies even should increase construction to give as much employment as possible" (55). Hoover considered the construction industry the most important and influential industry in the national economy. Private and public construction were needed to stimulate the economy. Construction could act as a stimulant for growth during off periods; and during inflation, it could be out down. (56).

Hoover even declared a kind of presidential Davis-Bacon several months before the bill passed. He announced that the Federal Government would insist that contractors of government work should pay their communities' prevailing wages. (57). Hoover was indeed thinking about the connection between wages and the construction industry, and this pre-Davis-Bacon declaration shows how important the issue was to Hoover. These two philosophies, maintaining wages and promoting construction, converged in Davis-Bacon. The prevailing rate of wages bill fulfilled Hoover's need to maintain wages. And it protected the industry that Hoover believed would remedy the country's economic troubles.

Even though Hoover supported Davis-Bacon, he obviously was

not responsible for thinking of it or proposing it; nor did he actively promote it as it passed through four years of hearings, reports, and resolutions. It was a happy break for the measure that it fit into Hoover's mindset. This piece of legislation had strong support from Congressmen from the start. Robert Bacon began his push with the original 1927 bill, and he did not relinquish it in the four years it took to get a bill passed. Bacon presented a completely different bill in 1928, "Preferences of Labor," under the advisement that his original bill might have been unconstitutional. "We attempted to attach the proposition in a different way in order to accomplish the same general result, namely that the Federal Government should not be a party to upsetting labor conditions throughout the country when engaged in Federal construction work" (58). No matter how the issue was presented, Bacon, and most Congressmen, were behind it.

Two Congressmen best represented the opinions most of their colleagues held on the bill. Robert Ramspeck, a Georgian Democrat, condemned the practice of bootleg labor:

I am in hearty sympathy with the purposes of organized labor and have no sympathy with any contractor who goes into a community and pays anything less than the union wage scale of that community, but I do not want the record to just simply indict the whole of the Southern States, when as far as I know, the fifth district of Georgia has no contractors of that sort, and I hope it never will (59).

And John McCormack (D-Mass.) said:

The Government should not be a Shylock trying to get its pound of flesh. . . . The government should consider the prevailing wage scale in order to meet the desire of organized labor which, as I view it, is not

selfish but has as its objective, the enactment of legislation which would be beneficial to the people generally in this great country of ours (60).

These Congressmen expressed similar ideas as labor did: that the contractors who exploited labor should be stopped; that the government should not be an accomplice to this exploitation; and that this legislation, by stopping these practices, would alleviate some of the problems of unemployment.

Only one representative came out with any strong opposition to the bill. Blanton, a Texas Democrat, accused his fellow legislators for accepting a labor-dominated bill: "We can not amend it. You have got to take it just like organized labor has written it for you, like a bunch of mocking birds with their mouths open and their eyes shut" (61). Although some analyses use Blanton to support the idea that labor pushed this bill, his accusations are completely unfounded. He must have known, as did everyone else, that the Hoover administration sat down and wrote the bill so that it could not be amended.

William Doak, Hoover's labor secretary, presented the guidelines the administration established for the bill's passage when he testified in the 1931 hearings. He and the government departments who did the contracting--the departments of the Treasury, War, Navy, and Labor, and the Veterans' Bureau--reworked the bill between the 1930 and 1931 sessions. He made three major points in his testimony. The first was that they changed the bill so it could pass. The second was that they had to take into account a number of different opinions on how the bill should have been worded. And the last is that they

would not allow for any changes in the agreed upon text of the bill (62).

The main changes in the bill were that the responsibility for establishing the wage and dispute settlements fell to the Secretary of Labor and that there was no longer any penalty for breaking the law. Contractors would merely be in danger of forfeiting their status as government bidders. Doak testified, "we believed it best to leave out all penalties and to treat wage rates in this instance just the same as one would treat material or other specifications going into a project" (63). In reworking the bill, Doak said they had to listen to a number of different opinions on what to do. "We had to give considerations to the contentions of the business people and due consideration to what the manufacturers had to say in the other hearings" (64). Once the administration took the bill, they would not allow any changes on it, or they would have withdrawn their support. "It is the best they could get out of a compromise, and that whenever it is changed, none of us is willing to sponsor the bill with that change which would destroy the interdepartment understanding we reached" (65). In effect, the administration took the bill, eliminated the clauses which would have caused the most problems--the penalty--and then gave it back to the Congress with the warning that if they amended the bill, it would not have gone through.

Three main issues arose from the House debates that explained why the bill could and should pass at that time, and also show why it did indeed pass. First, as Doak's testimony

showed, the administration supported the bill. Bacon said, "The President, as is well known, is very anxious the wage scale be not reduced" (66). William Kopp, a Republican from Iowa, said, "At the present time the officials who will let the contracts for public building are in entire sympathy with the bill and every effort will be made by them to enforce the law" (67). With the administration and the departments in charge of federal contracting behind the bill, there could be no reason for it not to be enforced.

Second, the federal construction program, which included not only public works but all other government building, was becoming a large investment for the government and the country. Bacon said, "The Government has embarked on a large construction program, perhaps to a total of some five hundred millions of dollars" (68). The government had much to gain in "better returns for its money in higher efficiency and greater skill" (69), according to Texas Democrat Clay Briggs.

And last, the bill did not try to do anything all that radical. David Glover, an Arkansas Democrat, pointed out, "The bill does not undertake to fix a wage scale. It simply protects labor in the locality or town in which the building is to be built for the Government so that imported labor will not be brought in and displace local labor" (70). It merely established a local prevailing wage that few workers, union or non-union, as well as few contractors, could disagree with. Davis-Bacon had simple goals and simple language. Assumedly reputable contractors had already been paying prevailing wages,

so this would not have been a burden. Unions were satisfied with a standard previously unheard of. It was not until later that non-union and union workers clashed over this issue of the prevailing wage.

In its final form, the Davis-Bacon Act caused little commotion or controversy. It passed in spite of indifferent lobbying from labor and industry. The administration had produced a bill that satisfied unions, contractors, and its own ideology. It was a small bill that affected only one particular industry. The government should have felt guilty for allowing the wage-cutting practices to become so widespread. Congressmen such as Sproul, Bacon and Davis promoted the bill, but Davis-Bacon would not have passed only with Congressional pressure or union support. It passed because it fit into the ideologies of the Hoover Administration: it concentrated on two specific issues--wage maintenance and the stabilization of construction--that Hoover and his colleagues felt strongly about.

The Davis-Bacon reform had neither strong promoters or detractors outside the administrative structure of the government. Everything that helped the bill came from within the government. It was conceived by a Congressman and rewritten in the administration. It was not by any means a labor-sponsored bill, though labor leaders endorsed it. Industry could not stop it because the bill did not truly attempt anything extraordinary. The Davis-Bacon Act was a painless reform for Hoover's administration that not only their

ideology, but it was progressive and forward-looking in its own small way.

CHAPTER 2 THE WAGNER ACT

The National Labor Relations Act, or Wagner Act, provides a much grander stage on which to view legislative labor reform than the Davis-Bacon Act. It was both a crowning achievement for the New Dealers, and one of its most despised laws among New Deal opponents. The Wagner Act gave workers the right to organize themselves into unions of their own choice. It protected their right to bargain collectively and to choose their own representatives by a majority vote. Employers who interfered with these rights could be accused of unfair labor practices; and the National Labor Relations Board (NLRB) was established to enforce the provisions of the law. The Wagner Act opened the door for full-scale union representation.

Considering the climate of the 1930s it is somewhat astonishing that this bill became a law. Business and government interests had teamed up to administer the codes and practices provided for by the National Industrial Recovery Act (NIRA). Because the bill promoted employees' rights over employers' interests, business hardly supported this new legislation. They had opposed earlier labor reform in the National Industrial Recovery Act (NIRA); the NIRA clause which promoted similar principles of collective bargaining rights met with little compliance from industry. Unlike the Davis-Bacon Act, and the later FLSA which both received administrative approval, the President treated the Wagner Act with a hands-off approach. Roosevelt himself had little desire to promote labor organization in the face of business opposition. And when

compared to the labor clause in the NIRA, the Wagner Act called for even stricter standards. The New Republic called the bill, "as deeply controversial a measure as has been in Congress for years" (1). The dilemma, then, is how did the Wagner Act pass? There must be an explanation for the passage of a bill that the most powerful and influential segments of the country opposed. The questions that arise are: what was business doing while this bill was in process; how did labor use its muscle; and where does the government fit into the picture?

The questions that surround the Wagner Act are more troubling and thought-provoking than the problems of Davis-Bacon, simply because the impact and the extent of a government-protected collective bargaining policy was much greater than the prevailing wage issue of the earlier law. The Wagner Act not only provoked enormous controversy when it was first introduced, but historians still puzzle over the question of why the act passed. There has not been, however, any sense of a historical consensus about the Wagner Act. The historical theories which attempt to explain why the Wagner Act passed fall into three broad categories: business control of the process, government control of the process, and labor control of the process.

David Montgomery expands on the first theory in his book Worker's Control in America in which he says that government intervention inhibited the freedom of unions (2). Business advisors urged that since unionization was unavoidable, management should "encourage the development of such union

structures and policies as would be least inhibiting to management's aims" (3). According to Montgomery, the alliance between business and government carried over into the passage of the Wagner Act at the expense of the rank-and-file worker. Montgomery implies that the result--that "the rank and file could in time be tamed and the newly powerful unions be subjected to tight legal and political control" (4)--was causally linked to an alliance between management and government.

The second interpretation relates to Montgomery's theory, but it places its emphasis on the government to explain why the Wagner Act passed. The government used its own administrative power to control labor even without business instigation. Christopher Tomlins says that "order and stability, no less than democracy, were the goals of labor relations policy" (5). Labor no longer could determine how their institutions should be run; the government determined what was best for the public interest, and labor unions lost their independence along with their self-determination of collective bargaining rights (6). Howell Harris says that the Wagner Act, by giving the NLRB exclusive power over collective bargaining, denied unions their autonomy and ignored unions' definition of their own jurisdiction (7). Harris asserts that although "organized labor supported its bureaucratic and congressional friends' legislative proposals," they "played little part in determining what they were and scarcely understood their detailed implications" (8).

The focus of these historians' interpretations of the Wagner

Act is that the government gained too much power over a labor movement unaware of the consequences of such regulation. Labor no longer could determine its own goals because the government, in establishing the power of the NLRB, had bestowed legitimacy on unions rather than supporting the unions' legitimacy in itself. The first NLRB emphasized "professionalism, legal process, and centralized review." This focus on efficiency (9) continued in the Wagner Act, sidestepping the AFL proposal to protect "the freedom of the established national unions to formulate their own organizing strategy" and to "ensure recognition as autonomous institutions with established rights." their freedom to determine their own strategy and to maintain autonomy from outside government control (10).

The last theory is that labor gave the strongest support to passage of the Wagner Act. Labor asserted its considerable power in the country to force the bill through Congress. Irving Bernstein suggests that the unsuccessful campaign of the National Association of Manufacturers to kill the Wagner bill was in part due to labor's power. Labor interests "lobbied rigourously" in the spring of 1935 to "press the Administration and Congress for the AFL legislative program, in which the labor relations bill was crucial" (11). Bernstein also notes that labor was highly influential, and few senators were willing to "face the AFL at the polls with a negative vote on their records" (12). J. Joseph Huthmacher, in his biography of Senator Wagner, gives credit to labor and liberal support in Congress; but he particularly recognizes Wagner's part in the

process: "He was its legislative instigator and tactician, and before Congress, the President, and the public he was its most ardent champion" (13). According to those interpretations, then, labor and its liberal allies within Congress and the Roosevelt administration contributed the most to the act's passage.

As one sided arguments are liable to do, these interpretations have some shortcomings. Montgomery's analysis in effect ignores what businessmen were saying at that time. Testimony in the Congressional Hearings on the bill shows that businessmen were, with few exceptions, opposed to the bill. Such business luminaries as James Emery, General Counsel of the National Association of Manufacturers; Walter Merritt, representing the League for Industrial Rights; and Henry I. Harriman, president of the Chamber of Commerce of the United States; as well as thirty-six other businessmen, spoke out against the bill at the Hearings. This does not even include the numerous telegrams and briefs businessmen sent to the committee in opposition, nor does it include the many representatives of company unions who were paid by their employers to testify against the bill. Only three businessmen, representing two minor tobacco manufacturers, were in favor of the bill. Those against the Wagner bill represented almost every industry: publishing, mining, textiles, oil, steel, automobile, furniture, rubber, and on. From this evidence, it makes sense to conclude that United States manufacturers were nearly unanimous in their opposition to the Wagner bill; it was

"anathema to the industrial employer" (14).

Businesses stances had two main themes: they objected to a government extension of power into the sacred sphere of employer/employee relationships: and they feared that labor would be given an inordinate and dangerous amount of power. In relationship to the first objection, Harriman said, "substantially every record of every employer in the United States could be open to the whims of roving investigators. This would be an invasion of personal rights, for which I think there is no constitutional warrant" (15). James L. Donnelly of the Illinois Manufacturers' Association said, "this bill would prevent practically any effort on the part of the employer to advise and counsel his workers regarding the condition of their employment, whereas it would permit and legalize almost unlimited coercion and force on the part of labor agents who may allege to be representatives of the workmen" (16). And Business Week astutely noted that the Wagner bill would give "government approval for practical outlawry of company unions, the requirement that representatives of a majority shall overrule minorities, . . . and the imposition of restrictions upon employers without provision for preventing union coercion of employees" (17). If businessmen intended to use this bill to undermine labor as Montgomery proposes, they must have kept these intentions secret.

One of the results of the administration of the Wagner Act was that labor, particularly the AFL, resented the interference from the government and felt that labor interests had been

placed second to government interests. This outcome colors the interpretations of these historians. "It is one thing to acknowledge this result [an institutionalization of unions] and quite another to conclude that Senator Wagner's remarkable legislative achievement in 1935 must therefore have come about . . . at the hands of a few unusually broad-minded industrial and corporate leaders with the capacity to shape political events miraculously to their liking" (18). There is little evidence to support business' role in an insidious conspiracy with the government, and to assert such a theory imposes a structure on their intentions which ignores their expressed positions.

Tomlins' and Harris' theory--that liberal government administrators were trying to control labor against its will--works until labor's role is examined more closely. Although labor leaders had some disagreements about the bill's proposed administration and scope, they were with few exceptions willing to be subject to government regulation. This willingness does not then imply that the government controlled labor. It is just as possible that labor used the government to its own ends. William Green's editorial in the American Federationist of April 1935 said, "The question of whether labor shall have the right to organize and to bargain collectively is now squarely before Congress and Congress cannot avoid decision. Passage of the Wagner Bill will give reality to this right" (19). Green recognized explicitly labor's need for Congressional support and legislation to achieve its goals.

Charlton Ogburn, general counsel for the AFL, did offer several amendments, but they were designed to strengthen and expand on the law, rather than to weaken it. Contrary to Harris' views, the AFL did not show any misunderstanding or naivete about the purpose of the bill or its implications. Ogburn first suggested changing the definition of labor organizations to exclude "any agency or employee representation committee or plan"--the company unions--and to make organizing such groups unlawful. He wanted labor to have a representative voice in the new Labor Board; and he wanted to give the NLRB jurisdiction in the automobile industry (20). None of these amendments, however, interfered with Ogburn's enthusiasm for the bill itself: "We think the bill will go very far toward establishing the principle of collective bargaining, in that it will prohibit employers from interfering with the organization of their employees. We feel if that prohibition is enforced, employees will organize voluntarily" (21).

The views of Bernstein and Huthmacher--that labor along with its allies in the government were the key instigators of the act--is merely too limited. It places too much emphasis on the effect labor had to instigate passage of the Wagner bill. Although labor had gained some power from the NIRA's collective bargaining clause, its lobbying power within the government had not been firmly established. The national unions did give the bill their full support, yet still did not shape the Wagner Act in any substantial way. Their support is tied into other factors that led to the bill's passage, and it does not stand

alone.

The deficiencies of these interpretations show that these historians have not adequately explained why the bill passed. They do not account for the bill's sidestep around business power, and they do not wholly account for the developing alliance of labor and government that was previously absent in the NIRA. These authors do include some points that suggest that labor reform came from a variety of sources. Huthmacher, as well as Harris, note Wagner's importance in the bill's passage; and there is no doubt that Wagner's influence and determination had an impact on public recognition of the bill. Wagner's name was attached to the bill; and he was the bill's sponsor in front of the nation, on the radio, and in the papers (22). Harris certainly gives credit to the drafters of the bill who could write an act removed from "judicial meddling and attack," and to Wagner's power to force the bill to a vote with or without FDR. Harris also says that the content of the bill had the benefit of two years of experience of employer opposition to unionism (23). Harris and Huthmacher both mention that the Wagner Act filled a vacuum left after the Supreme Court killed the NRA (24). Huthmacher and Bernstein note that not only did businessmen like Harriman question the bill's constitutionality, but the senators themselves believed they could pass the bill and wait for the Court to void it later (25). Their valid conclusions all involve the machinery of the government: labor's impact on the government process; Wagner's importance; the role of the Supreme Court; and the

administrative preparedness that came from two years of business opposition. But these fragmented ideas work much better within a more complex framework that can account for changes in the power structure.

Theda Skocpol and Kenneth Finegold suggest in their essay, "State, Party, and Industry: From Business Recovery to the Wagner Act," that to find out why the bill passed with such opposition from business, it is necessary to look to "intragovernmental developments that came together in 1935 to allow advocates of strong legal support for unionization" to enter the legislative arena (26). Skocpol believes that industry could not stop the Wagner bill because the NRA could not establish concrete business cooperation that would promote recovery. The collapse of the NRA showed that the private capitalists' answers to what was good for the economy were not necessarily the right answers. When business lost control over the definition of a recovery program, that in turn created a new balance of political forces (27). Skocpol attributes the bill's passage to the inability of industry to work within the government which caused both the failure of the NRA to promote recovery, "as well as the changing party system of the 1930s" (28).

Industry, although opposed to the bill, simply did not have the ability to stop it. This stemmed from the collapse of business and government cooperation on the NRA. The Illinois Manufacturers' Association suggested ending the NRA in March 1935 because the rise in prices hurt consumer demand; production and

volume increases were slowing down; employer/employee relationships were strained; and it intruded into private affairs (29). Two months later during the furor over the possible extension of the NRA, industry was divided over what to do about NRA. "1500 businessmen . . . praised the codes of fair competition, saying that their effect had been to minimize destructive competition, help turn losses into profits, and improve the conditions of labor." But large industrial groups did not want an extension, nor did retailers and other businesses which opposed price fixing (30). It was exactly these conflicts which caused the NRA to fall apart.

Those in charge of formulating the codes, the deputy code administrators, "had been drawn from the ranks of business" (31), and that in itself created problems. They "brought conflicts within and between industries into a political arena" (32). The NRA lacked either "trained government officials experienced in regulation or planning for industry with 'the public interest' and some conception of the whole economy in mind" (33). An incompetent and uncooperative administrative staff was "permeated by conflicting business interests" (34) and could not sustain itself.

Promoting business activity could no longer be the only solution for economic recovery. Labor had something constructive to say about the problems of the NRA:

considering the fact that the law itself had to be interpreted through administration, that the administrative staff . . . was groping for the meaning of the law, and that industry itself had to break from its old moorings and practices and develop the

procedure of balanced economy--that all this has been imperfectly accomplished should occasion little wonder (35).

Granted that labor took some glee in the demise of business and the NRA codes; but the point is that industry could no longer cooperate with the government. The law went against the grain of industrial competition. Business did not support the NRA any longer because it did not further their own ends. Not only did industry fail to make the NRA work, but the law itself had too many inherent weaknesses to succeed. The government did not have the administrative machinery to regulate the economy through business. "The NRA was unprepared either to classify industries uniformly prior to the negotiation of labor and trade provisions or to provide for subsequent administration of the codes. The result was chaos" (36). The National Recovery Act gave the government few means to actually enforce its codes and provisions.

Without enforcement, the NRA administration relied on each industry to regulate itself. And without strong supervision from the code agencies, mostly run by businessmen, business did not fall into line with the provisions and codes of the NRA. "Serious administrative dissension" in the NRA and the New Deal led to the breakdown of compliance with codes (37). The partnership between government and industry was the key to the success of NRA's programs; and when this partnership broke down, other interests, labor especially, were able to gain more prominence and power. Government no longer relied on industry to solve the economic problems of the country, as industry could

not rely on the government to solve their problems. Once the Supreme Court declared the NRA unconstitutional, all ties were broken. The absence of regulating legislation and the broken bond between government and industry contributed to a legislative environment in which labor reform could pass. Their complete failure, however, would prepare the way for more careful government planning (38) especially in the Wagner Act and FLSA.

Government intervention in the field of labor reform did not originate with the New Deal. As Davis-Bacon showed, depression conditions prompted government action to prevent falling wages two years before Roosevelt's New Deal. And even before the 1930s, government had been regulating labor conditions. A short legislative history of labor reform will show that although the idea of a law to establish collective bargaining rights may have been radical, government intervention in labor relations issues had not been at all unusual (39). In 1908 the Supreme Court interpreted the Sherman Antitrust Act of 1890 to issue injunctions against labor strikes and boycotts. The Clayton Act of 1914 was meant to amend this interpretation of the Sherman Act. Although the Clayton Act was designed to uphold labor's position, the court determined that labor still was accountable for its coercive actions. The Court also allowed private parties to obtain injunctions which were far more harmful to labor than government injunction had been. Presidential interventions were also common in labor relations with government. Presidents Cleveland, McKinley, Theodore Roosevelt,

Wilson, Harding and Coolidge all intervened in labor disputes to arrange settlements or to send federal troops.

Closer to the time period, the Norris-LaGuardia Act of 1932 outlawed the labor injunction and the yellow dog contract which required workers to pledge not to unionize as a condition of employment. The Railway Labor Act, as amended in 1934, set a precedent for labor policy that the Wagner Act would follow (40). The one-sided character of the Wagner Act was really not unusual when held up against other one-sided legislation in favor of industry, such as tariffs, subsidies, tax concessions, or free municipal bonds to industries (41). Where labor was concerned, the government historically had taken an active role in its regulation.

The relationship between government and labor continued into the New Deal. Section 7a of the NIRA encouraged union membership as well as union agitation. The New York Times reported that AFL membership rose by 1.3 million people since the NRA had begun four months before, to bring the total AFL membership up to four million (42). This encouragement also led to unrest and strikes as the NRA recognized workers' rights to join unions. 1934 was a banner year for strikes and violence, which had both economic and political concerns. The economic issues involved wages and hours, such as the NRA codes attempted to regulate. The more important political issues centered around collective bargaining, and the NRA's labor clause contributed to a rise in labor concern over their rights to organize (43).

Roosevelt established the National Labor Board to oversee the problems Section 7a brought to the government. Unfortunately for labor, the NLB did not have any power to enforce its pronouncements. "The NLRB's initial achievements assured very few substantive long term gains for organized labor. Industry too often refused to comply with the board's ruling and both the president and much of the NRA bureaucracy took an ambivalent position on the question of union power, frequently accepting the direct contradiction of NLB policy" (44). In 1934, Wagner proposed a bill that would give the NLB the power to enforce its policies. As it went through the Senate, the committee and past Roosevelt, the bill became modified and watered-down until it barely resembled its original form. Wagner dropped the bill; and Roosevelt established a National Labor Relations Board with Public Resolution Number 44 which was supposed to take the place of the ineffective NLB. This resolution did not invest a labor board with any more power than bills had previously (45).

The American Federationist in June 1935 pointed out the specific problems of the NRA and P.R. 44 labor boards: their provisions were ambiguous, which left room for misinterpretation; they were excessively generalized in regard to the principle of collective bargaining; they diffused administrative responsibility rather than assigning specific jobs; they gave no power to the NLRB; and any elections for union representation could be contested in the courts and tied up for months (46). In the hearings, Francis Biddle, then

Chairman of the NLRB, testified that the Board could not subpoena witnesses, nor did it have the "power to enforce its own decisions." The Board also faced tremendous delays in the machinery of the NLRB which hurt the labor grievants much more than it did the defendants (47). Even though the NLB and later the NLRB were designed to give labor rights, the law supporting them was sufficiently vague and unenforceable that their effectiveness was severely limited.

In spite of the shaky foundations that labor and government cooperation rested on, labor had its advocates within the government. The New Deal Democratic power was becoming increasingly urban and ethnic--the mainstay of union membership. The 1934 elections gave Democrats overwhelming majorities in both the House and the Senate. Time reported that the November 1934 election was the "nearest thing possible to a national referendum of Franklin Roosevelt's New Deal." The Democrats gained thirteen seats in the House and nine seats in the Senate (48), an extraordinary achievement for an off-year election. Congress had a liberal bent with sympathies that leaned toward labor interests. The heavy strike action in 1934 brought labor reform to the forefront of legislative consciousness. The Times said in May 1934 that, "There is every indication that the nation will witness a Summer of strikes in many widely scattered industries, and the tally of the year is likely to break records" (49). There was a recognition before and after the elections that something needed to be done about labor unrest. With their connections to strong pro-labor

constituencies, legislators were ready to seriously consider new legislation that would alleviate the tensions of 1934. The post-NRA decline in successful alignments between industry and government also contributed to a government which turned to labor legislation.

As important as the partisan make-up of the government was the ability of the administrators to write a bill that could be passed. Peter Irons' book The New Deal Lawyers shows the contributions that men of experience and ability made to the Wagner's bill passage. The bill's draftsmen were all skilled lawyers. They knew how the legal process worked and how to frame a viable bill. Their experience was in stark contrast to the drafters of previous New Deal legislation. The authors of the earlier legislation had been primarily politicians, bureaucrats and lobbyists, and each group had its own political agenda to pursue (50). The NRA did not last because its administration was unorganized and weak. It was not laid out in any coherent, effective manner. Its goals were so broad and diffuse so that ultimately nothing would ever be accomplished.

But the Wagner bill had one specific goal: to stop employer violation of collective bargaining agreements. With that one goal came the advantage of hindsight: neither the NLB nor P.R. 44's NLRB could process the complaints of employer violation of Section 7a (51). The NLB's and the NLRB's lack of success made the framers recognize the need for specificity and clarity to survive court interpretation (52). William Green wrote in the April 1935 Federationist, "this bill was drafted on a basis of

experience for the purpose of removing those conditions which make ineffective the right of wage-earners to organize" (53). Green knew that the previous problems creating a viable collective bargaining policy would contribute to writing a stronger bill more able to withstand the court.

The problems of constitutionality which dogged other New Deal legislation made these lawyers aware of the pitfalls of unspecific goals. They based the Wagner Act's constitutionality on the commerce clause and the due process clause of the Constitution. Strikes and labor unrest adversely affect the channels of commerce; and the inequality of bargaining power deprived workers of "actual liberty of contract" which "substantially burdens and affects the flow of commerce" (54). Government had a history of intervention in labor disputes with injunctions and presidential orders. In response to the constitutionality questions, Wagner said in May 1935 that the proposed bill delegated no legislative authority so it could not be accused of usurping Congress's jurisdiction, and that labor regulation directly related to the regulation of interstate commerce (55). Since the NRA was declared unconstitutional, support and opposition alike knew that the bill would eventually be tested in the court. However, the demise of the NRA even worked in favor of the Wagner bill. There was a distinct absence of recovery programs after the NRA fell. The labor bill could fill this legislative hole as well as give senators labor support. And a number of senators did believe that the bill would eventually be declared unconstitutional, so they could

vote for it without truly endorsing its philosophy (56).

The Wagner Act was written with little input from the presidency. Roosevelt "never was greatly interested in the subject [of the Wagner Act] and gave the proposal his support only at the last minute and then under considerable political pressure" (57). But Roosevelt's reluctance to support the bill was not decisive because Wagner could work through a Congress receptive to his initiatives on behalf of the industrial working class. Urban liberals dominated Congress, and they were willing to support pro-labor legislation. The presidential indifference meant little to a well-organized and highly motivated group of powerful Congressmen.

The Wagner Act had powerful allies and powerful adversaries outside the government. Saying that this law was unusual because it passed over businessmen's heads means not that industry secretly wanted the bill passed; but that because of the circumstances of the recovery, business could not mobilize its usually extensive resources within the government. That labor worked within the scope of government control should not imply that the government somehow manipulated labor's true intentions; instead it shows that labor recognized that their only recourse was the government, and that they could not reasonably hope to gain anything working outside these established routes.

Rather than working around established centers of power, organized labor worked within them. Labor had little need to work outside or around the government. The AFL leaders used

their power to call for legislation, not upheaval. A March 1935 Federationist editorial urged, "It is upon organized labor that the adoption of the Wagner Bill will depend. This means every union man and woman, every union official, must use to the full his influence in having this bill enacted into law." (58)

William Green said in his testimony at the hearings: "We cannot and will not continue to urge workers to have patience, unless the Wagner bill is made law, and unless it is enforced, once it becomes law" (59). Labor used its power within the confines of the government. They could urge union members to press their Congressmen to decision; they could threaten strikes if their plans were not carried out. Labor had its legislative agenda, and the government was able to respond to it.

The key to the puzzle of the Wagner Act is how the government worked. Only the state had the ability to change labor's status in the workplace. Which group prevailed, business or labor, depended on a complex set of relationships between the government and the concerned parties. As the balance of power in the government shifted from industry to labor in 1934 and 1935, labor gained some important allies among the framers of government policy, an advantage only allowed businessmen earlier in the New Deal. But without a receptive and able group of administrators, the bill would have been doomed to the fate of the NRA. Labor reform benefited from a long history of labor legislation, a determined sponsor, and framers who set out to write a bill that would pass, rather than to promote particular agendas. The Wagner Act passed because

the government had the machinery to respond to the call for labor reform. Although there may have been a large support base for reform, the initiative for the Wagner Act came from sources already politically entrenched.

Even though the Wagner Act showed a shift in government sensibilities, it did not show an entirely open arena for labor reform. The writers of the Wagner Act used their own considerable knowledge and experience and did not really solicit labor's approval. Certainly the bill coincided with organized labor goals, but the workings of a less open government has led many to an interpretation that the government ignored labor interests. It did not, but in the case of the Wagner Act, the process came to fruition fully within the government. The Fair Labor Standards Act offers a completely different method of successful federal labor legislation.

CHAPTER 3 THE FAIR LABOR STANDARDS ACT

The process in which national labor standards came to the legislative and political arena was far more complex than either Davis-Bacon or the Wagner Act. From its inception, the Fair Labor Standards (FLS) bill was different from the others. The economic implications--and interpretations--of the bill created regional and philosophical divisions between previously cohesive lobbies from business or labor, and even previously united political coalitions within the government. Labor unions were deeply divided on the viability of labor standards, which reflected the growing split between industrial and craft unions. Industrial leaders predominately opposed standards, yet some who served to benefit from minimum wages and maximum hours gave it a measure of support. The lower prevailing wages and longer work weeks in the South made the cost of labor much lower there, and southern industry fought to protect these standards. They opposed any attempt to restructure their prevailing wages and hours because it undermined the basis of their economy.

Unlike the other two cases, the original impetus for labor standards was within an administration, not from a concerned Congressman. This shows that by the time this legislation came around, labor reform had become more part of the administration's mainstream program. In spite of an enthusiastic administration, the Democrats were not unified behind Roosevelt, and the New Deal coalition in Congress that had succeeded so well with the Wagner Act was rapidly

deteriorating. Congressmen lined up with their regional and geographic interests, or with powerful industrial or labor groups, rather than in line with their parties. The law had the most arduous path to final passage of any of the cases. A Business Week article said in 1938, "Something is bound to be screwy about any analysis of the prospects for wage-hour legislation. . . . Nobody can reconcile all the contrary factors that will determine its fate" (1).

The legislative history of the Fair Labor Standards Act is complex and detailed (2). My purpose, rather than to retell an already told history, is to show, as I have in the other cases, the overlapping and contradictory initiatives that contributed to a Congressional labor reform. The complexity of this particular labor reform requires a different kind of telling than the other two cases. The reform went through so many changes; and the parties involved, both inside and outside government, so often rearranged their positions and realigned, that to arbitrarily declare that business, labor or government had the upper hand is presumptuous in such a multi-layered process. My argument will instead follow three stages of the bill and show which groups had the most influence during these stages. Unlike the cases of Davis-Bacon and the Wagner Act, no one group can be dismissed offhand as uninfluential or unimportant because of their political powerlessness. The power bases changed constantly during the year FLSA went through the process.

The three stages follow the three sessions of Congress from

when the bill was introduced to when it passed. The first established the support for and opposition to the bill. The original bill was introduced in the first session of the 75th Congress, and four variations of the bill followed until the end of the session in August (3). The second stage covers the dealings in Congress and especially in the House Committee on Labor during the special session of November and December 1937. It was in this second round that the opposition dealt a blow to the administration by holding up this key piece of legislation. The last round includes Roosevelt's push for passage beginning in early 1938, through to the bill's final restructuring in June. This stage shows Roosevelt and his administration most willing to compromise to assure a victory for their labor standards plan.

Once again a brief legislative history of applicable labor legislation is necessary to understand the impact of federal legislation. The origins of FLSA can be traced to a number of sources. States had labor standards legislation on their books going back to the 1910s and 1920s. The concept of labor standards was not new, although the constitutionality of this type of legislation was not particularly secure (4). In national legislation, three laws foreshadowed the philosophy of the FLS bill: Davis-Bacon, the NIRA and the Walsh-Healey Act. Of these, only Davis-Bacon and Walsh-Healey were still valid in 1937. Davis-Bacon established the prevailing wage standard for the federal construction industry. In 1935 it was amended to include a penalty clause for miserant contractors, one of the

provisions which labor and some members of Congress had wanted in 1931. The Walsh-Healey Act, passed in 1935, set up minimum standards for the production of goods sold to the government. Frances Perkins, Roosevelt's secretary of labor, considered Walsh-Healey a forerunner to the FLSA because it covered industry broadly to establish flexible minimum wages, a forty-hour week, and a ban on child labor (5). Walsh-Healey expanded the concept of the government as model employer first promoted in Davis-Bacon, but Walsh-Healey took Davis-Bacon one step further to include all industry that did business with the government.

The NIRA and the board which created and oversaw its wage-hour standards, the NRA, had the closest relationship to the FLS bill (6). The NRA established codes for nearly every industry in an effort to prevent more decline in the country's productivity. The maximum wage and minimum hour criteria were part of an effort to stabilize falling prices. The codes also attacked child labor as a practice not conducive to business practices (7). The NRA was least successful in establishing a uniform minimum wage. The complex wage structure of the country overpowered any regulation the NRA could enforce. As far as hours, the NRA "pushed standards in the direction of more national [check quote] norms," but "these were emerging rather than clearly established norms." The NRA was most successful in eradicating child labor abuses (8). When the Supreme Court invalidated the NIRA, the issue of labor standards had already been addressed; and it was not likely to be dropped (9). The

NIRA had introduced another government policy on labor, collective bargaining, which was reformed into the Wagner Act. The Wagner Act in itself did not address labor standards, but its presence lent credibility to the drive for other labor reforms. The Supreme Court's 1937 ruling in favor of the Wagner Act's constitutionality extended Congress' power to regulate under the commerce clause, and paved the way for more legislation (10).

Round One: Roosevelt's Administrative Initiative

Roosevelt and Perkins were sitting on a labor standards bill that had been drafted a year before and held until a more opportune time, and the opening of the 75th Congress seemed to be perfect. Although Roosevelt shied away from promoting a new NIRA in his 1936 campaign and arousing resentment (11), the time following the 1936 election created a "political setting [which] seemed ideal for quick action by President and Congress" for labor standards legislation. Both parties had proclaimed the need for improved standards. Roosevelt in a 1936 campaign speech said he "had only just begun to fight" for better conditions. He pledged "to continue to seek to improve working conditions for the workers of America--to reduce hours that are overlong, to increase wages that spell starvation, to end the labor of children and to wipe out sweatshops" (12) Roosevelt carried forty-six states in a landslide election. The Democrats dominated Congress, and there were only two Republicans on the thirteen-person Senate Committee on Education and Labor Committee (13). Roosevelt used his tremendous popularity to

place new legislation which would combat depression conditions at the top of his list of priorities for Congress, and FLS was one of those bills.

Roosevelt and his administration, with support from New Dealers in Congress, took the initiative for labor standards legislation. The bill was a combination of ideas from the Labor Department; Roosevelt aides Benjamin Cohen and Thomas Corcoran; Hugo Black, then the chairman of the Senate Committee on Education and Labor; and assorted labor leaders (14). Roosevelt's assistants took the Department of Labor bill, redrafted it, and gave it to Black to introduce in the Senate (15). Roosevelt shrewdly had Black front the bill to make "possible the pretense that the bill [was] entirely the work of Congress," which of course it was not (16). Roosevelt had delayed the introduction of the bill from the opening of the session to later in May, thinking that it would unite the Democrats after the furious battle over his court reform bill. Politically, he thought the bill could be "the perfect band-wagon on which to ride into the elections of 1938" (17). He miscalculated the opposition that would come from regional and labor-aligned forces, however (18). From its inception, the FLS bill generated a formidable opposition coalition of business organizations, the powerful old-guard craft unionism of the AFL and a bipartisan group of Congressional conservatives. Because the bill threatened these groups economically and/or politically, they banded together to confront the administrative initiative.

The framers of the bill had made every effort to avoid arousing exactly that kind of opposition coalition. Their objectives certainly were worthy: to establish a minimum hourly wage and maximum weekly hours, and to eliminate child labor. The minimum wage would prevent wages from dropping below what was determined as a minimum standard "so that the marginal worker cannot be made the football of competition" (19). The ceiling on hours would allow for fuller employment because more workers could be hired for fewer hours per week. The elimination of child labor would eradicate an exploitative labor practice. The bill's supporters argued that FLS would raise purchasing power by raising wages; combat unemployment by spreading out hours; and clean-up sweatshops and factories by eliminating child labor (20).

Although the bill owed a lot to the NIRA, the framers tried to avoid some of the problems that caused that law to self-destruct, just as the framers of the Wagner Act had attempted to avoid the similar ambiguities and misunderstandings of the NIRA's National Labor Board. The framers particularly wanted to avoid the problems that had arisen between the code administrators and the enforcement of the codes. These conflicts had been primarily the result of businessmen's administrative responsibility to promote protective codes on industry and their own profit motives (21). To avoid these problems, the first FLS draft laid down definite standards to a board, rather than allowing government agencies to decide somewhat arbitrarily what standards should be, "perhaps the

chief ground on which the NRA had been invalidated" (22). Neither did the bill attempt to regulate business practices or prices, but focused only on wages, hours and child labor, and thus eliminated a major source of administrative hold-up in the NRA (23). It did not allow for an "internal conflict of objectives to cause administrative indigestion," as did the NRA with businessmen defining their own industrial codes (24).

The framers also had the confidence to ground the bill's constitutionality in the commerce clause, as the Wagner Act's had been. They used this reasoning to assert that the government would have regulatory power if sub-standard labor conditions burdened the flow of interstate commerce and caused price fluctuation. Although constitutionality was a less important issue for FLS than for the Wagner Act, there was still no guarantee that, as the Nation warned, "the court would so interpret the situation" the way the framers projected. "The drafters of the wage and hour bill are playing a long shot" (25).

Most businessmen refused to side with the administration. Their experience with the NRA codes had left them soured for any kind of alignment. "As recovery developed, industry lost interest in the regimentation it had eagerly embraced in 1933, with the result that the vast superstructure of regulation became unenforcable" (26). Industry had suffered the blow of the Wagner Act at the hands of the Roosevelt administration and the New Dealers, and many were not willing to go any further with reforms. One businessman testified that the bill was "an

unprecedented delegation of power" (27). Another called a section of the proposed bill "a perversion of Federal authority and an inexcusable invasion of the rights of a State" (28). The recovery of 1935-36 had begun to slow in 1937; and businessmen, already disillusioned with a soured alignment with Roosevelt, lost interest in New Deal methods of economic regulation.

"Good intentions are not the only test of sound legislation," (29) said James Emery, the president of the National Association of Manufacturers, and most businessmen agreed. They believed national standards was an economically unsound policy which, rather than stabilizing prices, would cause the standard of living to fall to "a lower point that will be attained in an unregulated economy" (30). The bill "would not decrease unemployment. Any such measure is bound to increase costs and prices, and the natural effect will be to decrease sales" (31). One industry leader, Arthur Besse, president of the National Association of Wool Manufacturers, argued that a minimum wage would force the less productive, or marginal employee, to rely on relief programs. "These men are going to become unemployable, if you set a wage higher than they are worth based on the amount of product that they can turn out, and would have no alternative but to apply for relief" (32). A maximum work week would also lead to dire consequences, according to E. H. Lane, a furniture manufacturer. "If we reduce the number of hours individuals can work more rapidly than we increase the number of units of output per individual, we are bound to decrease the standard of living" (33). If

workers were working for fewer hours and they did not increase their output accordingly, they would become on the employer and the economy.

Aside from these broad economic objections, a debate opened up between northern and southern businessmen over the issue of regional differentials, or whether lower standards should be set in the South to compensate for a lower standard of living. The earlier case of the Davis-Bacon Act was related to the problem of wage differences in the North and South, but the goal of Davis-Bacon was only to prevent the exploitation of local labor on government construction. FLS attempted to correct the whole problem of regional differentials and in doing so, prompted outcries of protest. "Southerners defended low southern wages as the key to eventually ending southern poverty by creating a broader industrial base" (34). Other manufacturers supported the argument that a legislative differential would "crystallize a distinction between northern and southern wage rates" (35). Even though southern manufacturers agreed that minimum wage and maximum hour standards were desirable, "the great majority, having long deserted the partnership of the New Deal, opposed federal legislation." Their solution for stability was with voluntary agreements within the industry in "a romantic return to the 1920s" (36).

The leaders of labor, like the leaders of industry, did not present united opposition or endorsement. FLS became a battleground for the burgeoning rivalry between the traditional craft unionism of the AFL and the emerging industrial unionism

of the Committee for Industrial Organization (CIO). The CIO had challenged AFL supremacy in "capturing an already existent mass movement of industrial shop committees and rebel locals" (37) and rejecting the AFL's traditional unionism. The first major conflicts between the two national unions had been over the policies of the new NLRB. The AFL accused the NLRB of favoring the CIO unions, and was wary of endorsing another government board which might do the same thing. One leader of the AFL-affiliated IBEW "charged that the NLRB had illegally set itself up as the arbiter of jurisdictional disputes, had served as a propaganda arm of the CIO, had conducted hearings and elections with partisanship, had picked CIO officials as staff members and had set aside valid AFL contracts" (38).

The AFL's national leaders found themselves in an ambivalent position on FLS. They could not refute the need for the proposed bill's provisions for minimum wages, maximum hours and child labor restrictions. The AFL had been fighting for a five-day, thirty-hour week since 1932 when Black introduced a bill for that purpose (39). Green testified in the hearings that the act was "constructive legislation of far-reaching significance in the public interest, necessitated by the impact of the forces behind our industrial development and urban economy" (40). He knew well that the rise of automation and the growth of an unskilled labor force that went with it made protective standards necessary. He also knew that the President and the CIO had lent their support, leaving the AFL awkwardly opposed. Nevertheless, the scope of the first FLS bill was much

more than William Green thought necessary to solve the problem. The AFL offered support for the bill "contingent on congressional adoption of amendments . . . which would limit the power of a government wage-and-hour-fixing agency to matters best left to voluntary action or collective bargaining" (41). The AFL was most careful to make sure that any collective bargaining agreements would be insulated from labor standards regulation (42).

The CIO leadership, on the other hand, had few if any reservations about the bill. The new industrial unionism was more willing to accept legislation through policies which offered economic stability through a strong governmental voice in industrial affairs (43). John Lewis, the president of the CIO, had some reservations about the bill (44), but he nevertheless "urged its enactment and exhibited no inclination" to oppose it publicly (45). He testified at the 1937 hearings that the bill was "virtuous and will be welcomed by every wage worker in America" (46). Sidney Hillman, the president of the Amalgamated Clothing Workers of America and another CIO leader, offered more enthusiastic support for the bill than Lewis did. He spoke from his experience in the garment, shoe and textile industries in which collective bargaining could not "cover the whole industry" (47), and labor standards were desperately needed to support these workers. He believed that "to avert or even alleviate the catastrophe of another depression, it is high time that we set up machinery to protect the minimum-wage and maximum-hour standards from the onslaughts of such an economic

recession" (48).

The hearings firmly established the many regional, economic and political divisions which divided the different interested parties. The bill passed to Congress with the Senate divided on similar issues, though the opposition could only be loosely defined as "partly partisan, partly sectional [and] partly rural" (49). The New Deal ultra-liberal Democrats stood behind the bill, along with northern, worker-oriented Republicans (50). But hard-line conservatives, especially the southern Democrats, vehemently opposed the bill. The southern senators "feared the destruction of southern competitive advantages" (51), reflecting the views of their most powerful constituents. Other Senate conservatives merely did not want another New Deal agency (52). And Roosevelt's ill-fated court plan to raise the number of Supreme Court justices did not help him to win many friends even among the Democratic senators, much less the Republicans.

With the Senate ready to do battle, the Senate Committee on Education and Labor finished their hearings and released an extensively revised version of the bill. In accordance with AFL requests, the powers of the proposed board were curbed drastically. The amended version offered more exemptions to agricultural industries and differentials (53), which were enough "to pacify many hesitant senators" (54). Roosevelt only opposed amendments because they might have endangered the bill's passage. He "was not interested in the details of the bill; he wanted mainly to insure wide support and push it through" (55).

Green issued his support for the committee's revised version of the bill. The senators knew that the bill would face a struggle in the House, and a number of Democrats were willing to accept the heavily revised bill and a party truce (56). The Senate passed the bill in July 1937 by a vote of 56 to 28 (57) and promptly sent it to the House for consideration.

Even though the opposition was strong, "most observers were certain the bill would pass the House" (58). The presidential endorsement along with the AFL's support was considered enough to carry the bill. Even Business Week, no supporter of the bill, acknowledged, "There is no doubt that the bill will pass when it is brought up on the House floor" (59). But before the bill could get to the floor for a vote, the House Rules Committee had to issue a special rule to allow it to receive consideration before the end of the session. The four Republicans and five southern Democrats overruled four northern Democrats and refused to release the bill (60). A petition from New Dealers tried to spark a Democratic caucus to force action on the bill; but it failed because a number of southern Democrats sat out the vote in the cloakroom or the hallways, and there was no quorum (61).

The maneuver of a conservative committee prevented the bill from passing in 1937. It was a turning point for the momentum of the New Deal as "many, reading together the President's whippings on the court plan and on fair labor standards, concluded the New Deal was dead" (62). In spite of FLS' victory in the Senate, a combination of both regional and partisan

conservative opposition scored a win in the House. This marked a breakdown of any alliance among House Democrats and allowed for further factioing in the next series of Congressional manuevers. The AFL and business leaders could lobby for their own initiatives, leaving the President and his supporters floundering to rebuild a shattered New Deal coalition. The original initiative from the President was thwarted at every turn during this first round of FLS. The provisions of the bill prompted a particularly strong alignment of economic, regional, partisan and political foes.

Round two: A Powerful Opposition Alignment

Roosevelt called a special session to begin in mid-November to address issues not resolved in the regular session, especially FLS (63). The opposition entered the special session riding on its victory in August. The conservative mood was anything but conciliatory, and Roosevelt was in for a battle if he wanted to see his legislative agenda passed. In spite of an enthusiastic left-wing, the crippled economy and the perception of a weakened presidential authority hindered the progress of the bill. Many Congressmen were more concerned with alleviating the effects of the 1937 recession, and believed Roosevelt's programs had little direct bearing on the crisis (64). As Newman reported, "Things are different at this extra session--and the virus of independence seeping through Congress affects labor legislation along with everything else" (65). The House was more divided than ever: the AFL courted "the more conservative labor and industrial elements;" the southerners

were still "out to defeat wage-hour control;" and "a highly vocal bloc of ultra-New Deal liberals" was willing to accept the bill's limited scope knowing it would "at least return the principle of wage-hour legislation to the statute books" (66).

The attitudes which had been established in the first round were unchanged in the special session, except that the opposition coalesced more firmly. The National Association of Manufacturers and the Chamber of Commerce launched a campaign to stir up southern farmers to oppose the bill (67). And the AFL leadership, still lobbying for its own version, did not support the administration's bill. The new chair of the House labor committee, Mary Norton, again tried to wrangle the bill out of the clutches of the Rules Committee, this time with a petition to discharge it. She succeeded in getting the needed 218 signatures, though not without two weeks of intense politicking. Even though the bill cleared that obstacle and made it to the floor, it still had to face a major redrafting in committee and a final vote. Just because a majority of members had signed the petition did not mean the bill was certain to pass. Many felt, like Rep. Joseph Mansfield, who was the last to sign the petition, "the Rules Committee's action high-handed" and had the "expressed intention of voting against the bill later on" (68).

But the conflict which most hurt the bill's chance for passage in the second round was not because of concerted effort from opposition forces. The complete lack of any coherent pressure in favor of the bill worked only to the advantage of

the opposition. The AFL, with Green at the forefront, opposed the administration-supported Norton committee draft before it even made it to the floor. The AFL wanted a flat forty cent minimum and forty hour maximum work week, no regional differentials, and the administration of the act under one man already established in a government agency. Norton only conceded to the last demand, placing the authority of the administration in the Department of Labor (69). The labor committee accepted Norton's bill and sent it the House over Green's objections.

Norton's compromise was the "most the AFL could hope for if any bill at all were to pass" (70), but Green did not want any bill if it were not his own. The AFL drafted a bill with their stipulations to be introduced in the house, but it was defeated. Green then put all his clout behind a tactic to delay a final vote: a vote for the bill's recommittal back to the labor committee for more work (71). The House voted to recommit FLS, and the bill suffered its second major defeat. This time the defeat was brought on by a rivalry between those who did want national labor standards.

The conservatives, in staying out of the fracas, gained considerable power over their divided opponents. During the special session, they "sat back in satisfaction, knowing that they could throw their strength in such a way to defeat [either of] the bills" (72). Roosevelt, beleaguered, though willing to fight at the beginning of the session, seemed utterly defeated at the end on all counts. The court bill defeat, along with a

rise in sitdown strikes and relief problems, the deepening recession, and now FLS were blows to his prestige. He did not use his personal pressure to unite any kind of coalition, but allowed warring factions to crush the bill. Without a Roosevelt-led Democratic coalition, Congress could vote as they please, and they did (73). The special session Roosevelt had called with high expectations ended in disaster. The opposition gained its strength more from the disunity of the support for FLS than their own unity.

Round Three: Roosevelt's Victory

The FLS bill finally was successful on its third run through Congress. The success was primarily the result of a concerted and concentrated effort from the administration to get the bill passed. From the perspective of industry leaders, Roosevelt had little power left to bargain with, however. At the opening of the 1938 session, not only were industry leaders still vehemently opposed to FLS, but they were confident it would never pass. The Chamber of Commerce issued a diatribe against the bill (74). Even well into the session, Business Week gleefully reported: the "the President seems to have lost his power over Congress. Whatever his intentions may have been, his method was to destroy our economy and substitute for it one more to his liking It would seem that era has ended" (75). Even other observations showed Roosevelt "beset by difficulties, both within and without his party A man whose strength has always rested on his political adroitness and flexibility has--as a result of the barrage directed against him--grown

harder and more rigid in his resistance to his enemies" (77).

In spite of these negative assessments of Roosevelt's capabilities, he began in January 1938 to work in earnest for national cooperation. His State of the Union address called for a united purpose from industry, agriculture, business, and in politics "to do their utmost to cooperate with the government--in whatever program may be sanctioned by the chosen Representatives of the people" (77).

Roosevelt called for major overhauls on the bill. He decided it was too long and complex, and he gave it to Perkins and the labor department to pare down. FDR had his administrative aide, Rufus Poole, start a canvass of Congressional attitudes to see whom he could target. Poole decided the only way to break the deadlock would be for the administration to support the AFL draft and to improve it in conference committee (78). A new draft of the bill gave in to most of the AFL demands. There were no regional differentials, and the administration of the act was given to the Secretary of Labor (79). With the AFL leadership happy and supportive, a nationwide drive was launched in support of labor standards.

The third house committee bill, with its considerable concessions to the AFL, had the support of the majority of the labor committee (80). A minority bill, written by Rep. Robert Ramspeck of Georgia, challenged the majority and offered regional differentials and an easy passage through the Rules Committee. The Ramspeck bill's "shining merit was that it was delicately calculated to go through the House Rules Committee,

and through the House itself, with the least possible fuss" (81). Though it did pass through the Rules Committee, the labor committee voted it down, afraid a labor bill without AFL support could not pass. The majority bill was sent to the House, but once again, the Rules Committee held it up.

To gauge Congressional support, Roosevelt met personally with the Senate's majority leader and floor leader, two powerful southern Democrats. He hoped to gain their endorsement of the bill but was unable to sway them. Roosevelt sent them a letter, which Norton soon made public, to try to diffuse some of the hostility which had surrounded him: that he was brittle, dictatorial and unwilling to compromise. Roosevelt's semi-public plea for unity galvanized about fifty liberals to battle for the bill. Labor, with AFL machinery in gear, was now in full agreement on the bill and "pointed out to election-facing Congressmen the size of the labor vote in their respective districts" (82). Roosevelt aides gave money and endorsements to a rabid New-Dealer, Claude Pepper, who was campaigning for a Florida seat in the Senate. Pepper targeted labor standards as his prime goal, and he won his primary by a considerable margin. Pepper tapped a southern sentiment on the bill different from what conservatives had been professing (83). Popular support took off for fair labor standards, and a Gallup poll in May 1938 indicated 59 percent of the country in favor of FLS. In a regional breakdown in the poll, 56 percent of the South favored it; and the lowest regional support was split fifty/fifty in the West Central states. (84).

The Florida primary tipped off a number of Congressmen to the nationwide support for the bill. That, along with the AFL's endorsement for the revised bill, prompted a mad stampede to sign the petition to discharge the bill from the Rules Committee (85). When Norton submitted the petition this session, it was signed in two-and-a-half hours, with other representatives still waiting in line. Ramspeck's minority bill went to the house in spite of the labor committee's refusal to indorse. The house defeated it, and proceeded to pass the Norton bill with an overwhelming vote of 314 to 97. The debate produced some amendments which provided for more agricultural exemptions, and completely exempted the retail industries (86). So the bill had passed the House, riding on a wave of an administrative blitz, national support, and finally a united labor front.

The FLSA had yet one more step: a conference committee had to be named to reconcile the huge differences between the bill that had passed the Senate the year before and the bill which had just passed the House. All groups, from organized labor to liberals to southern conservatives, wanted their voices heard on this committee. The chief objects of debate were "the questions of possible regional differentials, of flexible versus inflexible standards, and of the best administrative agencies and procedures to set up" (87). The joint committee produced a compromise that granted the AFL's request for flat wage and hour scales, but placed them on a graduated system which would work up to the forty cent, forty hour requirements in a number of years (88). The House and Senate approved the conference

report, but "the law was a tissue of compromises made to appease a formidable coalition of opponents" (89). Many businessmen were pleased with the exemptions given to retail workers; agriculture interests were happy with farm worker exceptions. The South got a delayed introduction of flat standards; a gradual five-year move would prevent the 40 cent, 40 hour provision from affecting them until 1940. And the AFL certainly came out on top with almost all its provisions: no differentials, no labor board, and the forty cent, forty hour law.

Roosevelt came out best of all, ultimately victorious and on the top of the political heap. His "political sense, despite the massive opposition, was unerring. The law was extremely popular." A Gallup poll of January 1, 1939, showed 71 percent in favor of FLSA; and even more shocking, 59 percent of the South and 56 percent of employers across the country were in favor of it (90). The conservative coalition that had been so effective in stopping the bill in the earlier two rounds had crumbled. "Whenever conservatives faced no potent pressure groups . . . they banded together and carried enough New Dealers to win. Otherwise, as [with] labor standards, they slid into factionalism almost from the start" (92).

The policy of the administration had failed at the outset. Roosevelt had not expected such opposition, but he certainly got it with FLSA. Businessmen resented and rejected labor standards and found considerable support from the House. Even organized labor divided; and the AFL, along with the rest of the

opposition, effectively prevented legislation it did not favor. The turning point came with Roosevelt's decision to work with the AFL. Once those in favor of standards united behind a bill, the opposition could not sustain itself. The AFL had come a long way since from its silent, though supportive, position on the Wagner Act. The Fair Labor Standards Act showed more than a receptive government; it was a pliable one which conceded to powerful forces outside it.

CONCLUSION

The Davis-Bacon Act, the Wagner Act, and the Fair Labor Standards Act are three cases which show different avenues for the passage of labor legislation. In each case, the main actors--broadly, labor, business and government--interacted to create an environment in which that specific legislation could get through. They did not necessarily work together to produce labor reform, nor did the different factions within these groups unite on all issues. But their actions, combined with certain economic and political forces worked to produce these three labor laws.

Using these laws to gauge labor's power in a national forum shows a gradually improved ability to affect the provisions of a bill, though also greater factioning on a national level. Beginning with Davis-Bacon, admittedly a small reform, the labor movement was weak and willing to accept whatever reform available. Unions surprisingly showed little enthusiasm for Davis-Bacon; but a consensus among both national leaders, such as M.J. McDonough, John Frey and William Green, and union publications, was favorable to the law. They agreed that the concept of bootleg labor was abhorrent to their principles, and they had hoped for a law which would regulate the construction industry more than the provisions of the 1931 law did.

The Wagner Act presents a more complex issue, and one with far more implications than Davis-Bacon had or will ever have. By 1935, union membership had grown stronger and more violent in its push for recognition, and the NIRA's provision for

collective bargaining promoted a drive for union organization. The large number of unionized workers forced a recognition of the need for some legislation, though not all people accepted the fairly radical concept of enforced collective bargaining. In spite of some other evaluations of union support, the AFL gave no indication that it did not fully endorse and support the initiatives of the Wagner bill. Their support, however, was not equivalent to their input; and although the AFL pledged support, it did not have much of a hand in the conception or the language of the Wagner Act.

As soon as the CIO split from the AFL, conflicts began over the NLRB's administration of the Wagner Act. The division on the national level between the AFL's craft unionism and the CIO's industrial unionism spilled over to the process of the Fair Labor Standards Act. The labor movement divided on the issue of possibly another board to regulate labor; the AFL leadership was set against the concept of another governmental regulatory body which might discriminate against them. The CIO was generally more satisfied with the FLS bill in its original form.

The discontent from the AFL was highly influential for reasons related to divisions in Congressional alignments. Green was able in the 1937 special session to prevent the bill from coming to a vote. And in 1938, the AFL's endorsement was courted to gain a consensus among liberals in the House of Representatives. With FLRA, the AFL was able to frame the bill to its specifications, a feat certainly impossible with either

of the first two cases.

If labor had some success with legislation favoring it, then industrial interests were at the other end. Even Davis-Bacon, a fairly innocuous and unassuming law, did not receive a grand endorsement from construction industry leaders. Most supported the principles of Davis-Bacon while decrying the invasion of government into private affairs. Some businessmen did lend their support to the bill; and in spite of their protests, the law finally did not antagonize them to any great extent. The close alignment of business to the Hoover administration prevented Davis-Bacon from hindering the industry too much.

The Wagner Act provoked business leaders from its very beginnings, but unlike four years earlier with Davis-Bacon, the country's industrial leadership had little voice in the process. The collapse of their administrative capabilities with the NRA downgraded their stature in promoting economic recovery. Businessmen in 1935 had far fewer allies in Congress than did their labor rivals. And in spite of a protracted and vicious campaign against the Wagner Act, the leaders of the nation's businesses were powerless to stop it. They were shut out of the process, much more so than labor, since the Wagner Act was a bill at least designed to promote labor rights.

The FLSA was almost a triumph for businessmen, though their lobby against this bill was less of a consensus effort than in the other cases. A number of representatives of the industry objected to the bill because they felt it was economically unsound, and the principles that the framers espoused would

deepen the division already threatening the country. But the split between northern and southern business presented perhaps the most serious division. Southern industries had the advantage of lower labor costs and thus lower production costs. A national wage and hour standard would harm the economic structure of the southern wage scale. Southerners wanted wage differentials; but northern businessmen argued that the South already had an unfair advantage, and that it should be remedied with the same standards for the whole country. The full-fledged conservative opposition to any kind of labor standards legislation seemed to be winning up until the support for the bill grew more cohesive. For a period during the FLS process, businessmen seemed to have more allies in the government; but the administration's mammoth efforts in 1938 shut down all opposition.

Perhaps the most important ingredient in these cases was the receptiveness of the government to the proposed labor reform. Without some kind of support from an area within the government, none of the laws could have passed. Davis-Bacon, though conceived by an irate Congressman Bacon to defend his district from outside contractors, fell in line with the Hoover administration's ideology about wages and the construction industry. Hoover's deputies from the departments most involved in federal construction wrote a bill to fit their own specifications. Their bill did not do a whole lot; but it did defend the principle that the government should be the ideal employer, and not exploit workers on its own projects.

The Wagner bill, unlike either Davis-Bacon or FLSA, worked outside the administration under the direction of Robert Wagner, a liberal crusader. The Congress was filled with liberal crusaders in 1935 who were sensitive to the needs of the growing force of organized labor, and the Wagner Act's passage can be credited to their determination. There was also a talented staff of lawyers writing the bill, keeping the problems of the NRA in mind, and trying to disarm the question of constitutionality. On top of all that, New Deal legislation had slowed after the Supreme Court invalidated the NRA, and the Wagner Act filled a gap. The conservative opposition to the Wagner Act, though considerable especially in the Senate, was simply out of power. The bloc of liberal Senators, with Wagner in the lead, could pass the bill without conservative endorsement, and even without Roosevelt's endorsement.

As with labor and business attitudes on the FLSA, the government from the administration to the factions in the Congress contradicted one another from the start. The conservatives lined up against the bill. Southern Democrats strayed from partisanship to be loyal to their region, or more accurately to the industry in their region. Labor advocates split their support between the AFL and their own conception of the right kind of labor standards bill. And strangely, Roosevelt presented the bill originally as one of his administration's reforms, yet he was unable to build a coalition of votes until a year after the bill was introduced. The tried-and-true conservatives were successful only because those

who would have wanted a bill fought bitterly over what kind of bill it would be. The President broke the deadlock by granting concessions to William Green and having the labor committee formulate a new bill. He also jumped on the publicity wagon and began a nationwide call for labor standards legislation. The nation responded overwhelmingly, and the House of Representatives reflected that response. The FLSA bill passed, though only by incorporating the provisions of many different factions.

In the first two cases, Davis-Bacon and the Wagner Act, a problem with labor was presented to the government, and the government worked within itself to find a solution. The Davis-Bacon Act was framed by a small group of high-level administration officials to respond to the problem of wage undercutting. Perhaps a group more representative was responsible for the Wagner Act. They were sympathetic to a need for such legislation. In neither of these two cases did the governmental group in control give much consideration to suggestions from outside. And both labor and business accepted the laws as written. The process of FLSA shows a much different direction, however. The government was responsive to both the requests of a powerful labor lobby from the AFL, and to a public endorsement of the bill. The House of Representatives in particular was susceptible to that kind of pressure from public opinion.

The determination of those among the group in government in the ablest position to promote a bill--whether it was Hoover's

conservative administrators, liberal Congressmen, or a Roosevelt coalition--was the decisive factor. This concept draws together the various administrative, political and economic issues that surrounded these bills. The government, referring to the strongest faction in each case, could turn an issue to its advantage. Hoover's men used their complete monopoly on the government's administrative power to pass their version of Davis-Bacon. Wagner and his cohorts used a similar method, though it was tied to more complicated reasons. And with FLSA, Roosevelt finally recognized the need to align with the AFL; and he used his political skills to generate support.

These bills do show some progression to a different kind of forum in the federal government. The Wagner Act was a response to a problem of national import; it was meant to alleviate the tensions of the workplace to allow workers to gain strength in unity. The process of the FLSA showed what kind of affect the Wagner Act had: the AFL had gained a stature that allowed it to mold provisions of the law. The impact of public opinion on the House showed an even greater receptiveness among Congressmen to listen to constituents other than the conventionally entrenched industrial interests. From Davis-Bacon to the Wagner Act to the Fair Labor Standards Act, the political implications of legislative labor reform had expanded.

NOTES

Chapter 1

- 1) John P. Gould and George Bittlingmayer, The Economics of the Davis-Bacon Act: An Analysis of Prevailing Wage Laws (Washington: American Institute for Public Policy Research, 1980), p. 39.
- 2) See the New York Times, August 18, 1987, p. 8; and editorial on August 21, 1987, p. 18.
- 3) See Gould and Bittlingmayer, pp. 38-41.
- 4) U.S., Congressional Record, 71st Cong., 3rd Sess., 1931, 74:7, pp. 6508-6509. Referred to below as House Debates.
- 5) U.S., Congress, House, Committee on Labor, Hearings. Employment of Labor on Federal Construction Work, 71st Cong, 2nd Sess., 1930, pp. 2-3. Referred to below as 1930 Hearings.
- 6) U.S., Congress, House, Committee on Labor, Hearings. Hours of Labor and Wages on Public Works, 69th Cong., 2nd Sess., 1927, p. 2.
- 7) 1930 Hearings, pp. 18-19.
- 8) U.S., Congress, Senate, Committee on Manufacturers, Hearings. Wages of Laborers and Mechanics on Public Buildings, 71st Cong., 3rd Sess., 1931, pp. 10-19. Referred to below as 1931 Senate Hearings.
- 9) New York Times, July 20, 1930, II, p. 6.
- 10) Lester V. Chandler, America's Greatest Depression. 1929-1941 (New York: Harper & Row, 1970), p. 21 and p. 38. His sources are the U.S., Department of Commerce, U.S. Income and Output, 1958, p. 130; and National Income, 1954, p. 160.
- 11) Armand J. Thiéblot, The Davis-Bacon Act (Philadelphia: University of Pennsylvania Press, 1975), p. 8.
- 12) Gould and Bittlingmayer, p. 7.
- 13) Thiéblot, p. 8.
- 14) Gould, p. 6.
- 15) Thiéblot, p. 8.

- 16) Ibid., pp. 9-10.
- 17) Ibid., p. 10.
- 18) 1930 Hearings, pp. 13-16.
- 19) Thieblot, pp. 20-22; Gould and Bittlingmayer, p. 28.
- 20) 1930 Hearings, p. 8.
- 21) Ibid., p. 51.
- 22) Ibid., p. 58.
- 23) 1931 Senate Hearings, 7.
- 24) The Bricklayer, Mason and Plasterer, 33 (March 1930), 55.
- 25) Ibid.
- 26) BMP, 34 (January 1931), 3.
- 27) Ibid.
- 28) BMP, 34 (March 1931), 51.
- 29) Ibid.
- 30) The Building Trades Department of the American Federation of Labor, Report of the Annual Proceedings, vol. 24 (1930), p. 49; and vol. 25 (1931), p. 166.
- 31) The Journeymen Plumber and Steam Fitters' Journal, 45 (March 1931), 26.
- 32) Ibid., (April 1931), p. 27.
- 33) The Electrical Worker, 31 (February 1931), 39.
- 34) BMP, 34 (March 1931), 51.
- 35) Irving Bernstein, The Lean Years: A History of the American Worker 1920-1932 (Boston: Houghton Mifflin Co., 1960), p. 496.
- 36) William Haber, Industrial Relations in the Building Industry (Cambridge, Mass: Harvard University Press, 1930), p. 494.
- 37) Ibid., p. 309.
- 38) Ibid., p. 95.

- 39) Ibid., p. 311.
- 40) Bernstein, Lean, p. 343.
- 41) Ibid., p. 506.
- 42) Ibid., p. 507.
- 43) 1930 Hearings, p. 37.
- 44) Ibid., p. 38.
- 45) House Debates, p. 6511.
- 46) The Engineering News-Record (ENR), 106 (February 19, 1931), 305.
- 47) Ibid., 104 (January 16, 1930), 125.
- 48) Ibid., 106 (February 19, 1931), 305.
- 49) Ibid., 104 (March 20, 1930), 501.
- 50) Ibid., 106 (March 5, 1931), 413.
- 51) Ibid., 106 (February 19, 1931), 305.
- 52) Robert Zieger, Republicans and Labor, 1919-1929 (Lexington: University of Kentucky Press, 1969), p. 87.
- 53) Ibid., pp. 93-94.
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- 56) Ellis W. Hawley, Chapter One in Herbert Hoover and the Crisis of American Capitalism, ed. J. Joseph Huthmacher and Warren I. Susman (Cambridge, Mass: Schenkman Publishing Co. Inc., 1979), p. 16.
- 57) New York Times, December 24, 1930, p. 1.
- 58) U.S., Congress, House, Committee on Labor, Hearings. Professions in the Employment of Labor on Federal Administration Boards, 70th Cong., 1st Sess., 1928, p. 2.
- 59) 1930 Hearings, p. 59.
- 60) 1930 Hearings, p. 43.
- 61) House Debates, p. 6511.

- 62) U.S., Congress, House, Committee on Labor, Hearings. Regulation of Wages Paid to Employees by Contractors Awarded Government Building Contracts, 71st. Cong., 3rd Sess., 1931, pp. 2-13.
- 63) Ibid., p. 9
- 64) Ibid.
- 65) Ibid.
- 66) House Debates, p. 6511.
- 67) Ibid., p. 6515.
- 68) Ibid., p. 6511.
- 69) Ibid., p. 6513.
- 70) Ibid., p. 6518.

Chapter 2

- 1) New Republic 63 (June 5, 1935), p. 99.
- 2) David Montgomery, Worker's Control in America (Cambridge: Cambridge University Press, 1979), p. 165.
- 3) Ibid.
- 4) Ibid.
- 5) Christopher Tomlins, The State and the Unions (Cambridge: Cambridge University Press, 1985), p. 102.
- 6) Ibid., p. 147.
- 7) Howell Harris, "The Snares of Liberalism" Shop Floor Bargaining and the State, ed. John Tolliday and Jonathon Zeitlin (Cambridge: Cambridge University Press, 1985), pp. 174-75.
- 8) Ibid., p. 168.
- 9) Tomlins, p. 133.
- 10) Ibid., p. 139.
- 11) Irving Bernstein, The Turbulent Years: A History of the American Worker, 1933-1941 (Boston: Houghton Mifflin Co., 1970), p. 339.
- 12) Ibid., p. 341.
- 13) J. Joseph Huthmacher, Senator Robert F. Wagner and the Snares of Urban Liberalism (New York: Atheneum, 1988), p. 197
- 14) Stanley Vittos, American Labor Policy and the American Industrial Economy (Chapel Hill: University of North Carolina Press, 1987), p. 160.
- 15) U.S., Congress, Senate, Committee on Education and Labor, Hearings, National Labor Relations Board, 74th Cong., 2nd Sess., 1935, p. 465. Referred to below as Wagner Hearings.
- 16) Wagner Hearings, p. 513.
- 17) Business Week, 303 (June 22, 1935), 6.
- 18) Vittos, p. 152.
- 19) American Federationist (AF), 42 (April 1935), 466

- 20) See Wagner Hearings, pp. 153-56 for Ogburn's statement and brief on the AFL's suggested amendments.
- 21) Wagner Hearings, p. 156.
- 22) Huthmacher, p. 198.
- 23) Harris, p. 168.
- 24) Huthmacher, p. 198; Harris; p. 168.
- 25) Bernstein, Turbulent, p. 341.
- 26) Kenneth Finegold and Theda Skocpol, "State, Party, and Industry: From Business Recovery to the Wagner Act" Statemaking and Social Movements, ed. Charles Bright and Susan Harding (Ann Arbor: University of Michigan Press, 1984), p. 181.
- 27) Ibid., pp. 181-83.
- 28) Ibid., p. 184.
- 29) New York Times, March 13, 1935, p. 12.
- 30) New York Times, May 26, 1935, IV:10.
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- 32) Skocpol, p. 175.
- 33) Ibid.
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- 36) Bellush, p. 47.
- 37) Ibid., p. 83.
- 38) Skocpol, p. 176.
- 39) R. W. Fleming, "The Significance of the Wagner Act" in Labor and the New Deal, ed. Milton Barber and Edwin Young, (Madison: University of Wisconsin Press, 1981), see discussion pp. 123-25.
- 40) See Bernstein, Turbulent, pp. 214-15.
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- 42) New York Times, October 2, 1933, p. 1.
- 43) New York Times, July 22, 1934, VIII:1.
- 44) Vittoz, p. 140.
- 45) Fernstein has a detailed discussion of the substitution of P.R. Number 44 for the 1934 Labor Disputes bill, pp. 203-205.
- 46) AF, 42 (June 1935), 595-96.
- 47) Wagner Hearings, pp. 94-105.
- 48) Time, 24:2 (November 12, 1934) 12.
- 49) New York Times, May 14, 1934, p. 1.
- 50) Peter Irons, The New Deal Lawyers (Princeton: Princeton University Press, 1982), p. 227.
- 51) Ibid., p. 226.
- 52) Ibid., p. 227.
- 53) AF, 42 (April 1935), 354.
- 54) Irons, pp. 226-30. The phrases quoted are directly from the bill as Irons quotes them.
- 55) New York Times, May 30, 1935, p. 12.
- 56) See Morris, p. 168; Huthmacher, p. 198.
- 57) Fleming, p. 128.
- 58) AF, 42 (March 1935), 263.
- 59) Wagner Hearings, p. 122.

Chapter 3

- 1) Business Week 455, May 21, 1938, 14.
- 2) A number of historians have covered this history in greater detail and depth, and I have drawn heavily on their material. See especially Irving Bernstein, A Caring Society: The New Deal, the Worker, and the Great Depression: A History of the American Worker, 1933-1941 (Boston: Houghton Mifflin Co., 1985), pp. 116-45, and James Patterson, Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1941 (Lexington: University of Kentucky Press, 1967), pp. 149-54; 179; 182-83; 193-98, 242-46. Also James M. Burns, Congress on Trial: The Legislative Process and the Administrative State (New York, Harper & Brother, 1949), pp. 67-82; and Paul H. Douglas and Joseph Hackman's 1938 article, "The Fair Labor Standards Act of 1938" in the Political Science Quarterly, 53 (December 1938), 491-515.
- 3) John S. Forsythe, "Legislative History of the Fair Labor Standards Act" in Law and Contemporary Problems, 6 (Summer 1939), 474.
- 4) Bernstein, Caring, see pp. 121-26.
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- 7) U.S., Congress, Senate, Committee on Education and Labor, House, Committee on Labor, Joint Hearings, Fair Labor Standards Act of 1937, 75th Cong., 1st. Sess, 1937, Testimony of Frances Perkins, pp. 173-78. Referred to below as FLS Hearings.
- 8) See Bernstein, Caring, discussion on pp. 118-19.
- 9) Forsythe, p. 465.
- 10) Bernstein, Caring, p. 134.
- 11) New York Times, October 23, 1936, p. 22.
- 12) New York Times, November 11, 1936, p. 36.
- 13) Burns, pp. 68-69.
- 14) Ibid., p. 70.
- 15) Ibid., p. 69.

- 16) The Nation, 144 (June 5, 1937), 638.
- 17) Ibid.
- 18) Burns, p. 69.
- 19) FLS Hearings, testimony of Leon Henderson, former director of the NRA's Research and Planning division, p. 161.
- 20) See note 7, above.
- 21) See above discussion on Wagner Act, pp. 37-40.
- 22) Douglas and Hackman, p. 499.
- 23) The New Republic, 92 (August 11, 1937), 3.
- 24) FLS Hearings, p. 161.
- 25) The Nation, 144 (June 5, 1937), 638.
- 26) Ibid., p. 635.
- 27) FLS Hearings, testimony of John Harrington, General Counsel of the Illinois Manufacturers' Association, p. 872.
- 28) Ibid., testimony of George B. Chandler representing the Ohio State Chamber of Commerce, p. 867.
- 29) Ibid., p. 824.
- 30) Ibid., testimony of John W. O'Leary, president of the Machinery and Allied Products Institute, p. 740.
- 31) Ibid., Harrington, p. 872.
- 32) Ibid., p. 557.
- 33) Ibid., p. 474.
- 34) James A. Hodges, New Deal Labor Policy and the Southern Cotton Textile Industry, 1933-1941 (Knoxville: University of Tennessee Press, 1986), p. 181.
- 35) FLS Hearings, p. 814.
- 36) Hodges, p. 181.
- 37) Nibe Davis, "The Barren Marriage of American Labour and the Democratic Party" in The New Left Review, 124 (Nov.-Dec. 1980), 47.

- 38) Bernstein, Turbulent, p. 664.
- 39) Bernstein, Caring, pp. 91-92.
- 40) FLS Hearings, p. 212.
- 41) Ruth Horowitz, Political Ideologies of Organized Labor (New Brunswick, N.J.: Transaction Books, 1978), p. 187.
- 42) Bernstein, Caring, p. 140.
- 43) Horowitz, p. 199.
- 44) Bernstein, Caring, p. 138.
- 45) Horowitz, p. 197.
- 46) FLS Hearings, p. 306.
- 47) Ibid., p. 947.
- 48) Ibid., p. 948.
- 49) Patterson, p. 154.
- 50) Ibid., p. 153.
- 51) Ibid., p. 151.
- 52) Ibid., p. 150.
- 53) Burns, p. 71.
- 54) Patterson, p. 152.
- 55) Burns, p. 71.
- 56) Patterson, p. 153.
- 57) Bernstein, Caring, p. 139.
- 58) Patterson, p. 179.
- 59) Business Week, 411 (July 17, 1937), 24.
- 60) Bernstein, Caring, p. 139.
- 61) Patterson, p. 183; Bernstein, Caring, p. 139.
- 62) Bernstein, Caring, p. 141.
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- 65) Newsweek, 10 (November 29, 1937), 12.
- 66) Ibid., p. 13.
- 67) Bernstein, Caring, p. 140.
- 68) Time, 30:2 (December 13, 1937), 14.
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- 70) Time, 30:2 (December 13, 1937), 14.
- 71) Patterson, p. 195.
- 72) Burns, p. 76.
- 73) Patterson, p. 197.
- 74) The complete statement of the U.S. Chamber of Commerce is published in The Nation's Business, 26 (February 26, 1938), 48.
- 75) Business Week, 451 (April 23, 1938), 56.
- 76) The Nation, 146 (April 23, 1938), 456.
- 77) The text of Roosevelt's 1938 State of the Union is published in the New York Times, January 4, 1938, p. 16.
- 78) Burns, p. 80.
- 79) Forsythe, p. 472.
- 80) Bernstein, Caring, p. 141.
- 81) The New Republic, 95 (May 11, 1938), 17.
- 82) See Newsweek, 11 (May 16, 1938), 10-11.
- 83) Burns, p. 81.
- 84) Bernstein, Caring, p. 142. The exact numbers are taken from Hadley Cantril, ed. Public Opinion, 1935-1946 (Princeton: Princeton University Press, 1951), p. 1022.
- 85) Douglas and Hackman, p. 512.
- 86) Ibid., p. 514.
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91) Patterson, p. 249.

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