INTRODUCTION

Between the Progressive era and the New Deal, small businessmen and craft workers in Chicago defied the corporate transformation of American capitalism, establishing for themselves an island of governance in a largely unregulated economy. In trades like trucking, construction, and shopkeeping, unions and associations enacted self-styled laws that impeded large national firms and favored small, local, and labor-intensive businesses. They enforced their laws not through the legal system, but through fines, strikes, boycotts, pickets, and violence. Unsurprisingly, the men who owned Chicago’s department stores, warehouses, railroads, and factories condemned these forms of economic order, favoring a regime friendly to property rights. Their opposition provoked a series of confrontations between local tradespeople and corporate magnates that spilled into Chicago’s streets, markets, and courts.

This local struggle redirected the course of American labor law. Illinois case law felt its imprint, as judges defended private property rights by limiting craft practices such as picketing and the boycott. Indictments, injunctions, and contempt citations littered the dockets, as courts ruled Chicago’s craft organizations to be criminal conspiracies, violating both the rights of individuals and the sovereignty of the elected government. With the support of reformers, tradespeople gradually undermined the idea of conspiracy and established a limited legitimate space for themselves in Chicago’s economy. In time, craft governance influenced federal policy by impressing powerful officials like Raymond Moley, who wrote New Deal statutes encouraging trade agreements. Thus, the forms of industrial order established in the United States between
1890 and 1940 resulted not from a Progressive “search for order,” but from the local struggle between reformers, elite businessmen, small proprietors, and craft workers.¹

This struggle is almost entirely absent from current literature, which generally portrays American economic and political development as a peaceful and uncontested process. Even scholars of the left like Martin Sklar have concluded that the corporation inspired no radical or overwhelming popular response. In 1993, Sklar commented:

The corporate reorganization of American capitalism was a relatively peaceful affair. Unlike the great sociopolitical crisis of the 1850s and 1860s, which was solved by national reconstruction that required a civil war and revolution, the corporate reconstruction required neither civil war nor revolution, but rather political and economic reorganization and reform.²

This dissertation suggests the opposite, that modernization was a violent, contingent, and contested process. As such, it responds to four powerful myths that dominate early twentieth-century history: the myth of modernity, the myth of voluntarism, the myth of corporatism, and the myth of legitimacy.

The myth of modernity contends that the United States had achieved industrial maturity by the Progressive era, laying the material groundwork for a modern American


²Martin J. Sklar, The Corporate Reconstruction of American Capitalism: The Market, the Law, and Politics (New York: Cambridge University Press, 1993), 21. See also James Weinstein, The Corporate Ideal in the Liberal State, 1900-1918 (Boston: Beacon Press, 1968), 3-6, ix-xv, 254. For the centrist version of this narrative, see Wiebe, The Search for Order, 1877-1920. Two political historians, Barry Karl and Morton Keller, have resisted this linear narrative, stressing the ambiguity and compromise inherent in modernization. Though their research has deeply influenced this dissertation, I find far more physical conflict than either scholar. This may be no surprise, as this dissertation emphasizes the social and legal history of a specific locality rather than national policy. Barry D. Karl, The Uneasy State: The United States from 1915 to 1945 (Chicago: University of Chicago Press, 1983); Morton Keller, Regulating a New Economy: Public Policy and Economic Change in America, 1900-1933 (Cambridge: Harvard University Press, 1990).
state and society. During the nineteenth century, historians claim, American businessmen had integrated the nation’s commerce, mechanized its production, and incorporated its companies. With the new economy, distinct social classes had formed, one composed of managers, stockholders, and professionals, and another composed of ethnic industrial workers and their families. This modern economy, scholars argue, inspired a distinct set of social problems eventually addressed by a new political order.³

Chicago’s economy was far more diverse and “pre-modern” than such accounts indicate. Giant corporate steel mills, managed by Protestant gentlemen, employing thousands of immigrant laborers, selling to a national market, were less typical of urban commerce than the small shops and yards of the city’s construction, trucking, retail, and service trades. These trades provided Chicago’s exploding population with food, shelter, transportation, infrastructure, and public culture. Hundreds of thousands of men and women worked in these sectors, largely separate from, if not unaware of, the city’s dark factories. They often worked in public, even outdoors, and their jobs had changed little since the industrial revolution.⁴


Craft labor and capital had not hardened into the fixed social classes found in manufacturing. Local proprietors, partnerships, and family firms provided the city with most of its construction, teaming, retail, and service. Craft production relied more upon the skill, strength, and intelligence of workers than upon capital investments, a fact allowing some workers to start their own businesses and failed businessmen to return to wage labor. Craft workers and their families enjoyed varied life courses, illustrating the permeability of social relations in the craft economy. For example, William H. “Red” Curran was an officer of the plumber’s union, president of the Chicago Building Trades Council, and Illinois state factory inspector. He also worked as a bailiff, a deputy sheriff, a brewery agent, an aldermanic candidate, and a plumbing contractor. His immediate family included a Republican state representative, a county employee, a city bridge-tender, a municipal court judge, a bailiff, and the superintendent of the Bridewell jail.5

Social divisions existed, of course, but the relationship between workers and employers was antagonistic rather than contradictory. Unions and employers’ associations often bridged their differences, forming stable agreements that governed commerce in their crafts. Sometimes labor and capital fought violently, but sometimes workers and employers allied themselves against rival associations, factions, and business communities. The most heated episodes in Chicago labor history occurred when external agents challenged craft orders. The most blatant example is the teamsters’ strike of 1905, in which the city’s great merchants intervened to shatter agreements between local teamsters’ unions and their respective employers’ associations. The strike was

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indeed a class struggle, but only if we complicate our notions of class rather than shoehorning the conflict into conventional categories.\textsuperscript{6}

The second myth is the myth of voluntarism. Labor historians often describe early twentieth-century American craft unions and the American Federation of Labor (AFL) as conservative voluntary associations antagonistic to the state, opposed to legislative reforms, and unwilling to form a political party dedicated to broad social change. This voluntarism subsumed two related principles: business unionism and contractualism. Business unionism implied a narrow concern with bread-and-butter issues, such as wages and hours. Contractualism suggested reliance upon private, legally enforceable trade agreements rather than upon universal statutory protections.\textsuperscript{7}

Historians base this interpretation upon union rhetoric, conceived to gain access to and protection from the Progressive-era state. Union officers hoped to convince the voting public that American workers had no interest in radically undermining capitalism or the party system. Unions also appealed to hostile formalist judges by claiming to be

\textsuperscript{6}Though some scholars have suggested that class is a flexible rather than fixed social relation, few historians have reformulated the labor/capital dichotomy. For the difference between antagonism and contradiction, see Ernesto Laclau, \textit{New Reflections on the Revolution of Our Time} (New York: Verso, 1990), 7. For the teamsters' strike seen in standard terms, see David Witwer. “Corruption and Reform in the Teamsters Union, 1898 to 1991” (Ph.D. diss., Brown University, 1994).

mere associations, subject to the law, expressing the simultaneous will of their members. By presenting themselves as wholly private bodies, they hoped to earn public sympathy and evade public regulation.8

Yet local union activity contradicts this rhetoric, complicating our picture of the bread-and-butter, contractual union. Craft unionists in Chicago never accepted a strict divide between the public and private spheres essential to the idea of voluntarism. Local labor federations lobbied the Illinois legislature for Progressive legislation long after they purportedly became quiescent. Union officials took public jobs seeking to enroll thousands of government employees. In 1899, an investigation showed that nearly two-thirds of the officials of the Building Trades Council and of the Chicago Federation of Labor held public offices such as brick inspector, examiner of engineers, and others.9 By 1929, economist Carroll Lawrence Christenson calculated that the city of Chicago, Cook county, and various public contractors employed 163,310 union teachers, janitors, teamsters, repairmen, inspectors, and building tradesmen—over seventy percent of the


workers in these occupations. These employees accounted for ten percent of the city’s total workforce, but over half of its union membership.\textsuperscript{10}

Craft organizations themselves acted as governments, enacting constitutions, passing by-laws, electing officers, and levying taxes. Though craft producers signed contracts, they utterly rejected the power of the courts to enforce agreements, instead forming their own legal systems to administer rules stipulating wages, hours, prices, and materials. Having suffered persecution in the courts for centuries, workers refused to risk the decisions of elite judges. Beginning in the 1890s, building-trades unions and associations began hiring “walking delegates” to represent them at the work-sites scattered around the city of Chicago. These men policed the city, checking building sites for infractions including the employment of non-union workers, the payment of wages below scale, and the purchase of out-of-state materials. When the walking delegate found such violations, he notified the offender and attempted to negotiate a resolution. Failing conciliation, he conferred with his fellow delegates. In some cases, unions and trade associations tried offenders in their own judicial proceedings, sentencing them to fines, suspensions, strikes, and boycotts.\textsuperscript{11}


\textsuperscript{11}I would suggest that labor leaders like “Red” Curran modeled their organizations upon political bodies familiar to them from close association. For examples of union and association constitutions, see IC, \textit{Reports}, v.8, 555-63. Also, see copies of constitutions of attached to Bill of Complaint, 30 June 1899, in \textit{Union Pressed Brick v. Chicago Hydraulic Press Brick}, case File #196935 in the Circuit Court of Cook County. According to business agent Frank Buchanan, the Structural Iron Workers Union used the Australian ballot to elect their officials. IC, \textit{Reports}, v.8, 471-2, 118, 555, 62. For a description of the responsibilities of the business agent, see Robert A. Christie, \textit{Empire in Wood: A History of the Carpenters Union} (Ithaca, NY: Cornell University, 1956), 63-6; Royal E. Montgomery, \textit{Industrial Relations in the Chicago Building Trades} (Chicago: University of Chicago Press, 1927), 8-9. For delegates in action, see \textit{Minute Book} of the Chicago Building Trades Council, 1912-14, Chicago Historical Society. For examples of arbitration committees fining workers and employers, see Bill of Complaint, 30 June 1899, \textit{Union Pressed Brick Co. v. Hydraulic Pressed Brick Co.}, case #196935 in the Circuit Court of Cook County (1899). For the use of the boycott as punishment,
Contrary to the literature, these organizations posed a radical challenge to the city's corporations. Craft governance denied the sovereignty of the state, invoking the continual reaction of legal institutions. In the craft mind, organizations had the primary right to rule their jurisdictions. The state could be a rival or an ally, but never the sole legitimate regulatory authority. Judging craft producers by the standards of contemporary social movements, which demand from unions a crusade for the betterment of all workers, historians underestimate the militant implications of craft governance in its time.

The third myth is the myth of corporatism. Advocates of corporatism argue that Progressive and New Deal reforms were merely aspects of an emerging national, corporate, industrial, bureaucratic society. In this history, reform-minded executives managed peacefully to deflect both socialism and laissez-faire capitalism by advocating a political and economic order composed not of individuals but of large interest groups such as corporations, labor unions, and political parties. Their ideals, which historians call “corporate liberalism,” allowed for public regulatory bodies such as the Interstate Commerce Commission, statutory protections such as unemployment insurance, and the arbitration of labor disputes.12

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Yet scholars massively overstate corporate authorship of these initiatives. Though some executives joined influential reform groups like the National Civic Federation, most did not. Many more corporate executives joined the Illinois Manufacturers Association, which opposed nearly every reform proposed in the legislature. Such corporations were especially incensed by collective bargaining. At the turn of the century, one would be hard-pressed to name a single large firm in the city of Chicago that had signed a union contract. Thirty years later, the picture was little different, as unions had become concentrated in crafts controlled by small employers. These contractors and shopkeepers were, not coincidentally, strong supporters of Chicago’s Kelly-Nash Democratic political machine during the 1930s.13

If we are to write a history of the New Deal “from the bottom up,” we must look to the craft economy rather than to the corporate sector. Chicago’s craft producers had established a thriving associational culture by 1910, over a decade before the Hooverian corporate associationalism historians identify as a model for the New Deal. The trade agreements favored by New Deal architects would have been familiar to Chicago’s bricklayers as early as the 1880s. National policies like the National Industrial Recovery Act (NIRA) ratified arrangements and cultures existing in urban crafts.14


14For Hooverian associationalism as the source of the NIRA, see Himmelberg, *The Origins of the National Recovery Administration*. In *Making a New Deal*, Lizabeth Cohen writes political history “from the bottom up,” describing letters to Franklin Roosevelt, participation in New Deal programs, and shifts in black and ethnic voting. By contrast, I hope to show how workers and businessmen actually built the political and economic structures that brought Roosevelt into power and directly inspired New Deal statutes. Cohen, *Making a New Deal* (New York: Cambridge University Press, 1990), 251-89.
The reluctance of scholars to acknowledge the craft economy as the birthplace of many New Deal regulatory policies ironically flows from that economy’s central role in legal controversies preceding the New Deal. Today, many assume that trades like construction are “corrupt.” But such perceptions are themselves the residue of the struggle to legitimize craft governance. A professional strikebreaker invented the term “racketeering” in 1927 to condemn leaders of craft organizations in Chicago. The word’s power grew in the 1930s as the federal government legitimized collective bargaining while maintaining strict legal limits on the use and abuse of organizations. In other words, the craft economy’s reputation for “racketeering” is a reflection of its influence on the evolving New Deal regime.

The final myth common among historians is the myth of legitimacy, a progressive narrative tracing the ascent of organized labor from “conspiracy to collective bargaining.” With every passing year, early twentieth-century commentators heralded an end to the “outlaw” phase of industrial relations that found unionists and allied businessmen often in the criminal courts. In 1905, after the Chicago teamsters defrocked their president for alleged financial improprieties, economist John Commons announced that now “the teaming industry can be studied as an economic rather than a criminal phenomenon.” Within months, grand jury testimony made Commons look foolish, as witnesses charged teamsters and their employers with bribery and violence. Even New Deal labor laws failed to stem such allegations, indicating that reforms forced the reconfiguration rather than the abatement of criminal prosecutions.\footnote{John R. Commons, “Types of American Labor Organizations: The Teamsters of Chicago,” Quarterly Journal of Economics, 19 (1905): 407. The New Deal intensified such accusations. U.S. Congress, Investigation of So-Called “Rackets,” v.1, Parts 1-6 (Washington, D.C.: Government Printing Office, 1934).}
In this light, it seems reasonable for historians to focus upon what behaviors became criminal as the state offered its blessing to new forms of economic governance. The long process of union legitimization, beginning in 1843 with Justice Lemuel Shaw’s decision in Commonwealth v. Hunt, was accompanied by a concomitant recriminalization of many practices. Between 1843 and 1940, unions moved not between two unlike terms, conspiracy and collective bargaining, but between two competing conceptions of criminal law, conspiracy and “racketeering.” This shift affected the character and reputation of American labor unions nearly as much as the better-studied positive law of the New Deal. And the contested origins of the word “racketeering” help explain the apparent contradictions in “racketeering” law today.

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This dissertation sees the origins of an integrated national economy and a pluralist polity as conflicted, violent, and perhaps even overdetermined. It suggests that the modern corporate order bears the deep impress of its opposite: the local craft economy. Chicago’s craft economy both served as a potent counterpoint to the staunch liberalism of American corporations and provided the most vital example of commercial governance available to American policymakers from the Progressive era to the depths of the Great Depression. After four decades of conflict, the modern legal order ironically legitimized the culture of the least industrial, least national, and least corporate sectors of the American economy. In doing so, the United States government validated the continuing defiance of craft producers and their struggle for order.

This dissertation has five chapters. The first, “‘Modernization’ and its Discontents: Political Economy in Chicago, 1900,” depicts the rise of two commercial cultures in Chicago with startlingly different attitudes towards regulation: one a corporate elite, the other composed of small ethnic tradespeople in construction, trucking, retail, and service. The second chapter, “Ruling the Urban Economy: Craft Organization,
Governance, and Resistance in Chicago, 1890-1917,” describes how workers and employers assumed authority over the craft economy, passing “laws” enforced not through the courts but through fines, strikes, boycotts, and violence. These forms of governance reduced competition by excluding corporations and other outsiders.

The next two chapters deal with the legal efforts at curtailing and legitimizing craft governance. Chapter Three, “Law and the Critique of Craft Governance, 1900-1917” argues that Progressive-era labor law evolved in reaction to the thriving organizations of Chicago’s craft economy. Elite attorneys like Levy Mayer painted craft organizations as conspiratorial threats to law and order while muckrakers like Ray Stannard Baker questioned seemingly corrupt and tyrannical administration of unions and associations. Gradually, the Progressive critique gained authority in local courts. Prosecutors began charging craft leaders with abuse of office, an accusation that assumed the legality of craft governance and the possibility of its reform. In Chapter Four, “Controlling the Charter: Authority, Legitimacy, and the Incorporation of Labor Organizations, 1900-33,” the dissertation addresses a central component of Progressive efforts to reshape the state’s relationship with labor unions—union incorporation. Reformers proposed incorporation as a way of granting unions legitimacy, encouraging “responsible” behavior, and establishing the authority of the state in industrial affairs. I contend that officers of the American Federation of Labor opposed incorporation because it challenged the AFL’s exclusive power over the formation and administration of labor organizations.

Finally, in Chapter Five, “From Conspiracy to ‘Racketeering’: Labor, Criminal Law, and the Rise of the New Deal Order,” I argue that the Great Depression transformed the role of the criminal law in regulating economic organizations like unions and business associations. In the late 1920s, open shop employers coined a new term, “racketeering,” to conflate the organization of the economy with the organized criminal
activities of bootleggers and gamblers. During the Great Depression, “racketeering” took on new meanings more favorable to unions and trade associations. As New Deal laws validated collective bargaining, “racketeering” became synonymous with the corruption of presumably legitimate institutions rather than with collective action itself.

In telling this story, this dissertation crosses certain field boundaries, jumping from labor to business, from city to nation, from law to politics. Indeed, I argue that no one class, region, or form of state power alone can provide full understanding of American history. This breadth has a cost. I assume my attempts at scope will aggravate those specialists who deem inadequate a history spread thin across subjects. Yet the benefits should be equally clear. Work, business, politics, and law are hardly autonomous realms in life, and no history, however deeply researched, can capture experience when so tightly constrained.