sequently helped erase its impact on the consciousness of most white Americans. Europeans, she observed, might use the language of having been enslaved, but Americans have lived with the consequences of "the real thing . . . in pain, guilt, fear, and hatred."[72] This experience has been so profound that we should not be surprised that racism and Jim Crow imposed themselves on the key social policies of the New Deal. But if not surprised, we owe it to ourselves not to forget.

3

Rules for Work[1]

Well into the Eisenhower years, the strategy of offering concessions on issues of race, civil rights, and regional prerogatives worked to keep southern Democrats in the fold as part of a broad progressive coalition. But these representatives proved less willing to stay on board in matters that involved labor unions and benefits for working Americans. In the 1930s, the Democratic Party—northern and southern Democrats working, as we have seen, in a "strange bedfellows" alliance—spearheaded initiatives that transformed the wages, working conditions, and hours of work for millions of Americans. The Democratic majority fashioned a set of rules within which labor unions, including unions in mass production industries like steel and automobile manufacturing, could thrive, and passed laws to regulate the length of a work week and establish the lowest wage a person could be paid on the job. The passage of the National Labor Relations Act in 1935 and the Fair Labor Standards Act in 1938 ushered in what one commentator has called "a working class interlude in American labor history."[2] During the Roosevelt and Truman years, American unions grew rapidly, taking advantage of the safe haven offered by federal rules authorizing, indeed empowering unions to organize. And across a wide swath of workplaces, most of which were not unionized, many of the

least well paid workers in the United States had their wages lifted and their hours of work limited.

Together, these bills enacted something of a revolution in the status of most working Americans. The National Labor Relations Act (NLRA), for example, affirmed the rights of wage workers to organize and bargain collectively. The law specified election procedures designed to ensure that employees could freely select their union representatives under the principle of majority rule, and, crucially, it delineated and disallowed as "unfair labor practices" a variety of tactics commonly deployed by employers to subvert unionization. These tactics included interference with such concerted employee activities as striking, picketing, and otherwise protesting working conditions; employer surveillance of union activities; discrimination against employees for union membership or activism; and offers by employers of benefits to employees who agree to cease union activities.[3] The new law also barred employers from providing financial assistance to, or attempting to control, labor organizations, thus striking at the heart of company-dominated unions. Administratively, the act created the National Labor Relations Board (NLRB) as a quasi-judicial expert board to investigate and adjudicate most labor disputes arising under the act.[4]

The federal government began to offer unions a broad legal umbrella under which to shelter. Almost immediately, they expanded at a rapid rate. Both the American Federation of Labor (AFL), which mainly represented skilled craft workers, and the Congress of Industrial Organizations (CIO) quickly thrived. In 1929, the labor movement, fiercely resisted by business and already tainted by charges that it was linked to Bolshevism, possessed fewer than 4 million members. A decade later, despite continuing mass unemployment (more than 9 million Americans still out of work in 1939), the new CIO alone matched this membership, the AFL had grown to more than 4 million members, and more than 1 million other workers had joined independent unions. Even before the wave of union expansion made possible by the Second World War, the NLRA labor regime encouraged dramatic

union growth, altering the balance of power between labor and management.[5] In manufacturing, between 1930 and 1940, the proportion of workers in unions rose from 9 to 34 percent; in mining from 21 to 72 percent.[6] By 1948, overall union membership reached 14.2 million. The proportion of the non-farm labor force in unions reached 25 percent by 1940, and topped 30 percent a decade later.[7]

The New Deal also transformed conditions of work. Prodded by President Roosevelt, Congress enacted the landmark Fair Labor Standards Act (FLSA) in 1938 to eradicate "labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency and well-being of workers." The act established a minimum wage of 25 cents per hour for the first year following passage, 30 cents for the second year, and 40 cents within a period of six years. It also provided for maximum working hours of 44 hours per week in the first year following passage, 42 in the second year, and 40 hours per week thereafter.[8] The FLSA also prohibited child labor in industries engaged in producing goods in interstate commerce.

The great majority of southern members of Congress supported these bills, thus allowing this pivotal New Deal legislation to succeed. When they passed, unions were only a scant presence in the region, hence not much of a threat. At the same time, the status of unions was very important to non-southern Democrats who represented large industrial constituencies. The South was willing to support their wishes provided these statutes did not threaten Jim Crow. So southern members traded their votes for the exclusion of farmworkers and maids, the most widespread black categories of employment, from the protections offered by these statutes. In circumstances where congressional Republicans were adamantly opposed to these laws, the Democratic Party made these racially relevant adjustments to secure a winning coalition that included southern members of the party. As a result, these new arrangements were friendly to labor but unfriendly to the majority of African Americans who lived below the Mason-Dixon line. Without this fine-tuning, a majority of southern blacks might have had access to protections negotiated by unions that would have quite

shaken the political economy of segregation. Southern Democrats used their blocking powers to ensure this would not happen. As a result, the majority of African Americans, once again, were left out.

Southern participation in the New Deal coalition on labor issues, in short, had a price. In extracting it from fellow Democrats, southerners shaped and limited key labor laws by winning occupational bans.[9] The terms of this arrangement first appeared when Congress debated the National Industrial Recovery Act (NIRA) in June 1933, at the close of the New Deal's Hundred Days, the period at the start of the Roosevelt administration when it passed law after law the president proposed to jump-start the ailing economy. One feature of the bill was a provision that "employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers . . . in the designation of such representatives."[10] Further, within the framework of inducing industry-by-industry voluntary agreements to "codes of fair competition" and to regulate numerous aspects of production within industries, each code was directed to put into effect minimum wages and maximum hours as means to combat depression-driven wage cutting and stimulate purchasing power. Soon, once devastated unions like the United Mine Workers and the Ladies Garment Workers managed to rebuild their memberships in aggressively successful organizing efforts.[11] "In the floor debate, southern legislators voiced apprehension that these provisions to help unions might include agricultural labor. In a colloquy between Democratic Senators Huey Long of Louisiana and Joel Clark of Missouri, both complained that the Act failed sufficiently to define 'industry' (the category of activity regulated by the Act), and expressed concern that the term could be construed to apply to agriculture." Senator Robert Wagner, the New York Democrat who was the bill's principal congressional author, responded to such criticism by simply stating that "in the act itself agriculture is specifically excluded."[12]

Once the law was implemented, the National Recovery Administration (NRA) ruled that because the contemporaneously

passed Agricultural Adjustment Act was meant to protect the interests of farmers, "Congress did not intend that codes of fair competition under the NIRA be set up for farmers or persons engaged in agricultural production."[13] As a result, farmworkers were denied protection under the NIRA based upon how the agency interpreted the intent of Congress. Not just farming but many agriculturally related industries thus avoided regulation. The South was placated, and had learned an important lesson. Even leading liberals, including pro–civil rights senators like Wagner, were prepared under pressure to jettison the people whose inclusion the South most feared.

An explicit legislative exclusion of agricultural and domestic workers from New Deal labor legislation first appeared in the National Labor Relations Act. To be sure, the original draft of the bill introduced by Senator Wagner contained no such exclusion.[14] In the course of examining a witness in the Senate hearing, Senator David Walsh, a Massachusetts Democrat, observed that as the bill was drafted, "it would permit an organization of employees who work on a farm, and would require the farmer to actually recognize their representatives, and deal with them in the matter of collective bargaining."[15]

This possibility triggered discussion of the issue when the bill was referred to the Committee on Education and Labor. Senators Hugo Black of Alabama, who later would change his views about race and segregation, and Park Trammell of Florida worked closely with three nonsouthern Democrats representing rural states[16] to report a bill containing the exemption of agricultural and domestic labor in precisely the form that would be included in the final passage of the bill. The committee added a definition of "employee" providing that it "shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home. . . ." While there was no debate on the Senate floor that explains the motives or purposes behind the exemptions, the committee report suggests that they were a response to the initial bill's coverage of agricultural and domestic labor. In a section entitled "What The Bill Does Not Do," the committee stressed that contrary to "propaganda over the coun-

try," "misstatements," and "erroneous ideas," as "now drafted, the bill does not relate to employment as a domestic servant or as an agricultural laborer." The version of the bill introduced in the House of Representatives contained exemptions of agricultural and domestic labor identical to those that had been added by the Senate Committee on Education and Labor. These changes met with a virtually total absence of any criticism by non-southern members of Congress.[17]

The history of the Fair Labor Standards Act proved comparable.[18] In 1937, President Roosevelt sent Congress a message calling for minimum wages and maximum hours legislation that would include both industrial and agricultural workers.[19] Notwithstanding, the original bill contained an agricultural exclusion equivalent to that governing unions, though it delegated authority to an envisioned administrative board to define agriculture.[20] Though not mentioned explicitly, domestic workers were effectively excluded by virtue of the law's narrow embrace only of workers "engaged in commerce or in the production of goods for commerce."[21] By now, these exclusions seem to have been taken for granted as a condition for passage. Representative Fred Hartley, a New Jersey Republican, observed that "the poorest paid labor of all, the farm labor," was excluded from the bill as a matter of "political expediency" because coverage of agricultural labor would have resulted in defeat of the bill in Congress. The same point was made more forcefully, in reference to New Deal legislation more broadly, by Gardner Jackson, chairman of the National Committee on Rural and Social Planning, a labor-oriented advocacy organization. Testifying before Congress on the bill, he stated:

> No purpose will be served by beating around the bush. You, Mr. Chairman, and all your associates on this Committee know as well as I do that agricultural laborers have been explicitly excluded from participation in any of the benefits of New Deal legislation, from the late (but not greatly lamented) N.R.A., down through the A.A.A., the Wagner-Connery Labor Relations Act and the Social Security Act, for the simple and effective reason that it has been deemed politically certain that their inclusion would have spelled death of the legislation in Congress. And now, in this proposed Black-Connery wages and hours bill, agricultural laborers are again explicitly excluded.[22]

During the legislative process, southern members aggressively expanded the scope of the original agricultural exemption. They inserted an extensive and detailed definition of agriculture in the act itself to ensure that future administrators would apply the exemption to as wide a range of activities as possible. Of the range of activities that would count as agriculture, the bill reported out of committee provided that the exemption should include any "practice incident to farming." On the Senate floor this immunity was amended to include preparing, packing, and storing fresh fruits or vegetables within the area of production, and their delivery to market.[23] Later, before the bill passed, the exclusion was expanded to include the preparation for market of *all* agricultural products, including agricultural processing in the areas of production, and their delivery to storage, markets, or carriers. Democrats from other regions kept up their end of the bargain, voting overwhelmingly with the southerners in favor of expanding the agricultural exclusion in the five relevant Senate roll calls.[24]

It is not hard to see why southern members were so intensely concerned with this issue and why, in order to get the bill passed, other members were prepared to go along. The status of subaltern black labor in agriculture—a structure that often came close to resembling nineteenth-century conditions under slavery—was a consistent concern for southern members in the 1930s that peaked when this bill was being debated. By setting a floor on wages, it necessarily would have leveling effects that would cut across racial lines in the lowest wage sectors of the South, where there existed wide wage disparities between African American and white wage workers.[25]

Florida representative James Mark Wilcox explained:

> [T]here is another matter of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. So long as Florida people are permitted to handle the matter, the delicate and perplexing problem can be adjusted; but the Federal Government knows no color line and of necessity it cannot make any distinction between the races. We may rest assured, therefore, that when we turn over to a federal bureau or board the power to fix wages, it will prescribe the same wage for the Negro that it prescribes for the white man. Now, such a plan might work in some sections of the United States but those of us who know the true situation know that it just will not work in the South. You cannot put the Negro and the white man on the same basis and get away with it.

Martin Dies of Texas, later famous for his demagogic investigations of Communist activities, articulated the same concern, stating that a "racial question" was embedded in the bill because under its minimum wage provisions, "what is prescribed for one race must be prescribed for the others, and you cannot prescribe the same wages for the black man as for the white man." Echoing Wilcox and Dies, Edward Cox of Georgia complained that "organized Negro groups of the country are supporting [the FLSA] because it will . . . render easier the elimination and disappearance of racial and social distinctions, and . . . throw into the political field the determination of the standards and the customs which shall determine the relationship of our various groups of people in the South."[26]

Yet other southern legislators condemned the FLSA as racial legislation aimed at the South, claiming it was comparable to anti-lynching legislation. South Carolina's "Cotton Ed" Smith opened his speech in the Senate with an attack on anti-lynching legislation—"Every Senator present knows that the anti-lynching bill is introduced for no reason in the world than a desire to get the votes of a certain race in this country"—pronouncing of the bill at hand that "Any man on this floor who has

sense enough to read the English language knows that the main object of this bill is, by human legislation, to overcome the great gift of God to the South."[27]

IV

WITH THE PASSAGE of the Fair Labor Standards Act, all the New Deal legislation concerned with work included occupational provisions that converged with, and sustained, intense southern preferences, thus making possible their acquiescence to statutes and rules that advanced the cause of labor; that is, primarily white labor.[28]

During the Second World War, even this arrangement proved unsettling to the southern wing of the party. Pressed by wartime social change, southern Democrats shifted positions, moving to limit the effect of the labor regime they had helped install. With unemployment eliminated by wartime production, and with many blacks entering the industrial labor force at a time when many white workers were overseas, unions began to organize southern workers, including many blacks. In this context, southern representatives feared that the New Deal rules for labor and work they had helped create would undermine the region's traditional racial order. As a result, they shifted their votes from the pro-labor column to join with Republicans during and after the war to make it more difficult for workers to join unions and to limit their rights at the workplace. The country's system for regulating unions and the labor market took on an even more decidedly racial tilt. Politically, this shift by southern Democrats would radically transform American politics, as well as labor legislation, for decades to come.

The political arrangement that kept farmworkers and maids outside the protective embrace of New Deal labor legislation, while helping unions and securing decent conditions of work for the majority of Americans, did not last. By 1947, it had been superseded by new arrangements, which proved more injurious for black workers and much less friendly to unions. Following an unprecedented strike wave

in 1945 and 1946, the 1946 election of a Republican Congress placed labor law reform, intended to weaken unions and their organizing potential, at the top of the domestic policy agenda. "No domestic issue," the economist Orme Phelps observed in 1947 as major changes were being debated, "exceeds in importance and no issue, domestic or foreign, has received more attention since the close of World War II than that of the proper policy to be observed in labor disputes."[29] Though Republican gains in the 1946 elections were impressive, their ability to enact new labor law would have been limited, possibly entirely obstructed, without the support of Democratic Party members, particularly in the Senate, where the Republicans had secured fifty-one seats, far short of a supermajority. With Truman in the White House, the veto threat on contentious labor issues meant that the Republicans needed a substantial number of Democrats to join with them if they were to secure labor law retrenchment. Concurrently, the now minority Democratic Party had grown more dependent on the fidelity of its southern members, who represented a greater proportion of the party in the new Congress than they had in a quarter century.[30]

Southern Democrats thus became the pivotal voters in determining the fate of the labor laws the New Deal had enacted. Moving to join Republicans in an assault on these statutes, southern Democrats offered the decisive votes to undercut legislation they once had backed. By 1947, they rallied to pass the Labor-Management Relations Act (LMRA, or the Taft-Hartley Act) to weaken the National Labor Relations Act over the veto of President Truman, who denounced it as a "slave labor bill," and to approve the Portal to Portal Act, which relaxed the enforcement of minimum wages and maximum hours, thus attenuating the effectiveness of the Fair Labor Standards Act.

The most far-reaching anti-labor measures in Taft-Hartley concerned limitations upon the right of unions to negotiate collective bargaining agreements providing for closed shops and union shops. The act banned closed shop provisions outright requiring union membership as a condition of being hired. Further, it authorized states to pass "right-to-work" laws prohibiting agreements under which unions

obtain a "union security clause," obliging all employees to pay union dues as a requirement of employment.[31] Even where no state right-to-work law was in effect, union shop provisions now had to be approved by a majority of the membership in a secret ballot, a condition that applied to very few other types of contract provisions. Open shops undermine effective union organizing by eliminating the principal material incentives for joining a union.[32]

The act also added a list of "unfair labor practices" that obstructed or curtailed important forms of collective action. It barred the use of secondary boycotts, picketing, or strikes, which had targeted entities that did business with an employer with whom the union had a labor dispute, and limited the ability of unions to pressure employers through picketing to gain recognition of a union or to engage in mass picketing that interfered with access to the employer's premises by its employees or by the public. Moreover, union members who engaged in wildcat strikes in violation of a no-strike agreement were subject to employer discipline.

In the case both of prohibited strikes and picketing, the NLRB was required under the act to seek an injunction to prevent or end such activity. Further, the act conferred power upon the U.S. Attorney General to obtain injunctions for an eighty-day "cooling off period" in the event of a strike, or threat of one, deemed to "imperil the national health or safety." While the Norris–LaGuardia Anti-Injunction Act of 1932 had extensively proscribed court injunctions in labor disputes, Taft-Hartley negated portions of that law by fashioning a statutory basis for labor injunctions. With respect to sanctions against unions for engaging in the newly prohibited forms of collective action, employers were authorized to bring legal actions for monetary damages against unions for strikes or work stoppages that transgressed the act.

At the same time that Taft-Hartley increased the National Labor Relations Board's power to issue injunctions against collective action by unions, it diluted the board's authority in respects that were harmful to labor. Most significantly, the NLRB was turned into a purely quasi-judicial institution, as its investigative and prosecutorial func-

tions were segregated and delegated to a newly created General Counsel separate from the board. Advocates of this provision complained that employers had been denied due process by a pro-labor board that commingled fact-finding, prosecutorial, and adjudicative functions.[33] Thus, after Taft-Hartley, the board no longer could initiate investigations and prosecute unfair labor practice charges. Such a statutory division of authority within an agency was unprecedented.[34] The board also was prohibited from appointing personnel for the purpose of "economic analysis," thus preventing it from conducting independent expert studies of the industrial relations problems that it might seek to remedy. Further, Taft-Hartley restricted the board's discretion, in a manner favorable to employers, to determine appropriate bargaining units for purposes of union representation. It contained a provision limiting the weight that the board could give to "the extent to which the employees have organized," a factor that had increased the probability that the union would prevail. The act similarly curbed the board's authority to deny recognition to craft workers wishing to opt out of an existing larger union comprised principally of unskilled and semi-skilled workers, something the board had frequently done before 1947, which was regarded as favoring industrial unions.[35]

In another limitation on the board's authority and an attack upon unions as presumptively suspect and corrupt, certain reporting requirements were imposed upon unions as a precondition to the board recognizing and adjudicating their claims. To qualify for the protections offered by the NLRA, union leaders were compelled to submit affidavits to the Labor Department swearing that they were not members of, or affiliated with, the Communist Party, and they had to file reports disclosing a wide array of information about internal operating procedures, including the election of officials and compensation paid to them, as well as comprehensive financial statements. Similar requirements were not imposed on employers. Taft-Hartley also widened the NLRA's exclusions to eliminate supervisory employees and independent contractors from the definition of employee. The exclusion of supervisory employees was significant because foremen,

front-line supervisors, served as an important vehicle by which upper management could control workers, particularly for employers attempting to avoid unionization.[36]

While the NLRA's exclusion of agricultural workers remained unchanged by Taft-Hartley, both the Taft and Hartley bills included detailed and expanded agricultural exclusions meant to place workers in processing and handling activities ancillary to agriculture outside the scope of union protection. Such work previously had been found by the NLRB to be industrial and thus covered. However, in conference, the committee opted to retain the NLRA's original exclusion. It did so on the ground that the NLRB's decision had been effectively reversed in the past several years by attaching an expanded agricultural exclusion to the Appropriations Act for the NLRB, which the conference committee found to be a satisfactory way of dealing with the issue. What was most significant about this episode was that all of the Democrats not from the South serving on the House and Senate committees that reported the bills signed minority reports which attacked the expanded exclusions on the ground that they were too broad and unjustly excluded workers who were engaged in more commercial than farming labor.[37] Only now that southerners had defected on labor matters from the New Deal coalition did non-southern Democrats unite to oppose southern efforts to obtain the broadest possible agricultural exclusions.

In contrast to the 1930s, southern members of Congress no longer were prepared to back pro-labor legislation. This switch reflected one of the most significant political developments of the 1940s. In the Senate and the House, southern Democrats, now stalwart opponents, voted overwhelmingly with Republicans; indeed almost unanimously in the key Senate vote to turn back the President Truman's veto. Taft-Hartley could not have become law without this decision by the South to join with the Republicans to overturn what their colleagues and their president desired.

It was the same with the effort to modify the Fair Labor Standards Act. The Portal to Portal Act also stood on southern shoulders, precip-

itated by the "portal to portal" pay disputes of the 1940s in which suits were brought under provisions of the FLSA to recover payment for "off the clock" time which, by custom or practice, was not compensated. Common examples included time spent walking from a factory gate to a steel furnace (up to half a mile), sharpening tools, or cleaning a work area before an employee set to work at his or her main task.[38] In the early 1940s, some unions, most in the CIO, encouraged or initiated such wage recovery suits on behalf of large groups of employees.[39] Supporters of the bill devoted much attention to denouncing the escalating volume of FLSA legal action, particularly the CIO's central role in coordinating and managing this litigation.[40]

With respect to past claims, the bill provided that any custom or practice of not paying for certain time, even during the middle of the workday, would be sufficient to defeat portal suits. With respect to future claims, while certain activities "preliminary" and "postliminary" to the employee's "principal activity" would not be compensated (unless they were made explicitly compensable by contract), the amendments clarified that time spent doing tasks "integral" to the principal activity was covered by the FLSA, as was time that an employee was required to spend idly between tasks during the workday, regardless of an employer's past custom or practice.[41]

As a number of opponents of the Portal to Portal Act noted at the time, most of the act went beyond the portal issue and cut into unrelated FLSA rights. Perhaps most important was the insertion of a two-year statute of limitations for all FLSA claims. Under the arrangements of the original act the average applicable limitations period was nearly double this, and all comparable federal statutes had longer limitations periods. The act also limited available damages as compared with the original law. The FLSA had included a compulsory "liquidated damages" provision, which provided that employees would recover damages of double the amount wrongfully withheld, where the purpose of the doubling was to serve as a sanction for violation. The amendments to the FLSA modified this provision to require that liquidated (double) damages would only be available if the evidence indicated that the employer had violated the law in bad faith, a provision that effectively promised to gut enforcement of minimum wages and maximum hours.[42]

Another important change wrought by Portal to Portal was a significant curtailing of the class actions facilitated by FLSA's 1938 section 16(b), which had provided that some named employees could sue on behalf of themselves and other "similarly situated" workers who did not have to be named or consent to the suit. The Portal amendments changed section 16(b) to require that each employee individually file written consent to participate in such a suit.[43] This procedural change was important in wage and hour litigation because it is frequently the case that the aggregate value of claims for a small group of low-wage workers cannot justify the costs of litigation. The larger the group of employees on whose behalf a suit can be brought, the greater the incentive to enforce the law, and to obey it in the first instance.

V

WHY DID SOUTHERN MEMBERS of Congress abandon their support for New Deal labor policies that had been adjusted to suit their preferences? At the core of their near-universal shift to positions geared to make union organizing more difficult and restrict federal intervention in labor markets was a radical transformation in the way in which they understood labor issues. When domestic and agricultural exclusions had been made integral to labor legislation in the 1930s, they had viewed these votes primarily as choices about party loyalty and ideological conviction. By contrast, in the 1940s, labor legislation became an occasion for referenda about the durability of Jim Crow. A combination of dramatic labor union gains in the South brought on by the shortage of workers during the war, and growing national administrative responsibilities for labor markets, made southern representatives much more keenly aware of the racial issues at stake. As labor unions began to enjoy increasing, unexpected success in the South, and as non-southern New Deal liberals pressed to create a more expansive federal administration

to advance labor interests without relenting where race intersected with labor, southerners in the House and Senate closed ranks to consider labor questions defensively.

From their standpoint, labor matters no longer were a minor sideshow where they could compromise with other members of the Democratic Party in exchange for regional favors. They now had good reason to fear that labor organizing might fuel civil rights activism. They were concerned that close enforcement of the Fair Labor Standards Act would cause wage leveling along racial lines. They worried that the creation of a fluid national labor market under the auspices of the Department of Labor would induce poor black rural labor to leave the region. They were troubled by the prospect that efforts to increase national administrative authority over unemployment compensation would diminish incentives that had been counted upon to keep these workers in the fields. Zealous bureaucrats might use their administrative discretion, reinforced by wartime anti-discrimination efforts, to confront racially discriminatory practices by state government officials. Having merged indissolubly with race, labor votes now evoked preferences in southern members geared more to guard racism than to distinguish Democrats from Republicans.

When southerners had voted for the Wagner Act in 1935, unions were a trivial force in the South. During the prewar period, the unionization movement had been concentrated in large urban areas in the Northeast and Midwest where mass production industries were situated and in isolated "total" work environments such as lumber camps and mining communities. With the exception of union momentum in New Orleans at the docks and in the packing houses, and at steel mills in Birmingham, the South was largely left out of the union surge of the 1930s. And not just for reasons of industrial location. After all, lumber workers had unionized on the West Coast and textile workers in New England, but neither succeeded in the South, where employer resistance, the absence of union traditions, and a widespread fear that unions would disrupt the political economy of race and harm the low-wage strategy of economic development prevailed. Thus, despite some gains,

"the union movement of the South in 1939 . . . lagged markedly behind the Northeast, Midwest, and West coast in reacting to the stimulus of the New Deal."[44]

Labor organizing in the South faced high hurdles. The region was less industrialized than the rest of the country, and its factories, by comparison to other areas, were widely dispersed in small and middle-sized towns where resistance, often relentless, was more intense. Further, the huge supply of extremely poor people in the South both depressed wages and made union efforts very difficult. Most important, the region's racial order partitioned workers by race, rendering divide-and-conquer strategies by employers a ready tool with which to defeat union drives. Many efforts before the New Deal to build southern unions, including a large organizing drive conducted by the AFL in the teeth of the depression, came to naught.[45]

Yet even before the Second World War, the growth of the CIO, shielded by the NLRB, had begun to concern leaders in the South. Some of its national unions quickly developed a presence in major industries such as steel, rubber, automobiles, oil, and mining that included a growing southern, often multiracial membership. During the war, both the AFL and the CIO secured unforeseen gains and planned major campaigns to build on these successes in peacetime. The tight labor market induced by wartime industrial expansion was fueled by large federal investments, by urbanization, and by the substantial development of military bases; this in turn facilitated aggressive union efforts to take advantage of the legal climate that had been created by the Wagner Act but previously had had little effect in the South. In just two years, from Pearl Harbor to late 1943, industrial employment in the South grew from 1.6 million to 2.3 million workers. And many farmers and sharecroppers who experienced military service or worked at war centers were not prepared to tolerate a return to prewar conditions (during the war, one in four farmworkers left the land).[46]

All in all, southern trends were brought more in line with national developments. Between 1938 and 1948, the region's rate of increase in membership, marked by more than a doubling from under 500,000 to

more than 1 million, exceeded the growth of 88 percent for the country as a whole. A survey of union membership in the South between 1939 and 1953 found that "For the entire period . . . union membership increased more rapidly in the South than in the rest of the country," noting that most of the growth had come in wartime.[47] Indeed, as the Second World War came to a close, H. F. Douty, the chief labor economist at the Department of Labor, observed that "With respect to the South, the existing situation is different from any existing in the past."[48] Cotton mill unionism, for example, had begun to function, and important collective bargaining agreements had been reached with the major tobacco companies (covering some 90 percent of all workers in the industry) and in the cigar industry (covering about half). Steel unionism became strongly established, and there were important successes in oil, rubber, clothing, and a wide array of war-related industries.

These achievements were pregnant with deep-seated implications for southern race relations.[49] Because "the Negro constitutes a relatively large and permanent part of the southern industrial labor force in such industries as tobacco, lumber, and iron and steel," Douty noted, ". . . successful unionization of such industries require[s] the organization of colored workers," adding that, based on wartime experiences, including experiments with multiracial union locals, there "is evidence to the effect that workers among both races are beginning to realize that economic cooperation is not only possible, but desirable." Assessing future prospects, he concluded in 1946 that "union organization in the South is substantial in character and is no longer restricted in its traditional spheres in railroading, printing, and a few other industries." But, he cautioned presciently, "Much of the present organization, of course, has developed during very recent years, and its stability, in many cases, has yet to be tested."[50]

Seeking to secure their dramatic wartime gains in the South, both the AFL and the CIO (with the dramatic title of "Operation Dixie") announced major recruiting campaigns in the spring of 1946, based in part on the understanding, as a CIO prospectus had declared in 1939, that a relatively unorganized South is "a menace to our organized

movement in the north and likewise to northern industries."[51] The campaigns began optimistically in light of the wartime gains and the large number of unorganized workers in industries where there had been a good deal of union success elsewhere (70 percent of textile workers outside the South belonged to unions, compared to just 20 percent in southern states).[52] Both federations made efforts to appeal to black as well as white workers (though the AFL continued to display "easy acceptance of racially segregated locals"),[53] albeit without confronting local practices too directly. By August, the AFL was reporting 100,000 new members; by October, 500,000, a success rate (even discounting the overstatement of organizers) due in part to their claim that they represented the more moderate, and less Communist-influenced, alternative. By the end of 1947, the CIO announced (almost certainly an exaggeration) that it had recruited some 400,000 new southern members. However, these campaigns, meeting intense resistance by local elites and police forces, ambivalent about how much to confront Jim Crow, and increasingly caught up in competitive and internecine battles, soon began to falter. But it was the shifts in the legal climate that most decisively helped bring such efforts to an end. By late 1948, in the aftermath of Taft-Hartley, the AFL, formally, and the CIO, informally, both closed their southern campaigns.[54]

Throughout this period, which began before the war concluded and continued well after war's end, southern legislators moved vigorously to alter the institutional rules within which unions could operate. Three such efforts stand out: the 1939 Smith Committee investigation of the National Labor Relations Board and the bill it produced that passed the House but failed to get to the floor in the Senate; the War Labor Disputes Act (Smith-Connolly Act) of 1943; and the Case bill of 1946, which passed both houses but was vetoed by President Truman. Though only Smith-Connolly became law, each legislative event demonstrated the new preferences and pattern of behavior of the South toward unions, and provided important trial heats for Taft-Hartley.

Voting with Republicans, southern members were instrumental in establishing a committee led by Howard Smith, an anti-union Virginia

Democrat, whose main aim would be to investigate "[w]hether the National Labor Relations Board had been fair and impartial in its conduct, in its decisions, in its interpretation of the law . . . and in its dealings between different labor organizations and its dealings between employer and employee." The primary target was the CIO and the help it had received from the board in jurisdictional disputes with the AFL. During the brief debate, themes soon to be more prominent in southern discourse were articulated by Georgia congressman Edward Cox:

> I have no desire to conceal the opinion that I hold with respect to the [Wagner] act itself. I think it is a vicious law that is wrapped up in high-sounding language to conceal its wicked intent. It is one-sided and has been administered in a one-sided way. The Labor Board has construed it as a mandate to unionize industry and has missed no opportunity in the use of compulsion to bring this about. In its zeal to serve certain labor leaders and to direct the labor movement according to its own notion and its own social and economic theories, the Board has brought itself and the law into thorough disrepute. . . . Preaching economic democracy, the Board has moved steadily toward compulsory unionization in unions chosen by the board. . . . The first mistake that the Board made was in the selection of its personnel. It turned loose upon the country an army of wild young men who proceeded against employers as if their business was to destroy the institution of private property. . . . It has sought to terrorize business and to promote radical labor organizations.[55]

Aspiring to allay the NLRB's putative pro-CIO bias, the bill proposed by the committee adopted the expansive Social Security Act definition of agricultural workers. It also denied the board power to reinstate workers convicted of violence or destruction of property during a strike, and included provisions limiting the authority of the NLRB.[56] Most of these proposals later were incorporated into Taft-Hartley.

As sponsors, Howard Smith in partnership with Senator Tom Connolly of Texas also gave the War Labor Disputes Act a southern pedigree. To bring unions under control, they and their southern colleagues supported increasing federal administrative authority over the labor relationship by giving statutory authority to a War Labor Board, authorizing the president to seize and operate struck plants, requiring a thirty-day notice to the NLRB prior to striking in a labor dispute which might interrupt war production, mandating a secret strike ballot on the thirtieth day if the dispute had not been resolved, and prohibiting labor organizations from making national election political contributions.

The language utilized by the southerners was anxious and inflammatory. Referring to wartime strikes, especially by the CIO and the Mine Workers (who had recently left the CIO), southern members characterized union leaders as criminally corrupt ("racketeers," "goon squads"), lacking in patriotism under conditions of war crisis, and as communistic, fascistic, and dictatorial. "The nefarious and dastardly attempts of the Communist to fool the lower classes, and especially the American Negro, into embracing them as a Savior and Liberator," Congressman John Gibson of Georgia orated, in a floor speech complaining about campaign efforts by AFL and CIO leaders to defeat him, "is so cowardly, so full of deceit, when anyone that has studied the history of their activities in the past must know that all labor, including the classes just mentioned, would be subjected to absolute slavery if and when they force their form of government over this country."[57]

Like Smith-Connolly, the Case bill, sponsored by New Jersey Republican Clifford Case, was directed primarily at strikes, heralding Taft-Hartley by proposing, among other provisions, a sixty-day cooling off period, a prohibition against violence or conspiracy that interfered with the movement of goods in interstate commerce, monetary damages against unions for contract violations, and the proscription of secondary boycotts, amending Norris-LaGuardia to allow for injunctions in such cases. Southerners, voting nearly unanimously with Republicans in the House and Senate, were vocal supporters. In protracted floor debates they made clear that they were concerned

especially with the CIO's punitive electoral efforts, with what they considered to be the inordinate power of organized labor to bring the national economy to a grinding halt, and with what they viewed as the criminally corrupt and totalitarian character of labor unions.

We thus can see how the coalition that southern members had begun to fashion with Republicans on labor union issues in 1939 grew to almost unanimous solidarity during and especially just after the Second World War. The motivation for this dramatic shift was a deep concern about union power, its growing role in their region, and its potential impact on the racial order.

VI

THE RESULTS OF THE defection of the South from the Democratic Party coalition on labor issues were devastating for unions and particularly harmful for black workers. The new political arithmetic radically diminished their reach into the South and the chance to organize the region's black workers. It also erased the prospect that the national government might put a floor underneath the treatment of African Americans in the South's labor markets. Business and labor both immediately understood the importance of this counterrevolution, whose centerpiece was Taft-Hartley. "Management has grounds," a spokesperson for the National Association of Manufacturers (NAM) put it, shortly after the bill's passage, "sufficient under the LMRA to swamp our courts with requests for injunctions, suits for violation of contract and damages, and prosecution for unfair labor practices, to appear as a tidal wave compared to labor's portal-to-portal suits." But such action was not necessary, NAM counseled, because a "go-slow" policy should prove more effective by holding these powers in reserve.[58]

Three years later, a *Harvard Law Review* assessment took note of the contrast between the National Labor Relations Act, which "had emphasized the promotion of collective bargaining by encouraging the formation and growth of labor unions," and the Labor-Management

Relations Act, which, "less sympathetic toward organized labor, is designed to afford protection to employers and individual workers as well as unions." Similarly, an account by an economist writing for the Public Affairs Institute assessed these changes as drastic, finding that the law's reaffirmation of the right of labor to organize was counterbalanced by the "equal if not greater importance" now offered to protect the rights of individuals to refrain from bargaining, and by the imposition of restraints both on unions and the NLRB just as restraints on employers were being loosened and the role of courts reinforced.[59] Indeed, the preamble to Taft-Hartley was explicit in stating the goal of shifting the balance of power, aiming, it said, "to equalize legal responsibilities of labor organizations and employers."

The AFL's United Textile Workers of America immediately published a warning to its members that "it DID happen here" in "this anti-union Congress" with a result that "threatens the strength, financial security and freedom of Unions to operate under free collective bargaining."[60] In April 1948, the International Association of Machinists, also in the AFL, issued a detailed fifty-page rebuttal of a pamphlet widely circulated by the National Association of Manufacturers, one of the law's prime advocates. Rejoining point by point, the Machinists chronicled the massive shifts in capability entailed by the act.[61] A year later, the International Typographical Union, the country's oldest continuous trade union, likened the act to Mussolini's compulsory labor standards. Despite this hyperbole, the union quite accurately listed among the effects of the law that it made it difficult for unions to deploy their economic strengths and helped confine the labor movement to current pockets of strength by enabling employers to evade unionization, by making it more difficult for unions to act together, and by putting all unions under a cloud of suspicion.[62] Given the stakes, it is not surprising that "The debate over Taft-Hartley was one of the most intense in legislative history. The AFL pledged a million and a half dollars in advertising for radio and newspaper statements. The CIO held rallies in a dozen cities. . . . By June 18, the Capitol had received 157,000 letters,

460,000 cards, and 23,000 telegrams" generated, to no avail, by the labor movement.[63]

Organized labor, of course, did not disappear. It retained many strengths. But its capabilities had been hedged severely. Unions soon comprehended and adapted to this new reality. Ten years after Taft-Hartley passed, the AFL-CIO's Industrial Union Department, chaired by Walter Reuther, assessed the impact of the act in a series of sober reports. "If Taft-Hartley has been a problem to unions in organized industries," one concluded, "it has been a disaster to those unions whose major organizing job is yet to be done." A carefully written case study of the American Federation of Hosiery Workers demonstrated how the new law had helped frustrate that union's organizing efforts in the South. The union had won the large majority of its certification elections under NLRB jurisdiction prior to Taft-Hartley, almost all producing contracts. By contrast, "in the 10 years following Taft-Hartley, the union was able to sign only 23 new agreements" out of "a total of 117 NLRB representation elections."[64]

Indeed, even in the early years of Taft-Hartley a clear change had taken place in the climate of labor relations, shifting the weight of expectations; this had an especially deleterious impact on union efforts in areas that had been poorly unionized in the past. As a 1951 study observed,

> Unions testify almost universally that organizing became more difficult under Taft-Hartley. The "climate" has changed, resistance by employers is more overt and active, organization of whole communities against the union is even less restrained than before. A stimulus and new weapons have been given to antiunion employers. In the South, the long slow process has been slowed up by which Southern industry gradually moves and must move away from its old paternalistic, sometimes substandard, and often bitterly antiunion practices. . . . Most important, in the South and elsewhere, has been the increased use of the "right of free speech" by employers to intervene frankly in elections. When collective bargaining elections are lost, significantly it is said that "the company won" . . . this antiunion campaign is inevitably coercive upon the employees. All this goes much further than was permitted even during the last days of the Wagner Act.[65]

By such means, with labor "constantly thrown on the defensive," as Senator Paul Douglas put it in his memoirs, unions in the South "found it hard to get a foothold in these states, and . . . could not establish themselves in such industries as textiles, tobacco, and chemicals."[66]

The changes that the Portal to Portal Act wrought to the FLSA also diminished the ability of organized labor to utilize legal resources to protect workers' rights. The rules it fashioned are an object lesson in the considerable difference that seemingly modest procedural changes to public policy can make. The year 1947, the last before Portal to Portal regulations came into effect, stands out for the high number of enforcement suits filed in federal court (3,772) demanding compliance with the Fair Labor Standards Act, the most in any single year before or since. This peak reflected a steady rise in such judicial interventionism in the labor market under the aegis of FLSA during the prior three years. Once Congress enacted its amendments making such proceedings more difficult, the number of enforcement actions plummeted, in 1948, by 72 percent, to 1,062. During the decade following enactment the average annual number of suits filed was 754, representing a decline of some 80 percent from the high-water mark of 1947.[67] Further, as the overall legal climate for labor altered and FLSA enforcement declined, the cooperation offered by many states in enforcing minimum wages and maximum hours waned, especially in the South.[68]

When the impact of more limited possibilities became clear to the leaders of organized labor, they opted to make three fateful moves, all rational in this new context and all successful in the short term. First, they reined in their once ambitious efforts, focused on the South, to make the labor movement a genuinely national force. This strategy now had become prohibitively costly. Instead, they opted to focus attention

where their strength already was considerable. Second, they concentrated on making collective bargaining a settled, orderly, and productive process, trading off management prerogatives for generous, secure wage settlements indexed to inflation. In so doing, they experimented with long-term contracts (such as the UAW–General Motors five-year agreement in 1950), while limiting their scope of attention almost exclusively to the workplace. Third, rather than continue to fight for a more advanced national welfare state for all Americans, they concentrated on securing private pension and health insurance provisions for their members that would be financed mainly by employers.[69]

Under these circumstances, the South's political, social, and economic structure remained largely unchallenged by organized labor, the one national force that had seemed best poised to do so in the 1940s. In consequence, the emerging judicial strategy and mass movement to secure black enfranchisement and challenge Jim Crow developed independently of a labor movement that looked increasingly inward and minimized its priority of incorporating black workers within its ranks. Two effects stand out. First, the incipient civil rights impulse rarely tackled the economic conundrums of southern black society directly, focusing instead mainly on civic and political, rather than economic, inclusion.[70] Second, the unions' potential to alter the status of the majority of black working people profoundly failed to take hold.

These linked outcomes were the direct result of a shift in southern preferences about labor during the 1940s. Faced with the surprising rise of labor in the region and a continuing attempt by members of the New Deal coalition to create a more expansive federal administration to control labor that might not yield where issues of race intersected with those of employment, southern members of Congress no longer could afford to treat labor issues as a partisan question. With good reason, they feared that labor organizing would blend inexorably with, and fuel, civil rights activism; and they were frightened that an active federal government might level wages across racial lines, create a national labor market, encourage blacks to leave the South, diminish the southern establishment's control over those who stayed, and

directly challenge Jim Crow practices. Further, even the older 1930s "deal" which had excluded the occupations in which the majority of southern blacks worked from federal protective legislation now seemed precarious at best.

Distressed by wartime developments, keenly aware of what was at stake, and anxious to find means to maintain control of their racial order, Congress's "solid South" Democrats closed ranks to join Republicans and reshape the institutional regime within which unions and the labor market would operate. For their Republican partners, labor remained an issue of party and ideology. In the mind of the southern legislator, by contrast, labor had become race. This was a tidal shift that would affect midcentury American politics as nothing else.

With this transformation, the majority of American blacks, once again, were left out. The craft unions and industrial unions that sheltered under the umbrella of the National Labor Relations Act lost much of their capacity to recruit large categories of black workers, especially in the South, after the passage of Taft-Hartley. The protections offered by the Fair Labor Standards Act were not extended to the preponderance of African Americans. By contrast, federal work policies boosted white prospects.