DEVELOPMENT OF LABOR LEGISLATION FOR FREE LABOR

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DEVELOPMENT OF LABOR LEGISLATION FOR FREE LABOR

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CHAPTER I

LABOR IN COLONIAL AMERICA

Introduction

A great many contemporary labor problems are not really new, but were significant problems in the colonial period in American history. A comprehensive study of the relation of government and labor in early America with the successes and failures of the political and legal measures adopted, will not only add to one's knowledge of American history, but will also help one in evaluating policies and instrumentalities that deal with present-day labor problems. This study is confined to an analysis of the legal status of free labor. The free laborer was brought over by his employer, or came at his own expense and hired out for wages. Although colonial records reveal numerous laws relating to bound labor, it will not be accorded special treatment in this discussion, except in so far as its impact was felt directly upon the free labor system.

The period of history in which the early settlements took place exercised an unfathomable influence on their law.  

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In the colonial period, prior to the *laissez faire* capitalism, the government regulated both business and labor. The entrepreneur was not free to carry on his business as he saw fit, nor was the laborer free to withhold his labor or demand better working conditions. The controls for the regulation of business and labor which were introduced into the English Colonies were to a great extent rooted in English and continental experience. English institutions came with the settlers; but these institutions had to undergo changes before they were prepared to enter the new environment into which they were carried by colonization. Only those parts that were suited to the new conditions survived and became a part of the colonial system of government. The early history of the colonies was a period of discipline and suspension of constitutional rights. This curtailment of personal rights of the colonists was due to the character of the settlers, and the difficulties which a mother country always encounters in founding distant colonies.

A review of some of the earlier codes of the seventeenth century shows that definite ideas concerning labor were embodied in them. These ideas varied according to the interests and prepossessions of the founders. While the general

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3 Ibid.

4 Farnam, *op. cit.*, pp. 9-10.
economic environment was that which is found in most new
countries, it was different in the South from what it was in
the North. Too, the framers of the laws were often clergy-
men, who were versed in the scriptures and not adverse to
applying their attitudes to the labor problems. These
variations made a difference in the solution of the labor
problem. Since there was a scarcity of workers and a lack
of capital, the labor problem became an acute one from the
start. This labor shortage prevailed during the first two
centuries of American history. It was a problem to get
labor—not only to import labor, but to secure their services
after importation. Therefore, the colonial period marks
the beginning of a long line of experimental legislation
which has continued down to the present day.

Compulsory Employment

The first labor legislation passed in colonial America
was not to protect labor, but to suppress idleness. The
historical background for this type of legislation dates
back to the Elizabethan statutes, which maintained the
principle of compulsory labor. It is understandable why
the colonies, constantly short of labor and pervaded by the
intense resentment against idleness, should have adopted
this program. Throughout the colonies, idleness was

5  Ibid., p. 14.
6  Ibid., p. 55.  7  Morris, op. cit., p. 4.
discouraged. Colonial almanacs were adorned with aphorisms on the virtues of work. The Ames, father and son, told their readers that "an idle man is a burden to himself, to his family and to the publick." "He that riseth late must trot all day, and shall scarce overtake his business at night."

"Laziness always travels so slow that poverty soon overtakes him." Mercantilists advocated the labor of women and children. Those living without a "calling" were compelled to work.

Regulations for idlers were common. An act passed in Massachusetts ordered "that no person, howsoever, or other shall spend his time idly or unprofitably, under paine of such punishment as the court shall think meete to inflict."

In the court records of Massachusetts one finds that "Samm Rial presented for Idleness, Ye Court sentenced him to put in bond for the good behavior Standing committed till ye sentenced be performed." In an annual town meeting in New London, Connecticut, a paper drawn up for the use of townsmen which stated "No person suffered to live in idleness."

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North Carolina passed an act in 1766 concerning "idle and 12
dissolute people." Virginia enacted a law providing:

In detestation of Idleness be it enacted,
that if any man to be found an idler or renegade,
though a freedman, it shall be lawful for that
corporation or plantation to which he belongeth
to appoint him a Mr (master) to serve for wages
 till he shewe apparent signs of amendment. 13

Women were not exempt from idleness as the following case
in Massachusetts will reveal: "Grace Mathews convict in
court by her own confession of Idleness...Sentenced to be
whipt with Fifteen stripes." 14 Persons were often whipped
or fined for idleness. A typical case reads:

John Belcher was presented for Idleness &
profane & wicked speeches of which he was convict
in Court: The Court Sentences him to be whipt
with fifteen stripes or to pay five pounds in
Mony fine to the County with fees of Court &
Charges of prosecution & to give in bond for good
behavior... 15

A man not only had to have a calling, but he had to
apply himself to it. There are many cases found in the
court records concerning a man neglecting his business.
In Massachusetts "Hervey Floode being presented by the
Grandjury for neglecting his calling..." and "William

12 Walter Clark, editor, The State Records of North
Carolina, Vol. XXIII, pp. 746-47.
13 Lyon G. Tyler, Narratives of Early Virginia 1606-
1625, p. 263.
15 Ibid., Vol. XXIX, p. 306.
Arnall of Milton being presented by the Grand jury for night walking and neglecting his calling...." Both of these men were fined. 16

If the unemployed were recent arrivals, statutes of the colonies authorized their transportation to be paid back to the colony from which they came. 17 An act in 1672 in Virginia authorized the justices "to put the lawes of England against vagrant idle and dissolute persons to execution." Even more rigid was the law enacted in New York City in 1684, which directed the constable frequently to "make a Strict Search and Enquiry" after all strangers and report the names of such persons to the mayor. Later enactments for idleness provided for forced labor or commitments to the workhouse. A stranger in Massachusetts was imprisoned for not departing from town, as the following case reveals:

16 Ibid., Vol. XXX, p. 597.

17 Marcus W. Jernegan, Laboring and Dependent Classes in Colonial America 1607-1782, p. 201.

18 Morris, op. cit., p. 6, citing The Statutes at Large: being a Collection of all the Laws of Virginia 1619-1792, Vol. II, p. 298.


20 Jernegan, op. cit., p. 195.
John Smith imprisoned for his living idly, giving no account of his business here, but rendering himself suspicious both in his words and carriages. Sentenced to be whipt out of Towne at a carts taile with ten Stripes and ordered that if hee return again hee shalbee imprisoned.21

The compulsory labor program was not confined to the unemployed. In almost all the colonies the male inhabitants between sixteen and sixty years of age were required to work on certain public projects. In harvest time artisans and mechanics were compelled to leave their own trades, unless they had harvesting of their own. They worked at regular harvest wages fixed by statute. 22

Massachusetts in order to assure a food supply, impressed men to work on the farms. At the same time, men in the army might be assigned to harvest the crops or do other work. 23 An act of 1646 in Massachusetts authorized the constables to require craftsmen to work during harvest. The farmers were required to pay wages to their conscripted workers; a fine of double the usual wage rate was imposed for non-compliance. 24 In 1672 South Carolina required all


22 William B. Waeden, Economic and Social History of New England 1620-1789, Vol. 1, p. 82.

23 Morris, op. cit., pp. 7-8.

persons, with few exceptions to work at planting time, until the next crop was gathered.

In addition to the planting and harvesting of crops, laborers were impressed for other public services. In principle it was similar to military duty. Maryland impressed workers to build a townhouse and required the housekeepers to furnish food, labor, or tobacco according to the value of each man's personal estate. An act of 1750 in Maryland required the overseer of the ironworks to send one worker out of ten to work on the highway. Connecticut enacted a law in 1693 requiring that each man work one day in the year clearing brush from the highway. A number of acts were passed in the city of New York for compulsory work on the highway. Families were required to work at least twice a year or pay a fine. The inhabitants were summoned to bring spades, pickaxes, and other tools. A driver with a wagon and team was considered


27 Weeden, op. cit., p. 409.


29 Ibid., p. 364.

30 Ibid., p. 363.
equivalent of three days' labor. A person was allowed to send a substitute or pay a charge of six shillings for every day's absence. Inhabitants of towns could be impressed to construct bridges. Others were impressed to build fortifications, dams, or dikes. Workmen in other communities were required to clear commons, set a fence, deepen or broaden a river's channel, build a meeting house, cart materials to the parsonage, and repair prisons, stocks or whipping posts. The courts were vigilant in seeing that the impressment was equitably administered. When a person had not completed his share of work, some of the towns authorized the constable to hire other labor. Too, the absentee was required to pay the hired worker as well as pay for the constable's time. In other towns, as in New York, he could pay a definite rate in lieu of his own services. In order to secure the necessary number of

31 Ibid.
32 Ibid., p. 364.
34 Morris, op. cit., p. 10.
35 Ibid.
36 Ibid., p. 9.
laborers, constables were issued warrants to procure as many workers as the warrant specified. In the northern colonies the amount of property often determined the extent of one's obligation to do public work. In the southern colonies, persons who sent two servants were excused from public work.

It was legal to impress labor for private profit during the period. The entrepreneur was promised impressed labor in order to persuade him to enter into a project desired by a locality. Three entrepreneurs in 1644 required a new colony to furnish them four days' work from each man in town from sixteen to sixty years of age. The government agreed to the proposal, but allowed the men to hire others to work in their place. In Newark, women as well as men were required to perform public work. In order to secure an entrepreneur to construct a corn mill, the town offered him three days' work from every man and woman that held "an allotment" in the town. In these cases of compulsory labor for public projects, the interest of the community was placed above the personal rights of the worker. This type of work was considered public service.

37 Peterson and Edwards, op. cit., p. 163.

38 Morris, op. cit., p. 9.

39 Ibid., p. 8.

Another method of securing compulsory employment was the releasing of debtors from prison to serve their creditors. The colonies allowed imprisonment for debt, small debts as well as large debts. "In one city forty cases were recorded in which the sum total of the debts was only $23.40, an average of less than sixty cents each." In this country where labor was scarce, some of the colonies thought that imprisonment for debt was a loss of time as well as expense to the communities. Other communities denied the debtor the right of an opportunity to earn wages to pay his debts. Too, the debtor often had to depend on humane societies for his food, clothing and fuel. A criminal was given more consideration than a debtor. Virginia required her debtors to pay the cost of their maintenance. A later law provided that the debtors were to have an allowance from the assembly, if they were unable to pay for their keep. New York allowed four shillings a week for each prisoner's support. Most


42 Ibid.

43 Oliver P. Chitwood, "Justice in Colonial Virginia," (John Hopkins University, Studies in Historical and Political Science, No. 7-8, Series XXXIII), 1905, p. 112.

44 Ibid., p. 113.

of the colonies released the debtors from prison to work for their creditors or assigns for a specified period of time. If a creditor insisted on keeping his debtor in prison, he was required to pay for his maintenance. North Carolina and other colonies passed numerous laws during the colonial and post-revolutionary periods for the relief of the debtor. North Carolina in "an act for the relief of the poor debtors as to their imprisonment of their Persons 1749 stated that a person might be released from prison, if he would swear that he did not possess more than forty shillings. However, the law added "if such persons shall afterwards be disclosed to have sworn falsely, he shall be indicted for Perjury, and if convicted, shall lose both his Ears in the Pillory and be liable to sale for debt and damages." The legislation enacted in favor of the debtor contributed to the repeal of laws that authorized the imprisonment for debts.

The early statutes did not cover all the offenses of which the courts took cognizance; consequently, the court

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46 Chitwood, op. cit., p. 113.
49 Clark, op. cit., Vol. XXX, pp. 312, 314.
50 Wallace, op. cit., p. 256.
had to rely on its originality in rendering decisions. Punishments were frequently prescribed that would wring from crime an income to the community. In the early history of Virginia, the court could order freemen to serve the colony for a period of years for violating certain regulations of the government. A few cases are recorded in which violators were required to build stocks. In 1638 a man found guilty of sin was ordered to build a ferry boat for the use of the people. A court in 1634 ordered a man for abusing another to "daub the church" as soon as the roof can be repaired. On another occasion the offenders were punished by requiring them to repair the church the following Saturday. In addition, they were to pull all the weeds in the churchyard and in all the paths leading to it. Pennsylvania, from the earliest period, stressed programs for the employment of criminals at hard labor.

Virtually all the colonies imposed the penalty of labor in lieu of a prison sentence, however the bulk of such cases

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51 Chitwood, op. cit., p. 90, citing Accomac Records 1632-1640, pp. 28, 69.

52 Ibid., p. 90, citing Lower Norfolk County Records 1637-1643, p. 13.

53 Ibid., citing Accomac Records 1632-1640, p. 16.

54 Ibid., p. 88, citing Accomac Records 1640-1645, p. 16.

55 George Ives, A History of Penal Methods, p. 188.
came from the New England Colonies. After 1707 no crime other than larceny was punished by compulsory labor.

In the course of time attitudes toward labor began to change. Leaders in communities stated that if "the duty to labor was to be fulfilled", a more constructive program should be planned to train workers in some trade. As a result, the workhouse program was introduced into the colonies. The early houses of correction were not equipped with facilities to provide employment to the inmates. A workhouse was established in the Plymouth Colony in 1658. This act provided for a house of correction for vagrants, idle persons, rebellious children, and stubborn persons who refused to work. This house of correction or workhouse was controlled by the governor and assistants. The inmates were to "have no other supply for their sustinance than what they shall earne by their labour all the while that they shall continue there."

56 Morris, op. cit., p. 346.

57 Ibid., p. 347.

58 Jernegan, op. cit., p. 201.

59 Morris, op. cit., p. 12.

60 Jernegan, op. cit., p. 201.

61 Ibid., citing William Brigham, Laws of Plymouth, p. 120.
Boston established a workhouse in 1660; however, all classes of poor and vicious persons were here herded together. In 1770 the general court passed a special act authorizing the construction of a workhouse for idle and indigent persons. If the inmates became "stubborn, idle and disorderly", they might be punished by whipping. The Montgomery Charter in 1731 authorized the city of New York to erect an almshouse. This building was to serve a three-fold purpose: it was to be used for a house of correction where persons might be whipped. A public whipper was employed at the expense of the city. It also served as a workhouse for all "Beggars, Servants running away or otherwise misbehaving themselves, Trespassers, Rogues, Vagabonds, and poor persons refusing to work." Lastly, it was an almshouse for paupers, who were put to work at spinning or farming. After the establishment of the workhouses, labor sentences were imposed for minor offenses.

62 Jernegan, op. cit., p. 201.
66 Ibid. p. 309.
Another program which favored compulsory employment of free labor was the regulation of the poor. The workhouse was usually established for the tramp and vagrant, but the pauper was under the care of the town officials. Although the New England Colonies laid great stress on excluding strangers likely to become a public charge, those with property were compelled to help support the dependent classes through a system of general taxation. In many of the New England towns, the poor were auctions. In the southern colonies the town officials could apprentice poor children, make levies for the poor, and allot aid according to the individual needs. The colonial system included girls as well boys in this method of apprenticeship. In the Middle Colonies poor relief administration combined features of the New England and southern colonies. In New Jersey the pauper had to wear a badge in the form of the letter "P", together with the first letter of the town in which he resided. The New York City government also tried to reduce the number of paupers by a similar scheme. An act ordered the church wardens to put a

67 Jernegan, op. cit., p. 208.

68 Ibid., pp. 178-80.


badge on the paupers with "the mark N:Y in blew or Red Cloath." Boston voted five hundred pounds for materials and tools in order to provide work for poor and idle persons. In 1702 another order provided for spinning wheels and other implements for the poor.

In 1751 a Boston "Society for Encouraging Industry and Employing the Poor" was organized to employ women and children that were idle." Manufactory House was built about this time with the support of public funds to employ girls from eight years upwards. In the spinning school which a member of the society established in 1769, the founder stated that he had "learned at least three hundred children and women to spin" in the first year. These details show how thoroughly the towns and its selectmen tried to regulate the life of the working classes. Hardly a session of court or a town meeting occurred without some attempt being made to see that the people worked.

Complexity of Wages

One of the greatest difficulties encountered in the colonial period in the relation to labor was the perplexing

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74 Weeden, op. cit., Vol. I, pp. 82-83.
question of wages. The colonial records, letters and reports from agents of the British Company engaged in the colonial settlements, and the colonial governors all express consternation and distress over the exorbitant demands of craftsmen and laborers. A colonial treasurer of the colony of Virginia declared in 1625 that the wages "were intolerable" and were in excess to the wages paid for the same type of work in England. Governor Winthrop of the Massachusetts Bay Colony stated in 1633 that the "excessive rates" asked by workers "grew to a general complaint which caused legislative action." Winthrop also spoke of the insolence of the laborers. Governor Dobbs of North Carolina reported that

Artificiers and laborers being scarce in the number of planters, when they are employed they won't work half, scarce a third part of work in a Day of what they do in Europe and their wages are from two shillings to 3, 4, and 5 shillings per Diem this currency.

During the intervening years, the same story was told by numerous governors in the different colonies.

77 Ibid., Vol. II, p. 228.
Similar testimony comes from the viewpoint of the worker, although treated from a different angle. Gabriel Thomas, who wrote a history for the purpose of inducing poverty stricken workers of England to emigrate to the American colonies states that

the present encouragements are very great and inviting for Poor People (both men and women) of all kinds can here get three times the wage for their labour in England or Wales. 79

William Penn stated in a letter that "all provisions were reasonable but Labour dear which makes it a good Poor Man's Country."

The individuals who worked for wages were not numerous enough in the colonial period to constitute an important class. Because of the property qualifications for voting, the laborer exerted little influence on the local and provincial governments, which was dominated by the employers. Even if the laborer acquired the right to vote, often when he opposed a minor regulation he was deprived of this right. Under such conditions, laws were enacted that were unfavorable to the worker. Efforts were made to keep wages down rather than to improve the working conditions.


80 Stewart and Bowen, op. cit., p. 7.

81 Peterson and Edwards, op. cit., p. 81.
The scarcity of labor and the resulting high wages were met differently by the northern and southern colonies. The most significant experiment in colonial wage control took place in the Massachusetts Bay Colony. The regulation of wages was placed in the hands of the central authorities. The first series of enactments were directed toward the building trades, such as carpenters and bricklayers. An act of 1630 ordered that the rate be fixed at forty-two cents a day. If the workers were given food and drink the pay was thirty-two cents a day. In 1633 another act was passed in the Massachusetts Bay Colony which stated:

It was ordered that carpenters, Joyners, Bricklayers, Sawers, and Thatchers shall not take above 2 s (48.6) a day if they have meat and drinke, nor any man shall give more under paine of 10 s (2.43) to taker and giver; and that sawers shall not take above 4 s. 6d. (1.00) ye hundred if they have their wood felled and squared for them, and not above 5 s. 6d. (1.33) if they fell and square their wood themselves.

It was ordered that labourers shall not take above 12 d. (24.3) a day for their worke and not above 6 d. (.12) with meat and drink, under paine of 10 s. (2.43)

All men were to work the whole day with time allowed for food and rest. Idleness was not to be tolerated while on the job, or the workers would be penalized. This law was not successful.


and was only in force six months; however, the court was determined to regulate the rates of wages. In 1634, another law was enacted which lowered the rates of the master workman. This law did not determine the rates for the unskilled laborer. The determination of wage rates for this class was left to the constable and "two indifferent freemen" for each case. The wage regulation was ineffective, as current wages exceeded the levels laid down by the law by fifty per cent. Employers soon overbid the prevailing rate, and some violators were fined. After a year the clause about paying more than the specified rate was repealed. However, the penalty for the worker accepting more than the legal rate was retained. This constraint in the treatment between the employer and the employee reflects the attitude of the colonies toward labor. They believed that the worker owed more to society than to himself. This ill-balanced arrangement for the worker was repealed in 1635.

Colonial legislatures realized that their efforts at regulating wages had failed, but the idea "that labor could fix its own reward worried them exceedingly." Free trade did not suit people who were always craving legislation, for in 1636 the towns were authorized to fix wages within their

85 Stewart and Bowen, op. cit., p. 5.


87 Ibid.
boundaries. The magistrate turned the regulation of wages over to the freemen of the towns. Discretionary punishments were vested in the court "according to the quality and measure of the offence." Anticipating competition of towns for the services of the skilled workmen, the General Courts provided that the court, or the governor and assistants were to hear complaints and settle disputes. This attempt at local regulation of wages resulted in a number of complaints. The codes of 1648, 1660, and 1672 were similar to the basic law of 1636, which left the regulation of wages to the freemen of the towns. However, all these efforts to control the wages of the laborer were futile. In 1655 a committee on trade was directed to consider some way to regulate the workmen's wages.

For two centuries the Puritans were in "dead earnest" about their wage codes. Too, they blamed a great part of evil on high wages. They were hostile toward leisure and toward expenditures above mere subsistence on the part of the laboring class. John Winthrop reported that the carpenters could make enough in four days to keep them a week, and then spent the "remainder of their time in idleness and their surplus money on tobacco and strong water."

88 Ibid., pp. 179, 105.
89 Phillips, op. cit., p. 74.
90 Hosmer, op. cit., Vol. I, p. 188.
In New Haven, sweeping regulations were found in regard to laborers and artificers. Wages for special tasks such as mowing, sawing timber, fencing and similar work were set. The law against oppression declared that it was "much sin against God and much damage to men" to take excessive wages. Offenders were fined according to the judgement of the court. New Haven did not allow itinerant craftsmen to share in the division of the land. They were only allowed to use a small piece of land during their residence in town. Connecticut passed laws in 1641 which not only regulated the wages of the building trades and craftsmen, but also specified the number of hours. "Work ten hours a day in the summer tyme, besides that which is spent in eating or sleeping, and six hours in the winter."

To a lesser degree this same method was followed in the southern colonies. Twenty years after New England had given up the futile effort of wage regulation, Virginia attempted both impressment and wage fixing; as a result, the mechanics left the colony. The General Court then changed its policy of dictating the amount of wages the laborer should receive to one of thinking what amount he would accept. The wage


93 John W. Barber, The History and Antiquities of New England, p. 311.

94 Stewart and Bowen, op. cit., p. 9.
experiment was more short-lived in the southern colonies than in the northern colonies. In 1662 Maryland authorized the courts to regulate the fees of the surgeon. Virginia also regulated the fees in the medical profession. The fees were very modest, the ordinary visit fee was fifty cents for the ones who were able to pay. Surgical operations cost five pounds. South Carolina and Georgia attempted wage regulation in the early years of settlement. The middle colonies did not enact colony-wide regulations until after the Revolution. The legislation was established by the locality and usually applied to specific trades.

In addition to the efforts of the colonies to regulate wages by various legislative methods, efforts were made to counteract the scarcity of skilled workmen. In the first place, in many towns skilled craftsmen were required to stay within their jobs. In Virginia craftsmen were required by law not to leave their trade and enter agriculture. Apparently it was

95 Morris, op. cit., p. 88.

96 Ibid., p. 89.


98 Morris, op. cit., p. 90.

99 Ibid., p. 84.

100 Ibid., p. 30.
not a simple matter to employ skilled workers at a fixed rate of wages. Most settlers had a little land, and the cultivation undoubtedly paid better than the prevailing wage rate. The Plymouth court would not allow craftsmen to work outside of the colony as long as they were needed within Plymouth. In order to secure skilled workmen to settle in the colonies, they were offered freedom from taxation for a specified number of years, exemption from work on public projects, and exemption from military duty. They were also offered land and leases and other subsidies and bounties. The town of New Haven granted a collier, about to come to the iron works, twelve acres of land, if he would remain in the town twelve years. The colony freed all the workers engaged in this industry from taxes. Massachusetts granted the younger John Winthrop a monopoly on an iron industry for twenty-one years for locating the industry in the colony. In addition, the shareholders were given a plot of land three miles square, free from taxes. In New London, Connecticut, a blacksmith was given "house lot two acres in an eligible and central position in town."

101 Ibid.
102 Ibid., pp. 32-33.
103 Calder, op. cit., p. 279.
104 Hosmer, op. cit., p. 233.
105 Caulkins, op. cit., p. 83.
Although the rate of wages was fixed in the colonial laws, there was slight distinction in the trades in the matter of wages. There was little differences in the pay of skilled and unskilled workers. In some instances, it was specifically stated that all the work should be paid for at the same rate. In repairing a fort on Pointcomfort, Virginia, the General Court ordered that the same wages be paid mechanics and laborers. Although wages were fixed in terms of money in the early colonial statutes, it was not the medium in which the workers were always paid in any of the colonies. A system of barter existed in the payment of wages. This was regulated by law. In Virginia, wages were paid in tobacco. Tobacco was in fact money, the standard value in which all the supplies both domestic and imported, were purchased. It also paid the tax; it paid the minister and the physician, and also the attorney. It paid the debts due the merchant, and paid the wages of the laborer, midwife and the grave digger.

The most widely used medium of exchange in the New England Colonies was beaver skins and "country pay" which meant agricultural products, chiefly corn. Beaver was used largely in foreign business, and was rare in the payment of wages. It appears in only one instance in the wage material obtained in the early records. The standard medium in which workmen were paid was "corn", a generic term which included several


107 Ibid., p. 495.

species of grain and even peas. Gabriel Thomas stated in his history "as for corn, they have wheat, Rye, Pease, oates, 109 Barley, Rice &c. in great quantities." Livestock was also accepted in the colonies for payment of wages. The selling price of corn was fixed by the court. The rate was established annually at which it would be received in payment of wages. Massachusetts General Court ordered:

For servants and workmen's wages it is ordered that they may be paid in corne. For the price, if the parties can not agree, the corne is to be valued by 2 different freemen, to be chosen the one by the master, the other by the workman (who are to have respect for the value of the worke or service;) and if they cannot agree then a third man is to be chosen by the magistrate. 110

Toward the close of the seventeenth century, country pay was not used to a great extent. The expanding trade with the West Indies brought in an increasing supply of silver. However, it was resorted to again during the Revolution when money decreased in value. After money became more plentiful, it became customary for one to receive a discount from country pay prices, if they paid cash for commodities and goods.

An additional method of computing colonial wages was the almost universal practice of providing workers with board. This custom was always followed in the case of farm labor and

109 Thomas, op. cit., p. 476.


111 Ibid., p. 15.
domestic service. It was also true in regard to tailors, shoemakers, and to some extent of building tradesmen. Often the wage contract stated the specific rate to be paid for each day of work "with found" or "with dyett." Forcing the worker to accept wine in part payment of wages was another practice which became the subject for legislation in later period. In 1672 another angle of the same problem developed, when many workers began to demand an allowance for liquor and wine above and over their wages. One hundred years later, Thomas Jefferson complained of his building crew of tradesmen, who were remodeling his home, costing him a little over thirty-two cents a day for food and liquor.

Next to wages, the labor contract was the most important issue upon which the colonial courts had to rule. In suits for recovery of wages, workmen on the average were favored in the colonial courts. Before the introduction of the mechanic's lien in 1791, the worker could collect his wages by the attachment procedure. A number of statutes were enacted in the colonies allowing the attachment of crops, cattle, goods and even land. Numerous contracts did not specify a definite period of time. Contracts for annual employment were widely used in the colonies.


113 Stewart and Bowen, op. cit., p. 16.

114 Morris, op. cit., p. 216.

115 Ibid., p. 215.
particularly in domestic service and farm labor. Artisans were usually hired by the day or month. The requirement that three months notice be given before dismissal was observed in almost all the colonies. The principal reason for the workmen suing on contracts of employment was for the recovery of wages. At times the workman was penalized for non-performance of a labor contract. Damages were also assessed against workmen for poor workmanship.

Labor and Military Service

The impressment of laborers into the military forces and the Royal Navy for services as artisans resulted in problems similar to those resulting from the compulsory employment of laborers in the civilian fields. The impressment was universal in the colonies. To assure a labor supply, some of the colonies exempted workers in essential industries from military duty. Massachusetts, as early as 1639, exempted fishermen during fishing seasons, ship carpenters who were employed and millers; however, they were all furnished with arms. New

116 Ibid., p. 221.
117 Ibid., p. 223.
118 Ibid., p. 224.
119 Herbert L. Osgood, American Colonies in the Seventeenth Century, pp. 508, 508, 511.
York exempted her firemen from military duty except in time of extreme danger. Maine, Plymouth, and Virginia exempted workers in the iron industry. Virginia also exempted her seamen, workers in public shipyards, foundries and other public works.

During the seventeenth century common laborers, as well as artisans, were conscripted for non-military service with the armed forces. On other occasions they were recruited by voluntary enlistments or by labor contracts. Men and carts were impressed by Massachusetts for work on a fort in Boston harbor. In New Haven and in the Carolinas, gunsmiths and other artisans were conscripted to repair firearms. Connecticut impressed shoemakers to make shoes for the army. The impressment became more frequent with the advent of the Intercolonial Wars. Carpenters, laborers, and drivers with their horses and carts were conscripted for military duty. In New York, citizens and freemen were given the option of appearing in person with shovels, spades, pickaxes, or other tools, or of hiring labor to take their place. Persons were forbidden from labor on other projects, and all shops were closed until the fortifications of the city were completed.

121 Peterson and Edwards, op. cit., p. 337.

122 Morris, op. cit., pp. 279-81.

123 Ibid., p. 281.

124 Ibid., p. 295.
Military authorities secured the services of artisans and workers by voluntary enlistments or short term contracts. Carpenters, bricklayers and smiths were authorized to do the work for the army and then send the account to the colony. There was such a scarcity of artisans working on military projects that they were paid promptly in order to keep them on the job. They often performed tasks under hazardous conditions on the front lines. Washington said he felt embarrassed with respect to military power. However, in 1780 he justified impressment by stating in a letter to Brigadier General William Irvine that

Our affairs are in so deplorable condition (on the score of provisions) as to fill the mind with most anxious fears...Men half starved, imperfectly Cloathed, riotous, and robbing the Country people of their subsistence from sheer necessity.\textsuperscript{126}

The Continental Army employed a variety of artisans, ranging from the army engineers to laundresses, smiths and tailors. The continental authorities and state officials preferred to rely upon voluntary enlistments of mechanics and laborers rather than resort to conscription. Jefferson was indeed willing to order tailors and shoemakers to the factories for the construction of defense works in Virginia. However, Jefferson said that the work was essential and they might not


\textsuperscript{126} \textit{Ibid.}, Vol. XVII (1780), p. 368.
be able to secure sufficient voluntary workers. Advertisements for nailors, iron and steel workers, carpenters and many others for the Continental Army were common in the war years.

Artisans among the enlisted men were frequently transferred from military duty to work in their own trades and were given extra compensation. A larger share of the non-military tasks was performed by regular troops as fatigue duty. They performed unskilled tasks such as cutting wood, clearing roads, hunting, repairing huts, and making flour bags and cartridges. They were required by military orders to stay on the job and were subject to court martial for absenteeism.

Artisans in the army received much lower rates of wages than the wages paid to hired craftsmen.

To relieve shortages of labor in essential industries, regular troops were sometimes employed. When a shoemaker declared he had plenty of leather but was short of labor, several shoemakers from the army were sent to him. A New Jersey operator of the salts work was allowed to use military troops to guard his property. An investigation disclosed that the soldiers had been employed to promote the interests of a private industry. As a result, Washington transferred them

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State governors objected to the keeping of the militia on duty during planting season and harvest. Labor shortages and high wages hindered the military works project; nevertheless, working conditions, hours, and wages were regulated by the military authorities and were rigidly enforced. This caused many desertions in the army according to the information found in the colonial newspapers. An extract, which is typical, from *The Pennsylvania Journal*, No. 1010, April 15, 1762, reads:

April 15

Deserted from Capt. Dayton's Company of the New Jersey Regiment, a Soldier, went by the name of John Greenwood; had on when he went away, a light coloured Cloath coat, or a spotted Swankin one with a scarlet vest; is a likely well built Fellow, about five Feet nine Inches high, something round shouldered, and lightly pitted with small Pox; whoever takes up and delivers said fellow to Capt. Elias Dayton, at Elizabeth-Toon, before the Company embarks, shall have Six Pounds Reward, of

Elias Dayton

In addition to the compulsory service in the militia and non-military service in the armed forces, the free laborer was conscripted for watch duty. Numerous statutes were enacted during the close of the seventeenth century and the

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132
early years of the eighteenth century concerning compulsory service for watch duty. The service was compulsory without any compensation; however, one might employ a substitute. The principal duties were to arrest suspicious persons out late at night, patrol the streets, and look out for burgulars. The night watch at Charleston dates from the beginning of the settlement.

Maritime Regulation

Another class of workers who were distinguished from the other wage earners in colonial America were the seamen. Maritime occupations were a principal source of labor's income in this period. On the eve of the Revolution, it was estimated that there were 33,000 seamen employed in the colonies. Colonial shipping and the fisheries played an important part in the colonies. It must be understood that maritime labor was totally unlike the usual type of employer-employee relationship. On the high seas the relations between the master and the mariner were largely determined by tradition, which antedated the common law. It was influenced by continental rather than English practices. By the term

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133 Roy V. Smith, South Carolina as a Royal Province 1719-1776, pp. 179-80.
134 Morris, op. cit., p. 225.
135 Ibid., p. 227.
mariner is meant all persons employed aboard ship during the voyage. This included captain, mates, sailors, carpenters, cooks and cabin boys. A strike, by common law, might have been treated as an illegal combination; but if committed by mariners, it would be treated as mutiny.

In addition to borrowing from maritime experience, the colonies enacted legislation of their own for the seamen. These statutes may be divided into six main divisions: (1) Restraints were placed upon the arrest of seamen for debt, who had not completed their voyage. The purpose of this type of law was to assure the master of an adequate supply of labor. Tradesmen, taverns, or vendors of liquor were forbidden to extend credit to seamen. (2) Penalties were assessed against any one shipping a seaman who had previously signed for a voyage on another ship, and for harboring or entertaining a seaman without the consent of his master. (3) Legislation was enacted against deserting seamen; (4) a number of the colonies enacted laws concerning the contract. (5) By statute the seaman was required to obey the commands of his master. (6) Laws were also enacted concerning the punishment of seamen and the methods that could be applied.

Before the establishment of courts of vice-admiralty in the American colonies at the close of the seventeenth

136
Ibid., p. 229.
century, seamen's problems were settled in the regular courts
of common law and special courts for that purpose. The
governor in Virginia took a prominent part in admiralty pro-
ceedings; he was vice-admiral of the colony. He had power
to appoint masters of vessels and grant them commissions to
execute maritime law. According to a law of 1699, all
piracies, treasons, felonies, and other crimes committed on
the high seas, bays, harbors, or rivers were to be tried by
a special court for that purpose. Rhode Island had a
maritime court as early as 1653, but it was abolished in 1704.
Massachusetts provided for special courts composed of the
governor, two magistrates, and a jury to try maritime cases.
In the other colonies, maritime cases including labor cases,
were handled in their courts of common law. After the estab-
ishment of vice-admiralty courts, maritime labor cases con-
tinued to be heard in the common law courts between 1697 and
the American Revolution.

Unlike most of the labor contracts in colonial times, the
seaman's contract of employment was usually in writing in ac-
cord with maritime law or colonial statutes. Where the con-
tract was verbal, the seaman could recover his wages.

137
Smith, op. cit., p. 147.

138
Chitwood, op. cit., p. 73.

139
Morris, op. cit., p. 231.

140
Ibid., pp. 231-32.

141
Sometimes this contract was a collective one between all the seamen and the master. These agreements usually specified the amount of wages, the scale of provisions to be supplied, the nature and length of the voyage, the ship on which he was to be employed, and the capacity under which he was to serve. Agreements might be made for payment of wages in commodity or cattle. If the rate was not definitely agreed upon before sailing, the amount was determined by the prevailing seaman's wage.

In addition to the seaman's wage and food, he had the right to ship on board a small amount of freight for himself. Too, the mariner was entitled to a share of the prize. Several seamen sued a captain Lemoigne in Massachusetts for not dividing prize money fairly. They recovered the unusual damages of 5,000 pounds. Under maritime law sailors were allowed salvage if they had assisted in saving a ship that had stranded, burned, or had gone on the rocks. Seamen frequently shared in the risk of an enterprise, and were compensated, not as wage earners, but as partners. Examples of this are found in fishing, whaling and privateering, where the financial return was a fractional share of the net

144 Ibid., pp. 1068-69.
proceeds of the entire trip. In fishing voyages, the owners of the ship usually received two-thirds of the fish, the captain and his men received the remaining third. Readers of *Moby Dick* will remember the complications worked out in whaling expeditions. According to maritime law when a seaman was carried off by a pirate as hostage for the release of the ship and crew, his wages and ransom had to be paid.

Prior to the establishment of the courts of admiralty there was a question concerning when wages were due. Under the earlier codes, the seamen were not entitled to their wages until the ship reached its destination. By the act of 1721 the captain, who advanced any seaman over half of his wages while aboard, would forfeit double the sum advanced. The ship was pledged to the "last plank and nail" for the payment of the seamen's wages. Actions against the master for wages were more frequent in the colonial and early state courts of common law than in the vice-admiralty courts.

In some cases the seaman was prevented from full recovery of wages. Matters which prevented the seaman from full recovery of his wages were based on non-performance of his duties or improper performance of his duties. Deserion and


147 Farnam, op. cit., p. 243.

willful disobedience or refusal to work were the leading defenses of the master. Colonial enactments closely followed the maritime law; in the event of desertion the seaman forfeited all wages due him for the entire voyage. Too, the mariner was punished for breach of contract. Massachusetts imprisoned her deserters; while New York committed the seaman to hard labor until he was ready to go to sea. An act in Virginia provided that seamen would be fined for being absent without leave.

Colonial records reveal that desertion was one of the most serious problems in the Merchant Marine. The records contain many extracts from newspapers concerning deserters. Participation in mutiny was held as a legal defense in withholding the mariner's wages and prize money. The court also ruled that the seaman's wage could be deducted for the master's advance in money for clothes, doctor's fees, medicines, and other items advanced at the request of the seaman. Deductions were also made, if could be shown that the seaman was incompetent.

The seaman was given some protection by legislation against harsh correction, improper food, illness, unsafe condition of the ship, delinquent from a stipulated course, and

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149 Ibid., p. 247.

150 Morris, op. cit., pp. 256-57.
wrongful dismissal. At sea, the master had the right to administer discipline. The most common form of punishment was flogging, confinement, or a decrease in rations. Excessive corporal punishment was unlawful, and on proof of cruel and inhuman treatment, the seaman could be released from his contract. In addition, he was awarded his wages, and had the right to seek damages at common law. The mariner could be released from his contract on proof of bad food and unfit living conditions aboard ship.

The master had the legal right to prosecute the seaman for mutiny. A fine or imprisonment were the usual penalties that were imposed. A seaman could be compelled to fill his contract. The right to impress seamen was upheld by the colonial courts on the defense that it was a public necessity. However, this practice aroused the working classes to concerted action against impressment. By an act of 1696, the power of impressment was given to the colonial governors. Their duty was to supply the ships-of-war with as many seamen as were needed for service on board. The legislatures passed on the amount of wages to be paid the impressed crews.

After the Declaration of Independence, some of the states enacted legislation for the protection of the seaman. Several states enacted laws in 1780 requiring that a part of the

151 Ibid., p. 262.
152 Ibid., p. 276.
mariner's wages be collected for hospitals for their use. This amount was raised in 1782, and in 1787 Marine hospitals were established in Virginia and North Carolina. Several other states erected hospitals in the next few years. As a result of this protective movement for the seamen, the first congress passed laws for their protection.

When congress met in 1789, a bill was introduced providing for hospitals for the disabled and sick seamen. At least five bills were brought up from time to time before one was passed in 1798. This act provided for a tax to be levied on the wages of a seaman, who was engaged in foreign or coasting trade, to be applied to his support when he was ill. The act also provided for the establishment of shopsitals for the disabled and sick seamen. This was virtually compulsory sick insurance. This law did not apply to the fishing industry, for men in this industry were supposed to have homes. By an amendment in 1799, the provisions of this act were extended to officers, seamen, and marines of the navy.

Although the constitution had not granted power over labor conditions to the Federal government, the question of this act's constitutionality has never been questioned, and has never been passed on by the Supreme Court. However, there was another reason for the interest in the seamen. It seemed important to build a strong merchant marine in the event of hostilities with other nations. Therefore, these first laws enacted by the Federal government for the protection of the seamen were a combination of humanity and
defense. The same general conditions that led to the establishment of marine hospital service, led to other special legislation to improve the working conditions of the seamen.

Congress enacted a law in 1790 for their protection, which provided that the master of each vessel should execute a contract with each seaman before beginning the voyage. The master was penalized financially if he proceeded without such a contract. Provision was made for an investigation of the safety of the vessel. The act provided that the seaman be paid one-third of the wages due him at each port the ship discarded cargo, and the balance at the end of the voyage. Every ship was required to carry a medicine chest and a certain number of supplies for each person on board. If the rations were short, the captain was required to pay each seaman one day's wages for every day of short allowance.

On the other hand, the seaman might be penalized for being absent from duty or desertion. If he failed to report for duty at the hour set in the contract, he was penalized one day's pay for each hour he was late. If he left without leave for forty-eight hours, he lost three days' wages. If he were absent more than forty-eight hours, he forfeited all his wages and all his property on the ship. If he deserted

153  
Farnam, *op. cit.*, pp. 234-35.

154  

155  
Farnam, *op. cit.*, p. 244.
in any port, he could be brought to trial. If convicted, he might be sentenced to the common jail or to a house of correction until the ship sailed, or until the captain required his release. The costs of the proceedings could be deducted from his wages.

The provision of this act constituted involuntary servitude on the part of the mariner, which was very similar to the status of the mechanics and craftsmen. However, as compared with the prevailing law in the colonial period, the act of 1790 represented progress, for it, at least, provided some standards for the treatment of the mariner and for his protection from abuse.

The individuals who worked for wages during this period were not numerous enough to constitute a laboring class. Such laws as were passed show a distinct bias against the laborer. One can not fail to be impressed by the preponderance of laws to oppress labor, particularly in regard to wages. Despite the social stratification that permeated almost all the colonial settlements, the major portion of the settlers had a greater respect for the dignity of hard labor.

In the era of the Revolution, it became fashionable to applaud the virtues of the working classes and to treat them

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Farnam, op. cit., p. 244.
with more respect. Nevertheless, the social distinction between "gentle" and "simple" was by no means erased. The working classes performed an important role in developing a revolutionary spirit in the colonies. However, democracy as it is understood today was not achieved by the Revolution; it removed some of the restraints that were of external origin. Although the constitution does not contain many paragraphs that by strict interpretation would support social legislation, it provided an instrument for labor legislation in the later period when the constitution came to be interpreted more liberally.

CHAPTER II

CHANGING ATTITUDES TOWARD LABOR 1790-1830

Factors Determining Legislation

The ideals which prevailed with reference to labor in the early part of the nineteenth century were those of the colonial period. The economic conditions had not created much demand for labor legislation excepting for seamen. With American independence and the establishment of the constitutional government, an entirely new set of factors came into play that influenced labor legislation. These forces brought about a gradual change from the policy of discrimination against labor to that of protecting labor. Among these factors were: (1) the physical environment, (2) the artificial environment; (3) the changing social, ethical and political ideas; (4) the written constitutions and legal traditions; and (5) the formation of trade unions and other labor organizations.

Of particular interest has been the influence of the physical environment. Navigation employed from the beginning a large amount of labor in the shipping and fishing industries. Consequently, it was no mere accident that the first important

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Mary Beard, A Short History of the American Labor Movement, p. 11.
labor legislation of the Federal government concerned the protection of seamen. The discovery of mineral resources brought about legislation for these industries.

The artificial environment of the laborer, created by man, has influenced legislation. Particularly noticeable were the improvements in transportation and in the machinery of manufacturing. The latter improvements created a demand for the labor of women and children. The advance in engineering science created the skyscraper and the tunnel. Cycles of activity and depression have been accompanied by irregularities of employment. Other economic changes were the extension of the frontier to once vacant lands, and the increasing number of immigrants. Finally, the growth of capital stimulated large scale production, which brought about the separation of the employees from the employer.

Since the civil war there has been a strong tendency towards centralization, which has influenced the form and source of labor legislation. Trade unions and other organizations of labor have been active, especially since the last quarter of the nineteenth century, in promoting labor legislation. However, a great deal of the legislation began before these organizations were strong enough to exercise any real influence.

2 Farnam, op. cit., p. 226.

3 Beard, op. cit., pp. 54, 64, 81.

4 Farnam, op. cit., p. 227.
Many labor laws have not been influenced by those whose interests were directly concerned. This is true of child labor laws, for the child does not have the right to vote. It is true of immigration laws that were passed to protect the immigrants who were not residents or citizens. It is also true that much of the legislation enacted for the benefit of the organized classes has been initiated by others, and could hardly have been carried through without their help. This growth of humanitarianism has led to the protection of the worker.

The older constitutions which represented the ideals of the early settlers, often exercised a retarding effect on labor legislation. In recent years this influence has caused a great deal of criticism. There has been a great number of labor laws overthrown on constitutional grounds. It is evident that the social ideals of a past generation, as expressed in the constitution, and interpreted by the courts, have acted as an impediment to progress. The judges were men trained almost universally in common law. Too, traditions strongly influenced the judicial mind, and its general effect was antagonistic to any radical labor legislation.

After the adoption of the constitution, and until recent years, the labor legislation was state legislation. Consequently,


6 Farnam, op. cit., p. 228.
it is difficult to divide the legislation into different periods which will apply to all parts of the country. Each state has gone through its own period of development. The states have varied in their rate of progress and in the time in which they first entered upon a movement. Too, legislation beginning in one state may be passed on to others; but by the time it reaches the most backward state, the one in which it began may be struggling with other problems. Nevertheless, with all these differences, one can recognize certain influences in the development of labor legislation in American history.

The first period from 1789 to 1837 was a period of little action. It marks the weak formation of a laboring class, the establishment of small factories, and the struggle of workers for needed reforms. The second period from 1837 to the Civil War was characterized by the beginnings of labor legislation in limited fields; and to a few states. This legislation was influenced largely by educational ideas. The third period from the Civil War to 1890 showed some progress in legislation and in the legal status of the worker. This was partly due to the settlement of the slavery question, partly due to the rapid extension of industry and trade, to extension of the railroads, and to the great increase in immigration. It was in this period that trade unions became prominent, and the protection given women and children was mildly extended to men. After 1890 one notices that legislation began to branch off into different fields as new problems pressed for legislation.
Formation of a Laboring Class

At the close of the Revolution wages were low and the necessities of life were high in price. The wage earners of this period were not influential factors in the political world. All manufacturing was carried on in the home or in small establishments. England had prohibited the exportation of skilled craftsmen.

Nevertheless, skilled workmen came to America throughout the colonial period. Dutchmen were brought over to erect saw mills; they were introduced into the colonies before they were used in England. Polish workers established the naval stores industry; and Italians built glass industries. Peter Hasencleser, the iron master, brought over five hundred workmen from Germany to establish the iron industry. By 1831 there were 29,000 men employed in the iron industry. The Irish developed the linen industry in New England, Maryland and South Carolina. The Huguenots established salt

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7 Carlton, op. cit., p. 40.
11 Carlton, op. cit., p. 45.
manufacturing and indigo production in South Carolina. Italiana established the silk industry in Georgia. Other skilled craftsmen established tar, hemp, and iron industries in other colonies. Such immigrants did not furnish the unskilled labor; they were the foremen or the overseers.

After the adoption of the constitution, the United States gradually passed from the household form of industry into the factory system. Cotton manufacture was the first to pass from the household stage, and the woolen manufacture followed it. The Embargo Act of 1807, the Non-Intercourse Act of 1809, and the War of 1812 stimulated manufacturing. Although there was a large importation of foreign goods in the years following, inventions and growth of capital increased the manufacturing population. By 1815 the cotton factories were employing 100,000 operators.

The growth continued, and with it came an increase in immigration, which added to the factory population in the

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industrial centers. The growth in manufacturing, improvement in transportation and increase in immigration in towns made the investment of capital in industries more profitable and led to the division of capital and labor. It was in the earlier part of this period that the laborers began to unite for reforms. Too, the sub-division of labor made it possible to use women and children in the factories.

In the colonial period child labor was believed to be a righteous institution. Accordingly, when the transition was made to the factory system, it was inevitable that the colonial attitude towards children's work would be retained. Their labor was counted on as a valuable resource with which to meet the deficiency and high cost of male labor. When the government began seriously to consider the means by which the "infant industries" could be developed, Hamilton called attention to the fact that children could be employed and the national income increased by their work. Public opinion at this time commended all the efforts made to encourage manufacturing by the employment of children.

Samuel Slater employed only children in his first establishment which required only nine children. Although there

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19 Ibid., p. 22.

20 Kirkland, op. cit., p. 341.
was only a small number of children employed in the early mills, there were more children employed than adults. Some children were transferred from the workhouse to the factory; however, they were not transferred in wholesale lots, as in England. The use of the spinning mule led to the greater employment of children, for the machine required one adult operative and two children. Often the manufacturer tried to cut down on the cost of labor by apprenticeship. A very frank advertisement in one of the newspapers in an industrial center reads:

New mill opened proposes to receive to the woolen manufactory any number of boys and girls from the age ten to fourteen. They will be instructed in the various branches of the factory, well clothed and well fed, and taught to read, write and cipher and parents may be assured that the most particular attention will be paid to the morals as well as the education of the children.

Although education was stressed, the children in the factories had neither time nor opportunity to learn to read and write. The children worked the same number of hours as adults, usually eleven to fourteen hours a day. Some manufacturers established evening schools; however, the children were not eager to attend evening school after working such long hours. The few protests that same at this time

21 "Ibid., p. 342.

22 Stewart and Bowen, op. cit., p. 83.

23 Kirkland, op. cit., p. 342.
were from the foreign element. In towns like Lowell and Waltham, the operatives were cared for in corporation boarding houses. The cost of board for children was more than they could earn, so the employment of children was unprofitable.

Samuel Slater established the system of family employment in the mills. There was the advantage to the family system, for it exempted the employer from all responsibility for the care of the children. The family system of employment became common, as indicated by the fact that newspapers in the industrial areas were filled with advertisements for families with children from nine to sixteen years of age.

The following extract from an early manufacturer's memorandum will reveal the contract generally used in employing families.

(January 27, 1815)

Dennis Rier of Newberry Port has this day engaged to come with his family to work in our factory on the following conditions. He is to be here about the 20th of next month and is to have the following wages for work:

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>Himself</td>
<td>5.00</td>
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<tr>
<td>His son, Robt. Rier, 10 years of age</td>
<td>0.83</td>
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<tr>
<td>Daughter, Nancy, 12 years of age</td>
<td>1.25</td>
</tr>
<tr>
<td>Son William, 13 years of age</td>
<td>1.50</td>
</tr>
<tr>
<td>Son Michael, 16 years of age</td>
<td>2.00</td>
</tr>
<tr>
<td>Total</td>
<td>10.58</td>
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</tbody>
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24 Abbot, op. cit., p. 25.
25 Ibid., p. 27.
26 Kirkland, op. cit., p. 342.
27 Ibid., pp. 342, 344.
His Sister, Abigail Smith  2.33
Her daughter, Sally, 8 years of age  0.75
Son Samuel, 13 years of age  1.50
\[ \frac{4.58}{28} \]

As one can see, it would take the combined wages of the members of a family to make a living wage. The family space allowed in the factory tenements was determined by the number of children employed in the factories, rather than the number of children in the family.

Child labor was the answer to the problem of obtaining an inexpensive labor force in the early part of the nineteenth century; "the argument that factory employment was a moral and intellectual force soon withered." An exacting writer in the *Niles Weekly Register*, made a detailed calculation concerning the additional wealth this nation could acquire by placing all the unemployed children in the mills and factories. The man seemed to be annoyed because so many children were playing on the streets.

The men of this period did not and could not see the dangers involved in the employment of children in the factories, for they had been taught the sinfulness of idleness. However, they clearly saw the profits that could be made from child

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28 Abbot, op. cit., p. 27, citing the Poignant and plant Papers, a manuscript collection preserved in the Lancaster Town Library in Massachusetts.

29 Kirkland, op. cit., p. 344. 


employment. Nevertheless, the evils of child labor soon became apparent, which brought about an agitation for legal restriction. The growing working class and its leaders and humanitarian leaders became interested in securing legislation for child labor.

The labor class, although in its infancy, had already developed some active thinkers. Education became a common demand of the labor organizations. The property qualifications for suffrage, which had been imposed by the first state constitutions, were abandoned during the second quarter of the nineteenth century, and the ballot was extended to practically all working men. However, labor leaders had little political influence as yet. The real improvement in education came from men who represented the humanitarian point of view. Many educated leaders and literary men supported the labor leaders in their agitation for legal restrictions on child labor. Although animated by different ideals, the workers and the humanitarians not only saw a new rank of men rising to control the wealth of the nation, but also the political and social affairs of the state. The change in conditions and

2-52
Carlton, op. cit., p. 337.

2 133

2 34
Farnam, op. cit., p. 166.

2 35
growth of public interest initiated a new period of legisla-
tion. A minimum amount of schooling was demanded for every
child employed in factory work.

Massachusetts was the first to enact laws for the pro-
tection of children. There was a movement in this state as
early as 1825 to regulate factory conditions. However, it
was 1836 before legislation was enacted regulating the in-
struction of children employed in the factories. This act
restricted the employment of any child under fourteen unless
he had attended school at least three months preceding the
year of employment. Several other states followed with simi-
lar laws, but the laws neither mentioned school attendance
during the period of employment nor the number of hours to
be worked.

Following the first series of laws providing for educa-
tion, came another series of laws which forbade the employment
of children under a minimum age and set limits of the working
day. In 1842 Massachusetts limited the working day for chil-
dren under twelve years of age to ten hours a day. Only
four states covered both these subjects before the civil war;
five more restricted the working time without specifying a
definite age limit which a child might not be employed.

Susan Kingsbury, editor, Labor Laws and Their Enforce-
ment, p. 3.

Ibid., p. 20.

Farnam, op. cit., p. 259.
Massachusetts by an act of 1855 set the age limit at nine years, and in 1856 raised the age to ten years. Pennsylvania prohibited the employment of children under twelve in the textile factories. New Jersey and Rhode Island in 1853 set the age limit at ten and twelve years. Ohio passed her first child labor law in 1852, Wisconsin in 1877, and Michigan in 1885. The real precursors of adequate child labor legislation were the acts of 1866 and 1867 passed in Massachusetts which prohibited the employment of children under ten years in any factory. Three months of schooling was required in any factory employment in the case of children ten to fifteen years of age. In addition, no child could be legally employed in any factory more than sixty hours a week. Provisions were made for inspection, annual reports were to be made to the governor, and penalties were provided for violations of the act.

In 1869 Massachusetts established the first Labor Bureau in the world. A new chapter was opened in the field of labor

39 Kingsbury, op. cit., p. 20.
340 Farnam, op. cit., p. 259.
342 Ibid.
343 Samuel P. Orth, compiler, Readings on the Relation of Government to Property and Industry, p. 416.
in which is recorded numerous attempts of the states to create stage agencies to make systematic investigation of working conditions. Toward the end of the century all of the industrial states had enacted some type of law restricting the employment of very young children. The laws were ineffective because Americans had not realized that the acts had to be enforced. Most of the legislation chose agents already appointed for other purposes to enforce the acts. No definite proof of age was required by most of the statutes. The best means of enforcement seems to have been the educational requirement. The school system was interested, as the fines imposed were often promised in whole or in part to support the schools.

Legislation came for women later than for children; however, it was hardly differentiated from that for men before the civil war. It seems that women were workers throughout the nineteenth century. If they did not work in a household industry, they worked in a factory. During the first half of the nineteenth century women outnumbered men, running from two-thirds to three-fourths of the total number working in the factories. After this time, there was a steady decline until the men outnumbered the women by the twentieth century. The employment of young women was a deliberate policy of the

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44 37
Farnam, op. cit., p. 260.

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industrial manufactures. They realized that they must change the idea that factory work was degrading and immoral, and thus the Waltham system was created. This system was employed by Lowell and then copied in most of the industrial plants in that area.

Although the conditions under which women worked were far from ideal, their entrance into the New England mills, for most of them, was an advantage. The mills, especially the cotton mills, offered an opportunity for earning money, which was eagerly sought by educated girls of good families. Too, their social status was not lowered by their working in the factories. Only persons of good character were employed in the mills. Girls were discharged for profanity, lying, smoking, and in some cases for attending dancing school. The industrial plants provided boarding houses for the girls, and they were compelled to live there, unless their families lived within the city. The proprietors of the boarding houses, as well as the overseers of the plants were carefully selected. The proprietors were required to report the girls who did not attend church. The doors were locked at ten o'clock, and no girl was admitted after that time without a special reason. The same protection was given the young women in the factory.

Kirkland, op. cit., p. 345.

Farnam, op. cit., p. 260.

Kirkland, op. cit., p. 346.
The detailed protective system was offset by the blacklist. If a girl were dishonorably discharged, it was difficult for her to secure employment in any other factory. A record was kept of the girl's name and the nature of the offense. A duplicate record was sent to other industrial plants in the town. Occasionally a copy was sent to other towns. Persons were blacklisted for minor offenses, such as incorrectly fixing the looms. In addition, a person could not receive an honorable discharge unless he had worked for the mill one year and had given proper notification. Nevertheless, the Waltham and Lowell systems created an unusual environment for manufacturing establishments. There were flowers blooming in the windows, everything was clean and comfortable. There were bits of verse or scriptural quotations tacked to the looms to be memorized while the girls worked. They attended the Lyceum to hear Emerson and were members of girls' societies for the study of foreign languages and debating. The girls published a factory newspaper. In fact, it was the equivalent of an education. These girls were not permanent factory workers; usually after four or five years they married or returned home.

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52. Ibid.
About 1840 the best features of the factory system began to fade. The textile centers north of Boston began to develop a permanent force of factory workers. The girls who had entered the mills in Lowell as a boarding school were not recruited. Consequently, the factory owners began to recruit girls from northern New England who lived a great distance from the mills. This was an advantage to the mills, for it was not so easy for the girls to go home. When a larger percentage of the population worked in the factories, it was clear that factory work was no longer temporary employment for girls. The increase of immigration and the increasing percentage of newcomers in the factory made their situation less desirable. The immigrants displaced the native girls, this was due to the greater opportunities in other fields, and to the lowered wages. Meanwhile, the character of the employers had altered; the new type of employer was interested in dividends and profits.

The humanitarian movement brought about the appointment of numerous committees to make investigations on factory conditions existing at that time. All the reports stated that conditions existed that were already arousing complaints and

\[53\]
Ibid., p. 348.

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Farnam, op. cit., p. 260.

\[55\]
Kirkland, op. cit., p. 348.
protests. Complaints came from Waltham, Lowell, Fall River, as well as from other industrial centers. Petitions began to come in asking for legislation for a ten hour day. Massachusetts appointed a special committee to make an investigation of factories in that state. The committee reported that the women were in good health; therefore, they did not recommend legislation limiting women's hours at that time. Too, they stated that labor was intelligent enough to make its own bargains and look out for its growing interests. At this time, when the weak and growing working class needed protective legislation, the _laissez faire_ philosophy was invoked to prevent the erection of adequate protection. 57

In the decade 1850-1860 Massachusetts became the storm center of the ten hour movement. Agitation continued and legislative committees discussed the question. Frequent meetings were held in the industrial towns, and petitions were sent to the legislature. The petitions were no longer weak and rambling, as the earlier petitions had been. They followed definite forms, demanding a law that would prohibit any corporation chartered by Massachusetts from employing any person more than ten hours a day. The influence of able leaders was apparent in this movement. In 1853 the reformers

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56 Farnam, _op. cit._, p. 260.
managed to have one of their number made chairman of the committee, and by his efforts the measure was brought to the floor. In 1855 they obtained the unanimous report of the House in favor of a ten hour law. In 1856, they received favorable action from the Senate Committee, but the measure was again defeated.

In spite of the sharp opposition to the ten hour movement in Massachusetts, it made some headway in other fields. Outside of Boston, it had become the standard working day. The movement also obtained some concessions in the industrial plants. Many of the manufactures reduced the hours to eleven, and a few scattered towns reduced the working day to ten hours. Lawrence, Salem, Lowell, and other cities reduced the working hours to eleven. As a general rule from then on the hours in the textile factories were from seven in the morning until seven in the evening, with forty-five minutes for lunch and an earlier closing on Saturday. President Van Buren in 1840 ordered the establishment of the ten hour day for government employees on public works. New Hampshire passed the first ten hour law in 1847. This act provided for a ten hour day

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59 Kingsbury, op. cit., pp. 87-88.

59 Mary Beard, A Short History of the American Labor Movement, p. 39.

60 Kingsbury, op. cit., pp. 87-88.

61 Mary Beard, A Short History of the American Labor Movement, p. 39.
for all workers, but permitted longer hours by special contract. The larger corporations discharged the employees that did not sign the special contract. Pennsylvania enacted a similar law in 1849 providing for the special contract. After many disputes between the employers and the employees, the ten-hour provision was recognized; however, the wages were reduced.

There was slight progress in labor legislation before the civil war. However, the economic conditions were hard and imposed severe toil on all who were trying to make a living, whether on the farm, in the shop, in the factory, or on the frontier. The instruments of production and transportation were as yet undeveloped. Steam power was spreading, but had not shown its strength.

The working class was still in the process of formation. It had become self-conscious; but it still had to convince the public and the government that it needed protection from overwork. The working class had raised a question in demanding shorter hours, for more time for leisure and education, but it had to wait until a later period for legislation. The agitation for shorter hours coincided with various political controversies related to the slavery question. The compromise of 1850, the Kansas-Nebraska Bill of 1854, the Kansas War 1856, the Dred Scott Decision 1857, the re-alignment of the political


Ibid.
parties on the slavery question and the land question were all monopolizing the attention of the public.

Struggle for a Status

In addition to the political issues that were absorbing the interest of the public, one must take into consideration that the ten hour movement was only one plank in the platform of reforms of the working classes. They had demanded restrictions on child labor as has been pointed out in the preceding discussion. They had also demanded: free public school education; the abolition of imprisonment from debt; the exemption of the home, tools and wages from seizure for debt; and the establishment of the right of the mechanics to file liens on property to secure payment for wages. The labor party often added many other reforms to their platform of reforms.

Although tradition has it that popular education was one of the original doctrines of the American people, free and universal education did not make any progress until the middle of the nineteenth century. Organized labor had some influence on the establishment of the public school system through its agitation for "equal, universal and Republican system of education." Labor leaders looked upon education as the real hope of the working classes. In the early days of the Republic,

education had been thought of as essential to citizenship. However, with the development of the factories and the differentiation of classes, it became a means of raising the economic conditions of the working classes.

As early as 1827 the working men called attention to the existing schools that were established for the paupers. They advocated a public school system to be supported by taxation for all classes of children. In this way, no child would be considered a pauper in order to secure an education. In an address to the working men of the District of Columbia in 1835, a labor leader stated:

Let the ten-hour system be established, and we have obtained one step to improve our condition—this will give us time for study and useful reflections, and by a few hours, thus afforded, we can gain much useful knowledge, and be better able to perform our allotted labor, more to our employers' advantage and our own....We ask for a universal system of education.

Although labor leaders had little political influence at this time, the notoriety given to the subject of education aroused the interest of the public. As a result, the real initiative in improving education was taken by leaders who represented the humanitarian point of view.

The results of the first platform of reforms of the working classes is difficult to trace. However, a number of the

65 Ibid., p. 40.

reforms were eventually enacted by legislatures. One of the most significant gains in the early period was the abolition of imprisonment for debt. This was one of the many results of the great social change and upheaval. In 1829, it was estimated that 75,000 people were in prison for debt in the United States. Until this time only two states, Ohio and Kentucky, had abolished imprisonment for debt. Furthermore, a large percentage of the debts for which persons were imprisoned were small. One case is on record in which a person was confined in prison for thirty-two days for a debt of two cents. The laws of the several states provided bedding and fuel for the criminals, but the unfortunate debtors had to shift for themselves. Nearly all of the debtors would have starved or frozen to death if it had not been for the Humane Societies. New York had 10,000 debtors in jail at one time. The jailer stated that they would have frozen if he had not begged for fuel for them.


68 Ibid., p. 340.


There were many arguments for and against the abolition of imprisonment for debt. One argument of the humanitarians was that based on the natural rights and equality of men. Another argument stated that imprisonment for debt increased pauperism and was not an efficient way of collecting debts. Too, the imprisoned debtors' families suffered. The tradesmen and money lenders were against the abolition of this law. The lawyers were also against the repeal of the law for they received fees from cases involving the imprisonment of debtors. Nearly all the resolutions adopted by the numerous mass meetings of the working classes in the late twenties and early thirties contained clauses demanding the abolition of imprisonment for debt. The labor journals of this period were also uniformly opposed to this practice. The ephemeral labor parties made abolition of imprisonment for debt a plank in their platform. Tammany became interested in this reform to secure the labor vote.

In 1831 New York enacted a law abolishing imprisonment for debt except in cases of fraud. In other northern states the workers carried on this agitation and by 1840, imprisonment for debt had been abolished by practically every state in the North. The humanitarians of this period clearly saw the injustice of imprisonment for debt and were well aware of its inefficiency in the collection of debts. These leaders

71 Ibid., pp.341-43.

established the Prison Discipline Society as an aid to the debtors. The humanitarians were composed of ministers and other professional men, and persons who were not actively engaged in business. The humanitarians combined with the working classes to persuade the legislatures to enact laws for the abolition of imprisonment for debt. This legislation slowly spread until by the close of the nineteenth century it had reached all the states.

The debtors also made some gains by the homestead exemption laws. The homestead exemption laws of the several states are to be distinguished from the homestead laws of the Federal government. The homestead right under the Federal government made it possible for a person to acquire land, while the homestead exemption was intended to make it difficult for him to lose it. Historically, the homestead exemption had its origin in Texas before it became independent from Mexico. The homestead exemption law spread from Texas to the other states, Mississippi being the first state to enact a law in 1841. This movement spread to the South, the West, and then to the North. The exemption laws vary in the different states; however, the head of the family is protected against claimants by law from forced sale of a certain amount of property. The main purpose of the first laws in Texas was to induce settlement. In the period that it spread to the west and north,

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the immediate purpose was to protect the debtor from poverty.

The Panic of 1837 had reinforced the humanitarian movement towards greater democracy in bringing about the enactment of the laws for the benefit of the debtor. The mechanics' lien law, another reform demanded by the workmen, secured the right for certain claimants against land and house. One favored the debtor, the other the creditor. Although the two laws might come into conflict, both of the laws have favored the working classes.

Labor protection really began with the mechanics' lien laws. The labor problem was different at the time the lien laws were introduced from the problem in the latter part of the nineteenth century. At the end of the eighteenth century, the skilled craftsman passed from a wage earner to a small capitalist. He might have been an owner, manager or contractor who still worked with his own hands. He was not greatly separated from his own employees. Accordingly, the same law was made to protect the employees as well as the contractor. A mechanics' lien is the right of the mechanic or the person who has furnished material or labor not only to sue for what is owing to him, but also the right to hold property itself for the security of the debt.

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Farnam, op. cit., p. 152.
The history of the mechanics' lien law bears out the idea that it arose out of the economic conditions in America, and was a part of the policy of developing the country. The first law passed was purely local, applying to the unbuilt city of Washington. It was thought advisable quickly to build the city. In 1791 a recommendation was sent to the assembly of Maryland to pass an act creating a lien for the contractor on any houses built in the city of Washington. Thomas Jefferson and James Madison were both members of the commission that made the recommendation.

The next act was passed in Pennsylvania in 1803. This act only applied to dwelling houses and other buildings. It subjected the buildings to the payments of any debts contracted by the owners for any work done or materials furnished by the laborers. The contractor was not mentioned; but the law stated that if the house should not sell for enough money to pay for the claims, the sum would be equally divided among the workers. The law became a model that was followed by a number of states. New York passed a mechanics' lien law in 1830 emphasizing the position of the contractor, the sub-contractor and the laborers. These laws passed to the southwest, then to New England, and to Virginia, in 1843.

While the mechanics' lien had its origin in the desire to build up the country and to induce the contractors to assist in the process, it owed its extension to the desire of labor leaders to improve the conditions of the workers. The working men's party of New York was influential in securing the lien law that covered all classes of workers. At a meeting of nearly three thousand mechanics and workers in 1829 a series of resolutions were adopted demanding a mechanics' lien law. At the Lowell Convention in 1845 and at the Fall River Convention the same year, the wage earners drew up similar resolutions.

The principle of the mechanics' lien which started with a local and limited enactment, gradually extended in area, in the persons covered and in the structure. It spread from town to country and in 1834 Rhode Island made the mechanics' lien law state-wide. In many of the southern states the extension was not made until after the civil war. Although the law was designed for construction of buildings, it was extended to repairs. In 1848 Maine broadened the principle to cover laborers in the lumbering industry who were being cheated out of their wages. This was the crude beginning.

80 Ibid., Vol. VIII, pp. 100-23.
81 Farnam, op. cit., p. 156.
82 Ibid.
of legislation that required the employers to pay their employees regularly and in cash before all other creditors.

The working classes also made some gains in the Homestead Act of 1862. After the Panic of 1857 paralyzed business and brought about unemployment on a large scale and with it a reduction in wages, the laboring class began to call for free land. The wage earners had demanded free land for years. In 1828 the Mechanics Free Press published a memorial which was presented to congress demanding public land without payment. The plan was to give each settler a perpetual lease free from rent. The land was to return to the government when the lessee or his heirs failed to cultivate it or occupy it in person. If this had been carried out, there would not have been any land speculation or absentee land owning. During the intervening years, the labor leaders continued to demand free land. After many efforts to secure a homestead act, it was finally enacted in 1862 and signed by President Lincoln.

There seems to be a great difference in opinion regarding the influence of the Homestead Act of 1862 on the labor problem. The recent findings of research workers make opposite conclusions from those of Frederick Jackson Turner and his followers regarding the escape of wage earners to free land.

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84 Ibid., p. 45.
85 Farnam, op. cit., p. 135.
Other authorities have had the common opinion that the abundance of free land probably drew thousands of potential wage earners from the factories in the east. Nevertheless, if wage earners could escape "with slight effort" to an independent life in the west, it seems strange, that the workers fought so bitterly for labor legislation. Another research worker states that "the Homestead Act of 1862 did not bring about a miracle in the west." The cumulation of evidence points to the conclusion that the movement of wage earners from the east to the west was surprisingly small, and few industrial workers reached the frontier to attract notice in the accounts of settlement. Too, there was such a small number of wage earners that left the east that it had little effect on the labor situation. Frequently, the eastern wage earners that attempted to take up western lands failed, and were so discouraged they returned home.

A short time before the Homestead Act of 1862 and the Panic of 1857, industry had begun to expand. Gold had been discovered in California and the effect was magical. Manufacturers drove ahead producing goods in greater amounts which

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89 Goodrich and Davis, op. cit., pp. 61-116.
created a greater demand for labor. This foretold the downfall of small-scale production and the advent of industrial combinations. This large-scale production created a large class of workers entirely dependent upon the wages for their living. Independent craftsmen were no longer able to compete with the machine-made goods, and were forced to join the wage earners. The working classes had begun to organize for higher wages and shorter hours when the Panic of 1857 stopped business. Before industry recovered, the civil war almost rocked the nation.

The effect of war on industry was felt at once, for there was an enormous demand for war supplies, iron, steel, and all kinds of manufactured goods. Industries prospered during the high tariffs that were enacted, and the accumulation of wealth made possible the expansion of business. Too, there had been a number of new inventions concerning machinery. The working class remained at the same level, or experienced worse conditions. The government made little effort in placing contracts to guarantee the workers decent wages or living conditions.

The need for a larger supply of labor caused a greater employment of children, women, immigrants and convicts. Congress

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\textit{Mary Beard, A Short History of the American Labor Movement,} pp. 64-65.

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\[92\]
\textit{Ibid.}
passed an act in 1864 authorizing persons to make contracts in foreign countries to import laborers to the United States and bind them out for a period of time to work out their passage. The influx of immigrants during the last years of the war increased the divisive force of race prejudice. The civil war marked a transition period in the history of labor. This was due to the settlement of the slavery question, expansion of industry and trade, and the expansion of railroads. Too, the concentration of capital, extensive use of sub-divided labor, and the influx of cheap labor from southern Europe, all played important roles.

After the civil war the workingman awoke to find himself opposed by a strong employing class. The labor organizations became strong and stronger and began to be interested in labor legislation. The laboring class began to demand that an eight hour day be adopted, that the importation of cheap labor be restricted, and that a national Bureau of Labor be established.

The vast majority of immigrants that came to the United States during the nineteenth century were unskilled laborers. Certain industries that required little or no skill attracted a large number of foreigners to this country. This was particularly true in the manufacturing of clothing, in coal mining,

and in railroad construction. "In almost every year when these immigrants were arriving there were hundreds of thousands of idle workers walking the streets of our cities." The newly arrived immigrants were able to find work, for they were willing to work for less wages and under conditions that the Americans were unwilling or unable to accept. Immigration was profitable to employers in many ways:

It furnished them with an abundant supply of cheap and docile labor; the presence of mixed nationality and language groups made it difficult for unions to organize the immigrants but easy for the employers to play one group against another and all the "foreigners" against the native Americans; the available immigrant labor supply could be used as a threat by the employers to discourage strikes; and if strikes occurred, immigrants could be used as strike breakers.

Organized labor, as might be expected, vigorously opposed unrestricted immigration. The labor conventions demanded legislative action. Some early laws had been passed in the colonial period to restrict certain types of immigrants, and demanded certain health requirements. However, the first attempt at government restriction of immigration in order to protect labor was directed against the Chinese coolies. The Chinese had emigrated in small numbers until 1854, and had

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95 Ibid.


97 Farnam, *op. cit.*, p. 63.
been useful laborers in the mines, in agriculture, and in the building of the railroads. Too, United States and China had treaty agreements concerning rights to migrate between the two countries. As the Chinese immigrants increased, numerous local and state laws were enacted to discourage immigration.

When 39,579 Chinese entered the United States in 1882, the labor party demanded legislation for restriction on immigration. As a result, the Chinese Exclusion Act of 1883 debarred to the Department of Commerce and Labor as an official recognition that immigration was chiefly a labor problem.

Through the continuous pressure of the newly formed American Federation of Labor, the working classes also secured a National Labor Bureau. It was established in 1884 within the Department of Interior. In 1886, it was made an independent but non-cabinet department. In 1903 the Bureau was combined with the Department of Commerce. In 1913, President Taft approved a measure passed by Congress establishing the present Department of Labor. The affairs of the Department are directed by the Secretary of Labor, and until 1929 the secretaries were chosen from the nominees of the American Federation of Labor.

The workers made a little progress in their demands for a shorter working day. Congress enacted a law in 1888 providing for an eight-hour day for government employees. However, certain Federal officers reduced the wages with the shortening of the hours. The labor organizations began to lobby to have the losses in wages made good. As a result,
Congress appropriated money to pay back wages. In 1872 this law was weakened when the Attorney General ruled that the act applied only to direct government workers and that employees of contractors were not covered. In 1876 the Supreme Court declared that the directors of departments could make contracts with their employees for longer or shorter hours. In 1892 another eight-hour law was passed by the Federal government extending the eight-hour day to the employees working for government contractors. This law was soon weakened, as the law that preceded it. The law provided for an eight hour day except in emergencies. Since the term emergency was never clearly defined, the act was easily evaded.

State legislation was hardly more successful than the hour regulation of the Federal government. However, two states passed hour laws that were declared constitutional. In 1874 Massachusetts passed a ten-hour law for women and minors employed in factories. In 1898 Utah passed an eight-hour law for miners and smelters. In the early years of hour regulation, "it was a question of legislative acceptance of responsibility to shorten the hours of work of wage earners." Later the issue hinged more upon the judicial application of hour legislation to the principles of freedom of contract and the police powers of the state.

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100 Peterson, *op. cit.*, p. 446.
In the latter part of the nineteenth century, the state legislatures began to respond to public opinion and pressure by enacting legislation for particular groups of persons. However, most of the hour laws were declared unconstitutional by the courts. Too, many proposed laws were kept off the statute books for fear of unfavorable decisions by the courts.

Even more significant was the attitude of government toward labor organizations and industrial disputes. Following a long series of English precedents, the American courts had looked upon all labor organizations as unlawful, indictable as criminal conspiracies regardless of their objectives or methods. Suppression gave way to toleration in court decisions just before the business decline of 1837 killed the early union movement of the Jacksonian period.

The temporary period of toleration began in the second quarter of the nineteenth century when juries began acquitting strikers indicted as "conspirators", even though they had used intimidating methods. Too, suppression was, with few exceptions, abandoned after the celebrated decision of the Supreme Court of Massachusetts in Commonwealth v. Hunt 1842, which found no objection to combined action of laborers seeking action of lawful ends by lawful means.

Maritime Legislation

During this period from 1790 to 1890, a more tolerate attitude toward seamen was expressed in the legislation enacted for their protection. The earlier act of 1790 emphasized the shipping contract and the conditions of life which prevailed
This law was expanded to cover his rights in foreign ports, his status in case of shipwreck, and his protection from impositions while on shore. However, some special laws were passed to correct individual evils, such as shanghaiing. By the act of 1790 the captains of the ships saw and chose their own men, and the sailors chose their own ships. By 1820 this method had changed; a class of shipping masters had arisen who organized crews and advanced wages. The captains reimbursed the shipping masters. Many abuses grew out of this system of employment, for the contract ceased to be a volunteer agreement. Crews were often secured by intoxication, seized, sometimes knocked down and shipped.

Little was done by the Federal government until after the civil war. The whole matter was left to the states or to local regulation. A general movement was started in 1857 to correct these abuses. The ship owners organized against advancing money, but the shipping masters and boarding house proprietors combined to check the movement.

The act of 1790 had made provisions against unsafe vessels, but had proven to be inadequate protection. In 1840 an act was passed allowing seamen to demand of consuls that their ships be examined in foreign ports. The complaint had to be

101 Faulkner, op. cit., p. 230.

102 Farnam, op. cit., p. 245.
in writing and signed by the majority of the crew. If the ships were unsafe, the consul might discharge the seamen and require the payment of three months' wages to each seaman. This could be waived if the consul thought the contract had expired or the damaged ship was beyond the master's control.

The discharge of sailors in foreign ports often brought about hardships to the sailors. The act of 1792 required the master to send the seamen back to the state in which he went on board. By the act of 1803 the master was required to pay the consul three months' wages over and above the sum due. Two-thirds of the sum was paid to the seamen, and the remainder given to a general fund for destitute American seamen. This fund provided for the financing of the passage home or maintenance while in foreign port. This provision was intended to protect the seamen from unemployment while in foreign ports, and also to prevent masters from discharging their crews abroad in order to secure cheaper labor. In the course of years, conditions changed so that it was no longer difficult for the seamen to secure employment in a foreign port. Consequently, if he desired a change, he deserted. As a result, the payment of wages required by the act of 1840 was repealed in 1856. This act provided for wages to be paid to the seamen in case of wrecked or stranded ships, or ships that were condemned.

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In the case of shipwrecks, the act of 1792 required the consul to provide for the sailors with an allowance not exceeding twelve cents a day. All masters of vessels belonging to citizens of the United States were required under this act to transport the seamen to the United States without charge. However, the seaman was required to work for his passage, unless he was ill. By the act of 1803, the ships were allowed to charge ten dollars for the transportation of the seaman. This sum remained the legal rate until 1884 when it was doubled. The seaman's wage automatically stopped with a shipwreck. The laws of 1825 and 1851 concerning wrecks were enacted for the protection of the owners of the vessels.

The impressment of seamen had been one of the major problems in the colonial period, and one of the chief causes of the war of 1812. A law was enacted in 1813 to try to relieve the situation. This act prohibited the employment of any persons other than citizens or natives of the United States as a seaman on any of the public or private vessels of the United States. It allowed a deficiency of seamen to be made up in a foreign port by the employment of foreigners. An act of 1817 recognized the impossibility of enforcing the act of 1813, by refusing bounties to fishing vessels unless three-fourths of the crews were American citizens. It was difficult to find American seamen to man the ships, and the

law was often evaded with false lists and false oaths. These laws were ineffective and were repealed in 1864.

Provision was made in the act of 1790 for discipline, but it became necessary to prevent the abuse of this power on the part of the officers. An act of 1835 penalized by fine or imprisonment, or both, the beating, wounding or imprisoning of a member of a crew. The officers were also prohibited from withholding food or inflicting cruel or unusual punishment. This act abolished the death penalty for mutiny. It substituted a heavy fine and imprisonment of not more than ten years. In 1882, the imprisonment was reduced to one year. Imprisonment remained a basic penalty for desertion down to the passage of the White act in 1898. This act still retained a one-month term of imprisonment for desertion in a foreign port. Imprisonment for desertion was not entirely abolished until the twentieth century.

These laws for seamen reflected the growing humanitarian sentiment of the day, rather than actual practice. It only changed the character of corporal punishment, for while it prohibited the use of the cat, it authorized the use of the be-laying peir and the handspike. The ball and chain was

105 Ibid., pp. 249-50.


also in common use. Although legislation for seamen began with the first Congress, it did not advance greatly in the nineteenth century.

There was a great need for legislation for seamen, for they often worked thirty to forty hours at a stretch in port before the ship sailed. In sailing, the men began their sea watches without any intervening rest. Men who worked such long hours were too exhausted to attend to the safety of the ships or passengers. These abuses and hardships of the seamen aroused the humanitarians. It manifested itself first in the philanthropic societies, such as the Seaman's Friend Society. In addition to its missionary work, the Society established a Seaman's Savings Bank in 1829 and a Sailor's Home in 1841. In 1837 it began sending out sailor's libraries. These societies paved the way for legislation that was enacted in a later period when public opinion recognized the necessity of coercion by law.

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108 Metcalf, op. cit., p. 246.

109 Marion O. Cahill, Shorter Hours: A Study of the Movement Since the Civil War, p. 91.

110 Farnam, op. cit., p. 252, citing American Seaman's Friend, p. 5.
CHAPTER III
EXPANSION OF PROTECTIVE LEGISLATION

After 1890 new forces came into play, new problems pressed for solution, and new areas were reached. It can not be said that there was any definite change in direction; but it should be emphasized that there was a change in the volume and the scope of the legislation which began in the last decade of the nineteenth century. There was a decided change in the point of view of the public and of the courts. By the close of the nineteenth century a long step had been taken in the constitutionality of labor legislation. However, the legislation had not had easy sailing, for it had been a long tedious process.

The legal methods of determining the constitutionality of the law were still indefinite enough to let a particular judge in a particular case be the determining factor. These tests depended on the social and economic attitudes rather than legal training of the judges. Too, the laws that were passed were based on the theory that they were essential to the health and safety of the workers and the community at large.

Attitudes toward labor legislation have slowly changed until it has acquired a status of its own in measures for the economic well-being of the country. With the development of large-scale production, economic life has become regional, national and international. The development of public policy in recent years has been directed toward raising standards of wages, hours, working conditions and safeguarding the laborers' rights to organize for collective bargaining purposes. The subject of labor legislation has become so comprehensive that only a few of the more important fields will be developed in the following discussion: namely, the regulation of the supply of labor, the wage and hour laws, the regulation of the working conditions, and social insurance.

Regulation of the Supply of Labor

A great many laws, state and Federal, involves some limitation or restriction of the supply of labor. The purpose of the laws is to keep particular persons or groups of labor out of the labor market. The most significant ones are the ones that regulate or prohibit the employment of women and children, convicts, aliens, and unlicensed people in certain occupations.

Limitations on child labor is the oldest form of regulating the labor supply. By the close of the nineteenth century most of the states had enacted labor laws of some variety coupled with compulsory education. The new child labor movement began in the south where the cotton industry had developed at
rapid pace. In 1901 child labor laws were introduced in the leading industrial states. Although they did not prescribe the legal age of employment, the hours were restricted to sixty a week. Alabama established the first child labor committee in the United States.

While the local groups were organizing for action, the American Academy of Political and Social Science in its annual meeting in 1902 devoted a session to the discussion of the child labor problem. This new interest in child labor is reflected in the number of articles listed in the Poole's Index to Periodical Literature, during the period 1902-1906 as compared with the period 1897-1901. There was an increase of over sixty per cent between the two periods. Nevertheless, except for those dealing with the very young, the states did not prohibit child labor, even in hazardous and dangerous occupations, until the decade preceding the first world war. In the early part of the twentieth century, nearly every state adopted or extended child labor legislation.


3 The South in the Building of a Nation, The Southern Historical Publication Society, Vol. VI, p. 56.


The most far reaching laws now forbid factory or store work by children under sixteen, and mining and other particularly hazardous occupations by those under eighteen. States have also generally restricted work for children under sixteen to a number of out-of-school laws. Night work is generally forbidden; and some states have adopted minimum and maximum hour laws. Street trades are regulated in some cases, but agricultural child labor is untouched, except ineffective provisions for school attendance.

Virtually no constitutional questions are involved in the laws passed by states dealing with child labor. The courts have upheld the states in the position of a ward to his guardian. The child labor laws are undoubtedly affected by the predominating competition between children and adults. Yet, other elements such as health and education have played a larger role in influencing public opinion in favor of restrictions on the employment of children. Too, children are more liable to industrial accidents and more susceptible to occupational diseases.

The effectiveness of state legislation concerning child labor depends not only on the skill and force with which the laws are enforced, but also on the action of the other states. A state legislature hesitates in raising its standards, when its manufacturers are in direct competition with low-standard

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states. Under such circumstances, control by the Federal
government is needed.

Agitation for supplementary Federal legislation led to
the Owen-Keating Act of 1916. This law forbade the inter-
state transportation of goods on which children had worked,
or on which children under sixteen had worked more than eight
hours a day. After months of successful operation, this law
began to be challenged as an unconstitutional exercise of
Federal power over interstate commerce. In 1918 the act was
declared unconstitutional by the Supreme Court of the United
States.

Congress made a second attempt in 1919 to control child
labor by exercising its taxing power. It levied an excise
tax of ten per cent on the annual net profits of any estab-
ishment employing child labor in violation of the act of
1916. This act was declared unconstitutional in 1918 by
one dissenting vote. The court declared it was a regulatory
measure under the guise of taxation.

The seriousness of the problem led the advocates of child
labor reform to try another method of achieving Federal con-
trol by offering an amendment to the Constitution in 1924.
This amendment would give congress the power to limit, regulate,
and prohibit the labor of such persons under eighteen years

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8 Ibid., pp. 598-99.
of age. There were many opponents to the amendment. Most of the opposition was against the invasion of the Federal government into the state, the city and the home. By 1946, the ratification of the amendment had proceeded so slowly that only twenty-eight had given their approval.

Another temporary national regulation of child labor was achieved under the National Recovery Administration. Under the National Industrial Recovery Act of 1933, labor of children under sixteen was barred in certain specified types of industry. The codes under this act did not cover agriculture, domestic service, or the street trades, but it caused a decrease in the number of children employed in industry and commerce. When the codes were declared invalid in May 1935, the number of children leaving school was increased. During the last seven months of 1935 the number of children leaving school for work, in areas reporting to the Children's Bureau was fifty-five per cent above the total for the twelve months in 1934.

The Federal government successfully controlled child labor in public contracts. The Wash-Healey Act of 1936 provided that every contract with the Federal government shall include among the labor standards the statement that no boys

10 Ibid., p. 399.


under the age of sixteen or girls under the age of eighteen are to be employed. This measure reenacted some of the basic principles of the Recovery Act, but it serves only in those industries and establishments which have contractual relations with the Federal government.

By far the most significant step taken by the Federal government in the regulation of child labor was the passage of the Fair Labor Standards Act of 1938. The child labor provisions of this act substantially reenacted the provisions of the first Child Labor Law of 1916. In occupations other than mining and manufacturing, children between fourteen and sixteen may be granted permits to work, if the chief of the children's Bureau finds that such work is limited to periods which will not interfere with their education, and to conditions which will not impair their health or morals. The chief of the Children's Bureau is given the responsibility of making investigations and inspections regarding the employment of minors, and is also authorized to administer all provisions of the act. The attorney general is given power to bring action in the Federal courts to prosecute violations of oppressive child labor.

The appointment to the Supreme Court of men, whose views were known to be sympathetic to the purpose of the law caused

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13 Taylor, op. cit., p. 400.

14 The Wage and Hour Law, American Federation of Labor, p. 7.
the court to view such a use of the commerce power more tolerantly than the Supreme Court of 1918. The Fair Labor Standards Act does not cover agriculture and allied industries or street trades that do not produce goods which enter interstate commerce. Consequently, many working children are beyond the scope of the act. The answer seems to be in the ratification of the child labor amendment or in the adoption and enforcement by all states of uniform laws.

Laws for the legal protection of women developed almost contemporaneously with the movement for the protection of children. The legislation concerning the employment of women covers a wide variety of subjects, for women have often been singled out by legislatures for special treatment. For the most part, the justification of such laws rests on the belief that a woman is physically weaker than a man, and that her health must be protected against certain working conditions which might not affect a man adversely. As a result, laws have been enacted dealing with minimum wages, maximum hours and working conditions. Each of these will be discussed separately under other topics.

In a number of states, women have been prohibited from certain types of work which were regarded as hazardous, over strenuous, improper for women, or likely to result in the

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16 Ibid.
impairment of their morals. Probably the commonest prohibition is that on working in the mines. Others prohibit lifting heavy weights or constant standing.

Of the small number of states which have provided for rather extensive limitations on occupations for women, the Ohio law of 1919 is probably the most detailed. This statute prohibits many types of night work between specified hours. In addition, it lists in detail the numerous occupations that prohibit the employment of women. It also forbids employment in certain occupations that require frequent and repeated lifting of weights over twenty-five pounds. In the regulation of night work the United States is the most backward of modern industrial nations. Certain occupations present greater hazards than others, such as dust, which is more likely to affect women with pulmonary or bronchial troubles. Yet, attempts to prohibit labor or specified hours, when the hazards to the health and morals of women were most serious, have had to fight their way against the assumption of the courts that the adults were the best judge of their own

17 Mary E. Pidgeon, Women in Industry, p. 54.


20 Pidgeon, op. cit., p. 54.
interests. This was particularly true after woman suffrage.

Convict labor is another problem in regulating the labor supply. The Federal government and the states have had to face this problem for years. The Federal government realized the importance of convict labor as early as 1885. At this time, the Commission of Labor Statistics made a survey to determine the extent of the competition that existed in the open market between prison made goods and the products of free industry. Since that time studies have been made every ten years. Prisons do not have to meet the usual production costs; therefore, they are able to undersell any competitors. Too, work continues regardless of business fluctuations and is not dependent on the immediate market.

Both the employers and employees in private industries have expressed objections to certain aspects of convict labor and have tried to secure legislation limiting such labor. For years states have attempted to regulate the sale of convict goods, but legislation for this purpose was held invalid by the courts.

It was not until 1929 that congress enacted any legislation on this subject, when the Hawes-Cooper Act was passed.

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This act stripped prison made goods of their interstate character and subjected them to the laws of the state where they were offered for sale, irrespective of the place of origin. The law did not prohibit the interstate shipment of such prison made goods, but permitted a state to impose restrictions on such goods after they were transported into the state. The act was not to take effect until January 19, 1934, in order to provide time for the reorganization and readjustment of the several prison industries. This act was declared constitutional in 1936, after a number of protests had been made in 1934. The states immediately began to avail themselves of the opportunities afforded by this act, with the result that the majority of the states have legislation regulating the sale of prison made goods.

By an act passed by congress in 1932 no Federal government department could place orders for goods or services produced by convicts. The Federal Emergency Relief and Construction Act of 1932 required that convict labor should not be used on any contract. The same provision was included in the National Industrial Recovery Act of 1933. The Walsh-Healey Act of 1936 required that contracts between private companies and the United States Government in excess of $10,000 should include among its labor standards the provision that no prison labor could be used.

Ibid. 25
Taylor, op. cit., p. 474.
In 1935 congress took further steps toward restricting the shipping for sale of prison made goods through the passage of the Ashurst-Sumners Act. The law strengthened the Hawes-Cooper Act and also supplemented state prison laws. A maximum penalty of $1,000 was imposed on any person shipping prison made goods into a state whose laws forbade the sale on the open market of such goods. It also provided that prison made goods must be marked showing the name and address of the shipper and the consignee, the contents, and the name of the penal institution from which the goods were shipped. In case of infractions of the law, transporting companies are held responsible. By this law an easier and more certain check can be made than under the old method of checking thousands of retailers. This act has been questioned, but the Supreme Court declared it constitutional in 1937.

The states have made use of various systems of prison labor: namely, the contract, state-use, public-works-and-ways, lease, state-account, and piece-price system. The lease system has been discredited by state and Federal prisons. The contract, piece-price and state-account encourage competition. Consequently, free labor has objected to the three systems. Organized labor has been active in the development of the state-use system, which is at present used in thirty-six states.


Alien labor has been another problem of regulating the labor supply. Discrimination against Americans from other cities and other states are a recent development. This attitude developed especially during the depression. The great increase of employment led to the feeling that, if jobs were available, they should be given to local people. Much older is the discrimination against aliens. Anti-alien laws have taken various forms. The western states barred Japanese from owning lands; other states have barred aliens from engaging in certain types of business. The attitude of the courts has been that where aliens are forbidden to engage in private employment, it is unconstitutional; but laws that discriminate against aliens in public employment are constitutional. The Federal government has enacted laws to exclude Chinese coolies. In 1885 and 1886 acts were passed which prohibited the importation of contract laborers. Each successive act has been more stringent than its predecessors. More recent legislation has been the literacy Test Act of 1917, and the quota Acts of 1921 and 1924. The latter laws have safeguarded the worker by a type of restriction on supply not unlike the tariff, for these laws decreased labor competition. Too, they are flexible enough to decrease the labor supply as the need arises.


by refusing entrance permits to persons who are likely to become public charges. This method proved effective during the past depression.

Another method of control of the labor supply is the restriction on entrance into certain businesses, trades and professions. Legislatures have undertaken to set certain standards for would-be-entrants into different fields of work. One may not practice medicine, dentistry, or law until he is granted a license. Teachers have to meet certain educational requirements in the different states. Too, one may not engage in most public utility businesses as railroad, telegraph or telephone until the appropriate governmental agency grants the right. In many states, one may not act as a dealer or broker without a license. Similar requirements have been imposed by the Security Exchange Act. In the same way, various states have provided that a person may not work as a stationary engineer, as a chauffeur, as a plumber or as a barber until he receives a license. Before a license is granted, the applicant must furnish proof of his competence.

The reason for the imposition of the requirement lies in the desire of the government to protect the public. However, some of the laws are enacted for the protection of

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Maurice R. Davis, World Immigration, pp. 308-9, 370-76.

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vested interests by keeping down the number of competitors. The courts have been willing to recognize the public's interest in the different trades and professions, and to uphold the constitutionality of the laws.

Restriction of Hours

Not only has the supply of labor been limited, but the length of the working day has been restricted. Legislation restricting the hours of work is one of the oldest categories in the field of labor legislation. As far back as 1791, journeymen and carpenters of Philadelphia adopted a resolution declaring a day's work would commence at six o'clock in the morning and end at six o'clock in the evening. However, the men did not succeed in securing legislation for the reduction of hours in that period. Limitations on children's hours are the oldest examples of hour legislation, which dates back to the Massachusetts statute of 1842. Limitations of women's working hours followed the movement to restrict children's hours; the first law being passed in 1847 in New Hampshire.

All of the earlier laws were of similar nature and not very effective. If the working period was shortened, the pay was reduced. These laws generally allowed employer and employees to "contract out" by mutual agreement. The

32 Raushenbush and Stein, op. cit., pp. 419-20.
33 S. Howard Patterson, Social Aspects of Industry, p. 222.
34 Fainsod and Gordon, op. cit., p. 140.
chief motive for the restriction on the hours of women has been the desire to protect their health and safety. Closely related to the health motives has been the desire to protect the woman's morals, which was alleged to be endangered by long working hours. The number of employments covered by hour legislation has developed largely on what occupations public opinion considers dangerous to the health of women. The groups most commonly covered by law are workers in manufacturing, mechanical and mercantile establishments. Women workers in domestic service, agriculture or the professions have rarely been covered.

Although the legislation became more effective in the twentieth century, it was greatly affected and threatened by difference of opinion among the state courts as to its constitutionality. "Opposition to the ten-hour movement was much more formidable than the opposition presented later to the eight-hour movement."

The position of legislation as to woman's working hours was not secure until the decision of the Supreme Court in 1906, which upheld the Oregon ten-hour law for women in mechanical establishments, factories and laundries. The striking


feature of this law was that the briefs prepared by Lewis D. Brandeis were not concerned with points of law, but with exhaustive extracts from authorities. Brandeis based his case almost entirely on the testimonies of official bodies, doctors, sociologists and economists as to the effects of a long working day on women. The constitutionality of limitations on women's working hours is now established after many long years of struggle in the courts.

Laws have held that the state has the right to limit hours through its police powers. Such legislation has become general since the favorable decision of the Supreme Court in the Oregon ten-hour law. At the beginning of 1946, there were only four states which had failed to provide some hour law for women. Too, in 1946 all states but six had hour laws covering many occupations not covered by the Fair Labor Standards Act. There were wide differences in the amount of protection afforded by the states. Some states only prohibited night work for women, while others were more strict in limiting the hours.

California had strict provisions. The act provided for an eight hour day in most occupations, a forty-eight-hour week,


and one-day-rest-in-seven. The law was to be enforced by the Industrial Welfare Commission. California also prohibits night work in certain occupations. The states which set a shorter work week are usually the states which cover the most industries.

Hour laws for men have been slower in development than hour laws for women and children. This was due partly to the doubtful attitude of the courts toward restriction of hours for women, and partly due to the persistent opposition of organized labor to legislation for men. In recent years organized labor has had a different attitude toward legislation. Hour laws for men began with government employees and gradually broadened into widening circles of public concern.

The right of the state to fix the hours of its own employees has never been questioned. This right extends to the employees of private contractors doing work for the state government as was settled by a court decision in 1903.

In the field of transportation, the state has jurisdiction over intrastate traffic. The purpose of hour laws over transportation is not only to protect the health and safety of the workers themselves, but also to protect the lives and property of passengers and shippers. The majority of states

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42 Ibid., p. 840.

43 Watkins, op. cit., p. 610.
have a maximum limit for a day's work for those handling
trains to be followed by a specific number of hours of rest.
Laws have also been passed limiting the hours of motormen
and conductors on street railways.

Most mining states have recognized the hazards of mining
by limiting men's hours to eight hours a day. The metal min-
ing states have been more inclusive than the coal mining
states. States have made little progress in regulating the
hours in factories and workshops, for only about a dozen states
have secured legislation covering this type of work. Hour
regulations in other occupations have been faced with the con-
stant threat of judicial invalidation. If particular indus-
tries are set aside for special legislation, it must be shown
that they offer unusual hazards to health.

Lack of uniformity in state legislation has hindered
the effectiveness of restrictions on hours. This brought
about pressure for Federal legislation. The first attempt
of the Federal government to regulate hours was the executive
order of President Van Buren in 1840, as has been mentioned,
concerning a ten-hour day of employees in the navy yards.

44 Daugherty, op. cit., p. 537.

45 Commons and Andrews, op. cit., p. 273.

46 Fainsod and Gordon, op. cit., p. 141.

47 Watkins, op. cit., p. 610.
The eight-hour day was adopted for government employees and workers on public contracts in 1869, although its effectiveness was limited. In 1892 another act provided for penalties for violations. The act of 1912 provided that an eight-hour day be inserted in all contracts for laborers and mechanics making supplies for the Federal government. Exceptions were made in transportation by land and water and in cases of emergencies, such as fire and floods, which endangered lives and property. Overtime was prohibited; however, this provision was removed during the first world war when overtime was allowed to meet the emergency.

Civil employees have always been favored in the restriction of hours by the Federal government. Effective restriction of hours was secured for certain groups of post office employees as early as 1888. By the act of 1912, the eight hour law was extended to clerks in first and second class post offices. Today all government employees work strictly on an eight-hour schedule.

In transportation, the Federal government has the right to regulate hours of workers engaged in interstate and foreign commerce. Hours of workers engaged in transportation has been

48 Commons and Andrews, op. cit., p. 283.
49 Watkins, op. cit., p. 610.
50 Furniss, op. cit., p. 183.
51 Daugherty, op. cit., p. 836.
generally limited by law, in order to protect travelers, freight, and the employees themselves from unusual fatigue. A Federal act of 1907 limited continuous hours by an employee on railroad operation to sixteen hours, to be followed by at least ten hours of rest. Under the threat of an imminent strike, and at the urgent demand of President Wilson, congress passed the Adamson Law in 1916, giving the railway employees the basic eight hour day. Overtime compensation was allowed. Seamen's hours were legally limited in 1913; in 1915 their hours were reduced to nine hours a day while in port, except in emergencies. In 1938 they were lowered to eight hours a day both at sea and in harbor.

Recent Federal legislation of hours has stressed not only the health and safety of the employees, but also the putting of more men to work. Before the National Industrial Recovery Act of 1933, men worked excessive hours in businesses. For example, in some chain organizations, clerks worked up to eighty hours a week. They not only worked during the regular work period, but after hours to put away stock and prepare for the next day's business. Sunday work of that character was frequent.

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52 Fainsod and Gordon, op. cit., p. 140.
54 Feldman, op. cit., pp. 90-93.
In 1933 the National Industrial Recovery Act was passed which contained provisions for a maximum working week. The maximum was usually a forty-hour week, but in a number of cases, the maximum was below forty hours. All of the codes of this act provided for a reduction of hours. The law had more effect in shortening hours than any other single law in the United States, for it covered even manufacturing industries. After this act was declared unconstitutional, employers gradually increased the hours and decreased the wages.

The Walsh-Healey Act of 1936 was passed to hold some of the gains of the National Recovery Act. This act set a maximum hour limit of forty-four hours a week and eight hours a day. It appears to have been accepted by most employers including iron and steel corporations making war materials and other equipment.

The Fair Labor Standards Act of 1938 provided for a forty-four hour week for the first year, decreasing to a forty hour week by 1940. This act is applicable to workers engaged in interstate commerce or in the production of goods for interstate commerce. Congress spent nearly two years of study and debate on this act before it was passed. It also had a wealth

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56 Daugherty, op. cit., p. 832.
of government experience with hour regulation from the National Recovery Act and the Walsh-Healey Act. In five terms of court the Supreme Court of the United States has determined thirty-one Fair Labor Standard Act cases. After the first two cases, the constitutionality of the main features of the act was established.

Regulation of Wages

The question of wages is another fundamental labor problem, for a man's life and that of his family is largely dependent upon the amount he earns. Labor laws in the United States, with a few notable exceptions, have not set the amount of wages. There are two distinct types of wage laws that have been passed in the United States. One of these deals with the regulation of rates; the other deals with the form, time, basis, and deductions from wages. The latter type of laws have been on the statute books before minimum wages were passed. Too, the constitutionality of these laws had been affirmed before similar recognition was given minimum wage laws. "Apparently, both legislatures and courts have been more willing to protect the worker in the collection of his wages than in the determination of the rate.

57 Fair Labor Standards Act, U. S. Department of Labor, p. 3.

58 E. Merrick Dodd, The Supreme Court and Organized Labor, p. 107.

59 Haushenbush and Stein, op. cit., p. 424.
The first minimum wage law in the United States was passed in Massachusetts in 1912. This was the beginning of a long experimental period in America. A burst of sentiment for wage regulation had grown out of the report of the survey made by the Federal government between 1907 and 1910 on woman and child labor in the United States. The rates and earnings disclosed in the survey were astonishingly low in the majority of cases. This aroused the interest of Michigan and Massachusetts, and they made surveys of their own states. As a result, Massachusetts passed the minimum wage law in 1912.

In 1917 the Supreme Court of the United States upheld the constitutionality of a compulsory minimum wage law applying to women and children, which had received a favorable decision by the Supreme Court of Oregon. Several state courts rendered decisions favorable to the constitutionality of a minimum wage law for women and children. By 1920, thirteen states and the District of Columbia had enacted minimum wage legislation. Despite all the evidence gathered on the evil effects of low wages on women and children, the Supreme Court in 1923, declared the minimum wage law


61 Fainsod and Gordon, op. cit., p. 142.

62 Furniss, op. cit., p. 152.
of the District of Columbia unconstitutional. In the majority decision, it was argued that the law constituted an infringement of the freedom of contract. Too, it also stated that the constitutional amendment giving the women the right to vote equalized the bargaining power of men and women. The difference in the changed attitude of the courts was caused by a shift in the members of the Supreme Court. After the decision on minimum wages, the movement came to a halt, but was revived by the depression.

With the breakdown of the general wage standards after 1931, together with widespread increase in industrial homework and its evils of sweatshop conditions, efforts were stimulated to set minimum wages. While the National Industrial Recovery Act was in force, New York cleverly worded a law in order to evade some of the earlier decisions against minimum wage laws. However, after the Federal act was declared unconstitutional, the Supreme Court declared the New York law unconstitutional. By several other unfavorable decisions, the efforts of the states were unavailing. In 1937 the shift of a single judge altered the entire outlook. The way was clear now for state action, and by 1938, a total of twenty-four states had minimum wage legislation in force. Oklahoma not only enacted a minimum wage law for women and children, but also for men. Although minimum wage legislation is now


64 Daugherty, op. cit., pp. 829-30.
declared constitutional, women's wages are inadequate. Their wages are much below the remuneration of men, even when the work done is of a similar nature. Pennsylvania enacted a law July 8, 1947, requiring equal pay for women doing equal work with men.

The states have been more successful in regulating minimum wages on public works construction. About three-fourths of the states have passed laws governing the rates on such work. Some laws set a minimum rate prevailing in the community in which the work is to be done.

Although there has never been a question as to the right of the state to fix wages for the people it employs directly, laws which have applied to municipalities and to contractors on public works have occasionally been challenged. In a number of early cases, various state courts invalidated laws on the grounds that the state could not interfere with contracts made by cities, for cities were considered as having the same status as private corporations. Such views have changed to the attitudes that states may set wage rates or provide for the payment of prevailing wages, regardless of whether the work is done for the cities or for the states.

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65 Furniss, op. cit., p. 190.


The Federal government was projected into the matter of minimum wage legislation by the depression. Even before the 1932 election, it was suggested that Federal minimum wage laws might prevent the continuance of deflation and increase the consumer's purchasing power. The Roosevelt administration was committed to this view, and within a few months after President Roosevelt came into office, the Federal minimum wage became a reality. With the passage of the National Industrial Recovery Act in 1933, the minimum wage ranged from forty cents an hour to higher wages for skilled workers. Too, within less than two years, the regulation of wages had surpassed similar legislation in England that had been in force for years.

After the National Recovery Act was declared unconstitutional, the Federal government was barred from regulation of wages in private industry. However, this did not prevent the government from regulating wages on public contracts. Several laws have been passed by congress in these fields. The most important have been the Bacon-Davis Act 1932, amended in 1935 and 1940, and the Walsh-Healey Act of 1936. These laws intended to compel the payment of prevailing rates of wages on public construction. Other provisions authorized the government to withhold the wages of contractors if they failed to observe the wage provisions, until they refunded

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69 Ibid.
all the wages that they had held back from the workers they had employed.

A new opportunity for Federal legislation on minimum wages was presented by a number of liberal decisions of the Supreme Court in 1937. In President Roosevelt’s annual message to congress, he urged the passage of a wage and hour law. In accordance with his request, Congress passed the Fair Labor Standards Act of 1938. This act seemed to clear the way for action on wages for workers engaged in the production of goods entering interstate commerce. However, the primary purpose of this law was to make it possible for more workers to be added to the payroll.

Long before consideration was given legislation on wage laws for industry, the question had arisen whether congress could in an emergency fix wages for the railroad industry. The Supreme Court was faced with the question of whether the power of control over interstate commerce could be extended to wages. As has been previously mentioned, the railroad employees were threatening to strike in 1916, which presented an opportunity for the Federal government to test its power over wages. President Wilson suggested an eight-hour day with the same pay as with a ten-hour day. Congress in response to his suggestion passed the Adamson Act of 1916, which provided

70 Raushenbush and Stein, op. cit., pp. 452-53.

for a basic eight-hour day, and overtime was allowed. Since the railway employees were to receive the same pay for eight hours as they had received for ten hours, in reality it was a wage law. This act was challenged by the railroads, but was declared constitutional by the Supreme Court.

A wholly different type of wage legislation is that relating to the payment of wages. America has made considerable progress in enacting legislation for the protection of the wages of the worker. Such laws have intended to protect the workers against employers who try to make unjustified deductions from wages, or who unduly delay the time of payment or pay the workers in scrip. To prevent this situation, many states have provided for the payment of wages in all cash. The decision of the Supreme Court of the United States has always affirmed the power of the state to bar scrip payments.

Most states have passed laws to provide for the payment of wages at certain intervals. The most common time of payment is semi-monthly or weekly payment. Too, a law may provide that discharged workers must receive at the time of discharge, all the money due them. Some state courts have ruled these laws unconstitutional, but laws requiring the payment of wages at certain intervals have been upheld by the Supreme Court of the United States.

73 Watkins, op. cit., p. 611.
Too, some states require the payment of wages to be made on
the premises, rather than in some place where the wages might be
squandered. Another type of wage law forbids employers to make
certain deductions from their employees' wages. The purpose of
this type of law is to prevent unjustified deductions from the
wages of the workers. In recent years laws have been passed to
prevent the employer from paying the worker less than a contract
rate or receive back from the worker part of the wage paid.

One of the oldest types of wage payment legislation is the
mechanics' lien law. The first mechanics' lien law was passed
in 1791. The history of this law was discussed in the preceding chapter. In this type of law the wage earner and mechanic are made preferred creditors. All debts due for labor rendered
or materials furnished must be satisfied in full, next after
the taxes and government claims in the settlement of estates
of deceased persons, bankrupts and similar persons and condi-
tions. Today this applies to railroads, public works, mines,
saw-milling and many other occupations.

A special type of wage law is that which has been passed
by a number of states and applies only to coal miners. This
type known as the "anti-screen" law, provides that the coal
shall be weighed before passing through a screen where payment


75 Adams and Sumner, op. cit., p. 476.

76 Taylor, op. cit., p. 196.
is based on the amount of coal mined. When the coal is passed over a screen, the slate, other impurities, and small pieces of coal are removed. Therefore, if the coal is not weighed until after screening, the miner is not paid for the total amount mined.

Regulation of Working Conditions

In addition to the protective legislation previously mentioned, labor legislation has attempted to provide the worker with safe and healthy conditions of work. In the early days when manufacturing was carried on in the home or small workshop, safety and health was a minor problem. However, when the factory system developed, with hundreds or thousands under a single roof of an industrial plant, safety and health became a serious problem. The workers were subjected to speeding machinery as well as disease. As a result, society began to realize the necessity of legislative control.

Many of the earlier reforms came through emotional response to the inhuman and unsanitary conditions. The courts have favored laws on working conditions more than some other laws. They have acknowledged that it is the state's police power to compel the employer to provide for

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77 Raushenbush and Stein, op. cit., p. 477.

78 Taylor, op. cit., p. 276.

79 Solomon Blum, Labor Economics, pp. 55-56.
the health and safety of his employees. The range of this legislation dealing with health and safety in industry is broad. A great part of it has covered hazardous industries.

Industrial safety laws in the United States frequently deal with conditions in factories and workshops. The first American law requiring factory safeguards was passed in Massachusetts in 1877. Now practically all states have factory and workshop acts prescribing minimum conditions of safety. The laws usually deal with the safeguarding of machinery, mechanism for transmitting power, such as belting, shafting, gearing, as well as, active parts of machinery, like saws, planes, mangles and emery wheels.

Every state where mining is an important industry has adopted legislation for the safety of the men who carry on this hazardous work. In many cases the mining codes are the lengthiest, the most detailed, and the most complex of the labor laws. Mining laws also provide for regular inspection, adequate means of escape in case of emergencies, sufficient ventilation by unobstructed air channels, proper methods of drilling and blasting, safe cages for lowering and lifting the workers, protection from machinery, safety lamps and numerous other laws. In 1910, a Federal Bureau of Mines was established which makes studies, publishes reports, and maintains mine rescue stations and cars.

However, it does not have the power to enforce safety legislation.

There are many laws which exclude women and children from certain kinds of industries that are considered unhealthy and unsafe. Wisconsin probably has the widest coverage for the act of 1938 barred women from any occupation hazardous to their health or welfare. They are excluded in some states from industries that manufacture poisonous substances. The exclusion of poisonous substance is best illustrated by the banishment of phosphorous from the match industry. However, the United States does not prohibit the use of white lead or lead sulphate in paints, color, or cements. Restriction on the work of men in hazardous industries applies only to men who, by physical examination, are found to be unable to withstand the hazards. Food and drink are not allowed where poisonous substances are used. Factories must be ventilated for removal of dust and fumes. A few states require disinfection of hides, hair, bristles and clothing for protection against anthrax.

Transportation is safeguarded by special legal regulations. Legislation is in force which intends to reduce to

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81 Ibid., pp. 74-75.

82 Daugherty, op. cit., p. 840.

83 Taylor, op. cit., p. 277.

to a minimum the hazards to health life resulting from employment on construction of bridges, tunnels and subways. Some states have enacted legislation regulating hours of labor for persons working under compressed air.

Railroad employees are protected by laws requiring such devices as automatic couples, powerful brakes, ladders, running boards, blocking frogs, switches, proper clearance of tracks, and other safeguards. The most significant Federal laws are: The Federal Safety Appliance Act 1898; the Federal Employees Liability Act 1906; the Hours and Service Act 1907; the Ash Pan Act 1908; and the Accidents and Report Act 1910; as well as the Boiler Inspection Act 1911. Recently much attention has been given to full crew legislation, on the ground that the trains are continually being made longer and heavier without proportionate increases in crews. The railroads have fought this, but full crew legislation has been enacted by more than twenty states. Similar legislation for health and life is provided in the Seaman's Acts of 1913, 1915, and 1936.

Industrial homework is another serious labor problem and it has persisted in this country in spite of all efforts

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to control it. It is estimated that 1,000,000 women and
children are engaged in this work at wages from two to
ten cents an hour. Child labor is common, with some
studies disclosing children working as young as four years.
Old men are also represented in this type of work. Foreign-
born workers make up a large part of all those engaged in
home-work.

Although there have been many sweated industries such
as the manufacture of cigars and artificial flowers, the
evil exists most conspicuously in the clothing industry.
Material cut for garments was farmed out to competing
contractors. The contractor in turn made individual wage
agreements with his workers, often taking advantage of
misfortunes and ignorance. Too, the condition of work under
the sweating system is often dangerous to the workers,
consumers, and the general public. This type of work re-
presents long hours and irregular employment.

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(January 30, 1935.), 333-34.


91 Paterson, op. cit., p. 337.

92 Yoder, op. cit., p. 387.

Limited attempts to regulate this work by law were made as early as the nineteenth century. As a whole the laws were ineffective, for they failed to meet the abuses of long hours, low wages, the employment of very young children, and unfair competition with factories. Under the National Industrial Recovery Act of 1933, great gains were made for eight-six codes prohibited the giving out of industrial homework. After these codes were passed, interest in this type of legislation grew rapidly.

Many states have passed laws since 1935 attempting to regulate or prohibit homework. Some of the laws provide for complete prohibition, establish minimum wage, refuse to give minors work certificates, establish the same number of hours as for the manufacturers, and applied compensation and unemployment laws to the industrial workers. Recent meetings of state labor law administrators have urged prompt action by the states and the Federal government to abolish the industrial home-work system.

Another problem related to the regulation of working conditions is rest periods. Only slight attention has been given this problem. A worker needs a day of rest to maintain his health and efficiency. Nevertheless, under modern conditions, much work must continue seven days a week. For

95 Daugherty, op. cit., p. 844.
this reason, the old time Sunday laws designed to protect the Sabbath have failed to meet the conditions. Legislation has been passed requiring a one-day-rest-in-seven, which has been adopted in practically all the states. In some states women and children have been limited to six days a week. The Federal government has been generous with its employees in providing weekly rests as well as Saturday half holidays in certain classes of employees. In addition, all Federal and state employees have all legal holidays. Only a few states have laws to prohibit private employers from using wage earners on legal holidays, and they are usually poorly enforced. Investigations indicate that without undue hardship to industry, employees formerly employed seven days a week can be given a rest day. The courts have been universally favorable to the old time Sunday laws, and the highest court of New York rendered a favorable decision on the one-day-rest-in-seven law.

Social Insurance

Among the various developments in the field of labor legislation in recent years, none is more important than the


99 Daugherty, op. cit., p. 839.

development of social insurance. One branch of social insurance has been concerned with the laborer when he is forced to quit working, temporarily or permanently. Governmental action intended to protect the worker from complete loss of income has included laws dealing with accident and disease, unemployment, and old age.

The first to receive attention from the government was industrial accidents. Accidents grew increasingly severe in the nineteenth century as powerful machinery was added to industry. Direct safety legislation was stimulated by severe accidents; however, no preventive measures could be universally successful. Consequently, society was faced with the problem of supporting temporarily or permanently disabled workers and their dependents. Common law rules made it difficult for an injured worker to recover damages from his employer. Under the doctrine of "assumption of risk," employers escaped responsibility, if it could be shown that the worker was aware of the risks when taking a job. If the worker were in any degree responsible for the accident, the employer was excused of all liability by the doctrine of "contributory negligence." Too, the employer was not responsible for an accident due to the negligence of a fellow worker. Gradually, the responsibility was shifted to the employer by the states. Even with this aid

101 Patterson, op. cit., p. 258.
the economically weak worker often found it difficult to recover damages through ordinary processes of the court.

In the early part of the twentieth century, states began to enact compulsory accident insurance laws, which were contested by the employers. As successive legislatures enacted these laws, the battle was carried to the courts. In a series of Supreme Court decisions between 1915 and 1917, the validity was established on the ground that industrial accidents affected the common welfare of the public. Since this time, compulsory accident insurance has become the most highly developed protective labor legislation in the United States. Forty-six states have decided that the employer shall help pay the expenses of the injured worker. Acceptance of this machinery is optional with the employer, but his alternative is the possibility of a large adverse judgment under an employers' liability law depriving him of common law principles.

In recent years, special attention has been given to the inclusion of occupational diseases in the compensation laws. By 1941 twenty-three states had included occupational diseases in their compensation laws, but with great variations. Insurance, funds are built by employer's

102 Adams and Sumner, op. cit., pp. 478-80.

103 Fainsod and Gordon, op. cit., pp. 144-45.

104 Ibid.
premiums, usually in private insurance companies; but in some cases, it is directly operated by these states. Premium reductions are usually given for good accident records. It was hoped and expected that this reduction would induce employers to be more interested in accident prevention. Some excellent work has been done, but in many plants, production is carried on in the same manner. The insurance premiums are charged against cost of production as a necessary and unavoidable expense. 105

In addition to the state compensation laws, the Federal government has passed three workmen's compensation laws. The act of 1916 provided workmen's compensation benefits for civil employees of the United States who might be injured while performing official duties. The other two acts of 1927 and 1928 specify the compensation that is to be paid to harbor workers privately employed in the District of Columbia in case of industrial accidents. These acts are administered by the United States Employee's Commission, which was created as an independent establishment when the first act was passed. 106 There are many workmen not covered by such workmen's compensation laws, such as agricultural, domestic service and casual workers. Too, there are workers in industries of special importance that are not covered.


Taken as a whole, about eighty per cent of all the workers in the United States are given protection under some kind of compensation laws.

Prevention would be the best solution to industrial accidents, but complete prevention is apparently unattainable. In its absence, there is a need not only for compensation, but also a need for rehabilitation. The work of rehabilitation is carried on the states in cooperation with the Federal government, by authority of the act of 1920. The states are granted Federal aid on the basis of population. Each state supplies an amount equal to that provided by the Federal government. The Federal Social Security Act of 1935 recognized the importance of this work by increasing approximately $2,000,000 a year to be used for the purpose of rehabilitation of the disabled.

Social insurance legislation expanded into many fields under the Social Security Act of 1935. Viewed as a whole, social security attempts to provide for wage earners and the underprivileged throughout the nation. The Social Security Act of 1935 covers unemployment compensation, old age and survivors insurance, and public assistance grants to the states. The last named includes aid for the needy aged

107 Gemmill and Blodgett, op. cit., p. 95.

and blind, for dependent children, and for the crippled and disabled. There has also been assistance for maternal and child health services, for child welfare, for rehabilitation of the disabled in body and mind, and for public health. Although some of the methods adopted for carrying out this program have been criticized, especially those for financing it, public opinion has generally approved social security.

The passage of the Social Security Act marked the first attempt of the people of the United States to provide unemployment insurance on a nation-wide basis. However, Wisconsin and one or two other states had already adopted unemployment insurance. The unemployment compensation scheme was more complicated than some of the other provisions of the Social Security Act. The unemployment compensation was to be undertaken by the states with Federal supervisors in charge. The Federal government placed a tax upon all pay rolls of all covered employers with eight or more employees. The tax rate was fixed then at one per cent rising to three per cent. Ninety per cent of the revenue went to the states, if they adopted insurance programs which met Federal specifications. The states were allowed to choose the type of compensation insurance they preferred for their state.


The details of the various plans varied, but benefits to laid-off workers were usually based upon the length of time they had been employed, and the amount of wages they had received. By 1940 all of the states with the exception of New York and Pennsylvania had complied with the Federal specifications and the plan went into immediate effect. Pennsylvania adopted a benefit wage plan in 1944; New York adopted a pay roll variation plan in 1945. The unemployment compensation was declared valid on the grounds that the taxation provision of the Social Security Act was for a public purpose and for the public good.

The general administration of the unemployment features of the act was confided to the Social Security Board. Within the Department of Labor, this Board is made up of three members who comprise the governing body of the programs of the Social Security Act. The members are appointed by the President and confirmed or rejected by the Senate. All three members may not be of the same political party. They are appointed for six years to be staggered over two years intervals, and they receive a salary of $10,000 a year. The Board is

112 Fainsod and Gordon, op. cit., p. 791.


114 Daugherty, op. cit., p. 775.

subdivided into a number of bureaus: Bureau of Old-Age and Survivors Insurance, Bureau of Employment Security, Bureau of Public Assistance, and a number of Service Bureaus. The Bureau of Employment Security is the agency within the Social Security Board that administers the employment compensation and employment service functions.

The Bureau of Employment Security promotes and develops a national system of employment offices and assists in establishing and maintaining systems in the states. It makes grants to the states as provided by the Social Security Act and the Wagner-Peyser Act. It also furnishes the states with information of a valuable nature in operating the system. The Bureau also maintains a system for clearing labor between the states. The federal-state system of unemployment compensation has produced many complications. The administration is divided among fifty-three state and Federal agencies. In addition there is a separate system of unemployment compensation for railroad employees. This is operated by the Railroad Retirement Board. The act provides for a pooled fund system of unemployment insurance for railway employees.

If the worker escapes or manages to survive unemployment, industrial injury and loss of wages through illness, he is

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Fainsod and Gordon, op. cit., p. 792.
often confronted with the problem of old age. The prospect of living to a "ripe old age" is not too alluring to many people of the United States, for one-third of the wage earners receive only from $500 to $1000 a year. Before the Social Security Act of 1935, the Federal government and many of the states had tried to provide for the aged by enacting contributory old-age aid and invalidity insurance. After a specified number of years of service, the workers were entitled to a pension, depending on the length of service and previous pay.

Postal employees and Federal workers in the District of Columbia were insured in this way by the Acts of 1920, 1926 and 1936. The Social Security Act provides for a system of annuities to be paid to the insured over sixty-five years of age. The permanent plan provided for the building up of an insurance trust fund in the Federal Treasury to which both the employers as well as employees were to make annual contributions. They were to be on an equal basis, starting at one per cent of the employee's wages in each case, gradually rising to three per cent after 1948. By different amendments, the contribution rate has remained at one per cent, and the amendment of 1947 froze this rate there until 1950.

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117 Gemmill and Blodgett, _op. cit._, p. 108.


The old age insurance plan was subjected to bitter criticism on many sides and from different directions. As a result, congress initiated action in 1937 to revise the program. After much work by special committees, it was revised in 1939 in a number of important aspects. The coverage was extended to the maritime service, to employees of banks which were members of the Federal Reserve System and to the Federal Building and Loan Associations. The date of the first monthly payment was changed from 1942 to 1940. The eligibility requirements for benefits were modified in the direction of leniency. The average benefit payments of the earlier years was increased. The amendment extends to the wives and children, and also to survivorship benefits to widows and dependents. The average monthly payments by the amendment runs from $20.60 to 84.00.

The Bureau of Old Age and Survivors insurance is responsible for administering the old age and survivor's insurance. The Bureau compiles claims for these benefits and for the lump sum payments, which are payable to the estates of those who died prior to January 1, 1940. The Bureau provides advice to workers and employers as to their rights and obligations under the old age and survivors insurance program. Some of the regular departments of the Federal government are involved in the administration of the various phases of the

120 Painsod and Gordon, op. cit., pp. 790-83.
social security program. The Bureau of Internal Revenue is charged with the collection of the Federal taxes imposed by the Social Security Act. It also invests the funds of the old age reserve account. The Post Office Department assigned social security numbers during 1936 and 1937.

Provisions for old-age insurance for railway employees was made by separate legislation from the Social Security Act of 1935. The first Railroad Act was passed in 1934, but it was declared unconstitutional. The second act was passed in 1935 and was superseded by the Railroad Act of 1937. Like the old-age insurance plan of the Social Security Act, this act provides for taxes on the employers and employees and benefits based on the previous earnings of the worker. The act provides for old-age and survivors annuities, but does not make provisions for dependents of retired workers. It does provide for permanent total disability. Both eligibility requirements and benefit payments are considerably more liberal than those of the Social Security Act.

The Social Security Act of 1935 made provisions for old age assistance designed to protect needy persons who were already old or would become old in the future without the opportunity


123 Fainsod and Gordon, op. cit., p. 777.
to benefit by the insurance program. This act provided for a system of matched grants. The Federal contribution was limited to $15 a month for each individual. State plans for old age assistance, in order to be approved, had to provide for payment of assistance to persons sixty-five or above and meet other conditions prescribed by the act. The states were quick to qualify for by 1938 all the states and territories eligible for grants were administering old age assistance. The Social Security Act amendments of 1939 raised the Federal contribution to $20 a month, which made it possible for states to provide pensions for the aged as much as $40 a month by paying half of the cost. Thus far the wealthier states have been the chief beneficiaries, and the poorer states have received inadequate assistance. As of September, 1940, the state disparities in all old age assistance payments were more marked than in the earlier years, varying from $7.18 in Arkansas to $37.31 in California.

Of the three types of public assistance sponsored by the Social Security Board, aid to the blind has been the least important in terms of monetary outlays. Under the act of 1935, the Board undertook to meet the cost of aid made available to the blind under approved state plans up to a federal-state total of $30 a month. In 1939 the total increased to $40 a month. As of September, 1947, the states varied in their payments from $18.47 in Kentucky to $62.92 in California.

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124 Ibid., p. 775.

Aid to dependent children has been given on a more extensive scale. Under the Act of 1935, federal grants for this purpose was limited to one-third of a Federal-state total of $18 for the first child and $12 for each additional child in the same family. Under the amendment of 1939, the federal contribution was increased to one-half; and the age limit was raised to eighteen years provided the child attended school. As of September, 1947, the states varied in their payments from $35.25 in Kentucky to $105.34 in Washington.

The Bureau of Public Assistance has the largest task of administration. It administers provisions for grants by the Federal government for old age assistance, dependent children, and aid to the needy blind. It recommends the Federal grants to be certified by the Board. The Bureau also investigates the operations of state plans in order to see if they meet the specified requirements of the Social Security Act. It is also responsible for collecting data on public assistance. It gives the states assistance in initiating or amending state laws and public assistance plans. The Bureau also acts as a clearing house for information gathered from the different states in the operation of their own plans.

Although some groups hoped that the Social Security Act would include a health insurance plan, no such will was provided.

126
Ibid.

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Instead, there was a provision for Federal grants for public health work, infant and maternal care, and care for crippled children. There was relatively little opposition to these provisions. In recent years Congress has given more support to the health program. By amendments to the Public Health Service in 1939 and 1946, amounts were increased for maternal and child health. In 1944 the health program was extended to the prevention and control of venereal diseases and tuberculosis. The act of 1946 further amended the health program by the inclusion of a section establishing grants for the improvement of mental health. Too, Federal appropriations were increased in 1939 for the vocational rehabilitation of disabled persons; and in 1943 the Federal program was expanded for remedial treatment and job training. The Public Health Service apportions the appropriations made for supplementing the health activities of the states. The Children's Bureau is responsible for the maternal and child welfare provisions of the Social Security Act. The office of Education has charge of carrying out the provisions of the Vocational Rehabilitation Program.

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131 Ibid., p. 358.

132 Ibid., pp. 372-73.
Two factors in American labor law surrounding industrial relations have played a significant role in hampering trade-union growth. They are the influence of the Sherman Anti-trust Act of 1890 and the use of the injunction in labor disputes. The terms of the Sherman Anti-trust Act outlawed "every contract combination in the form of trust or otherwise or conspiracy, in restraint of trade or commerce among the several states or with foreign nations," whether it was meant to include the activities of labor, has been disputed. Nevertheless, a consistent series of judicial decisions established its applicability regardless of congressional intent. It became a serious obstacle to many efforts at unionization, and it served as a basis for labor injunctions for strikers. The boycott began to grow with the strike, and the Sherman Anti-trust Act was invoked against it as in the Danbury Hatters' case in 1908. As a result of the unfavorable decision, the American Federation of Labor demanded a repeal or an amendment of the Sherman Act and abolition of government injunction.

During the Wilson administration the Clayton Act of 1914 was passed which contained several labor provisions. However, congress did not wholly exempt labor activities from the ambit of anti-trust laws. It did eliminate the possibility of dissolution suits. The Clayton Act specifically states that

133 Raushenbush and Stein, op. cit., p. 41.
the "labor of a human being is not a commodity or article of commerce." Too, the right of collective bargaining of labor unions was recognized by the anti-trust laws to be a reasonable exercise of collective power.

The Clayton Act took away more than it gave; by Section sixteen, injunction relief might now be sought under the anti-trust laws not only by the government, but by private parties. "Such actions soon became more numerous than criminal prosecutions, damage suits, and government applications for labor injunctions combined." Consequently, the anti-trust laws retained their effectiveness as obstacles to unionization. Workers could be imprisoned for contempt of court without jury trial by the judge issuing an injunction.

The first world war period was an interlude of moderate government encouragement to trade unions. However, the years immediately following were marked by strong anti-radical movement in which government played an important role. The Sherman law continued to be applied to various sorts of labor boycotts.

The Norris-LaGuardia act of 1932 attempted to remedy the evils of the injunction and the weaknesses of the Clayton Act. The substantive grounds upon which labor injunctions might be issued were limited in three respects: (1) yellow-dog contracts were made unenforceable in Federal courts; (2) injunctions under the anti-trust laws might no longer be more

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134 Painsod and Gordon, op. cit., p. 155.
extensive than those based on the common law; (3) Federal injunctions could not prohibit persons participating in labor disputes, "whether singly or in concert." New procedural limitations were also thrown about the use of the labor injunction. Temporary or permanent injunctions might be issued only after the hearing of the witnesses in support of the complaint in open court, subject to cross examination. The constitutionality of this act was upheld in 1938.

A formula for semi-restrictions of union activities crept into the Railway Labor Act of 1926 which emphasized mediation and arbitration. The Railway Act of 1886 and the Erdman Act of 1898 had provided for mediation and arbitration of railroad disputes. The Newlands Act of 1913 provided for a permanent Board of Mediation and Conciliation. The act of 1920 created a full-time Labor Board of nine members, dignified by $10,000 salaries. In 1926, congress passed the Railway Labor Act which remains the basic law in this field. Amendments in 1934 further strengthened the act, elaborating its provisions against company unionism, thoroughly differentiating the various stages in the process of adjustment, and setting up appropriate machinery for each. This statute provides for mediation of disputes not settled by conferences through a full-time three-member National Mediation Board.

135 Raushenbush and Stein, op. cit., pp. 77-82.

The National Mediation Board is also given the important task of certifying labor representatives for collective bargaining purposes. Carriers may not interfere with labor organizations in any way, either by promoting their own unions or by hindering independent ones. Yellow dog contracts are forbidden. The prohibitions are backed by criminal penalties. The unions must depend for their enforcement on ordinary processes of courts.

If all the adjustment machinery fails to settle a dispute, the President may create a special emergency board of disinterested persons to make an investigation and report. This investigation is to be made within thirty days after appointment. Generally composed of members of unusual distinction, this Board has effected peaceful settlements almost without exception, although they have entered the negotiations in the last stages of disputes.

With the advent of the Roosevelt administration, the outlook for the laboring classes was transformed. The new administration was disposed to be friendly toward labor. Under the National Industrial Recovery Act of 1933 all the codes were required to contain the following provisions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion from employers of labor or their agents...; (2) that no employee or no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing;
and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment prescribed by the President.

The Industrial Recovery Act did not make provisions for the settlement of disputes growing out of its labor provisions. However, after a number of strikes in 1933, President Roosevelt, by executive order, established the National Labor Board composed of representatives of industry and labor. Subsequently, special boards were created under their codes or by executive order.

The National Labor Board was succeeded by the first National Labor Relations Board in 1934. The authority of this Board was established by a joint resolution of congress. The new Board's jurisdiction was based on the National Industrial Recovery Act. When this act was declared unconstitutional in 1935, the Board was extinguished.

The National Relations Act of 1935 became law soon after the National Industrial Recovery Act was declared unconstitutional. It declared the right of employees to self-organization, and to bargain collectively through representatives of their own choosing. The new National Relations Board was created by this act. It is composed of three members appointed by the President with the consent of the Senate. This Board was not concerned with the adjustment of disputes that was left to the agencies of arbitration or conciliation. Its primary purpose was to establish collective bargaining.

New duties have been added to the Board by the passage of the Taft-Hartley Bill of 1947 which seems to be the most complex labor act that has ever been enacted in America. It is designed to give unions and employers equal bargaining power. It is so far reaching in its control that almost every relationship with employees is affected.

Although labor law has been slow in developing in the United States, progress has been made since the colonial period. Today the fundamental purpose of labor legislation is "the conservation of human resources of the nation," which is the motto of the American Association for Labor Legislation.

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