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2 The Deep History of the Closed or Union Shop

What’s money? A man is a success if he gets up in the mornin’ and gets to bed at night and in between he does what he wants to.

In one of the first editorials he wrote about the closed shop, American Federation of Labor president Samuel Gompers in 1903 insisted that the “right to refuse to work with non-union men” was “fundamental,” so much so that to relinquish that right would “make slaves of the most skilled and competent of American workmen.” By contrast, the newly militant group of employers that had emerged at the turn of the twentieth century insisted that demanding a closed shop was “attacking a fundamental human right” and “opposed to natural justice.” It sapped American productivity, “[barred] . . . the American boy from learning the trade of his choice,” and entailed “coercion, threats, and intimidation” to force workers into unions.3

Why such strong language? Because the struggle over the closed shop—the practice of requiring union membership as a condition of employment—encompassed radically different views of the nature of labor unions and their place in the broader society. Many employers, both those vehemently opposed to unions and those engaged in negotiation with them, represented the choice to join a union as a purely private, individual decision akin to religious affiliation or membership in a fraternal society. To require membership, they argued, was a violation of the individual’s civil liberties: if union membership as a condition of employment was a fair demand, then “it is fair to say that you can or cannot work, because you are a Democrat or a Republican, because you are a Mason or a Hibernian, because you are a Catholic or a Protestant, or an infidel.”4 To most unions, though, the parallel with religious, political, or fraternal affiliation was completely misplaced. The appropriate analogy, they argued, was not private conviction but public government: unions were governing institutions, and one did not have a choice about whether to be
subject to government. As a British unionist pointed out, government applied to everyone within its purview: “Imagine a case of a few men becoming residents of Chicago, and refusing to pay rates [property taxes], whilst they were enjoying the sanitary arrangements & other privileges of the City, made at the cost of rate payers generally. I ask would such refusal be tolerated 5 minutes?”

Like city government, the closed or union shop had (and continues to have today) a pragmatic aim: it prevented “free riding,” that is, getting all the advantages while taking on none of the work or risk. Such solidarity mattered because it made the union stronger and because it was fair: all who benefited from the changes brought about by the union had an obligation to do their part, whether by paying union dues or participating in strikes or other actions aiming to secure such changes. To ensure this, workers could and should be required to join the union if they were to remain employed at a unionized workplace. Employer resistance to the membership requirement had (and has) an equally down-to-earth aim: to undermine union power. Employers also rather obviously used the closed shop as a cudgel against all labor organizing, and despite occasional protestations to the contrary, employers generally implicitly admitted that they did not much care to relinquish any power to unions. They did not approve of unions’ efforts to exercise power on the shop floor, set rules about output, set wages, or have a say about hiring and firing. Nevertheless, the chasm between employers’ and unionists’ views of the membership requirement went deeper than practical self-interest. The demand for mandatory membership asserted a union right to govern the work relationship, the shop floor, union members, or all three at the same time. It was rooted in a vision of governance very different from the laissez-faire view that employer organizations took for granted.

The membership requirement grew out of and in sync with the transition from the artisan system of production into the “modern” employment relationship. This transformation, which took place roughly over the course of the nineteenth century, was more than a shift from small-scale workshops to larger factories. It fundamentally changed how people thought about production and employment. In the older vision, employment relations were shaped as much by ritual, tradition, and multiple fields of governance and obligation as by the market, whereas the emerging vision was driven by the logic of labor as a commodity, a thing that could be bought and sold by individuals in accordance with the laws of supply and demand. That transformation was one aspect of the development of a classical liberal vision that was beginning to separate the market from governance and to imagine an unmediated relationship between the individual and the state. Labor’s demand for
an essentially parallel government sat uneasily with the developing liberal vision; indeed, in many of the nineteenth-century court cases where labor unions were indicted as conspiracies, the demand for a right of rulemaking was at the heart of the case.

Like any large-scale shift, the transition from an artisan-based and less market-driven society into the more transactional world of freedom of contract, commodities, and laissez-faire was ambiguous, uneven, and very much contested, and all these concepts shifted around, pushed by technological, economic, and cultural changes. Thus, competing strands of thought and conflicting interpretations of free labor or freedom of contract meandered through the nineteenth century like a great muddy river. Which meaning of a concept got fished out of the river in the service of a legal or political argument often depended as much on power relations as on intellectual traditions.

This chapter traces the way in which the evolution of the membership requirement fits into the larger puzzle of shifting ideas about the market, governance, and democracy in the century or so after the American Revolution. The chapter starts by examining the evolution of the membership requirement in the context of the nineteenth-century changes in the world of craft work. Because it is important to understand how demands over control of work related to traditional ideas about the meanings of markets, on the one hand, and to the new ideals of popular government elevated in the American Revolution, on the other, the chapter next turns to considering what the regulation of economic activity looked like in eighteenth- and nineteenth-century America. The final section considers how craft workers’ claims to governance came into conflict both with a liberal interpretation of the exclusive powers of the state and with developing ideas about the liberty of workers and employers to enter into contracts in the untrammelled market, and examines how workers responded to the changing economic and political circumstances of the nineteenth century.

Craft Rulemaking and the Origins of the Closed Shop

The traditional system of artisan production as it had evolved in late medieval and early modern Europe had involved (at least ideally) a period of apprenticeship, followed by a period of honing one’s skills as a journeyman, and capped by setting up one’s own shop as a master artisan. To be sure, that system was never perfect or unambiguous. Many artisans had various side hustles; uncertainty and conflict characterized the working lives of many journeymen at various points in history; and the transition to wage work
began earlier and was drawn out to a far greater degree than is stereotypically acknowledged—indeed, wage work is now estimated to have formed a significant contribution to the income of a third of rural English households by 1350. Still, the craft system of production remained pervasive in the early nineteenth century; it also remained small-scale enough that the masters of many workshops were not that far removed from their workers. In 1820s New York City, for instance, the majority of workshops were tiny, with perhaps three or four journeymen and apprentices per workshop. While these craft firms were by no means indifferent or immune to economic forces, neither did they fully embrace a supply-and-demand view of proper wages. What journeymen were paid was at least in part dictated by established customs of a “just price,” a somewhat vague but venerable principle that infused economic transactions with moral significance, aiming to curb greed and balance the reasonable needs of the payer and the payee.

These older values persisted even as the intensifying market competition of the early nineteenth century propelled manufacturing toward larger workshops and pushed master artisans to become more employer-like and entrepreneurial (what Sean Wilentz terms “craft entrepreneurs”). In heavier trades like shipbuilding and leather tanning, in printing and construction, and in the production of clothing and shoes—where the new factories in New England set price standards far below traditional artisan workshop production—the opportunities and pressures of the market led masters to make more use of low-paid outwork and apprentice labor over skilled journeymen. To journeymen, this appeared as stagnation in the traditional progression from apprentice to master: journeymen found it harder and harder to set up shop on their own, and in response, journeymen’s organizations emerged to protect the livelihoods of their members.

In accordance with traditions of just price, protecting the members’ livelihood took the form of defining a scale of wages dictated less by perceptions about the market value of one’s labor than by ideas about the standard of living proper to a self-respecting, skilled artisan and about the exclusive rights of craftsmen to the practice of the craft. Journeymen’s organizations, although a new development around the turn of the nineteenth century, drew on much older practices of craft regulation. Even in colonial America, following British tradition, craftsmen directed petitions to municipal and other authorities to keep newcomers, especially ones who had not completed traditional apprenticeships, from practicing a particular trade in their city. In a way, the logic of the organizations of skilled artisans was the logic of the cartel: we have something that there is a demand for (our skill), and we agree among ourselves not to sell it for less than what we perceive to be
a reasonable price. Yet the parallel of the cartel misrepresents the spirit of the organizations: rather than mere monetary calculations, these organizations were animated by a sense of the dignity of the craft and the kinship of those who mastered it. To refuse to work for less than the scale was an act of protecting the craft and its traditions as much as it was an act of economic calculation. How would the skill of the craft be preserved if the craft was cheapened by half-trained workers? Conversely, who would agree to be in training for years if even fully skilled men were working for a pittance? Without pride in the craft and knowledge of its various aspects, as well as the process of learning from one’s elders that created both, what would be the basis of a shared work culture? Thus, while such measures as restricting apprenticeships and insisting on full training had the (intended) effect of limiting the labor supply, they also ensured the production of well-rounded workmen who were welded together by both socialization and skill.\textsuperscript{11}

Early defenses of the wage scale often employed a fairly subtle form of collective action that relied on workers’ semitacit mutual agreement about rules. Skilled craftsmen were relatively few in number, and if a large enough percentage of them joined together to uphold a scale of wages, an employer who refused to observe the scale would soon find himself in trouble. Without ever needing to make an explicit show of collective power, the craft society could enforce what it considered the proper wage because skilled workers were hard to come by. Instead of striking, the society offered its members unemployment benefits that were collectible if the member chose to quit work in a shop that did not pay the scale. Buoyed by that guarantee, the craftsmen could engage in what Sidney Webb and Beatrice Webb called the “strike in detail”: one by one, workers would simply quit the employment of a master who did not observe the rates. If the craft was well organized, finding new permanent workers would prove impossible for the master; craftsmen would take up employment with him but quit within a week or two. Frustrated with the constant turnover, the employer would soon get the message and hasten to comply with union regulations. According to the Webbs, sometimes workers could make powerful use of this weapon to enforce the union scale and union rules nearly universally. Since it required no public collective action, it also shielded the union from public opprobrium.\textsuperscript{12}

However, for the strike in detail to be feasible, the workers had to be unusually well positioned: the craft had to require significant skill, and the craft organization needed to be exceptionally wealthy and cohesive. Moreover, while a craft society offering an unemployment benefit to its members made it possible for them to refuse to work at less than scale, it could not ensure that the members would choose to do so. What if no “fair” work was
available, and one’s circumstances made work, even work at less than the scale, imperative? What if enough craftsmen for whatever reason thought it inadvisable to insist on the union scale? Unless the organization had the power to institute some real consequences for workers who undercut others, it would eventually become unable to enforce the scale.

To be sure, a member of the society who ignored the rules could be expelled. But what of it? What were the consequences of being expelled to be? One would, of course, lose access to the unemployment benefits offered by the organization, but in reasonably good times, at least, that might not be an overwhelming consideration. One might face the censure of one’s peers, but perhaps that was an acceptable price to pay to get food on the table. To up the ante, as it were, the craft societies formalized the censure into a full-scale ostracism that attempted to ensure that undercutting the society would not be worth it in the long run. This ostracism could be very effective in prodding craftsmen to abide by a union rule or a strike demand. Among the Philadelphia cordwainers (makers of new shoes), for example, a craftsman who fell out of favor with the journeymen’s organization might at best “hobble along for a while,” and thus when the organization called a strike in 1805, even the large number of workers who had voted against the strike walked out and stayed out for weeks to avoid being “scabbed.” Such ostracism was the predecessor of the modern closed shop.

At first, union rules aimed at keeping the existing membership in line. In the early nineteenth century, they focused mainly on renegade members, that is, craftsmen who had been members of the union but had ignored or flouted its rules about the wage scale or some other aspect of practice. As punishment for having betrayed his fellows, a renegade member would be shunned: the members of the organization would refuse to work with him. If an employer hired such a “rat” or “scab,” he might find that he had gained one employee but lost five others who quit in protest. Or, since the craft organizations were often the means of transmitting news about the need for craftsmen in a particular shop, the renegade member might never get as far as offering his services, since the news about an opening would simply never reach him.

But what of workers who had never been members of the organization? Did the organization’s jurisdiction extend to them, or could an employer freely hire skilled craftsmen and pay them below the scale as long as they had never been members of a craft organization? It seems that practices varied on this score: the cigarmakers, for instance, appear to have required their members to refuse employment at less than scale but not to have objected to working with nonmembers even if these were paid below scale. More common, though,
was to only allow members to work at shops where everyone (member or not) was paid the union scale of wages; all other employers were “unfair” and therefore off-limits to society members. This was the practice of, for example, Buffalo tailors in the 1820s and New York tailors in the 1830s, as well as Baltimore printers in the 1830s.15

Requiring the employer to pay the union scale to all skilled craftsmen was all well and good when the union could set the scale. If, however, the number of nonmembers became too large, how would the union retain the power to enforce the scale? Eventually, this problem led to the demand that all skilled craftsmen be members of the union. Most organizations of journeymen printers, for example, switched sometime in the 1830s from simply requiring the payment of the scale and the nonemployment of “unfair” (renegade) workers to requiring that all printers accepting employment in a fair shop become members. By 1833 the rules of the New York Typographical Society dictated that its members “inform strangers who come into the office where they are employed, of the established wages, and also of the existence of the association and of the necessity of becoming members.” Similarly, the 1842 constitution of the Baltimore Typographical Society required every printer working in the city to join the society within a month of beginning work; if he did not, the society members working at the shop where he was employed were required to refuse to work with him.16 By the time of the Civil War, at least the printers, cordwainers, tailors, and cigarmakers had experimented with some form of a closed shop on at least a local level, though often customs varied from city to city or even from shop to shop. Usually, they were tied to specific circumstances rather than taking the form of categorical rules.17

It is impossible to ascertain exactly how widespread closed-shop practices were among early craft unionists and what precise form they took. This is partly because too few constitutions and minutes have survived and partly because the existing constitutions are sometimes vague. That vagueness signals both the degree to which these societies saw themselves as hewing to tradition and the precarity of their position in the broader society. Because the societies believed they were maintaining the traditional standards of the trade, even extant minutes might simply refer to maintaining the “customs of the trade” or a similar formulation; the customs were assumed to be clear to the members, so why state the obvious? In addition, secrecy itself was a time-honored element of craft culture. It was an essential component of the cementing of an exclusive craft identity into which apprentices were initiated and journeymen bound, and it enabled craft societies to present a united front even when internal dissension roiled.18 In an often-hostile society, secrecy was also a practical safeguard. Employers and the broader society frequently
frowned upon practices like restricting output and refusing to work with nonmembers, so it might be better to refer to them discreetly, if at all. Indeed, spelling them out might cost dearly: labor unions in the nineteenth century were regularly prosecuted as conspiracies in restraint of trade, and in these cases, the constitutions of journeymen’s societies were sometimes used as evidence that they were, as one nineteenth-century prosecutor put it, “anti-republican, tyrannical, illegal, [and] despotic.”

The membership requirement was no panacea: changing markets and new technology put pressure on perceived traditional craft standards and on who exactly should be admitted to membership. Members of the craft organizations may have envisioned themselves as the legitimate representatives and upholders of craft traditions and the workers working below scale as intruders who were an aberration from the norm. Changing conditions, however, meant that the number of such “aberrant” workers sometimes grew large enough to influence organizing the craft. For example, when war orders during the Civil War increased demand at the same time that many men were called to the Union army, New Jersey hatters found themselves unable to supply all the labor required by employers. The employers therefore hired large numbers of workers who had not completed the hatters’ strict apprenticeship requirements. Faced with being swamped by the new workers, the New Jersey local decided that the only remedy was to “whitewash” the workers already engaged by the employers, that is, accept them as members despite their lack of proper apprenticeships. That way, the shops would remain “fair” and the union would preserve its standing in the shop. Other locals, however, saw this as a betrayal of the trade, and the issue eventually caused the silk hatters to walk out of the recently created national union and establish a competing one, leading to decades of rivalry.

The development of the closed shop, then, was a gradual process, one that took place against the backdrop of the rapidly changing economy of the nineteenth century. Its origins lay as much in pride in the craft and its traditions as they did in economic considerations, and in its early forms it was more akin to what modern professional organizations see as their ethos: the creation of rules and regulations to maintain professional standards among the members of the profession. From the earliest years, craft societies and unions incorporated practices well beyond the closed shop that indicated their image of themselves as a form of (self-)government. For example, Wilentz notes that craft societies administered mutual aid like sickness and burial funds, drafted meticulous rules about decorous behavior at union meetings, and might fine members whose workmanship was shoddy. But pressures of craft dilution and market growth led the societies to focus more and more
on the employer. Eventually, craft societies began to equate a fair employer with an employer who only employed union workers. The reason behind that was not an irrational prejudice against "independent" workers who did not wish to join a union, as employers often claimed. The practice had a clear logic of governance. Even if the shop only had one skilled craft worker who was not a union member, and even if that worker was paid the union scale, maintaining the principle of the craft workers’ ability to set the wage scale and govern the craft’s standards of skills required that union members force the employer to discharge the nonunion worker if the worker refused to join up. The logic of the closed shop was the logic of the slippery slope: if the principle was not maintained, the union scale and craft governance might quickly become unenforceable.

Markets, Morals, and Regulation

Craftsmen’s efforts to regulate their craft reflected a traditional view of society that saw the profit motive not as a justification unto itself but as a disruptive force to be controlled. They, along with many mainstream thinkers, echoed a long-established understanding that unregulated pursuit of self-interest corroded the fundamental idea of society. As E. P. Thompson has famously argued, in the eighteenth century both folk and elite understandings of economic exchanges reflected a “moral economy” where the impact that wages and prices had on the society was at least as relevant a consideration as the abstract forces of supply and demand. It was assumed that wages and prices should be regulated and that people had a duty to abide by rather than skirt such regulations; they were part and parcel of civilized society. A British pamphlet from 1768 put the matter pointedly: to do as one pleased with one’s property was not “the liberty of a citizen, or of one who lives under the protection of any community; it is rather the liberty of a savage; therefore he who avails himself thereof, deserves not that protection, the power of Society affords.”

The idea that civilization entailed regulation of economic activity for the common good and civic health of the nation was widespread both in Europe and in the American colonies on the eve of the American Revolution. It persisted well into the nineteenth century. In some ways, it got added force from the revolution, as critiques drawing on custom and tradition meshed with the fraying of hierarchy born out of colonial realities and the rhetoric of the revolution. Appealing to tradition did not preclude innovation; as Thompson points out, many eighteenth-century protests used the language of custom to claim entirely new rights, besides asserting traditional ones. Such mixing of custom and new rights was common in the America of the
revolutionary era as well, both in the elite discourses where the “rights of Englishmen” morphed into “natural rights” and in folk understandings where new ideas about liberty and popular government mixed with older English ideas about the right of the people to “regulate” their government through protest when necessary.\textsuperscript{24}

During the lead-up to the American Revolution, arguments that economic inequality and profiteering undermined proper governance were advanced by colonists throughout the length of the Eastern Seaboard. After independence, ordinary people continued to draw on the revolution’s language of liberty to make claims of self-governance that entailed curbing wealth and the power it could confer. Famous protests, such as Shays’s Rebellion in 1780s Massachusetts and the Pennsylvania Regulation of the 1790s (better known as the Whiskey Rebellion), expressed a widespread sentiment that “moneyed men” possessed too much influence over legislatures and policy and used it to line their own pockets. Both the Massachusetts and the Pennsylvania protests, as well as many other protests and petitions in other states in the 1780s and 1790s, insisted that if allowed to continue, the power of the wealthy would lead to exacerbated economic inequality and threaten the very fabric of the republic. As a Connecticut assemblyman put it in 1787, “Continuing a popular government without a good degree of equality among the people as to their property” was simply not possible.\textsuperscript{25}

The ideas and ferment of the revolution had percolated through the artisan community; for one, artisans often read and owned books. It is therefore perhaps unsurprising that artisans drew on both the revolution’s republican ideals and “customary rights” to insist on craft governance.\textsuperscript{26} However, the persistence of ideas that prioritized a moral economy over a liberal market-driven one reached beyond farmer or artisan ranks to those responsible for making and enforcing the laws of the new nation. As William Novak has shown, an insistence on society over markets characterized the United States well into the nineteenth century. Illustrating his point with long lists of state laws regulating inspection of foodstuffs, the duties and rights of servants, the obligations of debtors and creditors, weights and measures, offensive trades, nuisances, and many other aspects of ordinary life, Novak argues that the ideology that underpinned nineteenth-century American public governance was not laissez-faire but a “common law vision of a well-regulated society” in which the state’s prerogative of curbing individual and property rights for the general welfare was taken as a given.\textsuperscript{27}

Perhaps least surprisingly, states passed laws to protect public morals or public health, enacting rigorous regulations designed to guarantee the quality of products. For example, an 1817 Maryland statute governing pickled or salted
fish, cited by Novak as typical, lavished over 150 words merely on defining what kind of a barrel is acceptable as a container for such fish. More broadly, though, legislators and courts did not see economic activity as divorced from the state’s duty to use its power to bring about desirable social and public ends. Indeed, some states made it illegal to sell anything at all for profit unless one first obtained a “license to trade.” Similarly, several American cities in the antebellum period allowed the sale of provisions only at the designated public marketplace, built and supervised by the city; persons caught selling provisions outside the market could be fined and have their goods confiscated. The purpose of such regulation was the same as it had been in early modern England: to ensure a fair price and prevent gouging or forestalling (in the older sense of this verb: to buy up goods before they reached the public market in order to make a profit, an offense under traditional English law because it was considered to result in excessive profits). Such regulations were occasionally challenged—with increasing frequency in the years just before the Civil War—but were usually upheld by lower-court judges and by state supreme courts as unremarkable and well within the tradition of local governance. Aware that other opinions on the matter existed, judges nevertheless frequently decided in favor of a version of a moral economy, as demonstrated in an 1841 ruling on the assize of bread (a law regulating the price, weight, and quality of loaves of bread) by the Alabama Supreme Court. “Whatever doubts have been thrown over the question by the theories of political economists,” the court declared, “it would seem that experience has shown that this great end [urban bread supply] is better secured by licensing a sufficient number of bakers and by an assize of bread, than by leaving it to the voluntary acts of individuals.”

Nineteenth-century America, then, was shot through with ideas that placed society over markets and regulation over “voluntary acts of individuals.” The reach of such ideas extended beyond the plebeian strata into the middling and upper ranks of society.

Placing the needs of the society over those of individuals could, of course, be quite coercive. Kate Masur has cogently pointed out that although local governments regulating the nineteenth-century market might commend themselves to modern progressives’ eyes, their use of police powers to maintain a “well-regulated society” also took forms that are hard to stomach these days. Their regulatory practices rested on an ideology that emphasized good public order over individual rights. That ideology might indeed rein in the excesses of the marketplace. It was, however, the same ideology that regulated “outsiders” to the community: it asked vagrants or prostitutes or jugglers to post bonds guaranteeing good behavior, and it required free African Americans to register with county clerks. It was also the same ideology
that accepted slavery. As Masur notes, “The great moral evil of slavery found ample justification within the ‘well-regulated society,’” and it is by no means clear whether it could have been dislodged without the growth of a different vision of individual rights.29

The potential for liberty (and equality) through collective regulation vied with visions of liberty through individual rights and the liberty to use one’s property “free from the restraints of collective regulation.”30 Some of this tension existed within workers’ movements themselves, as Christopher Tomlins argues. For example, some activists in the Working Men’s Party in the 1830s expressed doubts about the wisdom of advocating state-sponsored and state-controlled education because such advocacy clashed with the critique of monopoly. Other worker activists, though, argued that one needed to pay attention to who benefited from reform, not to abstract principles. Monopolies of the wealthy were evil because they by definition benefited a small minority of people. Workers’ combinations, however, were a different matter altogether. Indeed, it was preposterous to claim that they could threaten the public good—to all practical intents and purposes, they were the public good. As Ely Moore, the president of the General Trades’ Union of New York (and soon to be a congressman), put it in 1833, it was silly to claim that “it is setting a dangerous precedent for journeymen to combine for the purpose of coercing a compliance with their terms.” After all, these were organizations that represented the people—the workingmen were the majority. Dangers lurked in “an alliance of the crafty, designing and intriguing few,” not in “a general effort on the part of the people to improve and exalt their condition.”31

Moore had a point. Yet his own attitudes also underline Masur’s contention that the vision of a well-regulated society, with its emphasis on tradition and the collective public good, implicitly drew a boundary that left many on the outside. Again, the issue of slavery is the most revealing. Though antislavery sentiment was widespread in the General Trades’ Union and the labor movement in general, it had limits: if allowing slavery was the price for the “public good” of maintaining the Union without disruption, then so be it. Many, including Moore, also worried that abolishing slavery would flood the labor market and undermine the standing of white workers. Like many other Democratic politicians of his era, he thought that the concerns of white workingmen unequivocally took precedence over the plight of nonwhite slaves. Not for the first or the last time, “the people” did not encompass quite all of the people.32

The quandaries of what liberty meant and whose liberty was of concern is particularly clear in the different and contradictory interpretations of “free labor.” One meaning of free labor derived from classical political economy,
where the concept portrayed the laborer as a free agent in the marketplace and labor as comparable to coal, wheat, or any other commodity. In the nineteenth-century American context, the presence and prominence of slavery strengthened the freedom that such a vision of labor seemed to embody: the liberty of the free worker to sell his labor to the highest bidder seemed an obvious antithesis of the slave’s very person being sold. Abolitionist rhetoric enshrined the liberty to make contracts in the marketplace; that, after all, was something the slave conspicuously lacked. Against the unfreedom of being owned by another person, the abolitionists set the freedom to choose how and with whom to contract for the sale of one’s labor, regulated not by personal bondage but by the supply and demand of the market. The abolitionist William Jay explained that when the slave became free, “labor is no longer the badge of his servitude . . . for it is voluntary. For the first time in his life he is party to a contract . . . [T]he value of negro labor, like all other vendible commodities, will be regulated by supply and demand.”

The fact of slavery also highlighted that curbing the risks involved in trying to survive by one’s labor amounted to limiting one’s freedom. Who, after all, would argue that enslaved men and women were better off with the (at least theoretically) assured sustenance and basic care under slavery than with the freedom of the marketplace, even as the latter provided no guarantees whatsoever? That freedom of the marketplace, many abolitionists argued, required cooperation rather than conflict between capital and labor. Thus, for the abolitionist Wendell Phillips, labor and capital formed “a pair of scissors,” indispensable to each other. Labor unions, many antislavery advocates argued, only disrupted this liberty and harmony and were coercive in their claim to regulate the right of a worker to dispose of his labor as he saw fit. The orator and abolitionist Anna Dickinson, for instance, censured unions for requiring membership and objecting to the employer paying a nonmember more than a unionist; that was exercising “absolute power . . . more tyrannical [sic] than a European despotism.”

Where middle-class abolitionists emphasized the freedom of the marketplace, however, another meaning of free labor explicitly rejected the idea that seeing labor as a commodity could confer freedom. This meaning, derived from the republican tradition and developed further in the post–Civil War years, saw employment in the service of another as “wage slavery” that cut into a worker’s independence as a citizen. As a “vendible commodity,” labor was of a special sort: it could not be separated from the laborer. Because the commodity that a laborer was actually selling was time, it was also eminently perishable. To support themselves, workers had to sell labor day after day for the duration of their lives. According to worker intellectuals like George
McNeill, the labor reformer and Knights of Labor leader, this amounted to a significant degree of unfreedom. One might have the choice to change masters, as it were, but if one were forced to continue to sell one’s labor to survive, one could not choose to not have a master. Thus, since labor could not be separated from one’s person, permanent wage work essentially meant selling oneself for the duration of one’s life.\textsuperscript{38} Real freedom and independence, in the view of many workers and small proprietors, resided in property ownership and self-employment, not in the liberty to contract for wage work. These ideas persisted beyond the Civil War. Analyzing testimony at the congressional hearings on the causes of the 1870s economic depression, Rosanne Currarino shows that “the Jeffersonian ideal of the small property owner as the moral center of the republic” resonated deeply among the craftsmen and small businessmen whom the depression had hit hard. They used that ideal to argue that the government should facilitate the path to property ownership by grants of money, distributions of land, or other means.\textsuperscript{39}

Neither market regulation nor the idea of free labor offered any straightforward message regarding how to best secure a society in which all could have a dignified existence. The economic visions of the nineteenth century were not cleanly separated and opposing positions; rather, they were entangled in each other. Thus, for example, as the ideology of the Republican Party developed in the 1850s, it drew on ideas about the liberty of contract and on ideas about collective regulation to ensure the continued viability of independent producers. It emphasized class harmony and individual responsibility for upward mobility even as it critiqued the excesses of wealth and the power of corporations. It presented the North as economically and socially superior to the South because it was founded on free labor—efficient, intelligent, and productive men making good use of their faculties to develop the country. But it also reacted to the dislocation of economic depressions, such as the one following the Panic of 1857, by reproaching individual excesses and counseling those affected to frugality and hard work. In some ways, the contradictions in these ideas stemmed from the constant and rapid change of the economy. If upward mobility through small entrepreneurship indeed was within everyone’s reach, then it was no hypocrisy to ask that people attempt to reach for it or even to argue that regulation would only hamper their ability to do so. But if economic change was fast making a whole class of workers into permanent wage laborers with no hope of independent proprietorship, matters were rather different. Collective action by workers seemed to imply that the latter was closer to the reality than the former; often, the reaction of middle-class Republicans was to attack the collective action rather than revise their ideas about what the realities were.\textsuperscript{40}
Whose Rules, Whose Power?

Workers navigated the marshy terrain of ideas about markets, free labor, and governance as best they could. Their specific position in the society and the labor force shaped their interpretations of these ideas. Thus, the craftsmen whose skills continued to be in demand even as the ground under them shifted tended to continue to emphasize control of the craft. Meanwhile, workers whose industrial or labor market position gave them less skill-based leverage with employers might gravitate toward broader solidarities or more far-reaching demands for social change. All, however, repeatedly butted against a skepticism in the nonworker ranks of society about workers’ right to claims of independent decision-making, let alone collective governance.

One institutional setting where this suspicion against working people’s claims to independent rulemaking was prominently on display in the nineteenth century was the judicial system. Labor unions were frequently prosecuted as “conspiracies in restraint of trade,” and these conspiracy cases repeatedly took issue with precisely the thing that craft societies considered their main function: regulating the craft. The very first of these cases (Commonwealth v. Pullis, 1806), in which the first known organization of workers in America, the Federal Society of Journeymen Cordwainers of Philadelphia, was indicted for conspiracy, explicitly condemned the attempts of the journeymen to govern their trade. This the court viewed as encroaching upon the privileges of the state: there could not be, “besides our state legislature, a new legislature consisting of journeymen shoemakers.”

A crucial part of the case was that the journeymen had joined together not merely to set a price on their own labor (though that was bad enough); they also meant to make rules binding other shoemakers. They had presumed to “regulate the whole trade,” causing hardship for those who were forced out of work unless they joined the organization and abided by its wage demands. This, the prosecution contended, was “the chief charge in the indictment.” It showed that the aim of the case was “to secure the rights of each individual to obtain and enjoy the price he fixes upon his own labour,” that is, not to be bound by the wages set by the journeymen’s association but to be allowed to work for whatever he could get for his labor. The prosecution, in other words, set itself up to defend the rights of workers unaffiliated with the journeymen’s association, expressing its horror of the “fetters” that the association put on independent journeymen by demanding that they abide by its rules.

The defense of independent journeymen was a constant refrain in the conspiracy cases; indeed, the case that is famous for overturning previous court interpretations of all craft organizations as conspiracies, Commonwealth
The Deep History of the Closed or Union Shop

v. Hunt (brought first in the Municipal Court of the City of Boston in 1840) was brought not by employers but by a journeyman. The journeyman, Jeremiah Horne, alleged that his employer, Isaac Wait, had discharged him at the instigation of the Boston Journeymen Bootmakers’ Society. Horne had been a member of the Bootmakers’ Society, but the society claimed that he had broken its rules and slandered it, and it imposed fines on him for these offenses. Horne refused to pay the fines and therefore was no longer a member of the society in good standing. The constitution of the Bootmakers’ Society (adopted in 1835) stated that all journeymen in the city were expected to join if invited. If a shop where a majority belonged to the society employed a journeyman who was not a member of the society, the members of the society employed at that shop would be expected to quit. Wait, who knew the society’s rules, therefore discharged Horne rather than risk other workers walking out.

The society had not threatened a strike against Wait; as its constitution stated, its rules applied in the main to its members. Nor is it clear that Horne suffered economically: on Wait’s advice, he had sought work at another shop (although he was later let go for lack of available work). The prosecution, however, insisted that “to prevent a man from working lawfully, as he pleases, and for whom he pleases, is an invasion of the liberty of the subject” and that the society’s actions were “tyrannical” because they required all journeymen in the trade to submit to the society’s “dictation and rules” or risk being shut out of employment.

On appeal to the Massachusetts Supreme Court, Commonwealth v. Hunt was decided in favor of the Bootmakers’ Society on the grounds that the society did not force anyone to become a member. However, several cases in the latter half of the nineteenth century repeatedly condemned any agreements between employer and employees that limited the individual rights of workmen by requiring them to join a union, as well as agreements that limited the rights of the employer to hire whom he pleased. Throughout the nineteenth century, the courts’ supposed defense of workers and employers from union dictation was echoed by the commercial classes. For example, in the 1830s the editor of the New York Journal of Commerce, David Hale, argued that British employer combinations’ success in breaking up unions had been “a blessing most devoutly to be desired, chiefly for sake of the workmen themselves,” because unions forced otherwise contented workers to leave their positions and thus attempted to subvert the laws of supply and demand.

The claims of unions to governance were, then, in constant tension with the state’s claims to the exclusive power of formal coercion, the development
of ideas about liberty of contract, an expanding faith in the impartial laws of supply and demand, and a growing emphasis on personal rather than communal assumption of risk. Collective protections increasingly became interpreted as collective shackles, and true freedom was construed to reside in individual decision-making in the impersonal marketplace. These ideas extended to aspects of the workplace beyond the specific question of union rules. For example, in the 1842 *Farwell v. Boston and Worcester R.R. Corp.* decision, the Massachusetts Supreme Court decided against Nicholas Farwell, an engineman who had sued his employer for compensation for his right hand, destroyed in a workplace accident. The decision rested on the definition of risk: according to the court, Farwell had personally assumed a risk in accepting employment, and that risk was already factored into his wage. Like Farwell’s labor itself, the risk was his personal “property,” as it were—a commodity for which the railroad corporation compensated him in the premium it paid for his work.

The court’s rewriting of the rules in *Farwell* echoed the development of the ideology of free labor as the sale of a commodity through a contract entered into in a free marketplace. Farwell’s suit had rested on an older legal construction of the employment relationship, that between a master and a servant. The difference in power relations meant that a servant was expected to submit to a master’s will, but a master assumed some responsibility for the actions and well-being of his servant. Farwell’s accident was caused by a fellow worker, and so he appealed to a common-law principle of respondeat superior (let the master answer), which extended the master’s responsibility to damage caused by his underlings. The court, however, very explicitly rejected this older construction and affirmed the interpretation of employment as a commodity exchange by free individuals, neither of whom was responsible for the other. In fact, in finding legal precedent, the court drew on the law of maritime insurance and equated Farwell’s labor with a ship’s cargo—a physical, tangible commodity. Just as a cargo could be destroyed, the “commodity” of Farwell’s productive labor had been destroyed or damaged in the accident, and thus Farwell would suffer a monetary loss—the wages he could no longer expect. But that was not his employer’s problem.49

In the decades after the Civil War, court decisions affirming the primacy of the liberty of contract became ever more dominant, and liberty of contract was frequently used to strike down attempts at legislative regulation of work or wages. For example, courts ruled against laws prohibiting cigar manufacturing in tenement houses. They also ruled against requiring that workers be paid in cash rather than in scrip (vouchers redeemable in company-owned stores that generally charged well above market prices). In both of these, the
courts’ logic was that such laws violated the employer’s and the employee’s right to contract on such terms as they saw fit.\textsuperscript{50}

Yet the development of ideas about labor as a commodity or workers as free individuals entering into a contract between equals was hardly straightforward or unambiguous, let alone philosophically consistent. Decisions emphasizing the liberty of contract were amply counterbalanced by decisions reaffirming the older doctrines of master and servant. Even as courts refused, as in \textit{Farwell}, to apply the master-servant doctrine to hold the master (employer) to account, they did not balk at affirming the servant’s (worker’s) subordination and obligations. Thus, even in the post–Civil War era, courts routinely convicted union organizers on the grounds that it was “a familiar and well established doctrine of the law upon the relation of master and servant, that one who entices away a servant . . . may be held liable in damages therefor” if doing so broke the “servant’s” contract.\textsuperscript{51} In other words, which principles applied and how could depend on who was in the dock as much as on legal precedent. While legal discourse mattered, so did power; as David Montgomery has pointed out, “Employers’ awesome power [in the nineteenth century] would have existed whatever the discourse with which it was sanctioned.”\textsuperscript{52}

Workers trying to gain power over their working lives reacted in a variety of ways to the constraints of legal doctrine and the shifting industrial and economic landscape. Rank-and-file workers and labor leaders drew different and sometimes conflicting conclusions about how one should go about demanding a worker voice in the new context. Should one emphasize the need to maintain economic independence and craft governance? Or should one devise a new strategy to respond to the changing realities of industrial scale, of unskilled labor, of state expansion? Some hewed to the older interpretation of free labor as the opposite of not just slavery but also wage labor: they argued that a worker who was free was an independent producer, not an employee, and that the system of wage labor supported a consolidation of power and wealth that represented a fundamental threat to popular government. Therefore, worker strategy should defend workers’ political and economic position as an inseparable whole. Others accepted, more or less, that wage labor had come to stay. Therefore, workers should focus on raising the level of wages, securing control on the shop floor, and building power through organizing the craft or trade.

The manifesto of the Knights of Labor (KOL)—the era’s premier labor organization, founded in 1869, reaching a membership of nearly fifty thousand by 1883, and soon to explode (if briefly) to more than three-quarters of a million—insisted that there was “an irresistible conflict between the wage-system
of labor and republican system of government.” As Leon Fink has argued, the organization drew on a set of deeply held cultural values that emphasized “productive work, civic responsibility, education, a wholesome family life, temperance, and self-improvement” but insisted that both the marketplace and the rather placid-sounding cultural values needed to serve the needs of human beings embedded in a community, not empower impersonal market forces or grasping individualism. To pursue the goal of a “cooperative commonwealth” of producers, the Knights aimed for a broad-based strategy that incorporated politics, education, cooperatives, and workplace organizing of different kinds. The organization welcomed into membership a wide range of people—craft workers as well as unskilled workers, shopkeepers, and other small entrepreneurs who were supportive of its goals. It excluded only those it deemed to engage in no useful, productive labor (such as bankers and lawyers). Unlike the craft unions, the KOL was also open to organizing both on an occupational basis and along some other continuum such as industry or an even broader identity such as “producers.” Thus, local KOL assemblies were of two types: trade assemblies organized around a craft or occupation, and mixed assemblies, with boundaries defined by the local itself and open to a mix of occupations and skill levels.

The American Federation of Labor, which was formed in 1886 as an umbrella organization of mainly craft unions, often clashed with the Knights over strategy and emphasis. An important point of disagreement was the issue of “dual unionism,” that is, whether it was permissible for workers to belong to multiple labor unions at the same time and whether multiple organizations representing the same group of workers should be allowed to exist. The AFL insisted that dual unionism hurt labor’s organizational basis because unions representing the same occupational group might compete with each other for members and otherwise come into conflicts that employers could then exploit. An especially contentious point was that workers expelled from an AFL-affiliated craft union for violating the union’s rules might be able to enroll in a competing KOL assembly, which undermined the AFL union’s governance of the trade; the ability to sanction renegade members was, after all, a key feature of the idea of craft governance. The AFL’s leadership also tended to consider the KOL too undefined in its goals and insufficiently cognizant of the necessity for tight and carefully thought out institutional forms, while the Knights viewed the AFL’s craft-based trade unionism as too narrow.

If philosophical and practical conflicts formed a rift between the leaders of the KOL and those of the AFL, those differences were often less prominent among the rank and file. Individual unions and locals that formed under the umbrella of each organization, as well as the workers who joined them, often
had their own ideas about what constituted legitimate strategy or goals for organized labor. Even if they joined an AFL-affiliated craft union or one of the occupationally based railroad brotherhoods, workers did not necessarily align themselves with the leadership’s doubts about broad-based labor politics or opposition to dual unionism. Similarly, even if they joined a KOL assembly, they did not necessarily share the leadership’s official aversion to strikes. Moreover, the leadership’s differences were neither immutable nor all-encompassing. For all its “business unionism”—an emphasis on effective and reasonably well-funded union structures, a focus on the workplace rather than politics, and a rejection of “theorizing”—the AFL drew heavily on the older craft ideals that had animated artisan republicanism and that echoed in the philosophy of the Knights of Labor as well. Similarly, despite the Knights’ emphasis on a more capacious solidarity and a broader philosophy than that of the AFL, the local and district assemblies affiliated with it could engage in hard-nosed and pragmatic trade union–style organizing and bargaining; they also sometimes made use of the closed-shop requirement.

Unity on the best strategy to advance labor’s cause remained elusive, even within the AFL’s own ranks. By the early 1890s the AFL had largely eclipsed the Knights of Labor. That did not, however, mean that key questions had been resolved. Even within the AFL fold, unionists continued to vehemently argue about such matters as the advisability of independent labor politics, the extent to which the goals of capital and labor were fundamentally incompatible, or the proper role of the state in the quest to improve the position of the working class. Even AFL president (and quintessential business unionism proponent) Samuel Gompers deployed in those years language that was, in Shelton Stromquist’s felicitous phrase, “resolutely ambiguous” regarding producerist hopes of the eventual demise of the wages system.

The early 1890s offered some heady prospects for broadening the base and strategy of working-class activism. On the railroads, a new industrially based union, the American Railway Union (ARU), had won an important victory in 1893 and was growing rapidly, largely because it had seemingly finally found a formula to build solidarity among a large swath of railroad workers, whose organizing had long been complicated by divisions between skilled and unskilled workers. This mattered, since railroads were massive businesses that together employed hundreds of thousands of workers. On the political front, the rise of the Farmers’ Alliance in the South and West had created what Lawrence Goodwyn called the “largest democratic mass movement in American history.” By the early 1890s the movement was busily building a third party intended to bring together farmers and urban workers in a “People’s Party” (also known as the Populists). Politics was also debated among the trade unions: the American Federation of Labor’s 1894
convention considered an extensive “Political Programme” that originally included an affirmation of independent labor politics, as well as a plank calling for “collective ownership by the people of all the means of production and distribution.”

Much of the momentum of these developments, however, collapsed quickly. The “Political Programme,” despite its apparently significant popularity among the AFL’s membership, was defeated, and while the AFL in the coming years continued to push for specific legislative goals, it did not embrace a labor party or a broad labor politics. The People’s Party failed to build a strong alliance of farmers and workers, and in the election of 1896 it endorsed the Democrat William Jennings Bryan rather than fielding a third-party presidential candidate. Bryan’s campaign hardly lived up to the Populists’ broad democratic agenda, though it was enough of a threat to elite businessmen to drive many of them from the Democratic to the Republican Party and to galvanize them to mount a massive campaign that secured the victory to the Republican William McKinley. Meanwhile, successes that People’s Party candidates (some elected by biracial coalitions) had garnered in the South were met with harsh repression from the lily-white Democratic establishment. The new American Railway Union was undone in a failed strike and boycott. In the summer of 1894 workers making Pullman sleeping cars went on strike, and in a sympathy boycott, much of the railroad traffic in the western half of the country was brought to a standstill by workers refusing to handle Pullman cars. They were soon greeted by a federal court injunction and federal troops, and the ARU was left in shambles. The fate of the boycott strengthened the conviction of the business unionists within the AFL that prudently steering clear of mass politics, as well as mass worker action, was the better part of valor. In the subsequent years the AFL leadership leaned ever more heavily on a program of trade union organization and lobbying on specific issues. In other words, Gompers and his allies agreed that politics mattered. However, they contended that instead of focusing on parties and broad agendas, political action needed to target specific goals—such as lobbying against the use of court injunctions against unions, which had been crucial in defeating the Pullman boycott.

In some ways, these developments signaled the passing of a more broad-based vision of labor unionism, a shift from a political activism to the workplace, and from coalitions across skill levels and even across racial and gender lines to a narrow focus on the interests of workers who were white, male, and skilled. The repression of unions like the ARU diminished the voice of labor activists advocating a more politically oriented and inclusive strategy in the society at large, as well as within the labor movement. This did not necessarily mean that workers as such became less drawn to broad solidarities, but it did
shift the calculus for the unions left standing. As Gerald Friedman points out, “Union strategy, or the strategy followed by unions that survive, reflects not only the workers’ wishes but what they do to establish and maintain unions against opposition from employers and state officials.”

By the turn of the twentieth century, the chief “strategy followed by unions that survive[d]” emphasized clearly defined, limited goals that were to be achieved through well-funded and carefully planned actions by workers well placed to succeed. The closed shop became an integral part of that strategy. It allowed unions to enforce agreements made with employers, and it undergirded the maintenance of union membership in workplaces where the unions got a foothold. Although it had deep roots, the centrality of the closed shop to modern union strategy was not inevitable; rather, it grew out of specific circumstances. Had the political challenges of the nineteenth century succeeded, labor might have adopted a different direction; indeed, many European unions, especially on the Continent, eschewed membership requirements in favor of broad-based political alliances or other alternative strategies. Even in the United States, the landscape of opinion within the labor movement was never reduced to the views represented at the AFL executive council. Miners in the Rocky Mountain West, Jewish garment workers in New York, and even rank-and-file rebels within the AFL fold continued to find a range of radical ideas and tactics appealing—and sometimes the moderate business union leaders partly accommodated them.

Crucially, whatever critique the Left leveled at business unionists and the closed shop, in the view of employers neither looked tame. Employers found the American Federation of Labor a serious threat to their power. For one, the AFL insisted on workers’ right to organize and strike. This was a considerable challenge to ideas about who should hold power in the employment relationship and flew in the face of the ideology of worker obedience and master authority embedded in the master-servant doctrine, which the courts continued to uphold. The AFL unions also continued to assert the governance rights of workers’ organizations. As the membership requirement became a standard feature of union contracts, it underlined workers’ claim to governance and secured the position of the national union through more reliable membership dues and union authority over workers. The power in this vision, though very different from either the old artisan republicanism or the cooperative commonwealth of the Knights of Labor, was hardly negligible. Its potential was evident, if in nothing else, then in the vehemence with which a large segment of employers attacked it and in the unease with which even prolabor middle-class reformers greeted it.