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A Different Kind of Labor Law: Vagrancy Law and the Regulation of Harvest Labor, 1913-1924

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I. INTRODUCTION

In the late summer of 1920, a union organizer named Charles Gray was arrested by city police in Minot, North Dakota, and brought before a magistrate for trial. His misdeeds, according to a local newspaper: "organizing laboring men against accepting the going wage" and passing out literature "to poison the mind of the laboring man."[1] Gray was convicted, fined $23.70, and sent to jail for ten days at hard labor because he could not pay.[2] Gray was actually but one of many thousands of union organizers and harvest workers made criminals by local officials on the Great Plains in the early twentieth century for attempting to exercise rights that are basic to modern labor law: the right to organize, to protest and withhold labor, and to bargain over terms and conditions of employment. Their crime was vagrancy.

From today's vantage, the notion that the criminal law could be important to the administration of labor rights probably seems peculiar. Since the New Deal, the basic rights of labor have been administered at both the federal and state levels by civil agencies wielding civil authority.[3] The few criminal

1. *I.W.W. Organizer Gets 10 Days at Hard Labor*, WARD COUNTY INDEP., Aug. 5, 1920, § 1, at 1.

2. *Id. Cf. I.W.W. Organizer Gets 10 Days at Labor on Street*, MINOT DAILY NEWS, Aug. 2, 1920, at 1 (evening ed.).

3. Federal labor law, which has exclusive jurisdiction over most private sector workplaces, is administered by the National Labor Relations Board. In implementing rights under the statute, the NLRB has no criminal powers whatsoever, nor even the power to levy civil fines. Moreover, it must petition federal courts for enforcement of its orders. National Labor Relations (Wagner-Connery Labor Relations) Act §10(e), 29 U.S.C. § 160(e) (2000). Federal and state regimes covering government employees are roughly similar in form, except that in many cases public sector strikes are made illegal. Nonetheless criminal liability attaches, if at all, only in cases of contempt. *See* RAYMOND L. HOGLER, PUBLIC SECTOR STRIKES: EMPLOYEE RIGHTS, UNION RESPONSIBILITIES, AND EMPLOYER

provisions relevant to contemporary labor law are derivative or tangential.[4] And while the police may still enforce the criminal law in the context of labor disputes, this is comparatively rare and limited by law to enforcing court orders, maintaining public safety, and preventing the destruction of property.[5] Indeed, contemporary labor law and criminal law are fundamentally distinct fields, characterized by different structures, functions, and conceptual bases.

This segregation of labor law and criminal law is, however, unique to the post-New Deal era. Through much of post-bellum American history, the criminal law and its institutions were completely integrated into prevailing regimes of labor regulation and directly regulated labor in all sorts of ways. Labor conspiracy charges and criminal contempt proceedings were used quite frequently to bust unions, to break strikes, and generally to frustrate union organizing.[6] Controlling labor disputes was in fact a major impetus in the development of mod-

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PREROGATIVES 37–46 (1988); JOSEPH A. GRODIN & DONALD H. WOLLETT, COLLECTIVE BARGAINING IN THE PUBLIC SECTOR 244–68 (1975).

4. *See, e.g.*, National Labor Relations Act, § 12, 29 U.S.C. §162 (2000) (providing for criminal penalties for willful interference of the National Labor Relations Board in the performance of its duties); Labor-Management Relations (Taft-Hartley) Act § 302, 29 U.S.C. § 186 (providing for criminal penalties for bribes in labor relations context); Railway Labor Act, 45 U.S.C. § 152, ¶ 10 (providing for misdemeanor prosecution of railroad and airline employers that fail to abide by certain provisions of the act).

5. Serious criminal conduct by employees will deprive them of protection under the labor law. *See, e.g.*, NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240 (1939); Southern S.S. Co. v. NLRB, 316 U.S. 31 (1942). *See also* Clear Pine Mouldings, Inc. v. NLRB, 268 N.L.R.B. 1044 (1984), *order enforced by* 765 F.2d 148 (9th Cir. 1985). However, state criminal laws that excessively impinge on labor relations, as well as patterns of enforcement that have this effect, are usually preempted by federal law. *See* Int'l Union (UAW-CIO) v. Russell, 356 U.S. 634 (1958); United Constr. Workers v. Laburnam Constr. Corp., 347 U.S. 656 (1954); Allen-Bradley Local No. 1111, United Elec., Radio & Machine Workers v. Wis. Empl. Relations Bd., 315 U.S. 740 (1942). Labor disputes involving multiple acts of violence and the like may also provide a basis for federal RICO liability, but only based on predicate criminal conduct. *See* Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1962(c) (2000).

6. On labor conspiracy doctrine, see, e.g., DAVID R. PAPKE, THE PULLMAN CASE: THE CLASH OF LABOR AND CAPITAL IN AMERICAN INDUSTRY (1999); Herbert Hovenkamp, *Labor Conspiracies in American Law: 1880–1930*, 66 TEX. L.REV. 919 (1988). On the labor injunction, see, e.g., WILLIAM E. FORBATH, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (1991); Gerald G. Eggert, *A Missed Alternative: Federal Courts as Arbiters of Labor Disputes, 1877–1895*, 7 LAB. HIST. 287 (1966).

ern police forces.[7] In a rather cruder way, Southern jurisdictions used criminal surety and labor enticement laws to force blacks to work at prevailing wages and to bind them to their jobs.[8] Another example of this merger of criminal law and labor law, and in many ways the most compelling, is vagrancy law. Unlike today, when vagrancy law is a largely unenforceable device for controlling use of public space, before the New Deal vagrancy law played a direct and important role in delineating the essential rights of labor.

The most familiar example is in the South, where vagrancy law was used to force "free" black men and women to work when and where white employers preferred. But it was not just blacks in the South whose labor was intensely regulated by vagrancy law. And it was not simply the mobilization of labor that characterized its labor-regulating function. Long after the Civil War, vagrancy law was used to define the rights of labor in the North to organize, protest, withhold labor, and bargain with employers.

Nowhere was the resort to vagrancy to control Northern labor more clearly at play than in the farming towns of the Great Plains in the first few decades of the last century. Each summer and fall, in one of the great seasonal labor migrations in American history, as many as 250,000 transient laborers worked their way through this, the so-called "wheat-belt," hiring themselves out to harvest the millions of acres of wheat and other small-grain crops that formed the mainstay of this region's economy. Vagrancy law was used relentlessly against these workers—to force them to accept employment at prof-

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7. On the use of police as strikebreakers, see, e.g, SIDNEY HARRING, POLICING A CLASS SOCIETY: THE EXPERIENCE OF AMERICAN CITIES, 1865–1915, 101–48, *passim* (1983); Gerda W. Ray, *"We Can Stay Until Hell Freezes Over": Strike Control and the State Police in New York, 1919–1923*, 36 LAB. HIST. 403 (1995); Sidney L. Harring, *The Police Institution as a Class Question: Milwaukee Socialists and the Police, 1900–1915*, 46 SCI. & SOC'Y 197 (1982).

8. On the mobilization of Southern Black labor under convict leasing systems, see, e.g., ALEX LICHTENSTEIN, TWICE THE WORK OF FREE LABOR: THE POLITICAL ECONOMY OF CONVICT LABOR IN THE NEW SOUTH 169–70 (1996); DAVID M. OSHINSKY, "WORSE THAN SLAVERY": PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 21 (1996); Bernard J. McCarthy, *The Social Functions of Correctional Policy: A Case Study of the Alabama Convict Lease System*, 1845–1928, 9 AM. J. CRIM. JUST. 185 (1985). On the use of criminal and quasi-criminal regimes to discipline and re-mobilize newly emancipated Black labor, see, e.g., DANIEL A. NOVAK, THE WHEEL OF SERVITUDE: BLACK FORCED LABOR AFTER SLAVERY (1978). *See also* Amy Dru Stanley, *Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America*, 78 J. AM. HIST. 1265 (1992).

fered wages, to break up strikes and other protests, and to undermine their attempts at radical unionization. Vagrancy formed the basis of a comprehensive localized system of labor control that encompassed rights at the very center of present-day labor law. As this article will show, this dynamic followed a fairly consistent pattern involving discretionary street level enforcement of local ordinances by local police and equally discretionary adjudications before police courts. In each case, the threat of punishment by fine or incarceration at hard labor, or beatings at the hands of police, commanded the desired outcome. This was achieved in direct, instrumental ways, as well as through the construction of an ideology of "free" labor and "free" contract backed by force.

Embedded in this article's discussion of vagrancy as a mode of labor regulation is a concern with policing and its character as an institution of class control. While virtually all scholars of the history of American policing agree that through the late nineteenth century policing was substantially dedicated to controlling poor and working class people,[9] the nature of policing beyond this point is a matter of some controversy. Led by Eric Monkkonen, several scholars have argued that policing in the late Nineteenth and early Twentieth centuries transformed from an institution dedicated to class control to one primarily oriented to crime control.[10] Other, more critically-minded scholars offer a different interpretation. Typified by Sidney Harring, they argue that policing retained its emphasis on class control long after its supposed transition to crime control. For these scholars, the transition to crime control was more a matter of form and ideology than actual practice; in the guise of fighting crime—especially minor crimes—the police found a way to justify and maintain their control over the lower classes.[11] The evidence presented in this article suggests that at least in wheat-belt towns, class control re-

9. *See, e.g.*, WILBUR R. MILLER, COPS AND BOBBIES: POLICE AUTHORITY IN NEW YORK AND LONDON 1830–1870 (1977).

10. ERIC MONKKONEN, POLICE IN URBAN AMERICA, 1860–1920 (1981). *See also* Samuel Walker, *The Police and the Community: Scranton, Pennsylvania, 1866–1884*, 19 AM. STUD. 79 (1978); Bruce D. Johnson, *Taking Care of Labor: The Police in American Politics*, 3 THEORY & SOC'Y 89 (1976).

11. *See, e.g.*, HARRING, POLICING A CLASS SOCIETY, *supra* note 7; Helen Boritch & John Hagan, *Crime and Changing Forms of Class Control: Policing Public Order in "Toronto the Good," 1859–1955*, 55 SOC. FORCES 307 (1987). *See also* MARC NEOCLEOUS, THE FABRICATION OF SOCIAL ORDER: A CRITICAL THEORY OF POLICE POWER (2000).

mained a dominant and explicit feature of policing well into the twentieth century. For local police are exposed as class operatives of the most shameless sort.

Of course, the fate of harvest labor on the Great Plains can seem like an obscure concern. In many ways, though, the fact that the subject lies off the beaten path, so to speak, is a major advantage. For this highlights the role of mundane, day-to-day forms of official repression as tools of labor control. Here we encounter no landmark court cases (no reported cases at all, in fact), no great lawyers, no massacres, no well-known people in well-known places—none of the things to which labor law scholarship, even in its historical modes, is so often drawn. Instead, we uncover a system that comprehensively and effectively regulated the work lives of countless forgotten people in almost forgotten places, and did so in a remarkably hegemonic way.

Yet another matter inspires this article. The harvest labor phenomenon in the early twentieth century is an interesting aspect of labor history in its own right, one that has never received due attention from labor or legal historians. While the few studies that have been conducted comment in interesting ways on the political, economic, and cultural aspects of harvest labor in the wheat-belt, none gives any sustained attention to the decisive role of local criminal law in general or vagrancy law in particular in regulating this population of workers.[12]

This article focuses not on the Great Plains generally, but on the Northern Plains, and in particular the State of North Dakota in the period from 1913 to 1924. Several reasons inform this choice. North Dakota in the 1910s and 1920s was (and remains) the center of the spring wheat growing region. Its towns, especially railroad towns like Minot and Fargo,

12. This lack of attention to the role of the criminal law is evident even in the most comprehensive study of harvest labor in the wheat-belt. Gregory D. Hall, Harvest Wobblies: The Industrial Workers of the World and Agricultural Laborers in the American West, 1910–1925 (1998) (unpublished Ph.D. dissertation, Washington State University) (on file with author). While Hall addresses at length the role of federal and state criminal laws and procedures, his attention to vagrancy law is limited to only a few pages. *See id.* at 87, 181–82, 202–03. The same is true of other studies. *See, e.g.*, Theodore H. Grosshardt, Harvesting Hoboes: The 800 Mile Picket Line (1998) (unpublished Ph.D. dissertation, University of Kentucky) (on file with author); Allen G. Applen, Migratory Harvest Labor in the Midwestern Wheat Belt, 1870–1940 at 111, 166 (1975) (unpublished Ph.D. dissertation, Kansas State University) (on file with author) [hereinafter Applen, Migratory Harvest Labor].

served each season as labor markets for the huge influx of harvest hands. But the state government itself, affected by populist politics, made relatively few attempts to coerce harvest labor and actually intervened in progressive ways to regulate labor in other contexts.[13] Coercion was largely left to local governments, which turned to their vagrancy laws. With regard to time, the period from 1913 to 1924 brackets, as we shall see, the heyday of manual harvesting of wheat, as well as (not coincidentally) the rise and decline of radical labor organizing of harvest labor on the Northern Plains. Just as important is that North Dakota affords a number of excellent archival sources for this period. In addition to good secondary sources, I am able to draw on labor newspapers, two local dailies, one local weekly, and several continuous years of Fargo police court records.[14]

I structure this article in the following way: Part II is a review of the history of American vagrancy law and its role in the regulation of labor. My larger aim in this part is to anticipate, on the basis of established scholarship, some of the particular dynamics of labor regulation by vagrancy law that characterized the fate of harvest laborers. I also hope in reviewing this literature to emphasize just how common it was in a number of post-bellum contexts to resort to vagrancy law as mode of labor regulation. In Part III, I describe the context in which the phenomenon unfolded: the industrial structure of wheat production and its labor needs; the harvest laborers and their attempts at self-organization; the farmers they worked for and the townspeople with whom these laborers came into conflict; and the machinery of police power that would prove decisive. Part IV represents the core of my analysis. Here I examine the specific ways by which vagrancy law and criminal justice apparatuses were used to regulate harvest labor. My argument is partly based on accounts from the local and labor newspapers of the period, and partly based on an evaluation of Fargo police court records. Because it helps to flesh out the story of labor regulation in this context, I also review the role of other modes

13. During this period, North Dakota actually adopted an anti-injunction act, as well as other reformist labor laws. 1919 N.D. Laws 171, 173 & 174. *See also* ELWYN B. ROBINSON, HISTORY OF NORTH DAKOTA 343 (1966).

14. Focusing the project in this way also makes it rather more manageable from a research standpoint. Needless to say, to examine with any thoroughness this phenomenon across the entire wheat-belt, from Oklahoma and Texas north through the Dakotas is not possible with a single article.

of coercion, legal and extralegal, in controlling this labor. Part V comprises a conclusion that, among other things, further explores some implications for the way we understand the relationship between criminal law and labor relations in modern America.

II. VAGRANCY LAW AS LABOR REGULATION

Vagrancy law revolves around two basic functions: (1) the criminalization of the condition of being unemployed or holding illegitimate forms or circumstances of employment; and (2) the establishment of mechanisms for either controlling the distribution of such people or forcing them into legitimate employment. As such, vagrancy law is fundamentally labor-regulating and always has been. Exactly how this labor-regulating dynamic plays out in real life is seldom either simple or self-evident. Analyzing the problem in a particular case benefits from two preliminary discussions: the first a review of the theoretical bases of seeing the criminal law as labor-regulating; the second a review of efforts in the historical literature to describe the labor-regulating aspects of vagrancy law in actual operation.

A. The Criminal Law as Labor-Regulating

The idea that vagrancy law serves to regulate labor is rooted in a perspective that sees the criminal law generally—including other institutions of criminal justice—as an institution of labor regulation. Inspired by Marx,[15] but really grounded in the work of Georg Rusche and Otto Kirchheimer, this perspective regards the criminal law as a regime dedicated in large part to disciplining the working classes that they might acquiesce to the norms and structures of capitalism, to mobilizing scarce labor, and to warehousing surplus labor. As Rusche and Kirchheimer made clear, this critical perspective on criminal law is premised at the outset on a skeptical regard for theories of punishment, or "justifications," given the sup-

15. Without ever offering an explicit account of the relationship between criminal law and social class, Marx nonetheless considered the law generally and criminal law in particular to be both determined by, and functionally supportive of, prevailing class structures. *See, e.g.*, MAUREEN CAIN & ALAN HUNT, MARX AND ENGELS ON LAW 145–201 (1979).

posed link, inherent in such theories, between the criminal law and its institutions of enforcement and punishment, on the one hand, and the realities of crime and public safety, on the other.[16] While Rusche and Kirchheimer were particularly concerned to show how this dynamic manifested itself in a causal relationship between unemployment and incarceration rates,[17] the more significant idea is their notion that the criminal law is an important institution for disciplining and mobilizing labor.

This latter idea has inspired a broad array of scholarship. For some scholars, the labor-regulating functions of the criminal law are instrumentalist—that is to say, more or less overt and direct. For these scholars, the criminal law directly governs the behavior of the lower classes, particularly those poised on the margins between the working class and the unemployed. In essence, this theory contends that the protection of property and the prohibition of "disorder" converge with the criminalization of unemployment, of class protest, and of illicit forms of employment to leave the lower classes no option but to surrender to capitalist employment.[18] By this view, too, the experience of punishment itself—in particular the prison—is a mechanism for imposing order on the lower classes and for inculcating among them habits fundamental to efficient labor in capitalist society.[19]

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16. GEORG RUSCHE & OTTO KIRCHHEIMER, PUNISHMENT AND SOCIAL STRUCTURE 5 (Transaction 2003) (1968). On this notion, see also FRANK E. ZIMRING & GORDON HAWKINS, THE SCALE OF IMPRISONMENT, at xi–xiv (1991). For an introduction to other proposals to see beyond justification theory, see, e.g., DAVID GARLAND, PUNISHMENT IN MODERN SOCIETY: A STUDY IN SOCIAL THEORY (1990).

17. RUSCHE & KIRCHHEIMER, *supra* note 16, *passim.* Rusche and Kirchheimer's so-called "labor surplus" thesis has inspired a considerable number of contemporary studies, many of them statistically sophisticated. While there remains some controversy, a careful review of the literature suggests that this thesis is likely correct. *See* Theodore G. Chiricos & Miraim A. Delone, *Labor Surplus and Punishment: A Review and Assessment of Theory and Evidence*, 39 SOCIAL PROBLEMS 421 (1992).

18. *See, e.g.,* RICHARD QUINNEY, CRITIQUE OF LEGAL ORDER: CRIME CONTROL IN CAPITALIST SOCIETY (1974); Loic Wacquant, *The Penalization of Poverty and the Rise of Neo-Liberalism*, 9 EUR. J. ON CRIM. POL'Y AND RES. 401 (2001). *Cf.* CRIME AND CAPITALISM: READINGS IN MARXIST CRIMINOLOGY (David F. Greenberg ed., 1981).

19. *See, e.g.,* MICHAEL IGNATIEFF, A JUST MEASURE OF PAIN: THE PENITENTIARY IN THE INDUSTRIAL REVOLUTION, 1750–1850 (1978); DARIO MELOSSI & MASSIMO PAVARINI, THE PRISON AND THE FACTORY: ORIGINS OF THE PENITENTIARY SYSTEM (1977).

For another group of scholars, the criminal law's disciplining and mobilizing functions encompass more subtle dynamics, including an ideological function. By this view, which is often associated with the work of Douglas Hay, the labor-regulating functions of the criminal law are articulated in substantial part by symbolic displays and informal, discretionary procedures; these underscore to the lower classes the power of the law and the need to comply with the norms of property, contract, and capital that the law enforces.[20] A somewhat related argument is made by Evgeny Pashukanis, who suggests that class interests inhabit the very juridical structure—the "form"—of modern criminal law. By this view, the inner logic of the criminal law, even in its most innocuous guises, is to enforce a class structure.[21]

These different perspectives on the labor-regulating character of the criminal law do not pretend to describe every function of the criminal law in terms of class and labor. The concern is simply to emphasize the importance of class and labor, not to suggest their utter hegemony. These two perspectives, the instrumentalist and the ideological, are likewise much more complementary than competitive. Indeed, this complementary relationship is implicit in the idea, to which a number of such scholars explicitly subscribe, that the criminal law achieves its labor-regulating agenda both by direct restraint on the behavior of the lower classes and by the deterrent effect of such action on others.[22] As Dario Melossi puts it, criminal punishment not only orders behavior explicitly, it simultaneously serves as a "gazette of morality"; it announces to the lower classes "what is allowed and what is forbidden" and "creates a sort of 'social whip' effect that makes everyone work harder, especially those who are close enough to the bottom to hear the

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20. Douglas Hay, *Property, Authority and the Criminal Law, in* ALBION'S FATAL TREE (Hay et al., eds., 1975). This volume features similar essays which might also be consulted: Peter Linebaugh, *The Tyburn Riot Against the Surgeons*, at 65; Cal Winslow, *Sussex Smuggler*, at 119; John G. Rule, *Wrecking and Coastal Plunder*, at 167; Douglas Hay, *Poaching and Game Laws on Camock Chase*, at 189; and E.P. Thompson, *The Crime of Anonymity*, at 255.

21. EVGENY B. PASHUKANIS, LAW AND MARXISM: A GENERAL THEORY 166–88 (1989). For Pashukanis, "[c]riminal justice in the bourgeois state is organised class terror," and, "[e]very historically given system of penal policy bears the imprint of the class interests of that class which instigated it." *Id.* at 173, 174.

22. *See, e.g.*, Wacquant, *supra* note 18, at 402–05.

howling and moaning of the ones being hit."[23] In the end, these different tacks simply reflect the spectrum of ways, from the very symbolic to the most express, by which the criminal law might tend to reflect and support existing class structures, and in turn regulate labor relations. This is the view, one that appreciates the complexity of the issue, that guides this article.

B. Vagrancy Law and Labor Regulation in America

Vagrancy law represents a prominent case in the regulation of labor via the criminal law. Indeed, the first known vagrancy laws, the English Statutes of Laborers, enacted in 1349 and 1350, clearly betray a labor-regulating orientation. They provided, among other things, that all able-bodied persons under age thirty without property or other means who are not "serving any other," be required under "pain of imprisonment" to "serve him which so shall him require," and to do so at the prevailing wage rate.[24] The statutes likewise prohibited—again "upon "[p]ain of [i]mprisonment"—giving alms to the able-bodied or leaving the service of one's master without "reasonable [c]ause or [l]icence [sic]."[25]

These provisions were central to the development of a regime under which a "man [or woman] must work where he happen to be, and must take the wages offered him on the spot, and if he went about, even to look for work, he became a vagrant and was regarded as a criminal."[26] Over the next several centuries, subsequent English statutes tended to expand the definition of vagrancy, to accommodate vagrancy law's labor-regulating functions to changing economic circumstances, to further integrate vagrancy law's labor-regulating functions with the general control of the poor, and generally to stiffen and expand its coercive aspects.[27] While contemporary scholars

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23. Dario Melossi, *Gazette of Morality and Social Whip: Punishment, Hegemony and the Case of the USA, 1970–92*, 2 SOC. AND LEGAL STUD. 259, 262–63 (1993).

24. 23 Edw. 3 (1349); 25 Edw. 3 (1350).

25. 23 Edw. 3 (1349); 25 Edw. 3 (1350). *See also* JAMES FITZJAMES STEPHENS, 3 A HISTORY OF THE CRIMINAL LAW OF ENGLAND, 203–04 (Macmillan 1883); William J. Chambliss, *A Sociological Analysis of the Law of Vagrancy*, 12 SOCIAL PROBLEMS 67, 71–72 (1964).

26. STEPHENS, *supra* note 25, at 267.

27. A 1388 statute, for example, further restricted the right of movement of laborers, providing as punishment the "stocks" and took additional pains to distinguish the able-bodied from the "impotent" poor. 12 Rich. 2 (1388). A statute

have done much to unravel the complex social origins and functions of English vagrancy law—often emphasizing their broader social-control functions—the regulation of labor remains an obvious and prominent theme.[28]

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enacted in 1530 advanced what was to become a centerpiece of vagrancy law, deeming certain professions—including, practicing "crafty science" or palmistry—to be *per se* violations. 22 Hen. 8 (1530) (also providing for the licensing of beggars). A 1547 "Act for the Punishing of Vagrants" added to the already barbaric penalties for vagrancy (whipping and ear-cropping were already sanctioned options, as well as capital punishment for repeat offenders) the possibility of enslavement—initially for a specific term, but subject to a lifetime condemnation if the vagrant should flee. 1 Edw. 6, c.3 (1547). The same statute provided for firebranding, as well as the dispossession and apprenticing of the children of vagrants. 1 Edw. 6, c.3 (1547). Through the late sixteenth century, these statutes were repealed and replaced by a new regime, one that maintained the general scheme of criminalizing the very status of "all wandering persons and common labourers, able in body . . . and refusing to work for [the] wages . . . commonly given," and subjecting them to the now familiar array of punishments. 39 Eliz., c.4 (1597) (translated from Old English). An adjunct to the Poor Laws, the Elizabethan statute responsible for this innovation also dramatically expanded the list of explicitly prohibited professions or other acts, to include, among other things:

> all idle persons going about . . . either begging or using subtle craft, or unlawful games and plays, or feigning to have knowledge in physiognomy, palmistry, or other like crafty science, or pretending that they can tell destinies, fortunes, or such other fantastical imaginations; . . . all fencers, bearwards, common players . . . and minstrels; . . . all jugglers, tinkers, and petty chapmen, . . . ; all persons delivered out of gaols that beg for their fees or otherwise do travel begging; all such persons [that] wander[] abroad begging, pretending losses by fire or otherwise, and all such persons . . . pretending themselves to be Egyptians . . . .

39 Eliz., c.4 (1597) (translated from Old English).

The same statute also added to the array of traditional punishments (which by the end of the sixteenth century included imprisonment as well as all manner of corporeal and mutilating punishments), and to the general threat of being set to work, that of being committed to a local "house of correction" where such persons would be made to work under supervised, factory-like conditions. 39 Eliz., c.4 (1597).

28. Scholars have long emphasized the labor-regulating functions of English vagrancy law. *See, e.g.*, 1 KARL MARX, CAPITAL 896–907 (Ben Fowkes, trans., Vintage Books 1977) (1867); C.J. RIBTON-TURNER, A HISTORY OF VAGRANTS AND VAGRANCY AND BEGGARS AND BEGGING (1887); RUSCHE & KIRCHHEIMER, *supra* note 16, at 40–52; Chambliss, *supra* note 25, at 76–77.

This perspective on English vagrancy law has been modified and rendered in a more nuanced way, but not repudiated, by contemporary social historians. *See, e.g.*, A.L. BEIER, MASTERLESS MEN: THE VAGRANCY PROBLEM IN ENGLAND, 1560–1640 (1985); Nicholas Rogers, *Vagrancy, Impressment and the Regulation of Labour in Eighteenth-Century Britain*, 15 SLAVERY AND ABOLITION 102 (1994); Simon Fowler, *Vagrancy in Mid-Victorian Richmond, Surrey*, 21 LOC. HISTORIAN 66 (1991); Peter Mackay, *Class Relationships, Social Order and the Law in Eighteenth Century England*, 11 POLICE STUD. 92 (1988); Rachael Vorspan, *Vagrancy and the New Poor Law in Late Victorian and Edwardian England*, 92 ENG. HIST.

Our concern is more with American vagrancy law. Given the predominantly English origins of American law, it is not surprising that the colonies and the states in the early years of the republic adopted substantially similar laws on vagrancy—laws dedicated, on the surface at least, to both labor regulation and control of the poor generally. This was largely a matter of common law and local ordinance.[29] And yet local did not necessarily mean "soft"; to be adjudged a vagrant could be a very serious matter indeed. Most American colonies in the eighteenth century subjected vagrants to the same array of barbaric punishments as did the English at that time: whipping, branding, ear-cropping, commitment to the house of corrections, imprisonment, and even enslavement.[30]

As is always the case with vagrancy, though, some pattern of enforcement is vital to any labor-regulating function, even the ideological kind. Actual enforcement of antebellum vagrancy laws seems to have been relatively uncommon and, according to one authority, often explicitly mitigated by expressions of class solidarity.[31] A relative lack of concern for vagrants is to be expected in any case of a society still dominated, even in the North, by relatively rigid authority structures and labor relations—a society in which there was comparatively little day-to-day need to control unemployment or restrict illegitimate employment.

The end of the Civil War brought forth an entirely new regime of vagrancy law, one with an overt and sustained commitment to regulating labor. One important occasion for this development was the sudden creation of a huge pool of newly freed black laborers who, in the eyes of many whites, had literally to be put back into servitude. The result was the enactment throughout the South of so-called Black Codes.[32] These were really either de facto or de jure race-specific regimes of vagrancy law featuring the characteristic criminalization of unemployment and illegitimate employment, as well as provi-

REV. 59 (1977); J.F. Pound & A.L. Beier, *Debate: Vagrants and the Social Order in Elizabethan England, A Rejoinder*, 27 PAST & PRESENT 130 (1974).

29. KENNETH L. KUSMER, DOWN & OUT, ON THE ROAD: THE HOMELESS IN AMERICAN HISTORY 15–21 (2002).

30. *Id.* at 20–21.

31. *Id.* at 21–22.

32. *See, e.g.*, NOVAK, *supra* note 8, at 1–8.

sions for setting offenders back to work.[33] Some interesting provisions were often added to the basic scheme. In some states, for example, blacks were required to provide written proof of employment at the beginning of each year. In an overlapping group of states, those convicted of vagrancy were "allowed" to hire themselves out to private employers to pay off any fine that was levied.[34] Mississippi, in an obvious throwback to slavery, made special provision for the auctioning off "at public outcry, to any white person" a black person who failed to pay the fine and costs for vagrancy or other misdemeanors.[35]

Already eroded some by the intervention of the Freedman's Bureau (which itself was often implicated in forcing blacks to work), the Black Codes were largely nullified by the Civil Rights Acts.[36] But they were immediately replaced by a patchwork of ostensibly race-neutral laws that served the very same functions. And again, the law of vagrancy featured prominently. According to historian William Cohen, the system of race-neutral vagrancy statutes developed in the South in this period "enabled police to round up idle blacks in times of labor scarcity and also gave employers a coercive tool that might be used to keep workers on the job."[37] Indeed, Cohen musters numerous examples of Southern vagrancy law being used to fill particular seasonal and transitory labor needs of planters and businessmen.[38] These statutes functioned with a host of other labor "recruitment" laws to make it "possible for both individu-

33. On vagrancy in the Black Codes, see, e.g., THEODORE B. WILSON, THE BLACK CODES OF THE SOUTH *passim* (1965); James B. Browning, *The North Carolina Black Code,* 15 J. NEGRO HIST. 461 (1930).

34. NOVAK, *supra* note 8, at 2–7.

35. Act of Nov. 29, 1865, ch. 23, 1865 Miss. Laws 165, 167. The auctioned person would then be bound to work off the fine, which would be paid by the purchaser.

36. ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877, 153–58, 363, 372 (1988); ERIC FONER, NOTHING BUT FREEDOM: EMANCIPATION AND ITS LEGACY 45, 52 (1983); NOVAK, *supra* note 8, at 9–19.

37. William Cohen, *Negro Involuntary Servitude in the South, 1865–1940: A Preliminary Analysis,* 42 J. S. HIST. 31, 33–34 (1976).

38. *Id.* at 47–52. Among the examples Cohen cites is an injunction from the editors of the *Atlanta Constitution* to the police that: "Cotton is ripening. See that the 'vags' get busy." *Id.* at 50. Similarly, Cohen cites a Memphis police court judge who proclaimed that blacks appearing on vagrancy charges "would be allowed 'to go free provided they would accept jobs offered by farmers who have set up a cry over scarcity of [labor].'" *Id.* Cohen cites yet another example from Helena, Arkansas, that saw the chief of police threatening a "house-to-house canvas" to raise one thousand hands for plantation work. *Id.* at 51.

als and local governments to acquire and hold black labor virtually at will."[39] Other historians have documented this function of vagrancy laws in the South.[40] Among their findings is that in some instances, this resort to vagrancy to mobilize black labor persisted through the 1940s.[41] In its labor-mobilizing aspect, this model of vagrancy law clearly anticipates one of vagrancy law's main uses in the 1910s and 1920s on the streets and rail yards of the Northern Plains.

By the 1880s, the move to enact effective and modern vagrancy statutes had become a nation-wide trend, encompassing white laborers in the North as well. Three developments, above all others, motivated this trend: the Civil War itself; the consolidation of industrial capitalism that came in its wake; and the emergence of the railroad. The first and second of these factors had the effect of dramatically increasing the number of idle and transient laborers in the country, whites as well as blacks. The war, for example, had mangled both bodies and souls, leaving behind men who were disabled, wayward, and undisciplined. The war also introduced hundreds of thousands of people to habits of riding the rails, "foraging" the countryside, and wandering about in general. Industrial capitalism, for its part, introduced these folk to the caprices of the business cycle, to often brutal and alienating employment conditions, and to a world in which the daily sale of one's labor, with all its uncertainties, was rapidly displacing more permanent arrangements as the prominent means of legitimate support. By the end of the nineteenth century, the development of

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39. *Id.* at 31. Vagrancy statutes worked in concert with an intricate web of labor-compelling statutes: "criminal enticement" laws, which criminalized a third party's causing or assisting a laborer in breaking an employment contract, express or implied; "false-pretenses" laws, which criminalized a laborer's breaking a labor contract with intent to defraud or injure the employer; "contract" laws that expressly criminalized the breaking of labor contracts (nominally for employers and employees alike); "emigrant-agent" laws, which criminalized the unlicenced contracting of labor for out of state employment; convict-leasing; debt-peonage; and "criminal surety" laws, by which an employer could pay the fine (or bail) of an inmate convicted of a petty crime in exchange for months or years of the inmate's labor. *Id.*, *passim*. *See also* NOVAK, *supra* note 8.

40. Carl V. Harris, *Reforms in Government Control of Negroes in Birmingham, Alabama, 1890–1920*, 38 J. S. HIST. 567 (1972).

41. *See, e.g.*, Jerrell H. Shofner, *The Legacy of Racial Slavery: Free Enterprise and Forced Labor in Florida in the 1940s*, 47 J. S. HIST. 411, *passim* (1981). Other scholars of Southern history, principle among them Alex Lichtenstein, have emphasized the significance of vagrancy statutes to feeding labor into the convict lease system. LICHTENSTEIN, *supra* note 8, at 169.

the country's rail network allowed these people to travel with relative ease across state boundaries, thus converting what had been up to then a mainly local and urban phenomenon into one of national proportions.[42]

The result was that, by the end of the nineteenth century, hundreds of thousands of more or less able-bodied people were at any given time roaming the landscape. Indeed, by the turn of the century a distinct and durable sub-culture of transiency had developed. For many generations to come this culture, which was in many ways centered on "hoboeing" (illegal travel by railroad), continued to provide to victims of industrial capitalism's caprices techniques of coping with their plight—techniques for fleeing bad situations, for looking for better, and for finding food, shelter, and support in the meantime.[43] Mostly native-born men, these people were otherwise an ethnically diverse assortment of the unemployed, underemployed, semi-employed, and down-and-out.[44] Although most seemed politically ambivalent, a substantial minority were radically dismissive of capitalist institutions and culture, and sometimes affiliated with radical labor organizations like the Knights of Labor and later the Industrial Workers of the World (or IWW).[45]

At its height in the late Nineteenth and early Twentieth centuries, this "tramp problem" utterly horrified "decent," middle-class people. Anticipating habits that are still with us today, many who perceived themselves as social reformers, political progressives, and caring philanthropists saw this new underclass of vagrants as criminals, moral degenerates, ethnic

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42. KUSMER, *supra* note 29, at 37–40. It was not at all uncommon in the 1870s and 1880s for these habits to combine with a rising sense of labor militancy to provoke violent encounters, sometimes on quite a large scale, between tramps and railroad crews and officers. *Id.* at 40–41.

43. This sub-culture survived through the Great Depression of the 1930s. On its general contours, see, e.g., Roger Bruns, *Hobo: A Tribute to the Knights of the Road*, 16 AM. HIST. ILLUST. 9 (1982).

44. Despite fearful establishment hyperbole about the criminal, drug-addicted, or diseased character of the tramp population, contemporary investigation revealed a population that was demographically quite normal when compared to other working people of the time. Most were native-born Americans, few were criminals, and only a relatively small number were drinkers. Of course few of these men were married. As we might now expect, most of these men were simply looking for work, for better working conditions, or for some kind of reprieve from work. *See* John J. McCook, *A Tramp Census and Its Revelations*, 15 F. 753 (1886).

45. On the emergence of radical tendencies among this population, see KUSMER, *supra* note 29, at 136–38.

or genetic inferiors, and diseased outcasts who had either to be removed from society or saved from themselves by the harshest of policies.[46] And while the culture of transiency would eventually inspire generations of leftists and radicals with its implicit (and often colorful) critiques of capitalism and bourgeois culture, for mainstream society it would be reduced to an object of fear, voyeurism, and ridicule.[47] Indeed, interest in "solving" the tramp problem—an interest that seldom contemplated major social reforms—became a central concern for professional scholars too, including some of America's first modern social scientists.[48] It was in large part in direct response to the demands of this constituency of reformers and scholars—and only indirectly to the real problems posed by vagrants—that northern legislatures in the 1870s and 1880s began to replace the prevailing patchwork of local, colonial, and common law vagrancy laws with updated, state-wide statutes. The resulting statutes came in two basic forms: regular vagrancy laws and "tramp acts," both essentially the same except that the latter placed special rhetorical emphasis on tramps and "tramping"—that is to say, going about or committing other crimes *as a vagrant*.

In either guise, these laws replicated the key tenets of preindustrial English vagrancy laws: criminalization of the condition of being able-bodied, propertyless, and unemployed; restriction of alms; and subjection of violators to (by modern standards) quite harsh punishments, including forced labor. Echoing another aspect of the old English laws, this new regime routinely deprived its victims of basic criminal process: enforcement was carried out on a highly discretionary basis and often with a good measure of brutality; threats and other

46. *See id.* at 44–52; Stanley, *supra* note 8.

47. On this phenomenon, see William R. Hunt, *"Which Way 'Bo?" Literary Impressions of the Hobos' Golden Age, 1880–1930*, 4 J. POPULAR CULTURE 22 (1970); John D. Seelye, *The American Tramp: A Version of the Picaresque*, 15 AM. Q. 535 (1963). *See also* KUSMER, *supra* note 29, at 169–91.

48. On the investigation of the tramp problem by progressive, middle-class social scientists, see Mark Pittenger, *A World of Difference: Constructing the "Underclass" in Progressive America*, 49 AM. Q. 26 (1997); Michael G. Wade, *The American Tramp: A Social Problem of the 1890s*, 6 RED RIVER VALLEY HIST. REV. 35 (1981). *Cf.* NELS ANDERSON, ON HOBOS AND HOMELESSNESS 80–89 (Raffaele Rauty ed., 1998); Benjamin C. Marsh, *Causes of Vagrancy and Methods of Eradication*, 23 ANNALS AM. ACAD. POL. & SOC. SCI. 445 (Jan.–June 1904); John J. McCook, *Tramps*, 3 CHARITIES REV. 57 (1893); Towne Nylander, *The Migratory Population of the United States*, 30 AM. J. SOC. 129 (1924).

informal confrontations were more common than formal arrests; trials were ridiculously perfunctory affairs without juries and before a magistrate or police court; and defendants consistently faced at least a *de facto* presumption of guilt.[49]

Eventually enacted in some forty states and countless municipalities, these statutes reflected the ascent of a middle-class ideology that saw the coercive construction of a "normal" work life as a natural—indeed, necessary—adjunct to the ideals of productivity, progress, and class mobility. The real-life contradiction between this agenda and those other prominent post-bellum ideals—free contract and free labor—remained just that: one of the many, perhaps inherent, contradictions of bourgeois culture.[50]

In fact, according to Kenneth Kusmer, the main function of these statutes, especially in their early years, was as much to reinforce a conservative work ethic as to actually put people to work—which is costly to do anyway under the conditions of labor surplus and recession that so often made the problem salient in the first place.[51] This essentially ideological view of how these statutes worked reiterates one offered by Amy Dru Stanley in her study of these measures, as well as one drawn by David Bright in his analysis of vagrancy law in Calgary, Alberta, in the first fifteen years of the Twentieth Century.[52] But the ideological functions of these statutes did not prevent them from also accomplishing more immediate labor-regulating functions when circumstances allowed. The scholarly literature, including Stanley's work, affirms this point as well.[53] For example, examining the cities of Portland, Oregon, and Seattle, Washington, in the 1910s, Dennis Hoffman and Vincent Webb highlight the use of vagrancy laws to repress radical labor organizers.[54] In a quite similar way, but with a focus on Buffalo,

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49. Stanley, *supra* note 8, at 1277–80.

50. KUSMER, *supra* note 29, at 47–48, 56; Stanley, *supra* note 8, *passim*.

51. KUSMER, *supra* note 29, at 53–56.

52. Stanley, *supra* note 8, at 1277; David Bright, *Loafers Are Not Going to Subsist Upon Public Credulence: Vagrancy and the Law in Calgary, 1900–1914*, 36 LAB. 37 (1995). Bright's particular emphasis is on the function of vagrancy prosecutions as an example to working people of the perils of straying from the work ethic.

53. Stanley, *supra* note 8, at 1273, 1275–77.

54. Dennis E. Hoffman & Vincent J. Webb, *Police Response to Labor Radicalism in Portland and Seattle, 1913–1919*, 87 OR. HIST. Q. 341 (1987). Like this article, Hoffman and Webb's examines police repression of IWW organizers, although in quite a different context.

New York in the mid 1890s, Sidney Harring describes the labor-disciplining and union-busting functions of vagrancy law and other anti-tramp legislation.[55] With a rather more contemporary focus, Mitchell Chamlin and Steven Brandl examine vagrancy arrests in Milwaukee, Wisconsin, from 1930 to 1972, and attempt to show how vagrancy law served more or less directly to force workers into low-wage employment.[56] These studies echo conclusions reached by scholars who have studied English vagrancy law,[57] as well as by those who have studied the role of vagrancy law in other legal traditions.[58]

Important points emerge from this brief survey. In spite of the continued underdevelopment of this literature, it is clear that the regulation of labor via vagrancy law was not at all an unusual feature of post-bellum American life. One does not need to go back to Elizabethan England, or even Jim Crow Mississippi, to find vagrancy law as a means of labor regulation. In the modern North, vagrancy's victims were invariably members of the lower working classes, particularly those who dared protest, to make themselves inconvenient to the needs of capital, or to express too much contempt for middle-class sensibilities, especially those related to work. In other words, labor regulation of this sort went hand-in-hand with a particular kind of class domination.

This is not to say that labor regulation was vagrancy's exclusive function, or that this function always played out in an immediate way. In many cases vagrancy law has been used to control access to public space, to preserve community aesthetics, to promulgate codes of morality, to frame a coercive regime

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55. Sideny L. Harring, *Class Conflict and the Suppression of Tramps in Buffalo, 1892–1894*, 11 L. & SOC'Y REV. 872 (1977).

56. Mitchell B. Chamlin & Steven G. Brandl, *A Quantitative Analysis of Vagrancy Arrests in Milwaukee, 1930–1972*, 21 J. CRIME & JUST. 23 (1998).

57. Among other examples, see especially, Rogers, *supra* note 28.

58. For examples from outside the Anglo-American tradition, see MARGARETHA JARVINEN, OF VICE AND WOMEN: SHADES OF PROSTITUTION (1993) (examining, in part, the role of vagrancy law in defining the line between legitimate and illegitimate occupations in Finland); MARTHA KNISELY HUGGINS, FROM SLAVERY TO VAGRANCY IN BRAZIL: CRIME AND SOCIAL CONTROL IN THE THIRD WORLD (1985) (examining, in part, the use of vagrancy law to control the supply of black labor in the wake of slavery). For examples from within the Anglo-American tradition, see Ravi Ahuja, *The Origins of Colonial Labour Policy in Late Eighteenth-Century Madras*, 44 INT'L REV. SOC. HIST. 159 (1999); Louise White, *Vice and Vagrants: Prostitution, Housing, and Casual Labor in Nairobi in the Mid-1930s, in* LABOUR, LAW, AND CRIME: AN HISTORICAL PERSPECTIVE 202 (Francis Snyder & Douglas Hay eds., 1987).

of social reform, and to invest the police with preventative detention powers.[59] But who are the objects of these seemingly alternative functions anyway, but the lower classes, the ranks of surplus labor, and those who cannot find or will not settle for legitimate employment? In this sense it is important to ask not simply whether vagrancy law might accomplish some functions other than the regulation of labor, but rather, how might these other functions be themselves connected to the regulation of labor in a particular case.

III. CONTEXT

Yet another implication that flows from the history of vagrancy law as a mode of labor regulation and from the body of literature that describes this phenomenon is that context makes all the difference in deciding what sort of labor-regulating function, if any, vagrancy law will serve. For vagrancy is quintessentially a mechanism for the local, or at most regional, control of labor, and one that is not self-enforcing. Everything depends on economic, social, and political conditions.

The context before us, however, is hardly a familiar one. To most folk, the Northern Plains in the early Twentieth Century are quite distant in time and place. Even today they suggest a great void, a landscape of awesome scale, seemingly bereft of just about everything but endless grainfields, a few ranches and feedlots, and a good scattering of farmhouses and ageing, sleepy towns. Indeed, in popular culture, and in contemporary literature in particular, the significance of this region is seen only in its emptiness and supposed backwardness and in the stupid mythologies, rich metaphors, and quirky

59. *See, e.g.*, TONY HENDERSON, DISORDERLY WOMEN IN EIGHTEENTH-CENTURY LONDON: PROSTITUTION AND CONTROL IN THE METROPOLIS, 1730–1830 (1999); JARVINEN, *supra* note 58 (discussing the role of Finnish vagrancy law in the construction of categories of deviance and attendant notions of acceptable morality); LIONEL ROSE, "ROGUES AND VAGABONDS": VAGRANT UNDERWORLD IN BRITAIN, 1815–1985 (1988); John McLaren, *Chasing the Social Evil: Moral Fervour and the Evolution of Canada's Prostitution Laws, 1867–1917*, 1 CANADIAN J.L. & SOC'Y 125 (1986) (describing vagrancy laws as the original basis for the control of prostitution and the advancement of an accompanying moral agenda); Caleb Foote, *Vagrancy-Type Law and Its Administration*, 104 U. PA. L. REV. 603 (1956) (emphasizing the general social control and police functions of vagrancy law).

travelogues that can be drawn from these features.[60] At the same time, little scholarship has addressed the labor history of this region.[61] This set of attitudes obscures the role of vagrancy in this context. It also conceals the dramatic clash of labor and the state that unfolded in the Northern Plains' towns and rail yards, on its railroads, and in its wheat fields, barely a lifetime ago.

A. *"Factories in the Field": The Industrial Character of Wheat Production on the Northern Plains*[62]

In the 1910s and 1920s North Dakota was, as it remains today, premier spring wheat country.[63] The scale of this enterprise is staggering. In 1920, for example, Ward County—of which the town of Minot is the seat—harvested 335,000 acres of wheat, and Cass County—of which Fargo is the seat—harvested 401,000 acres.[64] Statewide in that year farmers and their hired hands harvested almost ten million acres of wheat—an astonishing 15,000 square miles, an area about

60. *See, e.g.*, KATHLEEN NORRIS, DAKOTA: A SPIRITUAL GEOGRAPHY (2001); JONATHAN RABAN, BAD LAND: AN AMERICAN ROMANCE (1997); IAN FRAZIER, THE GREAT PLAINS (1989).

61. On the general underdevelopment of the labor history of the Northern Plains, see William C. Pratt, *Workers, Unions and Historians on the Northern Plains*, 16 GREAT PLAINS Q. 229 (1996).

62. The phrase "Factories in the Field" is the title of a 1939 account of California migrant labor. CAREY MCWILLIAMS, FACTORIES IN THE FIELD: THE STORY OF MIGRATORY FARM LABOR IN CALIFORNIA (Univ. of Cal. Press 1999) (1939).

63. In this period two varieties of wheat were grown in North America: winter wheat and spring wheat. Winter wheat is sown in the fall that it may achieve some preliminary growth in the late fall, lie dormant through the winter, resume growing in the spring (with a head-start on weeds), and ripen for harvest by early and mid summer. Spring wheat is planted in early spring and grows, without interruption, to harvest in late summer. Spring wheat cultivation is more appropriate for colder climates and was (and remains) the dominant method of wheat cultivation in the Northern Plains. In all other wheat growing regions of the country, winter wheat predominates. 6 DEP'T OF COM., BUREAU OF THE CENSUS, FOURTEENTH CENSUS OF THE UNITED STATES IN THE YEAR 1920: AGRICULTURE PT. 1, at 623 tbl.32 (1922) (showing overwhelming preference for spring wheat in North Dakota in 1909 and 1919) [hereinafter 1920 CENSUS: AGRICULTURE]; MIR B. ALI, ET AL., CHARACTERISTICS OF U.S. WHEAT FARMING: A SNAPSHOT 6 tbl.1 (U.S. Dep't of Agric., Econ. Research Serv., No. 968, 2000), http://www.ers.usda.gov/publications/SB968.

64. Nat'l Agric. Stat. Serv., U.S. Dep't of Agric., *Agricultural Statistics Database: Crops County and District Data*, *at* http://www.nass.usda.gov:81/ipedbcnty/c_NDcrops.htm (last visited Mar. 16, 2004).

twice the size of the entire Commonwealth of Massachusetts.[65] Perhaps most remarkable is that with all the changes in technology since then, these figures from almost a century ago come very close to, and in some cases exceed, contemporary agricultural statistics.[66]

By the 1910s, commercial agriculture on the Northern Plains was conducted by modern, rational, and fundamentally capitalist (if still quite labor-intensive) methods. These methods were inaugurated on massive (and ultimately unwieldy) "bonanza" farms, some entailing tens of thousands of acres, which were prominent in the region in the 1880s and 1890s before fading in the early twentieth century.[67] Such methods gradually came to prevail throughout the wheat-belt; by the early 1900s, even modest farms were characterized by high levels of mechanization, money-based business practices and management techniques, and fairly large-scale cultivation. From 1880 to 1920, the mean size of North Dakota farms increased from 271 acres to 466 acres.[68] More tellingly, very few small farms survived through this period. In 1910, 67 percent of North Dakota farms encompassed more than 175 acres, with 20 percent being more than 500 acres; by 1920, over 83 percent of farms were more than 175 acres, and 29 percent, more than 500 acres.[69] The majority of these farms—some 87 percent by 1919—were involved in wheat production; and indeed, the majority of the acres of land under cultivation in North Dakota were in wheat.[70] The whole state was, in other words, a vast conglomeration of grain factories that bore little resemblance to the idyllic images of the nineteenth century yeoman agriculture. Even more significant, this structure of production

65. *Id.*

66. In 2000, North Dakota accounted for over 10 million acres of planted wheat, of which 9.4 million were harvested. *Id.*

67. ROBINSON, *supra* note 13, at 137–40.

68. 1920 CENSUS: AGRICULTURE, *supra* note 63, at 617 tbl.4.

69. *Id.* at 618 tbl.6.

70. *Id.* at 618, 623 tbls.6 & 32. Of some 19.4 million acres of crops under cultivation in North Dakota in 1919, 9 million were wheat. *Id.* at 623 tbl.32. *See also* Kenneth M. Hammer, *Bonanza Farming: Forerunner of Modern Large-Scale Agriculture*, 18 J. OF THE W., Oct. 1979, at 52; ROBINSON, *supra* note 13, at 369 (discussing the increasing concentration of wheat production); Applen, Migratory Harvest Labor, *supra* note 12, at 22–43.

brought about an equally modern system of employment, dominated by anonymous and casual wage-labor.[71]

Wheat farms of this scale could not be operated without considerable resort to transient labor. Several factors made this so. The first was the labor intensity of even the most advanced harvest machinery of the day. In North Dakota, in these days before the advent of the motorized "combine"—hence its name—the harvest was a two-step enterprise, encompassing the use of a binder to cut the grain and a threshing rig to separate the wheat from the straw. The binder, drawn by horses or mules, usually required the labor of several men, and could only cut perhaps fifteen acres a day. The thresher rig, a large steam-driven contraption, usually employed over a dozen men. And even a modest farm would typically require the use of these machines over a period of several weeks to get in the crop.[72] In North Dakota in particular, most of the labor needed for both binding and threshing was hired by the farmers themselves—and not, as was sometimes the case in other places, by independent contractors.[73]

A second, closely related factor affecting the need for transient labor was that, in contrast to the harvest, other phases of wheat production required relatively little labor. On all but the largest farms, the farm family[74] could usually perform the nec-

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71. On the development of modern structures of employment out of the industrialization of wheat agriculture, see Allen G. Applen, *Labor Casualization in Great Plains Wheat Production: 1865–1902*, 16 J. OF THE W., Jan. 1977, at 5. *See also* E.G. Nourse, *Some Economic and Social Accompaniments of the Mechanization of Agriculture*, 20 AM. ECON. REV. 114 (1930).

72. The binder cut the ripened wheat low to the ground, tied it up in bundles, and cast it to the side; these bundles were then manually "shocked" together in stacks, or "shocks," of a dozen or so to await final ripening of the grain and retrieval for threshing. Once gathered, the wheat was only ready for sale after it was threshed down to the grain. In this period, threshing involved the use of a semi-portable, steam-driven engine to which the actual threshing apparatus was connected. The wheat had to be brought over to the thresher and stacked in preparation for this final step. THOMAS D. ISERN, BULL THRESHERS & BINDLESTIFFS: HARVESTING AND THRESHING ON THE NORTH AMERICAN PLAINS 27–39, 47–48, 74–75 (1990). On the specific labor demands of each technique, see DON D. LESCOHIER, CONDITIONS AFFECTING THE DEMAND FOR HARVEST LABOR IN THE WHEAT BELT 14–21 (U.S. Dep't of Agric. Bull. No. 1230, Apr. 1924) [hereinafter LESCOHIER, CONDITIONS AFFECTING DEMAND].

73. HALL, *supra* note 12, at 69.

74. Of course the entire household, and not simply the single farmer, represented the basis of proprietary agriculture in this context. Suffice it to say that wives and children performed a considerable proportion of the necessary labor. Cornelia B. Flora & Jan L. Flora, *The Structure of Agriculture and Women's Cul-*

essary non-harvest chores themselves, which largely obviated the need for year-around employees. Yet another factor at play in the demand for transient labor on the Northern Plains was the region's low population density, and the fact that so much of the local population was itself composed of farmers or others who performed jobs essential to the harvest. This left North Dakota "entirely dependent upon more distant centers of population" to satisfy its harvest labor demands.[75]

B. Proletarians in the Wheat Fields

The combined effect of all these factors was an extraordinary dependency of the wheat-belt harvest on transient wage-labor—and one of the great seasonal labor migrations in American history. According to Don Lescohier, a U.S. Department of Agriculture researcher who in the early 1920s prepared several revealing reports on the harvest labor "problem," each year the harvest required "the services of more than 100,000 harvest hands from other States."[76] Another authority suggests a high in the late 1910s and early 1920s of as many as 250,000 transient harvest laborers.[77] North Dakota farmers alone needed between 25,000 and 30,000 transients. This was equal to roughly 5 percent of the state's permanent population through the 1910s and early 1920s. In Ward and Cass counties, several thousand laborers were needed each season. Overall, the harvest forced farmers to double their labor inputs. On a typical farm, of say 400 to 500 acres, this would mean about three to four extra men paid by the day.[78] In 1921 more than 70 percent of North Dakota farms required seasonal harvest labor. Then, as now, North Dakota produced mainly spring wheat, which generated a peak demand for harvest labor in August and September.[79]

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ture in the Great Plains, 8 GREAT PLAINS Q. 195 (1988); Pamela Riney-Kehrberg, *Women in Wheat Country*, 23 KAN. HIST. 56 (2000).

75. LESCOHIER, CONDITIONS AFFECTING DEMAND, *supra* note 72, at 1.

76. DON D. LESCOHIER, SOURCES OF SUPPLY AND CONDITIONS OF EMPLOYMENT OF HARVEST LABOR IN THE WHEAT BELT 1 (U.S. Dep't of Agric. Bull. No. 1211, May 23, 1924) [hereinafter LESCOHIER, SOURCES OF SUPPLY].

77. HALL, *supra* note 12, at 43.

78. LESCOHIER, CONDITIONS AFFECTING DEMAND, *supra* note 72, at 1, 5–7 tbls.1 & 2.

79. DON D. LESCOHIER, HARVEST LABOR PROBLEMS IN THE WHEAT BELT 3–5, 23–24 figs.2 & 3 (U.S. Dep't of Agric., Bull. No. 1020, Apr. 12, 1922) [hereinafter LESCOHIER, HARVEST LABOR PROBLEMS]; LESCOHIER, CONDITIONS AFFECTING

The men—and they were nearly all adult males[80]—who traveled to work these farms were proletarians in every important sense of the word. For most, employment was casual and anonymous. Workers sold their labor via money contracts for specific time periods—usually by the day. Little besides contract tied the transient harvest hand to his employer or to the production process itself.[81] In addition to this, tenure at any one job was seldom more than a couple of weeks.[82]

Lescohier's data also hints at the proletarian background of this labor force. He found that in this still very agrarian age almost half of the transient harvest hands (44.6 percent) were "city bred" and over half (52.9 percent) "found their first job[s] for wages in a nonagricultural occupation."[83] For Lescohier, such numbers emphasized the dependency of the wheat harvest on surplus industrial labor. Workers reporting first employment as either factory work, mining and oil-field work, railroad work, or "unclassified common labor" comprise some 38.4 percent of his sample.[84] When asked to describe their "customary" occupations, 32.9 percent indicated they were "floating laborers" while only 29.2 percent identified themselves as full-time "farmers and farm laborers."[85]

DEMAND, *supra* note 72, at 1, 5–7 tbls.1 & 2. According to census figures, the total population of North Dakota in 1910 was 577,056, and by 1920, 646,872. III DEP'T OF COM., BUREAU OF THE CENSUS, THIRTEENTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1910: POPULATION 348 tbl.I (1913) [hereinafter 1910 CENSUS: POPULATION]; I DEP'T OF COM., BUREAU OF THE CENSUS, FOURTEENTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1920: POPULATION 270 tbl.5 (1921); [hereinafter 1920 CENSUS: POPULATION]. *See also Army of Needed Harvesters in Great Annual Migration*, MINOT DAILY NEWS, July 19, 1922, at 4 (evening ed.); *Minot Employment Office Is Closed*, MINOT DAILY NEWS, Oct. 15, 1921, at 8 (evening ed.); *Minot Labor Bureau Which Closes Today Has Placed Many Men*, MINOT DAILY NEWS, Sept. 30, 1922, at 10 (evening ed.).

80. While I suspect that a small percentage of transient North Dakota harvest laborers were women, I have found no evidence of their presence in any primary sources. One article does describe the arrest in Fargo of a group of boys, ages 17, 16, and 14, all carrying IWW membership cards. *Sheriff Discovers 3 Youthful I.W.W.*, FARGO F. & DAILY REPUBLICAN, Aug. 3, 1922, at 2 (evening ed.). But generally, little mention is made of people this young in the harvest.

81. Applen, Migratory Harvest Labor, *supra* note 12, at 49–66.

82. Philip Taft, *The I.W.W. in the Grain Belt*, 1 LAB. HIST. 53, 56 (1960). On the relationship between wheat mono-culture and the development of wage-labor, see also Harriet Friedman, *Simple Commodity Production and Wage Labour in the American Plains*, 6 J. PEASANT STUD. 71 (1978).

83. LESCOHIER, SOURCES OF SUPPLY, *supra* note 76, at 3.

84. *Id.* at 4 tbl.2.

85. *Id.* at 5 tbl.3.

Lescohier also found that the majority of these workers were young, single, native-born whites: 89 percent were native-born; 77 percent were single; and only 19 percent were age forty or older.[86] Like most Americans of the day, the majority were literate, but few had graduated high school.[87] Predictably, very few owned anything but their personal effects—a point sadly underscored in newspaper accounts of deaths and other tragedies among this lot.[88] Other evidence collected at the time tends to support Lescohier's demographic descriptions.[89] Harvest laborers on the Northern Plains in the 1910s and early 1920s were heavily dependent on railroads, first to get to the wheat-belt and then to get from job to job. According to Lescohier, an astounding 60 percent made their way on freight trains—compared to only 35 percent who paid their way on passenger trains, 4 percent who got along by automobile, and 1 percent who were shipped by employment agencies.[90] Local newspapers describe scores of men riding this way during the harvest.[91] They, along with other records, almost never

86. *Id.* at 3, 7–8 tbl.5. According to Lescohier, while most harvest hands hailed from Midwestern or Plains states, only 15 percent of laborers interviewed in the process of seeking harvest work were residents of the states in which they were interviewed. *Id.* at 1.

87. *Id.* at 6–7 tbl.4.

88. LESCOHIER, HARVEST LABOR PROBLEMS, *supra* note 79, at 18–22. *See also Man Finds Death by Placing Head on Rail*, FARGO F. & DAILY REPUBLICAN, Oct. 5, 1914, at 2 (evening ed.) (noting that on the victim's person was "$8.40 in money and some letters from his mother and a sister"); *Stranger Killed in Great Northern Railroad Yards*, WARD COUNTY INDEP., Oct. 19, 1916, at 1 (noting that only liquor, a watch, some money, and a list of names and addresses were found in decedent's clothing).

89. Lescohier's descriptions closely match those made by sociologist Nels Anderson, who in the same period conducted pioneering research not on the phenomenon of harvest labor, but on "hoboes" and homelessness in general. Anderson's work is nonetheless quite relevant to us because it consists, in part, of interviews he conducted in 1921 of some 400 "cases" met on a 2,200 mile field trip through the Midwest via freight train—and this represents exactly the time, place, and mode of travel of the harvest worker population. This work disclosed a similar set of demographics: predominantly young, white, native-born men with industrial work histories, whose main reason for riding the rails was the search for employment. ANDERSON, *supra* note 48, at 80–89. *See also* Thornstein Veblen, *Farm Labor and the I.W.W.*, *in* ESSAYS IN OUR CHANGING ORDER 319, 329 (Leon Ardzrooni ed., Kelly 1964).

90. LESCOHIER, SOURCES OF SUPPLY, *supra* note 76, at 11–12.

91. For example, one article in a local paper describes as many as thirty transients per train riding through Minot during the harvest season. *News Briefs: Many Ride Freights*, MINOT DAILY NEWS, Aug. 29, 1921, at 3 (evening ed.). Another depicts trains in the Fargo area carrying over 100 workers each. *Transients*

mention workers traveling by passenger train, suggesting that Lescohier's estimate of the rate of freight travel may actually be too low.[92] Reasons for this reliance on hoboeing are easy to grasp: underdevelopment of automobile roads compared to railroads; the still prohibitive cost of automobiles; and the relative inability and general reluctance of the railroads (which profited by shipping in farming supplies and shipping out the grain) to enforce their rights against illegal riding and trespass.[93]

An important point to note is how extraordinarily dangerous it was to hobo to work. Trains, particularly freight trains, were in this period especially prone to accidents. The freights were of course completely bereft of passenger safety features. Lucky were the riders who found places inside box cars. Many had to ride on flat and gondola cars, often atop bulk loads (which have a lethal tendency to shift), atop the box cars themselves, with livestock, underneath the cars ("riding the rods," as it were), and in extreme cases even on the cow-pushers at the front of the locomotive.[94] Thus, harvest hands who took this route incurred, in addition to the usual perils of collision, derailment, or locomotive boiler explosion, the risks of falling off or underneath the train, or being crushed by shifting loads or between cars. The newspapers describe a number of accidents of this sort in North Dakota during this period.[95]

Freely Beat Passage on Railroad Trains, MINOT DAILY NEWS, July 22, 1921, at 1 (evening ed.).

92. One reason Lescohier's data may be too low in this regard, and skewed as well with respect to information about workers' backgrounds, is that for this set of data, Lescohier interviewed harvesters at government employment bureaus, which likely catered to a slightly less militant, more secure segment of workers. LESCOHIER, SOURCES OF SUPPLY, *supra* note 76, at 1.

93. The railroads were invested in the success of the harvest, and therefore disinclined to disrupt the flow of workers. HALL, *supra* note 12, at 78. *See also Free Ride on the Top of Cars*, FARGO F. & DAILY REPUBLICAN, July 25, 1921, at 7 (evening ed.); *Transients Freely Beat Passage on Railroad Trains*, *supra* note 91. A database compiled by the author of 3,265 Fargo Police Court cases reveals only one clear case of trespassing on the railroad, and two other trespass cases where the nature of the charge is unclear. *See infra* Part IV.A.

94. For a vivid description of this, see, e.g., ROGER A. BRUNS, KNIGHTS OF THE ROAD: A HOBO HISTORY (1980).

95. According to the railroads, in 1914, seventy-two individuals were killed on North Dakota railroads, of which thirty-two were trespassers. *Seventy-Two Were Killed During Year*, WARD COUNTY INDEP., Dec. 17, 1914, at 1. *See also Man Killed at Berthold: Transient Run Over by Train Which He Was Attempting to Board*, WARD COUNTY INDEP., June 24, 1915, at 1; *Stranger Killed in Great Northern Railroad Yards*, WARD COUNTY INDEP., Oct. 19, 1916, at 1 (identifying victim in a preceding story); *Transient Has Foot Cut off by Soo Train*, MINOT DAILY OPTIC-REPORTER, Sept. 30, 1916, at 1 (evening ed.); *Transient Hurt by*

As if this were not enough, hoboeing harvest hands were also subject to all sorts of brutal and capricious treatments from train crews and railroad police. Riding freight trains without authorization was quite illegal in North Dakota, and indeed in every state. Moreover, the same North Dakota "Act to Suppress and Punish Trespassing and Stealing Rides Upon Cars, Engines and Trains" defined conductors, engineers, and brakemen as "peace officers" and empowered them to arrest illegal riders.[96] As just stated, in most cases it seems that riders were left unmolested—at least during the harvest season (and at least before this too became a forum of labor control). But enormous power remained in the hands of officers and crewmen, and harvest hands were routinely extorted for fares, shot at, thrown off of or underneath moving trains, or severely beaten by such personnel.[97] Again, the local papers provide an ample set of examples of this treatment.[98] In a number of in-

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Train, WARD COUNTY INDEP., July 19, 1923 (reporting a transient seriously injured near Fairmount); *Transient Is Hit by Train*, MINOT DAILY OPTIC-REPORTER, Aug. 4, 1914, at 5 (reporting a victim seriously injured); *Transient Loses Limb Under Great Northern Freight Near Berthold*, MINOT DAILY NEWS, Aug. 20, 1924, at 5 (evening ed.); *Transient Met Horrible Death Near Stock Yards*, MINOT DAILY OPTIC-REPORTER, Oct. 16, 1916, at 1 (evening ed.) (describing how the victim, who carried no identification, likely fell while trying to hop a train and was dragged to death).

From the labor press, see, e.g., Tom Murphy, *Fellow Workers Injured in Wreck on the Soo Line*, INDUS. WORKER, July 9, 1921 (reporting eight union members injured by derailment in North Dakota); Joe Trayer, *Member Killed Near Havre*, INDUS. WORKER, July 21, 1917 (reporting a "fellow Worker" crushed to death by shifting lumber load on Montana train). One derailment at Tripp, South Dakota, which was widely reported in the IWW press, killed several harvest hands and injured about thirty. *Hundreds Hurled in Air in South Dakota Wreck*, SOLIDARITY, Aug. 5, 1916, at 1.

96. Act of Feb. 27, 1899, ch. 127, 1899 N.D. Laws 196.

97. *See* STEWART BIRD, ET AL., SOLIDARITY FOREVER: AN ORAL HISTORY OF THE IWW 38–39, 46 (1985); RALPH CHAPLIN, WOBBLY: THE ROUGH-AND-TUMBLE STORY OF AN AMERICAN RADICAL 88 (1948); KUSMER, *supra* note 29, at 41 (quoting an 1883 correspondent: "If a brakeman throws a tramp off a train and he is killed . . . you will generally read an item about an unknown tramp, while trying to steal a ride, having fallen between the wheels or something of that kind, but we know better."); *Harvesting Harvesters: Human Birds of Prey Who Infest the Harvest Belt as Gamblers, Hold-up Men, and Other Crooks in League with Railroad Bosses*, SOLIDARITY, July 10, 1915; *News from Agricultural Workers' Industrial Union No. 400*, SOLIDARITY, Sept. 22, 1919 (reporting a union man apparently shot dead in the back by railroad policeman; second union man, in unrelated incident, shot by robbers).

98. *Brakeman Held for Murder: Killing of Transient on Soo Train Gets Man Into Serious Trouble*, MINOT DAILY OPTIC-REPORTER, Nov. 1, 1915, at 1 (reporting a brakeman alleged to have randomly shot harvest hand in boxcar from the caboose as the train negotiated curve in adjacent county); *Farm Hand Shot in Leg:*

stances, officers and crewmen were actually prosecuted for robbing, assaulting, or killing transient riders.[99] How often they did these things with impunity can only be imagined.

The same uncertainty characterizes the prevalence of another danger to harvest labor—being robbed or assaulted by common criminals. Nonetheless, scores of newspaper stories describe what must have been an absolutely pervasive practice, both on the trains and in the rail yards.[100] Some of these en-

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Wounded Man Says Brakeman Fired When He Left Train, MINOT DAILY OPTIC-REPORTER, Aug. 14, 1914, at 3; *Gunman Fatally Shot at Harvey; Crime Wave Grows*, MINOT DAILY NEWS, Sept. 3, 1921, at 1 (evening ed.) (reporting a transient shot dead by Soo Railroad detective); *Hobo Thrashed, Man Who Attacked Conductor is Given the Same Medicine*, WARD COUNTY INDEP., Sept. 25, 1913 (reporting that hobo who supposedly attacked conductor "beaten so badly . . . that he is in a hospital").

99. *Alleged G.N. Policeman Wanted for Robbery*, MINOT DAILY NEWS, Aug. 14, 1917, at 1 (evening ed.); *Brakeman Held for Murder*, MINOT DAILY OPTIC-REPORTER, Nov. 1, 1915, at 1 (reporting a Soo brakeman arrested for murder of harvest laborer in McHenry County); *Brakeman Shot a Hobo*, FARGO F. & DAILY REPUBLICAN, Aug. 11, 1914, at 4 (evening ed.) (reporting a Northern Pacific brakeman arrested for shooting harvest hand, who would not tender twenty-five cents, near Jamestown); *Brief State News*, WARD COUNTY INDEP., Nov. 11, 1915, § 2, at 2 (reporting a Northern Pacific Brakeman arrested for robbing harvest hands at Marmarth); *Detective Held for Shooting of an I.W.W. Laborer*, MINOT DAILY NEWS, Oct. 8, 1920, at 1 (evening ed.); *I.W.W. Is Shot for Thrusting Hand in Pocket*, MINOT DAILY NEWS, Oct. 5, 1920, at 1 (evening ed.); *N.P. Detectives To Be Arraigned at Jamestown*, FARGO F. & DAILY REPUBLICAN, June 15, 1921, at 2 (evening ed.) (detailing arraignment for the shooting of three transients).

100. *See, e.g., Brief State News*, WARD COUNTY INDEP., Nov. 4, 1915, § 2, at 3 (reporting 18 harvest laborers robbed in box car between Berwick and Granville); *Fifteen Hobos Robbed on Moving Train*, FARGO F. & DAILY REPUBLICAN, Sept. 30, 1914, at 8 (evening ed.) (reporting that a robbery occurred on Minnesota train, directly across the border); *Harvest Hand Shot in Arms: Robbed of $35 and Will Take Ten Days to Recover from Injuries*, MINOT DAILY OPTIC-REPORTER, Sept. 23, 1915, at 5 (describing robbery of harvest hand near Jamestown); *Harvest Hands Robbed on Train: Holdup Men Lock Victims in Car After Taking Their Valuables*, MINOT DAILY OPTIC-REPORTER, Sept. 21, 1914, at 6; *Held Up Five and Burned Box Car*, WARD COUNTY INDEP., Sept. 24, 1914, at 1; *Man Shot in Vag Holdup: Laboring Men on Soo Train Held Up by Masked Men*, MINOT DAILY OPTIC-REPORTER, Aug. 24, 1915 (describing robbery of harvest hands near Valley City); *News from Agricultural Workers' Industrial Union 400*, SOLIDARITY, Sept. 1, 1917 (calling for donations to aid member injured in Carrington robbery); *Several Robbed While Riding in Stock Cars*, MINOT DAILY OPTIC-REPORTER, Sept. 14, 1915, at 1 (describing some "humorous features" of robbery of harvest laborers near Surrey, including victim's unwillingness to use deadly force against robbers); *Thirty Men Robbed by Thugs on Train*, FARGO F. & DAILY REPUBLICAN, Oct. 8, 1914, at 6 (evening ed.) (describing robbery near Grand Forks, wherein victims were forced to leap from moving train); *Two Robbed And Driven From Cars*, FARGO F. & DAILY REPUBLICAN, Sept. 29, 1920, at 9 (evening ed.) (reporting transients robbed near Kodalk).

counters proved fatal to the harvest laborers.[101] On many other occasions, however, harvest laborers fought back against robbers as well as officials and crewmen.[102] In a great (and perhaps not uncommon) example of this spirit of resistance, harvest laborers in the summer of 1916 managed to commandeer an entire train in Jamestown, North Dakota—reportedly "just for the fun of handling things themselves."[103]

Nationwide during this period, tens of thousands of hoboes were killed or injured on the trains; it seems likely that thousands of these were harvest hands.[104] And even without the

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101. *Brief State News*, *supra* note 100 (describing harvest laborer robbed of $80 and fatally shot near Arvilla); *Murder Committed in Railroad Yards at Stanley*, WARD COUNTY INDEP., Oct. 16, 1916, § 2, at 1; *Transients Die from Crushed Skulls—Murdered for Money*, WARD COUNTY INDEP., Sept. 6, 1923, § 1, at 1.

102. *City Briefs: Harvey Policeman Shot*, MINOT DAILY OPTIC-REPORTER, Sept. 7, 1915, at 8 (describing policeman shot attempting to arrest transient in "jungle"); *Hold Pair of I.W.W. Gunmen*, FARGO F. & DAILY REPUBLICAN, Aug. 21, 1916, at 6 (evening ed.) (reporting alleged IWWs held for attempted robbery after "running gun fight [with train conductor] on top of the moving train"); *I.W.W. Gunman Slain by N.P. Agents Aboard Moving Train*, FARGO F. & DAILY REPUBLICAN, Sept. 7, 1917, at 1 (evening ed.) (reporting IWW member killed in gunfight with railroad police at Fargo); *I.W.W. Leader Held at Lakota for Shooting at Railroad Men*, FARGO F. & DAILY REPUBLICAN, Sept., 3, 1919, at 1, (evening ed.); *Night Marshal at Stanley Shot and Killed by I.W.W.*, WARD COUNTY INDEP., Aug. 24, 1922, at 4; *Soo Policeman Loses Gun*, WARD COUNTY INDEP., Aug. 18, 1921, at 3 (reporting railroad detective's gun taken by "tough guys"); *Wobbly Pleads Guilty: Pulled Gun on Detective, Given 60 Days in Jail*, WARD COUNTY INDEP., Sept. 29, 1921, § 1. Reducing robberies became a key aim once these workers unionized. *See, e.g.*, J.R. Parker, *Crop Failure for Hi-Jacks*, INDUS. WORKER, July 14, 1917. *See also* 4 PHILIP S. FONER, HISTORY OF THE LABOR MOVEMENT IN THE UNITED STATES 476–77 (1965) (noting that the IWW warned its members about carrying too much money) [hereinafter FONER, HISTORY OF THE LABOR MOVEMENT].

103. *I.W.W.'s in Command of N.P. Freight*, FARGO F. & DAILY REPUBLICAN, Aug. 1, 1916, at 2 (evening ed.). About a week later, near Leith, a train crew abandoned its train to IWWs supposedly attempting to commandeer it. *New England Drives "Wobblers"; Train is Surrendered to Gang*, FARGO F. & DAILY REPUBLICAN, Aug. 8, 1916, at 1 (evening ed.).

104. Interstate Commerce Commission data for 1921 reports 2,481 deaths and 3,071 injuries among "trespassers"—compared to 1,137 death and 28,747 injuries among employees, and 205 deaths and 5,584 injuries for paying passengers. The anomalously small ratio of injuries to deaths for trespassers undoubtedly reflects a much lower injury-reporting rate for these victims. INTERSTATE COMMERCE COMM'N, 36TH ANNUAL REPORT 62–63 (1922). These figures are nationwide and do not differentiate among different types of trespassers (for example, hoboes versus local victims); nor were all illegal train-riders hoboes. But it is also certain that the total deaths are grossly undercounted, not least because the railroad usually bore the costs of coroner inquests into every death they reported. Frank Tobias Higbie, *Indispensable Outcasts: Harvest Laborers in the Wheat-belt of the Middle West, 1890–1925*, 38 LABOR HIST. 393, 398 (Fall 1997) (quoting a railroad

risk of death or serious injury, riding freights was hardly an ideal way to get about. Hoboeing harvest hands were dogged by heat and wet and cold, by the caprice of the rail schedules, and by the uncertainty of finding work or even being allowed off the trains at their intended destination.[105]

By no means did danger and privation end when the harvest hands reached their jobs. Workers generally had to live on the farms while they worked there. And although sometimes quite decent, accommodations were just as often very spartan, consisting of bad food, sometimes alkaline water, and perhaps a barn for sleeping.[106] Often poor themselves, and under pressure to gather the wheat while weather permitted or prices were good, farmers frequently made their crews (who were usually paid by the day) work as long as conditions permitted. Writing in 1915, labor organizer E.F. Doree observed that for harvest hands the eight-hour work day meant "eight in the morning and eight in the afternoon."[107] In fact, in North Dakota a typical harvest day was ten to fourteen hours long.[108] And there were many, many ways to be maimed or killed at this job. All too often, workers and farmers alike were crushed or mangled by the machinery, kicked by draught animals, impaled by pitch-forks, struck down in the open fields by lightning, or laid low by heat stroke.[109] Threshing alone presented a

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official to this effect). In his recent book on history of homelessness, Kenneth Kusmer reckons that through the early twentieth century, about 1,000 hoboes were killed on the tracks each year. KUSMER, *supra* note 29, at 145.

105. HALL, *supra* note 12, at 78–81. For a general description of the hardships encountered, see, e.g., CHAPLIN, *supra* note 97, at 86–89; BIRD, ET AL., *supra* note 97, at 37–49. *See also* BRUNS, *supra* note 945.

106. *Farm Hand Dies in Incendiary Fire*, MINOT DAILY NEWS, Aug. 29, 1917, at 5 (morning ed.) (reporting harvest laborer burned to death attempting to retrieve suitcase from burning barn); *Happy Life of Harvest Hands in South Dakota: Consisting of Long Hours, Short Pay, Short Meals, and No Sleeping Quarters*, SOLIDARITY, Oct. 9, 1915; HALL, *supra* note 12, at 84–86, 112–13; BIRD ET AL., *supra* note 97, at 42–43; *The Happy Life of a Harvest Hand*, SOLIDARITY, Aug. 1, 1914.

107. E.F. Doree, *Gathering the Grain*, 15 INT'L SOCIALIST REV. 740, 740 (1915). Doree also quips that "[i]f the farmer in South Dakota had the power of Joshua, he would inaugurate the twenty-four-hour workday." *Id.* at 741.

108. According to Lescohier, the typical workday in North Dakota was 10 hours long. LESCOHIER, CONDITIONS AFFECTING DEMAND, *supra* note 72, at 33 tbl.8.

109. Doree claims that on one day in one Kansas county in 1914, *twenty-five* men perished of heat stroke! Doree, *supra* note 107, at 741. *See also* BIRD, ET AL., *supra* note 97, at 37 (noting that a harvest hand in Kansas "saw five men go down with heat exhaustion in a single day").

The array of dangers that harvest laborers faced on the job is truly amazing, including: assault, *Pitchfork Was His Weapon: An Apparently Insane Man Beat*

uniquely horrendous risk: explosion, either of the steam boiler or of the huge clouds of chaff-dust generated by the process.[110]

All of this risk and toil yielded relatively little money. Wages tended to average between two and six dollars per day, with great seasonal and local variation. Compounding their problems, workers had to string together several jobs per season.[111] And many days were lost in transit or due to bad weather. Of 266 North Dakota laborers interviewed by Lescohier regarding their 1920 earnings in the harvest—a good year for wages—only twenty-nine had netted at least $350; most had netted less than $200.[112] In the previous year, only seventeen of 230 North Dakota laborers netted at least $350, and again over half of those who could recall netted less than $200.[113] Every year many others came away broke.[114]

Up Fellow Worker Without Cause, MINOT DAILY OPTIC-REPORTER, Sept. 27, 1915, at 2; *Temper and Whiskey Get Farmer into Trouble: Arrested for Vicious Assault on Farm Hand During Drunken Debauch*, MINOT DAILY OPTIC-REPORTER, Sept. 27, 1915, at 6; boiler explosion and other thresher-related risks, *Accident Is Fatal To Farm Laborer*, FARGO F. & DAILY REPUBLICAN, Aug. 13, 1921, at 1 (evening ed.); *Man's Arm is Nearly Pulled Off: Thresher Dies from Shock and Loss of Blood After the Accident*, MINOT DAILY OPTIC-REPORTER, Aug. 22, 1914, at 1 (reporting victim a migrant from Illinois); *Threshing Accident*, MINOT DAILY NEWS, Aug. 27, 1920, at 1 (evening ed.) (describing injury received in boiler explosion); *Threshing Rig Boiler Blows Up*, MINOT DAILY OPTIC-REPORTER, Oct. 29, 1915, at 3; lightning, *Two Are Killed by Lightning*, WARD COUNTY INDEP., Oct. 16, 1913; *Two Men Struck by Lightning Bolt*, MINOT DAILY OPTIC-REPORTER, Sept. 21, 1914, at 3 (describing incident which occurred while threshing); being run down, *Run Over by Thresher Rig*, WARD COUNTY INDEP., Sept. 21, 1916, § 2, at 8 (reporting that victim was a hired hand).

110. ISERN, *supra* note 72, at 103–04.

111. Lescohier's reports dispel a myth that still endures in conventional understandings of the harvest labor phenomenon: that a vast and relatively coherent "army" of harvest labor annually followed the ripening grain from the southern reaches of the winter wheat fields in Oklahoma and Texas, up through the spring wheat fields of the Dakotas. It is true that transient workers did migrate from farm to farm through the harvest; they had to if the harvest was to be worth their while, for each farm generally provided only a couple of weeks of work. It is also true that their overall numbers were rather army-like—particularly compared to the local populations. But Lescohier's data reveals clearly that most workers labored the entire season in one state, and that within particular states, workers tended to migrate east to west—which is the way the railroads generally ran—not north to south. LESCOHIER, SOURCES OF SUPPLY, *supra* note 76, at 20–22 tbl.15. Furthermore, a relatively small number of laborers worked in both the Dakotas and the southern wheat-belt. LESCOHIER, HARVEST LABOR PROBLEMS, *supra* note 79, at 10–11.

112. LESCOHIER, SOURCES OF SUPPLY, *supra* note 76, at 19 tbl.13.

113. *Id.* at 19 tbl.14.

114. *Id.* at 16–19 tbls.10–14. Indexed to 2002 values, $200 in 1920 is less than $2,000.

Hoboes in the strictest sense of the word, most harvest laborers found their homes between jobs in "jungle" campsites and rail yards, where they organized themselves in surprisingly cooperative ways. Here goods and information were exchanged and substantial protection from criminals and police provided. Here, too, a deep sense of solidarity was forged, not least on the basis of a shared sense of exclusion, persecution, and exploitation.[115] While this workforce was by nature quite fluid, the famous sociologist Thornstein Veblen, who was commissioned by the federal government to study the harvest labor problem, found that year after year workers tended to coalesce into core groups or "gangs," which furthered the sense of labor solidarity.[116]

These men were well acquainted with physical violence and hardship, often contemptuous of middle-class culture, and with little use for conventional ideals and institutions of law and order. Many harvest hands seemed drawn to confrontation, destruction, and mischief of all sorts. Indeed, they were on the whole a genuinely roguish lot. And yet, precisely because of this, these men expressed a rare spirit of rebellion and of solidarity, and a real willingness to challenge the industrial system and its values.[117]

C. The Industrial Workers of the World

No doubt as a result this perspective, the struggle to regulate harvest labor on the Northern Plains proved by no means a one-sided affair. By 1915, harvest laborers had organized themselves into a formidable labor organization: the Agricultural Workers Organization (AWO), later renamed the Agricultural Workers Industrial Union (AWIU). Founded in Kansas City, and based for most of its existence in Minneapolis, this organization was created specifically for the purpose of organizing labor in the wheat and other small grain agriculture on the Plains. The AWO/AWIU was an affiliate of the IWW. In fact,

115. HALL, *supra* note 12, at 87–89; Don D. Lescohier, *With the I.W.W. in the Wheat Lands*, HARPER'S MONTHLY MAG., Aug. 1923, at 371 [hereinafter Lescohier, *With the I.W.W.*]. Between harvest seasons, workers either took up other agricultural or industrial jobs, particularly in lumber, or retired for the winter to urban "skid rows" in cities like Minneapolis, Kansas City, and Chicago. Veblen, *supra* note 89, at 330.

116. Veblen, *supra* note 89, at 329–30; Taft, *supra* note 82, at 56.

117. Lescohier, *With the I.W.W.*, *supra* note 115, at 373.

the AWO/AWIU was in the late 1910s and early 1920s the largest, and in many ways most successful, IWW affiliate. This integral connection to the IWW makes a basic overview of IWW history, doctrine, and practice essential to an understanding of the struggle that unfolded in the wheat-belt.

The IWW was conceived in Chicago in the first half of 1905 by a diverse collection of labor radicals and left-wing socialists. Particularly prevalent at its founding convention were representatives from the militant Western Federation of Miners (which was itself forged in vicious labor battles through the Rocky Mountain West) and its sister organization, the American Labor Union, as well as the Socialist Party.[118] Also present were veterans of the old Knights of Labor, which had a generation earlier unleashed its own brand of radicalism on the owning classes. Key personalities in attendance at the Chicago conference included Vincent St. John, Mary "Mother" Jones, and William "Big Bill" Haywood, who opened the convention with the characteristically bold words, "This is the Continental Congress of the working class."[119]

From its antecedent organizations, the IWW inherited a defining set of radical principles. Foremost among these was an unequivocal commitment to industrial unionism. This manifested itself in a comprehensive rejection of the central tenets of craft unionism. As such, the IWW was dedicated from the outset to easy and open membership for all wage-earners. Dues and fees were relatively uniform and cheap. Salary earners and professionals were not welcome and IWW affiliates were not permitted to organize themselves, in the manner of craft unions, according to skill, education, or rank. And unlike virtually all modern unions, IWW locals were largely banned from entering written contracts.[120] In keeping with this orientation, the IWW aggressively recruited lumberjacks, miners,

118. The Western Federation of Miners was the key player in the formation of the IWW. Its leaders, of whom William "Big Bill" Haywood was the most important, laid out plans of the organization of the IWW in 1904. The Western Federation of Miners also exerted lasting influence on the IWW's theoretical and structural orientation. *See, e.g.*, MELVIN DUBOFSKY, WE SHALL BE ALL: A HISTORY OF THE INDUSTRIAL WORKERS OF THE WORLD 21–43 (2000). On the Western Federation of Miners' labor struggles, see, e.g., Phil H. Goodstein, *The Rise of the Rocky Mountain Labor Movement: Militant Industrial Unionism and the Rise of the Western Federation of Miners*, 2 LABOR'S HERITAGE, July 1990, at 22.

119. FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 29.

120. *See, e.g.*, DUBOFSKY, *supra* note 118, at 33–49; FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 37, 115, 137.

factory workers, and other groups outside both the emerging labor aristocracy and the old artisan elite. Its ranks swelled with thousands of the country's most insolent and militant workers.

The political orientation of the IWW was decidedly radical, combining both socialist and syndicalist elements. The organization's stated goal (in the preamble to its constitution, among other places) was the destruction of the wage-labor system. It evoked, instead, an audacious vision of a world in which work would be not only equitably and democratically organized by workers themselves, but fulfilling and balanced.[121] The IWW's syndicalism showed itself in a thoroughgoing opposition to any collaboration with the state and any interest in formal political organizing. This attitude also encompassed a special distaste for police and courts, as well as labor organizations that would rely on these institutions in the struggle with capital. In fact, for the IWW, the state, along with most civic institutions, the church, and the artifacts of middle class culture generally, were little more than instruments of ruling class domination and exploitation.[122]

In addition to these stances, the IWW from the outset embraced a number of other quite leftist positions. At a time when few organizations of any sort stood against racism or xenophobia, the IWW aggressively recruited blacks, Asians, and other minorities and adopted and enforced strict antidiscrimination rules. Moreover, IWW publications consistently editorialized against racist and anti-immigrant policies and social prejudices, all the while admonishing members to trade parochialism for solidarity.[123] "Universal solidarity is the goal of the Revolution and this includes the Negro and the Mongolian no less than the Caucasian," reads a typical 1921 editorial in the *Industrial Worker*.[124] On gender questions, too, the IWW stood on radical ground. When most labor organizations (the American Federation of Labor chief among them) were keen on

121. FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 142–43; DUBOFSKY, *supra* note 118, at 84–97.

122. FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 129–33.

123. *Id.* at 123–27; HALL, *supra* note 12, at 124–25. *See also A Class, Not Race Problem*, INDUS. WORKER, Feb. 3, 1917; Joseph Ettor, et al., *Workers and Race Hate*, INDUS. WORKER, June 4, 1910; *Is There a Negro Problem?*, INDUS. WORKER, Sept. 18, 1917; Caroline Nelson, *Away With Race Prejudice*, INDUS. WORKER, Oct. 10, 1912; *The Negro Worker*, INDUS. WORKER, June 11, 1921.

124. *The Negro Question*, INDUS. WORKER, Apr. 9, 1921.

restricting the entrance of women into the workforce, or at best bent on shunting working women into inferior, segregated organizations, the IWW recruited women, prohibited gender discrimination, and championed feminist causes from the right to vote, to the right to birth control and family planning, to the right of economic autonomy.[125]

Although these positions on race and gender were not at all uncomplicated, neither were they empty rhetoric. For a time in the early 1910s, at the height of Jim Crow culture, an IWW affiliate, the Brotherhood of Timber Workers, managed to organize blacks and whites, men and women, in the piney woods of Louisiana and Texas.[126] The union also successfully organized integrated locals among dockworkers.[127] Another affiliate was the gender-integrated Domestic Workers Industrial International, Local 113, based in Denver.[128] In the fall of 1915, the union met a scheme by North Dakota farmers to import 30,000 black replacement workers from the South with an earnest vow to organize these workers just as well.[129] Other progressive IWW causes included opposition to capital punishment and support for the anti-war and anti-imperialist agendas.[130] Needless to say, none of this enhanced the IWW's reputation in establishment quarters.

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125. FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 127–29. *See also Birth Control*, INDUS. WORKER, Apr. 1, 1916; C.W. Sellers, *The Domestic Workers' Union*, SOLIDARITY, May 13, 1916.

126. FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 233–57. Predictably, this organization was subjected to fierce repression. Jeff Ferrell & Kevin Ryan, *The Brotherhood of Timber Workers and the Southern Trust: Legal Repression and Worker Response*, 19 RADICAL AM., 1985, at 55.

127. Howard Kimeldorf & Robert Penney, *"Excluded" by Choice: Dynamics of Interracial Unionism on the Philadelphia Waterfront 1910–1930*, 51 INT'L LAB. & WORKING CLASS HIST., Spring 1997, at 50–51.

128. C.W. Sellers, *supra* note 125.

129. Robert Russell, *The Roulette of Labor in North Dakota*, SOLIDARITY, Oct. 30, 1915.

130. DUBOFSKY, *supra* note 118, at 215–16, 243–54; FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 131–32, 555–57. *See also Queries and Replies: Does the I.W.W. Believe in Capital Punishment?*, INDUS. WORKER, May 29, 1913; *The Military Ideal*, SOLIDARITY, Nov. 8, 1913 (depicting an advertisement of anti-military paraphernalia).

D. The Rise of the IWW in North Dakota

It is difficult to judge just how successful the IWW[131] was in recruiting harvest hands in North Dakota. Fluid employment tends to lend itself to fluid membership rolls. The IWW itself did not keep good records and surely exaggerated membership numbers at some points. Veblen estimated that in the late 1910s a "large majority" of transient labor in the wheat-belt was affiliated with the IWW.[132] While this estimate is probably too high, it does seem safe to say that in any given season in the late 1910s and early 1920s that at least several thousand North Dakota harvest laborers were fairly hard-core IWW members, and that many thousand others were more casually affiliated.[133]

IWW recruiting on the Northern Plains shifted between two different strategies. The first, pursued in 1913 and 1914 (before the formation of the AWO/AWIU as a dedicated affiliate), relied on "agitation" above all else, consisting mainly of soap box oratories and other kinds of street corner confrontations. Aside from some desultory efforts earlier in the decade, this strategy was the first serious organizing effort in the wheat-belt.[134] Among the most prominent of these so-called "free speech" campaigns on the Northern Plains was one waged in Minot, in the summer of 1913. A brief account speaks both to the limitations of this strategy as well as its incendiary impact on labor relations in the region.

In July, in an apparent attempt to take advantage of perceived socialist sympathies in that town,[135] as well as low

131. To avoid confusion and also follow the predominant usage in the sources, I will use this acronym to denote the AWO/AWIU throughout the remainder of this article.

132. Veblen, *supra* note 89, at 321.

133. FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 478–79; DUBOFSKY, *supra* note 118, at 183–84. *See also 50,000 I.W.W. Organized in Northwest, Report*, FARGO F. & DAILY REPUBLICAN, July 13, 1917, at 3 (evening ed.).

134. On earlier organizing efforts, see, e.g., *Industrial Union for Harvest Hands*, INDUS. WORKER, July 1, 1909; *Harvesters! Organize with the I.W.W. and Own the Harvest*, INDUS. WORKER, June 25, 1910; *Get Eight Hours in Harvest*, INDUS. WORKER, Mar. 30, 1911.

135. Minot did apparently harbor strong socialist sympathies, but for a much more domesticated kind of socialism than that sought by the IWW. In 1915, Eugene Debs gave a well-received lecture there. *Debs Spoke to Large Crowd at Dorman Park Last Night*, MINOT DAILY OPTIC-REPORTER, June 15, 1915, at 1

wages in the region, IWW organizers descended on Minot in force and began raucous, but nonviolent, demonstrations. This was designed to educate and impress potential recruits among the pre-harvest congregation of workers. At first the campaign was met by equally nonviolent counter-demonstrations from townsfolk.[136] But although the unionists went to some lengths to avoid escalation, within a couple of weeks, local businessmen had managed—by hurling rotten eggs, among other strategies—to incite considerable conflict. Following a pattern seen in many towns,[137] this provocation ultimately resulted in a spiral of police arrests and beatings of IWW speakers, followed by the arrival of scores of IWW reinforcements, followed by more arrests.[138] The resort to reinforcements was designed by IWW leaders to finally overload the local jail and courts, causing the town to free the prisoners and reopen access to the streets, all the while bringing favorable publicity upon the union. The city countered by opening a "bull pen" to hold all the IWWs (or "Wobblies," as they widely came to be called) it arrested. Noisy protests and song from IWW inmates, and their refusals to work on the "rock pile," were eventually met by the police with beatings, fire hoses, and denial of meals. The IWWs did not yield, and within a week or so the police, realizing the folly of continued mass arrests (and initiating a practice soon to be commonplace in the region) resorted to intercepting arriving IWWs at the rail yards and either steering them out of town or attempting to coerce them into working in the harvest at the prevailing three dollars per day wage.[139] The jailed Wobblies were eventually subjected to a mass trial, most of them charged with either disorderly conduct, or with violating a just-enacted

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(evening ed.). On other reasons for choosing Minot, see, e.g., HALL, *supra* note 12, at 161.

136. *Agreement Reached in I.W.W. Dispute*, WARD COUNTY INDEP., Aug. 21, 1913, at 1. However, a number of townspeople apparently sided with the Wobblies, with some women "[fighting] the [local police] officers like wildcats." *Fierce Riot at Minot Squelched*, FARGO F. & DAILY REPUBLICAN, Aug. 21, 1913, at 1 (evening ed.).

137. For a review of IWW free speech fights in other locations, see, e.g., FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 172–213.

138. *More Than One Hundred I.W.W's Thrown in Jail*, WARD COUNTY INDEP., Aug. 14, 1913, at 1.

139. *Sent Two Cars of I.W.W.'s to Williston*, WARD COUNTY INDEP., Aug. 21, 1913.

ordinance prohibiting blocking the streets.[140] All were convicted and received minor sentences. But town leaders had had enough. As with most of its free speech fights, the IWW eventually won some concessions from Minot authorities, and perhaps also made an important impression on potential recruits. But not much was achieved in the way of organizational success. Perhaps worse, by demonstrating at once the IWW's resolve and fearlessness, as well as its radicalism, the episode no doubt heightened fear and animosity towards the organization on the part of townspeople throughout North Dakota.[141]

Realizing the problems with this strategy of organizing by agitation,[142] the IWW (now operating in the wheat-belt as the AWO/AWIU) shifted in 1915 and 1916 to a much more successful approach, centered on installing "stationary delegates" in towns throughout the wheat-belt—Minot and Fargo principal among them. These men would recruit and coordinate dozens of "field delegates" who would in turn travel along with harvest laborers and recruit them in the wheat fields and hobo jungles and on the freight trains.[143]

The first part of this program was to set up an "800 mile picket line" of sorts across the entire wheat-belt, by which a combination of successful recruitment and the exclusion of nonmembers would be used to create a union-only workplace.[144] While not altogether different from other unions' practices, implementing such a policy on this vast and ungoverned landscape and among such a raucous group of workers was bound to get quite rough. In many cases, persuasion involved casting reluctant recruits off the trains or otherwise denying them the

140. *I.W.W. Are Sentenced at Minot*, FARGO F. & DAILY REPUBLICAN, Aug. 16, 1913, at 1 (evening ed.).

141. On these events and on the problems with this kind of organizing strategy, see Charles James Haug, *The Industrial Workers of the World in North Dakota, 1913–1917*, 39 N.D. Q. 85, 87–92 (1971) [hereinafter Haug, *Industrial Workers 1913–1917*].

142. For an acknowledgment of the failures of the previous model of organizing, see, e.g., E.W. Latchem, *"Getting Our Bearings" on Harvest Organization*, SOLIDARITY, Apr. 3, 1915, at 1; W.T. Nef, *Lessons Gleaned from the Kansas Harvest*, SOLIDARITY, July 31, 1915.

143. FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 478–79. *See also* E.W. Latchem, *supra* note 142 (outlining new organizational strategy); Haug, *Industrial Workers 1913–1917*, *supra* note 141, at 96–97.

144. Taft, *supra* note 82, at 60–61; *see also* Forrest Edwards, *The Class War in the Harvest Country*, SOLIDARITY, Aug. 12, 1916.

opportunity to ride.[145] In other cases, it was the Wobblies who were victims of violence.[146]

In any event, while this program never came close to achieving a closed shop, it did dramatically increase membership. By 1916, IWW success at raising members lent itself to the second part of their program: to use strong membership to wage strikes and other protests. This usually involved the very simple tactic of organizing a group of workers to withhold their labor, or "hold out," for higher wages, and doing this whenever and wherever success seemed likely.[147] Although threats to mount state-wide or industry-wide strikes were raised periodically, this was never done.[148] Nor were unrealistic or gratuitously radical gains often sought. Instead, organizers concentrated their struggles locally, usually within single communities and sometimes against particular farmers.[149] And

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145. *Laborers on Trains Annoyed by Demands of I.W.W. Agitators*, MINOT DAILY NEWS, Aug. 18, 1922, at 1 (evening ed.); *Man Shot, Thrown Off Freight Train by Party of I.W.W.*, MINOT DAILY NEWS, Oct. 21, 1921, at 1 (evening ed.); *Workers Carry Wobbly Cards in Order to Ride Trains Without Molestation*, MINOT DAILY NEWS, Oct. 12, 1922, at 8 (evening ed.).

146. *Beaten When He Refuses to Join Gang of I.W.W.'s*, FARGO F. & DAILY REPUBLICAN, Aug. 30, 1916, at 2 (evening ed.) ("agitator" was also shot in the melee); *Gun is Texan's "Card"; Doesn't Join "Wobblies,"* WARD COUNTY INDEP., Aug. 24, 1922; *Minot Officers Battle Five Desperate Gunmen*, WARD COUNTY INDEP., Sept. 22, 1921, § 2 (police battle men who sought out IWW members to rob them, "just to have something to do").

147. *See, e.g., I.W.W. Are Busy at Cando: Attempting to Organize the Harvest Hands to Get High Wages*, MINOT DAILY OPTIC-REPORTER, Aug. 8, 1914, at 4; *Wobblies to Strike Where Best Chances For Success Appear*, MINOT DAILY NEWS, July 28, 1923, at 2 (evening ed.); *I.W.W. Organizes Men for Harvest at Cando*, FARGO F. & DAILY REPUBLICAN, Aug. 8, 1914, at 5 (evening ed.) (IWWs "stopping the harvest hands from working unless a larger wage than the going market price is paid"); *I.W.W. Agitators Are Demanding $6 a Day*, FARGO F. & DAILY REPUBLICAN, July 31, 1916, at 10 (evening ed.) (describing episode in McClusky); W.C. King, *I.W.W. Turns the Trick*, SOLIDARITY, Sept. 2, 1916 (describing organizing tactics); *$5 Daily Wage Demand of Men, Who Stand Out Against Offers: 600 Industrial Workers Hold Boards on Lower Front Street Today*, FARGO F. & DAILY REPUBLICAN, Aug. 1, 1917, at 1 (evening ed.). *Cf.* J.A. Sullivan, *Making the Wheat Farmers Come Across: Methods Suggested and Used by Workers in the Kansas Harvest Fields*, SOLIDARITY, July 4, 1914 (describing alternative tactics, such as agreeing to perform work at prices set by the farmer, only to refuse to work when harvesting was set to begin until the farmer agreed to pay higher wages).

148. *See, e.g., I.W.W. Called a Strike On Farms*, FARGO F. & DAILY REPUBLICAN, July 9, 1918, at 6 (evening ed.) (nationwide strike threatened).

149. *See, e.g., Threaten to Burn Property: Striking I.W.W.'s on Otto Zaeske Farm Near Chafee Results in Call*, FARGO F. & DAILY REPUBLICAN, Sept. 1, 1916, at 8 (evening ed.); *Men, Led by I.W.W., Quit Binder in Fields When Wage Increase Is Denied*, FARGO F. & DAILY REPUBLICAN, July 31, 1920, at 1 (evening ed.);

the union largely confined its demands to higher wages, better conditions, and simple recognition.[150] An August, 1922, edition of the *Minot Daily* describes the strategy in the mundane form it usually took: "More than two score men are loafing along North Main Street today, refusing offers of work . . . . They will consent to go to work only when offered higher wages than now prevail."[151] A more dramatic example appears in an August, 1917, edition of the Fargo daily, which describes with great alarm some *600* men, all supposed to be Wobblies, holding out on Front Street for five dollars per day and a ten hour day.[152]

By this program the IWW managed not only to increase membership but to raise wages substantially in the 1916 season.[153] But doing so inevitably exposed harvest laborers to the full force of vagrancy prosecution. For it required that large numbers of workers periodically remain both idle and available for work for substantial periods of time, and that IWW delegates, or organizers, continuously engage in what was invariably seen as a form of criminally illegitimate employment. Worse, much of this activity had to be conducted within the towns, where the farmers came to recruit their workers.

During the 1917 season, the IWW was strong enough in North Dakota to provoke an invitation to contract talks by the Non-Partisan League, a socialist-tinged organization of populist farmers that enjoyed considerable political influence and membership among North Dakotans in the 1910s and beyond. But these talks collapsed under the pressure of conflicted class interests and ideologies.[154] In general, a basic level of class con-

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I.W.W. Held on Charge, FARGO F. & DAILY REPUBLICAN, Sept. 6, 1921, at 10 (evening ed.). *Cf. Making the Wheat Farmers Come Across: Methods Suggested and Used by Workers in the Kansas Harvest Fields*, SOLIDARITY, July 4, 1914.

150. *See, e.g., Demands of Harvest Workers*, SOLIDARITY, June 26, 1915; Tilden Collar, *John Farmer and the I.W.W.*, SOLIDARITY, Nov. 5, 1915.

151. *Police To Act Today Against Activities of I.W.W. Agitators*, MINOT DAILY NEWS, Aug. 7, 1922, at 2 (evening ed.).

152. *$5 Daily Wage Demand of Men, Who Stand Out Against Offers*, FARGO F. & DAILY REPUBLICAN, Aug. 1, 1917, at 1 (evening ed.).

153. *See* Haug, *Industrial Workers 1913–1917*, *supra* note 141, at 98.

154. Haug, *Industrial Workers 1913–1917*, *supra* note 141, at 101–02; HALL, *supra* note 12, at 228–29, 260–61; J.A. Stromquist, *Can I.W.W. Join with Farmers of the Country to Abolish Capitalism*, INDUS. WORKER, Apr. 2, 1921 (considering and ultimately rejecting the notion). On the Non-Partisan League and its relationship to the IWW, see, e.g., Dale Baum, *The New Day in North Dakota: The Nonpartisan League and the Politics of Negative Revolution*, 40 N.D. HIST. 4, 10 (Spring 1973); *Plan to Dicker with I.W.W. Is Dropped by N.P.*, FARGO F. & DAILY REPUBLICAN, July 16, 1917, at 10 (evening ed.).

flict between laborers and farmers prevailed throughout. But it is important to note that the IWW did not see the farmers as their main foe. Indeed, for the union, farmers were merely middle-men, exploited and manipulated by banks and other truly capitalist interests.[155]

E. Farmers and Townspeople

Harvest laborers enjoyed no monopoly on hardship, for it was not often easy to be a wheat farmer on the Northern Plains. From its inception in the 1880s and 1890s, the wheat economy in North Dakota afforded most farmers very tenuous prospects for any kind of stable, prosperous existence. Federal homesteading programs, the scheming of real-estate agents and railroads, a growing export market, improvements in the techniques of wheat production, the vanquishing of native tribes, rising land prices in other areas, and a vibrant culture of agricultural conquest all drew farmers to what they thought might be a sort of agricultural promised land. The reality proved quite different. Competing all the while against each other and induced by the government, railroads, banks, and suppliers to establish ever-larger farms, they were pressed by these same entities with high shipping rates and equipment costs, high interest and insurance rates, and onerous homesteading requirements. While many farmers did well nonetheless, this situation resulted, by the 1920s, in the increasing cultivation of marginal land, high average debt burdens, and high farm failure rates.[156] Aggravating this situation were wildly fluctuating prices. While the Great War drove up grain prices, post-war agriculture suffered through a serious economic

155. On this attitude, see, e.g., BIRD ET AL., *supra* note 97, at 39 (an ex-Wobbly remembers, "We never felt as badly toward the farmer as [we did] toward some of the other types of boss."); *IWW Chieftains Say They Will Have 1,000 Men in Fargo Saturday*, FARGO F. & DAILY REPUBLICAN, July 20, 1923, at 1 (evening ed.) (IWW organizer Charles Gray uses speech to condemn bankers and their exploitation of farmers); *Industrial Unionism and the Farmer*, INDUS. WORKER, Aug. 27, 1921 ("The position of the average farmer today is a sort of cross between that of the feudal serf of the middle ages and the wage slave of the present."). *See also* DUBOFSKY, *supra* note 118, at 206.

156. On these factors, *see, e.g.*, Theodore Saloutos, *The Spring-Wheat Farmer in a Maturing Economy 1870–1920*, 6 J. OF ECON. HIST. 173 (1946).

downturn; wheat prices by 1920 were more than double their 1913 levels, but by 1923 had fallen back to pre-war levels.[157]

As is well-known, by the 1930s, these factors combined with a general depression to devastate plains agriculture. In the meantime, many farmers found themselves in a difficult bind, caught between workers making valid but onerous demands for higher wages, and an array of powerful business interests, headed by railroads and banks, intent on raising rates and lowering production costs in any way possible. Although North Dakota farmers made serious attempts to organize against business interests, these were largely unsuccessful.[158]

Towns like Minot and Fargo served as farmers' principal labor markets for harvest labor. So entrenched and efficient was this practice that even after numerous government-run employment bureaus were established to send laborers to their job sites, farmers still came to town to fill most of their hired labor needs by picking men up literally off the streets.[159] This set up an interesting situation as denizens of harvest towns, who were usually employed in commercial or government work, seem to have expressed a far greater hostility to harvest laborers, and to the IWW, than did the farmers themselves.[160] According to Veblen and others, while farmers evidenced a more or less rational kind of class conflict with the harvesters, most townspeople simply loathed and feared the IWW and demanded servility from all harvest laborers.[161] Undoubtedly this reflected a number of factors, including townspeople's unfamiliarity with the harvesters' humanity and the difficulty of

157. *See, e.g.*, Nat'l Agric. Stat. Serv. Database, *Prices Received by Farmers, Historic Prices & Indexes 1908–1992*, *at* http://usda.mannlib.cornell.edu/datasets/crops/92152/wheat1.wk1 (last visited March 1, 2004) (historical prices of wheat—all types).

158. The foremost example of this was the Non-Partisan League. On its failure to dramatically advance farmers' interests, see, e.g., Baum, *supra* note 154. On other efforts at farmer organizing, see, e.g., Larry Remele, *North Dakota's Forgotten Farmers' Union, 1913–1920*, 45 N.D. HIST. 4 (1978); H. Roger Grant, *"Captive Corporation:" The Farmers' Grain & Shipping Company, 1896–1945*, 49 N.D. HIST. 4 (Winter 1982); *cf. Farmers Blame Freight Rates*, FARGO F. & DAILY REPUBLICAN, July 8, 1921, at 12 (evening ed.).

159. Lescohier found that in 1921, 144 of 274 interviewed North Dakota farmers said that they filled their labor needs by picking up workers on the "streets of cities and towns." LESCOHIER, CONDITIONS AFFECTING DEMAND, *supra* note 72, at 31, tbl.6. *See also* HALL, *supra* note 12, at 113–14.

160. DUBOFSKY, *supra* note 118, at 206.

161. Veblen, *supra* note 89, at 324–25; *cf. Dakota Farmer Praises I.W.W.*, FARGO F. & DAILY REPUBLICAN, July 13, 1918, at 9 (evening ed.).

their work, as well as their greater investment in the contradictory bourgeois ideals of free labor and free contract backed by force—a quite common feature in this period.[162] In the end, American Legion posts, "Commercial clubs," and other groups—all of which could manipulate municipal police—were ultimately most responsible for controlling and harassing the union and the harvesters generally.

As the voice of these urban interests, writers and editors of local papers relied on various motifs to articulate a distinction between desirable and undesirable laborers. The desirable were variously described as: "a good class of men";[163] "good men . . . who can be trusted . . . of the honest stripe";[164] "men who want work;"[165] or "industrious and honest" men.[166] Indeed, the description of "this good class of men" often reached gushing proportions, with one news article in the Minot daily paper elaborating on a "good bunch of harvest help" as a "husky bunch" who were "well dressed in working clothes . . . clean and energetic"; these men, who came to Minot to get work, "had plenty of money with which" to buy provisions and "did not wait for farmers to come in to ask them to go out and work."[167] This article continues: "They were experienced in both what to do and the best methods of finding work. One of them stated that he did not want to loaf but to work and that his companions were the same."[168]

A similar hyperbole served to identify the less desirable. These men were routinely referred to as "vags," "floaters," "criminals," or "neversweats."[169] If black they were "disreputable coons . . . more intent on peddling booze and playing cards

162. This is a major theme in Stanley's argument. *See* Stanley, *supra* note 8.

163. *Plfnty* [sic] *Competent Harvest Help Arriving; Wages About $4*, WARD COUNTY INDEP., Aug. 2, 1923, § 1, at 1.

164. *Ten Men Sent to Jobs by City Agency*, MINOT DAILY OPTIC-REPORTER, Aug. 1, 1916, at 1 (evening ed.). *See also Bunch of Good Men Hunting Jobs of Work*, MINOT DAILY OPTIC-REPORTER, Aug. 2, 1916, at 1 (evening ed.).

165. *Many Jobs Being Found for Men Who Will Work*, MINOT DAILY OPTIC-REPORTER, Aug. 4, 1916, at 1 (evening ed.).

166. *Many Get Jobs*, MINOT DAILY OPTIC-REPORTER, Aug. 13, 1915, at 8.

167. *Good Bunch of Harvest Help: About 125 Experienced Men From Southern Fields Arrived Yesterday*, MINOT DAILY OPTIC-REPORTER, Aug. 20, 1915, at 1.

168. *Id.*

169. *See, e.g.*, *Many Jobs Being Found for Men Who Will Work*, MINOT DAILY OPTIC-REPORTER, Aug. 4, 1916, at 1 (evening ed.); *City in Brief*, FARGO F. & DAILY REPUBLICAN, Aug. 27, 1915, at 5 (evening ed.) ("Three vags were arraigned . . . being sent to the weed gang").

than heaving bundles . . . ."[170] If thought to be IWWs—and anyone who protested or held out was likely to be—they were "trouble makers,"[171] "agitators,"[172] "sons of rest,"[173] "malcontents,"[174] or one of a "class of lawbreakers."[175] The papers also took special pains to divulge (or presume) the IWW membership of any fiendish person identified by the authorities.[176] These verbal antics are all the more interesting given the often judicious tone evident in these papers' reporting on other labor issues.[177]

F. Local Police as Labor Regulators

For the criminal law to function as a mechanism of labor regulation, the local police must take upon themselves the role of labor regulators. This is all the more necessary where the

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170. *Bunch of Good Men Hunting Jobs of Work*, MINOT DAILY OPTIC-REPORTER, Aug. 3, 1916, at 1.

171. *I.W.W.'s Have Reached Minot*, WARD COUNTY INDEP., Aug. 3, 1916, § 1, at 1.

172. *Police Arrest I.W.W. Agitator*, WARD COUNTY INDEP., July 22, 1915, § 1, at 1.

173. *I.W.W. Crowd at Ellendale Disperse; Notified to Get Out*, FARGO F. & DAILY REPUBLICAN, July 31, 1916, at 2 (evening ed.).

174. *I.W.W.'s Finding It Tough: Armed Bands of Malcontents Roving Over the Northwest States*, FARGO F. & DAILY REPUBLICAN, Aug. 5, 1916, at 6 (evening ed.).

175. *Brief State News*, WARD COUNTY INDEP., Sept. 6, 1917, § 2, at 11. *See also* Applen, Migratory Harvest Labor, *supra* note 12, at 108.

176. *Police Methods in Fight on I.W.W.*, INDUS. WORKER, Oct. 14, 1915. *See also Frank Adams, I.W.W. Member, Pleaded Guilty at Bowman*, WARD COUNTY INDEP., Jan. 17, 1918, at 1; *Wobbly Pleads Guilty: Pulled Gun on Detective, Given 60 Days in Jail*, WARD COUNTY INDEP., Sept. 29, 1921, § 1; *Two Bad Characters With Guns Arrested*, WARD COUNTY INDEP., Oct. 26, 1922, 4; *Night Marshal at Stanley Shot and Killed by I.W.W.*, WARD COUNTY INDEP., Aug. 24, 1922, at 4; *I.W.W. Steals Ring*, FARGO F. & DAILY REPUBLICAN, Aug. 23, 1917, at 3 (evening ed.) (IWW member accused of stealing ring from farmer's wife); *Suspect I.W.W.*, FARGO F. & DAILY REPUBLICAN, Aug. 24, 1917, at 6 (evening ed.) (IWW accused of tearing up railroad pumping station); *I.W.W. Blamed: Believed Responsible for Burglary of General Store in Knox, N.D.*, FARGO F. & DAILY REPUBLICAN, Oct. 13, 1917, at 5 (evening ed.); *I.W.W. Held on Robbery Charge*, FARGO F. & DAILY REPUBLICAN, Sept. 15, 1919, at 5 (evening ed.).

177. *See, e.g., Judge Lowe Issues Temporary Injunction Against Sheriff Scofield Deputizing Guards*, WARD COUNTY INDEP., Aug. 3, 1922, § 2; *Labor Must Learn*, MINOT DAILY NEWS, Sept. 20, 1919, at 2; *Strike Reaches Minot*, MINOT DAILY NEWS, Aug. 7, 1919, at 1; *Loyal Union Men are Called Upon to Show Colors*, FARGO F. & DAILY REPUBLICAN, Aug. 21, 1917, at 1 (evening ed.). The *Fargo Forum*, in an editorial distinguishing good labor organization from bad, actually avowed itself as being a "union shop." *Union Labor and the Path Ahead*, FARGO F. & DAILY REPUBLICAN, Sept. 6, 1920, at 4 (evening ed.).

relevant laws are so inherently subject to discretionary enforcement. At least where harvest labor is concerned, such was clearly the case throughout North Dakota in the 1910s and 1920s.

The IWW accepted this view of the police as a matter of course. For the IWW, the police in the wheat-belt were "lackeys of capitalism," who enforced the law precisely to undermine workers' interests, to put them to work, and so forth.[178] More surprisingly, the local papers had no problem articulating an identical view of the functions of the police, and police officials allowed themselves to be quoted in these publications to the same effect. For example—and we will see much more of this below—a July, 1923 edition of the *Minot Daily News* quotes the chief of police: "The I.W.W.'s will find no bed of roses awaiting them when they come to Minot . . . [they should] [g]et a job or get of town."[179] In fact, during at least part of this period, both the Minot and Fargo police departments operated "free employment bureaus." In Minot, those unwilling to work were promised arrest on vagrancy charges and farmers and "others desiring help" were urged to "call the police station by phone and the number of men desired . . . will be sent to them."[180] By the middle of the 1917 season, the Fargo chief of police had supposedly sent out over 500 men to harvest jobs.[181] Some towns hired new officers in anticipation of the arrival of harvest hands;[182] and the need for jail space was evaluated accord-

178. *See, e.g., The Labor Criminal—A New Type*, INDUS. WORKER, June 26, 1913; *Jailing Harvest Strikers: I.W.W. Agitators Jugged by Tools of Farmers in North Dakota*, SOLIDARITY, Aug. 23, 1913; Ted Fraser, *Where "The Law" Stands in N. Dakota*, SOLIDARITY, Nov. 5, 1915. *Cf.* E.N. Osborne, *"Battle" of Mitchell, South Dakota*, SOLIDARITY, Aug. 12, 1916.

179. *Yes, We Have No Bed of Roses for I.W.W. Members, Says Chief*, MINOT DAILY NEWS, July 19, 1923, at 5 (evening ed.).

180. *Free Employment Agency Opened Today*, MINOT DAILY OPTIC-REPORTER, July 31, 1916, at 1 (evening ed.).

181. *Call For Help From Edmore: Get Men Here*, FARGO F. & DAILY REPUBLICAN, Sept. 1, 1917, at 8 (evening ed.).

182. *Brief State News*, WARD COUNTY INDEP., Sept. 6, 1917, § 2, at 11 ("Sixteen members of the Hatton Home Guard have been sworn in as deputy sheriffs and are ready to step in and put a stop to any disturbance that may be started by the I.W.W.'s, or any other class of law breakers.").

ingly.[183] Minot and Fargo on several occasions constructed bullpens for this purpose.[184]

In both Minot and Fargo the city police seem to have exercised nearly exclusive jurisdiction over vagrants. Not surprisingly, given the time and place, the overall professionalism of these departments was quite low, with little in the way of formal procedures or apparent training.[185] Records from these towns and their surrounding areas show relatively little involvement by the county sheriffs' offices.[186] In other areas, sheriffs did seem to take a more active role in making these arrests, particularly when city police felt overwhelmed.[187] Likewise, police courts in Minot and Fargo disposed of virtually all vagrancy charges, and did so in a quick and relatively informal manner, consistent with the accomplishment of labor-regulating functions. This seems to have been typical statewide.[188] Significantly, no vagrancy cases or other cases involv-

183. *State News*, WARD COUNTY INDEP., Sept. 3, 1914, at 3 ("A new jail is being built at Deering and Editor Rable says it will not be needed much this fall as the harvest hands are a peaceable lot.").

184. *Bull Pen in Operation*, WARD COUNTY INDEP., Oct. 5, 1922, at 1. *See also Much I.W.W Material Roped In By Police*, FARGO F. & DAILY REPUBLICAN, Aug. 10, 1916, at 10 (evening ed.) (vagrants bound for "bull pen").

185. *See* Michael J. Martin & Glenn H. Smith, *Vice and Violence in Ward County, North Dakota, 1905–1920*, at 47 N.D. Q. 10, 11 (Spring 1980).

186. In at least one instance, the Ward County Sheriff refused a request by the director of the Minot employment office to arrest alleged IWWs essentially for holding out for five dollars per day wage. The sheriff's reason: he had no warrant. *I.W.W. Threaten Harvest Hands; Their Arrest Asked*, WARD COUNTY INDEP., Aug. 10, 1922, § 1.

187. *See, e.g.*, *80 to 100 I.W.W.'s Giving Ellendale Hard Week; Driving Them Out*, FARGO F. & DAILY REPUBLICAN, July 26, 1916, at 8 (evening ed.) (Sheriff conducting effort to "rid the city" of IWWs); *Find Fugitive in I.W.W. Haul*, FARGO F. & DAILY REPUBLICAN, Aug. 24, 1916, at 8 (evening ed.) (sheriff summoned to help arrest IWW vagrants at Hankinson); *Officers Called to Casselton*, FARGO F. & DAILY REPUBLICAN, Aug. 18, 1916, at 10 (evening ed.) (sheriff summoned to help arrest supposed IWW leader on weapons charges).

188. Under the North Dakota Constitution at the time, the police magistrate (as an elected official) enjoyed jurisdiction over all criminal cases where the possible penalty did not exceed $100, thirty days in jail, or both. Martin & Smith, *supra* note 185, at 11, 13, 16, 20 tbls.1–3.

A study of Ward County by Michael Martin and Glenn Smith shows 891 vagrancy cases tried in the Police Magistrate's Court in the two periods between July 29, 1908 and August 9, 1913, and between October 29, 1916 and January 1, 1921. *Id.* at 13, tbl.1. This compares to only 78 vagrancy cases in the County Court of Increased Jurisdiction for the entire period from January 1, 1905 to January 1, 1921. *Id.* at 16, tbl.2. Further, there were no vagrancy cases tried at all in the District Court during the period from May 1, 1906 to December 27, 1920. *Id.* at 20, tbl.3. My own research of Fargo records reveals a quite similar pattern. While an examination of police court records from May 1, 1915, through

ing Wobblies or harvest laborers appear among reported North Dakota state court cases in this period. Everywhere, regulation was overwhelmingly local.

IV. VAGRANCY LAW AND THE REGULATION OF HARVEST LABOR

The labor-regulating norms inherent in vagrancy law are neither inevitable nor self-executing; they do not follow simply from the enactment of a vagrancy statute. Achieving labor-regulating functions depends on some measure of actual enforcement of the law. This goes without saying if any kind of instrumentalist dynamic of labor regulation is contemplated. But some measure of enforcement is also important even where the effect is an ideological one; no one is likely to be influenced by the purely theoretical prospect of punishment. If accomplished in a meaningful way, such enforcement reveals itself in more or less distinct patterns. To uncover in a meaningful way the dynamics of labor regulation requires a careful consideration of these patterns. Section A of this part considers the use of vagrancy in this way; Section B discusses the role of other, in some respects similar, coercive policies in regulating harvest labor.

A. Vagrancy Law as Labor Regulation

Harvest laborers in North Dakota were subject to prosecution under both state and municipal vagrancy laws, all enacted in the early 1900s, in the later years of the nation's tramp scare.[189] In practice, however, the municipal ordinances were much more important than the statewide provisions. While differently worded, the Minot and Fargo statutes are both typical of vagrancy statutes in this period: extremely broadly written in archaic terms to cast a wide net in which virtually anyone could be caught.[190] As is always the case with vagrancy,

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April 30, 1918, revealed 358 vagrancy cases, records from higher courts in that jurisdiction over the same period yielded no vagrancy cases at all. *See* Police Magistrate Court Docket, Misc. File 116, Box 6, vol. 4, bk. 4 (May 1, 1915 to June 11, 1919) (on file with the North Dakota Institute for Regional Studies) [hereinafter Police Magistrate Docket]; Justice Court, Justice of the Peace, Cass County, N.D., Misc. File 116, Box 12 (1893–1947) (on file with the North Dakota Institute for Regional Studies).

189. *See* Act of Mar. 13, 1903, ch. 206, 1903 N.D. Laws 285.

190. The Minot ordinance reads:

usual prerequisites of criminal liability, like the requirement that the defendant commit a "voluntary" and "overt" act con-

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§1. All persons who are idle and dissolute and who go about begging; all persons who use any juggling or other unlawful games or plays; runaways; pilferers; confidence men; common drunkards; common night walkers; lewd, wanton and lescivious [sic] persons in speech or behavior; common railers and broilers; persons who are habitually neglectful of their employment or their calling and do not lawfully provide for themselves or for the support of their families; and all persons who are idle and dissolute and who neglect all lawful business, and who habitually mispend their time by frequenting houses of ill-fame, gambling houses, or tippling shops; and all persons lodging in or found in the night time in outhouses, sheds, barns or unoccupied buildings or loafing in the open air and not giving a good account of themselves; and all persons who are known to be thieves, burglars or pick-pockets, either by their own confession or otherwise or by having been convicted of larceny, burglary or other crime against the laws of the state, punishable by imprisonment in the penitentiary, or in a house of correction of any city, and having no visible means of support are habitually found prowling around any railway depot, banking institution, broker's office or other office or place of business or amusement, auction room, store, shop, car, omnibus, wagon or other vehicle or on any street or avenue or other place within the corporate limits of the City of Minot; and all persons found in any house of ill-fame; and all persons who without visible means of support frequent gambling house [sic] or disorderly house [sic] as defined by any ordinance of this city, shall be deemed to be and they are declared to be vagrants. §2. Every person convicted of vagrancy under the provisions of this chapter, shall be punished by a fine of not less than Five and not more than Nineteen Dollars, or from one to ten days in the City Jail, or by both such fine and imprisonment.

MINOT, N.D., REV. ORDINANCES ch. 40, §§ 1–2 (1907).

The Fargo Ordinance reads:

That any person able to work and support himself or herself in any honorable and responsible calling, not having visible means to support himself or herself who shall be found loitering or strolling about the streets, alleys, avenues or lanes, or public or private places within the city, or who shall be an idle or dissolute person, or who shall go about begging in any part of the city, not having any regular business or employment, or who shall occupy for the purpose of lodging any barn, shop, shed, railway cars, or place other than those that are kept for that purpose, without the permission of the owner or party entitled to the possession thereof, . . . , shall be deemed and is hereby declared to be a vagrant, and it shall be the duty of any member of the police force of the city to arrest either with or without [a] warrant, all such persons, and take them before the police magistrate, or city justice of the peace, and complaint shall be made against them as in other cases for the violation of any section of this ordinance; and every person convicted of being a vagrant under the provisions hereof, shall be subject to a fine of not less than five nor more than twenty dollars for each offense.

FARGO, N.D., CHARTER & ORDINANCES tit. I, § 23 (1908).

current with some kind of "culpable mental state" mattered little, even on a formal level. Instead, in North Dakota as elsewhere, vagrancy liability turned entirely on a defendant's status and overall condition, and on the discretion of police and judges.[191]

How exactly were these laws used to regulate harvest labor? To figure this out, we turn to two sets of sources: newspaper records from Minot and Fargo and from the IWW; and a three-year continuous database of Fargo Police Court docket entries. Each set of sources augments the other: the newspapers provide detail and insight absent from the case records, while the police court records allow statistical confirmation and generally add reliability to our study. To anticipate a bit, the evidence that emerges shows two basic ways in which vagrancy law was used to regulate harvest labor: first, by forcing all laborers to accept prevailing wages, which necessarily deprived them of any right to hold out for higher wages; and second, by vigorously prosecuting organizers. "Keeping the men constantly on the move, picking out the leaders, and running them out of the country whenever possible," is how in the summer of 1916 the Fargo daily described the overall approach.[192]

1. Enforcing Prevailing Wages and Preempting Hold-Outs

In many cases, the enforcement of vagrancy laws involved simply running idle workers out of town. As described by Michael Martin and Glenn Smith, who studied policing in Ward County during this period, "The arresting officer simply would pick up the idle person during the daytime, charge him or her with vagrancy, and escort the person to the next train out of town or to the city or county jail."[193] As the Minot daily puts it, the idea was that a "man who wont [sic] take a job when one is at hand . . . ought to be chased out or put in jail and made to

191. *See, e.g.*, Foote, *supra* note 57.

192. *Pep is Walked Out of I.W.W. Leaders; Police Strategy Works*, FARGO F. & DAILY REPUBLICAN, Aug. 17, 1916, at 1 (evening ed.). A short piece in a July, 1915, edition of the *Fargo Forum & Daily Republican* sums up the spirit of this approach: "[T]here are no crops to be harvested in the city of Fargo, and . . . the police department keeps a sharp lookout for the undesirable variety, so the city is bothered but little." *City in Brief*, FARGO F. & DAILY REPUBLICAN, July 14, 1915, at 5 (evening ed.).

193. Martin & Smith, *supra* note 185, at 14.

labor on the public roads of the state."[194] But this is not the whole story. Vagrancy was measured not simply by idleness, but by willingness to work at prevailing wages; and would-be vagrants were quite often given the opportunity, either explicitly or implicitly, to go to work as an alternative to arrest or expulsion. In this manner, harvest hands holding out for higher wages could often be put to work at prevailing wages.

Such practices are frequently reported in the press. In September, 1915, for example, Minot police arrested one R.T. Jenson for vagrancy and offered him work at $3.50 a day but "he refused and . . . was landed in a cell."[195] Indeed, according to the IWW press, the Minot chief's tactic that season (and perhaps many others) was to drive around by car and confront workers who had gathered for the harvest. Those holding out for higher wages or refusing to sign up with the city's employment bureau got "ten days on the streets."[196] According to the union, the railroads had distributed handbills that summer advertising inflated wages in the Minot area (a frequent and probably true claim); workers trying to bargain actual wages up to the advertised level were arrested "by the dozen."[197]

Acting more preemptively, on at least two separate occasions, Fargo city police enforced a "work-or-get-out-of-town" order.[198] In a single incident in August, 1919, this resulted in the removal of sixty transients, some suspected of being IWWs, who refused prevailing wages.[199] Likewise, in late July of 1921, more than 100 IWWs were reported to be working the streets of Fargo, encouraging other workers to hold out for higher wages. According to the *Fargo Forum & Daily Republican*, "many" were arrested by police, charged with vagrancy, and ordered to leave town.[200] By 1923, Fargo authorities, anticipating wide-

194. *Making Them Pay The Penalty*, MINOT DAILY OPTIC-REPORTER, Aug. 10, 1916, at 2 (evening ed.).

195. *City Briefs: Vanderbilt Vag*, MINOT DAILY OPTIC-REPORTER, Sept. 7, 1915, at 8.

196. J.A. McDonald, *"To Hell With the U.S. Constitution" Is Slogan in Minot, N.D., Also, Police Set Aside "Freedom of Contract" and Compel Scabbery*, SOLIDARITY, Sept. 11, 1915; Nils H. Hansen, *Hostility of Minot "Powers"*, SOLIDARITY, Aug. 28, 1915.

197. *Good Work of A.W.O. in Dakota Harvest*, SOLIDARITY, Aug. 28, 1915.

198. *60 Transients Sent on Way*, FARGO F. & DAILY REPUBLICAN, Aug. 1, 1919, at 12 (evening ed.).

199. *Id.*

200. *Complaint Made To Commission Against I.W.W. Menace In City*, FARGO F. & DAILY REPUBLICAN, July 21, 1921, at 5 (evening ed.).

spread hold-outs, had developed a new policy: a "48 hour unemployment rule" under which hold-outs would be prosecuted for vagrancy.[201]

Indeed, numerous reports of this kind in both the local and labor papers make it quite clear that holding out for higher wages was a sure way to get arrested for vagrancy, not only in Minot or Fargo, but in other North Dakota towns as well. For example, in the summer of 1915, police in both Munich and Berthold arrested groups of workers for trying to raise wages.[202] Twice in 1917 Jamestown police confronted large groups of workers holding out for higher wages and then ran them out of town.[203] In August of the following year, Devils Lake police ran off 200 supposed IWWs holding out for better wages.[204]

Confrontations involving large numbers of workers were not uncommon. In August, 1916, Minot police rounded up "forty vags" and told them "to get jobs or get out . . . [T]hey were told where they could find employment if they wanted it."[205] In another incident that same week, about 100 men arrived in Minot by freight train. The *Ward County Independent* describes what followed:

> Chief of Police Dougherty and his men had been warned and were at the depot to greet the trouble makers. They all carried the [IWW's] red membership cards. They informed

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201. *Cass County Organized To Prevent Harvest Strike*, FARGO F. & DAILY REPUBLICAN, July 24, 1923, at 1 (evening ed.).

202. *Sedition According to Farmers*, INDUS. WORKER, Aug 22, 1917; Frank C. Hanley, *Berthold Policeman Raises Harvest Wages*, SOLIDARITY, Sept. 18, 1915.

203. *Jamestown To Tolerate No I.W.W. Interference*, FARGO F. & DAILY REPUBLICAN, July 20, 1917, at 2 (evening ed.); *Want $4.50 Day at Jamestown; I.W.W. Gang Issues Ultimatum*, FARGO F. & DAILY REPUBLICAN, Aug. 1, 1917, at 10 (evening ed.).

204. *Work of Lake Officials Cause 200 I.W.W. to Quit*, FARGO F. & DAILY REPUBLICAN, Aug. 24, 1921, at 5 (evening ed.); *see also I.W.W. in City Jail Wants 70 Cents Per Hour on Farm*, WARD COUNTY INDEP., Aug. 19, 1920, at 1. In 1923, a Wobbly attempting to visit fellow members at the Minot jail was told to "secure work at once or leave town," he was charged with vagrancy. *Vagrant I.W.W. Member Fined in Police Court*, MINOT DAILY NEWS, Sept. 1, 1923, at 3 (evening ed.). *See also Police Court News*, MINOT DAILY NEWS, Sept. 2, 1920, at 3 (evening ed.).

205. *Bunch of Vags Were Rounded Up Today*, MINOT DAILY OPTIC-REPORTER, Aug. 3, 1916, at 8 (evening ed.). Days later, on the other side of the state, the Fargo daily reported that while its city's police were quite ready to "keep the undesirables on the move," other towns were having difficulty. *Fargo is Ready for Wobblers*, FARGO F. & DAILY REPUBLICAN, Aug. 8, 1916, at 6 (evening ed.).

> the chief that they had come here to demand $4.00 a day as harvest hands and would not work unless they got their price. The chief advised them to move on and they proceeded to Kenmare without getting off the train.
>
> Another band who had come to the city were escorted out of the city this afternoon. They were taken to the big bridge, their faces pointed towards the setting sun, and they were told to move onward.
>
> Two of the leaders were arrested for vagrancy and are now in the city jail. They will be given a trial and it is presumed that they will be given an opportunity to make themselves scarce.
>
> The working man finds a welcome in Minot, but the trouble makers will be given a decidedly interesting time.[206]

Interdicting supposed IWWs clearly represented to the police an efficient, preemptive way of weeding-out the hold-outs. Towards the end of the 1919 season, Chief Dougherty explained to the *Minot Daily News* how his office had thus far preserved Minot from a supposed statewide "terror" campaign by the IWW: suspected IWWs were arrested automatically and, in the Chief's words, "when they came out after their twenty days of hard labor they were anxious to get out of town and stay out."[207] The terror at hand was no more than an attempt by workers to hold out for higher wages.[208] An article a few days earlier in the same publication describing the arrest of six alleged IWWs on vagrancy charges applauded the police practice of arresting "all suspicious characters who refuse to work."[209]

Some idea of the ubiquity and normalcy of these confrontations can be gleaned from reports of vagrancy arrests in July, 1914, appearing in the *Fargo Daily*. On July 17, the daily paper described the police station as a "particularly dull place,

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206. *I.W.W.'s Have Reached Minot*, WARD COUNTY INDEP., Aug. 3, 1916, § 1, at 1. *See also 150 I.W.W.'s Leave Town: Police Officers Persuade The Men They Are Not Wanted in Minot*, MINOT DAILY OPTIC-REPORTER, Aug. 7, 1916, at 1 (evening ed.).

207. *Dan Dougherty Says I.W.W.'s Were Taken to Jail on Arrival*, MINOT DAILY NEWS, Sept. 3, 1919, at 1.

208. *I.W.W.s Around Minot Told to Get One Dollar Per Hour from the Farmers Offering Them Work*, MINOT DAILY NEWS, Aug. 27, 1919, at 1.

209. *Six "I Won't Work's" In Jail*, MINOT DAILY NEWS, Aug. 23, 1919, at 5.

considering the season of the year."[210] But several days later, on July 22, police were having a "busy day," with the "large number of transients that always come this time of the year."[211] On July 27, the paper reported the arrest of an "even dozen" vagrants, most of them "colored," and all likely to be given short sentences and warned "out of town."[212] The very next day, the paper reported the arraignment of another dozen vagrants and drunks, all likely to end up on the "weed gang."[213]

Such reports describe only a fraction of the arrests that actually took place that month in Fargo. Records from Fargo not in our main database reveal that during July, 1914, the police magistrate actually disposed of *sixty-three* vagrancy cases—half of the 124 cases of all kinds adjudicated that month. Of the vagrancy cases, fifty-nine were decided in the last two weeks of the month, just as the wheat harvest was beginning.[214] August brought another eighty-four vagrancy cases, out of an overall total of 232.[215] The full database reveals even more. As Figure 1 indicates,[216] vagrancy cases comprised 358 of the 3,265 total adjudications before the Fargo Police Court between May 1, 1915, and April 30, 1918. This is close to the proportion of vagrancy cases found by Martin and Smith in their analysis of Minot.[217]

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210. *City in Brief*, FARGO F. & DAILY REPUBLICAN, July 17, 1914, at 5 (evening ed.).

211. *Police Have a Busy Day*, FARGO F. & DAILY REPUBLICAN, July 22, 1914, at 10 (evening ed.).

212. *What's Going on in Police Court*, FARGO F. & DAILY REPUBLICAN, July 27, 1914, at 5 (evening ed.).

213. *City in Brief*, FARGO F. & DAILY REPUBLICAN, July 28, 1914, at 5 (evening ed.).

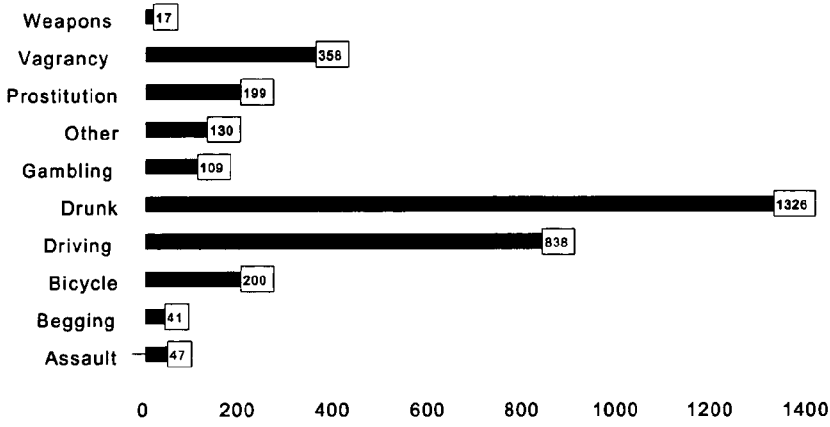
214. Police Magistrate Docket, *supra* note 188, bk. 3, at 120–65.

215. *Id.* at 166–357.

216. In Figures 1-4, "weapons" charges usually involved carrying a concealed weapon without a permit. The category "bicycle" consists of riding a bicycle on the sidewalk and the like. "Driving" entails all motor vehicle violations. Finally, "Drunk" includes both drunkenness and disorderly conduct, as well as the combined charge of drunk *and* disorderly. All other categories conform to their literal meaning.

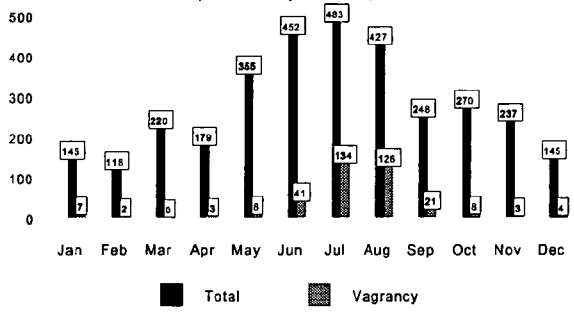
217. Vagrancy cases comprise about 13 percent of the police court cases in their data. Martin & Smith, *supra* note 185, at 11, tbl.1.

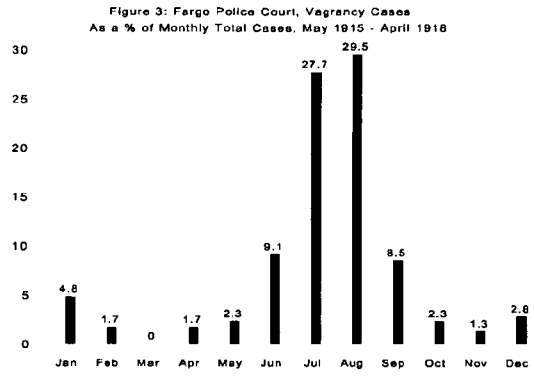
Figure 1: Fargo Police Court Cases
Totals by Lead Charge, May 1915 - April 1918



The import of these numbers is heightened by the seasonal incidence of vagrancy cases. As Figure 2 indicates, vagrancy adjudications over this period increased in absolute terms during the middle and late summer months, with July and August accounting for almost three-quarters of the total. In fact, the last two weeks of July and the first two weeks of August alone account for *over half* (194 of 358) of all vagrancy cases in the years covered by the database. Not surprisingly, this one-month period coincides exactly with the commencement of the local wheat harvest.

Figure 2: Fargo Police Court, Vagrancy Cases Versus All Other Cases
Totals by Month, May 1915 - April 1918





Nor did this increase in vagrancy cases simply reflect a general increase in police court activity or the normal rise of criminality in the summer months. As Figures 2 and 3 reveal, vagrancy cases as a *proportion* of the overall number of cases increased a little in early summer, but quite dramatically over the late summer months.[218]

Taken out of context, the total number of formal vagrancy adjudications in Fargo —about 120 per year—might seem fairly modest.[219] Several points suggest differently. First, Fargo was a fairly small town in the late 1910s.[220] Second, as we have just seen, the vagrancy cases were very tightly clustered around the harvest.[221] Third, these actual adjudications

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218. When the number of arrests for August is averaged out and expressed in relationship to the resident population of Fargo in 1920, the result is a figure quite comparable to that evident in Sydney Harring's study of vagrancy-type laws as labor control. For example, in his study of the use of such laws to influence a spate of urban labor disputes in Buffalo, Harring found 9,476 arrests in 1894 for both vagrancy and tramp act violations—a figure substantially higher than in surrounding years. Given Buffalo's 1900 population of 352,387 this suggests about one arrest for every 37 residents. Harring, *supra* note 55, at 886. In fact, when the number of arrests for the last two weeks of July and the first two weeks of August is averaged out and expressed in relationship to the resident population of Fargo in 1920, the result is a figure quite comparable to that inherent in Harring's study of vagrancy-type laws as labor control. If the rate of vagrancy arrests in Fargo in late July and early August were sustained throughout the year, the resulting ratio would be about one arrest for every thirty residents.

219. From almost 10 years of records, Martin and Smith count 891 vagrancy trials before the Minot Police Court. Martin & Smith, *supra* note 185, at 13 tbl.1.

220. Fargo's population in 1910 was 14,331; in 1920, it was 21,961. 1910 CENSUS: POPULATION, *supra* note 79, at 348, tbl. I; 1920 CENSUS: POPULATION, *supra* note 79, at 270, tbl.51.

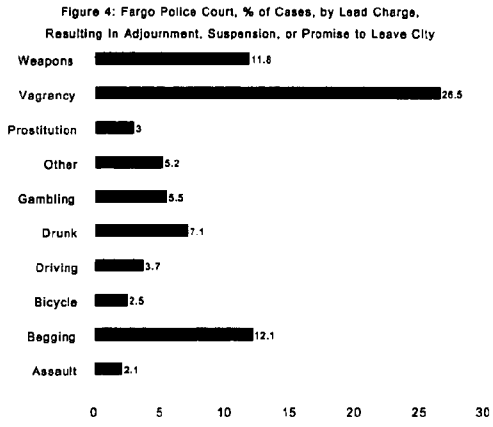
221. *See* figure 2 and note 217, *supra*.

represent only a fraction of the total number of cases where police challenged harvesters with the threat of vagrancy charges. While we have no direct data on the situation in Fargo eighty years ago, there are several reasons to think this. In all contexts, "stops" and other street-level confrontations by police far outnumber formal arrests. In fact, recent data suggest that only about 2 percent of investigatory stops by police lead to formal arrests, and that for every formal arrest police make many informal arrests.[222] We have also seen a number of newspaper accounts describing up to 100 workers confronted in this manner.[223] And yet, on only a handful of days in the entire sample were more than ten vagrancy defendants tried before the Fargo magistrate.[224] Much more common were days when one or two defendants were tried. On this basis, it is probably quite appropriate to suppose that formal adjudications represented somewhere around 10 percent of total street-level vagrancy confrontations. This would suggest *at least* 1,000 vagrancy-based confrontations per year in Fargo and Minot as well, and probably a similar proportion in other towns.

222. *See, e.g.*, JOHN E. BOYDSTUN, SAN DIEGO FIELD INTERROGATION: FINAL REPORT 5 (1975); SAMUEL WALKER, TAMING THE SYSTEM: THE CONTROL OF DISCRETION IN CRIMINAL JUSTICE, 1950–1990 39–41 (1993); Gordon P. Whitaker et al., *Aggressive Policing and the Deterrence of Crime*, 7 L. & POL'Y 395, 401 (1985).

223. *I.W.W.'s Have Reached Minot*, WARD COUNTY INDEP., Aug. 3, 1916, §1, at 1; *80 to 100 I.W.W.'s Giving Ellendale Hard Week; Driving Them Out*, FARGO F. & DAILY REPUBLICAN, July 26, 1916, at 8 (evening ed.). *See also 150 I.W.W.'s Leave Town: Police Officers Persuade The Men They Are Not Wanted in Minot*, Aug. 7, 1916, at 1 (evening ed.). *Cf. Bunch of Vags Were Rounded Up Today*, Aug. 3, 1916, at 8 (evening ed.) (40 men challenged); *Jamestown to Tolerate No I.W.W. Interference*, FARGO F. & DAILY REPUBLICAN, July 20, 1917, at 2 (evening ed.) (20 men challenged).

224. On July 17, 1917, thirteen defendants were tried, and on August 10, 1917, eleven were tried. On two occasions in July, 1914, as many as twelve defendants were tried at once. Police Magistrate Docket; *supra* note 188, bk. 3, at 120–65. But these cases are not part of the data set, as they are not contiguous.



The relatively small numbers of workers actually arrested for vagrancy and brought before the police court faced several possible outcomes. As the newspaper accounts above already indicate, a fine or jail sentence was not unlikely. But in many other instances, the magistrate imposed a sentence designed to get such a worker, who had already proved his attitude toward work, to leave town. As with most vagrancy cases said to involve IWWs, this kind of thing was often but casually reported in the press.[225] The Fargo Police Court records shed more light on the matter. As Figure 4 demonstrates, vagrancy adjudications resulted in suspended sentences, adjournments, and promises to leave the city (as opposed to not guilty verdicts, fines, or jail sentences) at a substantially higher rate than any other adjudications.

The intent is obvious with orders to leave the city, which were worded in exactly these terms. Of thirty-five sanctions of this sort in the sample, seventeen were handed down in vagrancy cases. Adjournment orders are, of their very nature, usually time-specific. That they were intended in most vagrancy cases to give the defendant an opportunity to get a job or get moving is evident in the fact that no adjourned cases

225. In August, 1919, for example, the following outcomes are reported in the Fargo Daily: On the 2nd, two vagrants "were given until 6 o'clock this evening to leave the city." *News About Town: Vagrants Must Leave*, FARGO F. & DAILY REPUBLICAN, Aug. 2, 1919, at 5 (evening ed.). On the 5th, "[f]our vags . . . were ordered to leave town." *News About Town: Four Vags in Court*, FARGO F. & DAILY REPUBLICAN Aug. 5, 1919, at 5 (evening ed.). And on the 22nd, one Herbert Huntley was "given until noon to leave town." *News About Town: Vagrancy is Charged*, FARGO F. & DAILY REPUBLICAN, Aug. 22, 1919, at 5 (evening ed.).

were ever reconvened. Suspended sentences could either be open ended or time-specific. If time-specific, they were usually either for an hour or day, or until some future time certain, for example, "until 5:30 p.m." This resort to time-specific suspensions was especially common with vagrancy. Of thirty-seven vagrancy cases resulting in suspensions, thirty-five were time-specific; with every other category of charge, time-specific suspension was either not used at all, or comprised a minority of suspensions.

A range of such sentences often emerged from the same court sessions. On July 23, 1915, for example, eight men were adjudged vagrants. Four were given one hour to leave Fargo; one was given one day to leave; two others were fined five dollars each; and one, who had his sentence suspended, was "given 1 day to get to work."[226] Likewise, on August 10, 1916, eleven men were arrested for vagrancy, with six being found guilty and committed in lieu of payment, and the other five receiving various instructions to leave town.[227] This incident was gleefully reported in the local paper, which (offering information unavailable in the court records) described the defendants as IWWs.[228]

While most such sentences followed conviction, many suspensions and adjournments were ordered in lieu of guilty verdicts. Largely because of this practice, vagrancy defendants suffered a fairly low conviction rate. Where conviction means either a guilty plea, or an actual verdict of guilty, or forfeiture of bail (which was treated like a guilty plea), vagrancy defendants were convicted only about 67 percent of the time. Only the residual category of "other" crimes reveals a lower conviction rate (about 54 percent). By contrast, the conviction rate for the category including drunkenness and disorderly conduct is about 91 percent, for gambling offenses about 79 percent, and for all crimes about 85 percent. On the other hand, actual acquittals or dismissals for those facing vagrancy charges were fairly rare, about 21 percent.[229]

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226. Police Magistrate Docket, *supra* note 188, bk. 4, at 17.

227. *Id.* at 68.

228. *Much I.W.W. Material Roped in by Police*, FARGO F. & DAILY REPUBLICAN, Aug. 10, 1916, at 10 (evening ed.).

229. When vagrants were sentenced to pay fines, they were clearly less able to pay these fines than were other defendants. Indeed, over 83 percent of fined vagrants (153 of 183) were ultimately committed in lieu of payment. On the other hand, as with other charges, vagrancy very seldom resulted directly in a jail sen-

Implicit in these police court and newspaper records are a couple of interconnected modes of labor regulation. Even where an anti-IWW bias or the demand to accept prevailing wages were not made explicit, the proscription of idleness necessarily prevented hold-outs and other attempts to bargain up wages, thus striking at the heart of IWW strategy. In some respects, this represented a quite direct, instrumentalist mechanism for regulating harvest labor. But it also suggests a more ideological function in enforcing the norm that the only acceptable wages were market wages, and that "free" contract, in this sense of the word, would be maintained by force when necessary.

2. Repressing Organizers

IWW organizers, whose union membership was often readily evident, and who had to work the streets, were especially vulnerable to vagrancy prosecution. In fact, it is quite clear that they were singled out in this regard. No doubt because of events in the summer of 1913, this was especially common in Minot.

From the very beginning, the IWW charged in its publications that Minot officials were in the business of selectively prosecuting organizers.[230] In July, 1915, one Carl Jacobs, an "I.W.W. agitator," arrived in Minot and, according to the *Ward County Independent*, began "distributing literature and creating a little excitement. He was arrested, charged with vagrancy and given 20 days in jail."[231] Readers were reassured that "Chief Doughtery does not invite trouble, but states that he is ready for it in case it comes."[232] A 1916 article in the IWW's *Solidarity* claims not only that events like these were products of selective prosecution, and were commonplace, but that IWW members were afforded inadequate process and routinely subjected to horrendous jail conditions and to beatings at

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tence; in only eight vagrancy cases and only fifty-five cases of all kinds were defendants sentenced straightaway to jail.

230. Fraser, *supra* note 178; *Good Progress in the Harvest*, SOLIDARITY, Sept. 18, 1915.

231. *Police Arrested I.W.W. Agitator*, WARD COUNTY INDEP., July 22, 1915, at 1.

232. *Id.*

the hands of Minot police.[233] By 1917, according to *Solidarity,* organizers were routinely being "ordered out" of Minot.[234]

This practice gradually became even more intensive. In August of 1920, the law caught up with Charles Gray, the union leader whose fate is mentioned at the very beginning of this article.[235] That same month, another organizer was held on charges of stealing a ride on a freight train—a charge rarely encountered in either newspapers or official records.[236] The organizer, one Harvey Kanestrum (or Karnstrom), was accompanied by four or five other IWW members, who were each convicted of vagrancy and jailed in lieu of payment of fine.[237] A couple of weeks later, Minot police arrested organizer James M'Clure on vagrancy charges, and a few days later, V.G. Parker. The *Minot Daily News* noted that when arrested, Parker had "an I.W.W. card and 40 cents in his pockets"; M'Clure, for his part, supposedly avowed his disbelief in government, thereby likely increasing "the sternness of the official handling" of his case.[238] Apparently, a similar pattern of enforcement reigned in 1921 as well.[239]

Amidst a post war depression in agriculture, the summer of 1922 found the IWW working very hard to reassert itself in North Dakota, having lost ground in the previous few years. Probably because of this, persecution of organizers was particularly common. In August of that year, the director of the state employment bureau in Minot complained to police that "agitators" were forcing up wages by causing laborers to "hold out." The chief, in turn, made good on a promise that once the agitators were found "they will be charged with vagrancy or given a

233. *Stop Minot's Savagery*, SOLIDARITY, Sept. 2, 1916.

234. *News from Agricultural Workers' Industrial Union No. 400*, SOLIDARITY, Sept. 1, 1917; *I.W.W. Organizer is Held as Vagrant*, FARGO F. & DAILY REPUBLICAN, Aug. 20, 1917, at 2 (evening ed.).

235. *I.W.W. Organizer Gets 10 Days at Hard Labor*, *supra* note 1. *Cf. I.W.W. Organizer Gets 10 Days at Labor on Street*, *supra* note 2.

236. *Chicago I.W.W. Say They Will Aid Their Organizer in Minot*, MINOT DAILY NEWS, Aug. 28, 1920, at 1 (evening ed.).

237. *Wobblie Wires Chicago for Aid When Arrested*, MINOT DAILY NEWS, Aug. 20, 1920, at 1 (evening ed.).

238. *In Police Court: Alleged I.W.W. Arrested*, MINOT DAILY NEWS, Sept. 13, 1920, at 7 (evening ed.); *I.W.W. Disbeliever in Government Taken*, MINOT DAILY NEWS, Sept. 11, 1920, at 1 (evening ed.).

239. *See, e.g., I.W.W. Agent Busy at Minot; Laborers Complain*, FARGO F. & DAILY REPUBLICAN, July 8, 1922, at 6 (evening ed.) (describing the previous year's activities).

certain length of time in which to leave the city."[240] Although local papers suggest that many IWW members fled ahead of this, two organizers were arrested in separate incidents on vagrancy charges.[241] Michael Klimchuck was charged with vagrancy after issuing a public lecture on Minot's Main Street.[242] After ignoring an order to "go to work or leave town,"[243] Jay Murray was twice charged with vagrancy in Minot for "organizing I.W.W. farm hands and endeavoring to get them to quit their jobs at $4 a day, and demand $5 a day."[244] That Murray had sixty-five dollars on his person and pointed out that he was employed by the union, and could not, therefore, be called a vagrant, was ignored by the police.[245] Indeed, this apparent impediment to vagrancy prosecution of IWW organizers seems to have been a matter of perfect irrelevancy to the police in Minot and elsewhere—underscoring vagrancy's proscription not merely of unemployment but also the wrong kind of employment.[246] Murray eventually did agree to leave the city to avoid further prosecution.[247]

The next year brought an equally aggressive pattern in Minot. We have already seen how in July, 1923, the chief of police vowed to present IWW members with an ultimatum: "Get a job or get out of town."[248] He went on to describe the rock pile that awaited IWW members.[249] This was no idle threat. In August of that year organizers Carl Jacobson, Charles Kolar, and Raymond Crosier were each, in separate incidents, con-

240. *Police to Act Today Against Activities of I.W.W. Agitators*, *supra* note 151.

241. *Agitators for High Harvest Wage Leave Inhospitable Minot*, MINOT DAILY NEWS, Aug. 8, 1922, at 1 (evening ed.).

242. *Wobbly Who Lectured to Street Crowd Now Soliloquizes in Cell*, MINOT DAILY NEWS, Sept. 7, 1922, at 2 (evening ed.).

243. *Transient Organizer for I.W.W. Draws Ten Days in Police Cell*, MINOT DAILY NEWS, Aug. 17, 1922, at 8 (evening ed.).

244. *I.W.W. Organizer Arrested*, WARD COUNTY INDEP., Aug. 17, 1922, at 9; *I.W.W. Organizer is Again Under Arrest*, MINOT DAILY NEWS, Sept. 16, 1922, at 2 (evening ed.).

245. *I.W.W. Organizer Arrested*, *supra* note 243.

246. Organizers Lee Wosk and James Baker both tried this argument, unsuccessfully, with Fargo authorities in 1923. *I.W.W. Workers Are Bound Over*, FARGO F. & DAILY REPUBLICAN, July 31, 1923, at 12 (evening ed.); *I.W.W. Held to District Court*, FARGO F. & DAILY REPUBLICAN, June 18, 1923, at 12 (evening ed.). Organizer Ted Fraser unsuccessfully tried the same argument in Carrington, in 1915. *Good Progress in the Harvest*, SOLIDARITY, Sept. 18, 1915.

247. *I.W.W. Local Secretary Leaves Minot; Promises to Suspend Activities*, MINOT DAILY NEWS, Sept. 25, 1922, at 8 (evening ed.).

248. *Yes, We Have No Bed of Roses for I.W.W. Members*, *supra* note 179.

249. *Id.*

victed of vagrancy and sentenced to jail in lieu of payment of fine.[250] Later that same month Minot police raided an IWW meeting in town, sending members fleeing and arresting two union officials, who were then charged with vagrancy.[251] In September, three organizers found with red cards and union literature were arrested in Minot on vagrancy charges.[252]

Though common there, this policy toward organizers was not confined to Minot. In August, 1919, for example, the IWW's "news agent" in Fargo, who had already been arrested "several times" for vagrancy and ordered out of town, was arrested, fined, and jailed for contempt of court.[253] The Fargo Police Department's vagrancy arrest of "many" supposed IWWs in July, 1921, was predicated in part on their efforts to distribute literature to other workers.[254] By 1923, Fargo's repression of organizers was in full swing. In mid June of that year, as workers began to gather for the harvest, police initiated a "drive" against organizers. Within days, organizers William Edwards and Lee Wosk (carefully described as a "19-year-old Jew") were arrested and charged with vagrancy.[255] In mid July, two other organizers were arrested, one for vagrancy, the other for vagrancy and resisting arrest.[256] Not a week later, two more were arrested, also for vagrancy.[257]

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250. *Organizer for I.W.W. Is Fined as Vagrant*, MINOT DAILY NEWS, Aug. 11, 1923, at 1 (evening ed.); *Organizers for I.W.W. Find Minot Decidedly Inhospitable to Reds*, MINOT DAILY NEWS, Aug. 21, 1923, at 1 (evening ed.); *I.W.W. Organizer Given Choice of Fine or Jail*, MINOT DAILY NEWS, Aug. 22, 1923, at 2 (evening ed.).

251. *Two Arrested When I.W.W. Meeting is Visited by Police*, MINOT DAILY NEWS, Aug. 30, 1923, at 1 (evening ed.); *Trials of I.W.W. Speaker and Secretary Scheduled in Police Court Today*, MINOT DAILY NEWS, Aug. 31, 1923, at 1 (evening ed).

252. *Trio of Alleged I.W.W. Delegates are Arrested*, MINOT DAILY NEWS, Sept. 17, 1923, at 5 (evening ed.).

253. *Alleged I.W.W. Is Fined For Contempt*, FARGO F. & DAILY REPUBLICAN, Aug. 11, 1919, at 8 (evening ed.).

254. *Complaint Made To Commission Against I.W.W. Menace In City*, FARGO F. & DAILY REPUBLICAN, July 21, 1921, at 5 (evening ed.).

255. *Third I.W.W. Taken To Jail*, FARGO F. & DAILY REPUBLICAN, June 18, 1923, at 1 (evening ed.); *see I.W.W. Held To District Court*, FARGO F. & DAILY REPUBLICAN, June 18, 1923, at 12 (evening ed.); *I.W.W. Organizer Arrested Here*, FARGO F. & DAILY REPUBLICAN, June16, 1923, at 1 (evening ed.).

256. *Two Wobblies Jailed: One Resisted Officer*, FARGO F. & DAILY REPUBLICAN, July 26, 1923, at 5 (evening ed.).

257. *I.W.W. Workers Are Bound Over*, FARGO F. & DAILY REPUBLICAN, July 31, 1923, at 12 (evening ed.).

Smaller towns were no different. In Carrington, it was standing policy to "protect" farmers from Wobblies' "unreasonable demands and methods" by sending "agitators" out of town.[258] In Ellendale, in 1916, according to the *Industrial Worker*, an IWW member organizing against a thirty cents per hour wage was apparently ordered by the state attorney to leave town and "flatly refused." He was jailed on a $500 bond and the other harvest hands, organized and unorganized, were ordered by the deputy sheriff to leave town immediately.[259] Apparently, this move ended up backfiring anyway, as dozens of IWWs besieged the town.[260] A fiasco of a similar sort unfolded that same summer in Hankinson; arrested for vagrancy and suspected of embezzlement, IWW organizer John Jackson was sprung from jail by his comrades and not seen again.[261]

These are apparently not the only occasions that IWW members came to the aid of jailed members; quite frequently, members mobilized strikes or other protests to gain the release of their fellows.[262] One particularly notable episode of this sort unfolded in late August and early September of 1921, as hundreds of Wobblies descended on the Town of Laydon in an attempt to force the release of fellow members jailed for beating up an American Legionnaire. While some of the Wobblies were arrested, most were simply "deported" by police acting in concert with armed citizens.[263]

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258. *Agitators Not Tolerated*, FARGO F. & DAILY REPUBLICAN, July 25, 1921, at 10 (evening ed.).

259. *Dakota Justice Would Crush I.W.W.*, INDUS. WORKER, July 22, 1916.

260. *80 to 100 I.W.W.'s Giving Ellendale Hard Week; Driving Them Out*, FARGO F. & DAILY REPUBLICAN, July 26, 1916, at 8 (evening ed.); *I.W.W Crowds at Ellendale Disperse; Notified to Get Out*, FARGO F. & DAILY REPUBLICAN, July 31, 1916, at 2 (evening ed.).

261. *Jackson, I.W.W. Organizer, Escapes With Outside Aid*, FARGO F. & DAILY REPUBLICAN, Sept. 6, 1916, at 2 (evening ed.).

262. *I.W.W. Strike at Bowbells Fails*, FARGO F. & DAILY REPUBLICAN, Aug. 26, 1921, at 3 (evening ed.); *Harvesters are Pulled; No Work Will Be Done While Worker is Held*, INDUS. WORKER, Aug. 20, 1921 (strike called at Valley City to protest vagrancy arrest of member); *I.W.W. Call For Harvest Strike*, FARGO F. & DAILY REPUBLICAN, Aug. 6, 1921, at 2 (evening ed.); *.I.W.W. Call Strike in Fields to Get Comrade's Release*, MINOT DAILY NEWS, Aug. 6, 1921, at 1 (evening ed.); *I.W.W. Called a Strike On Farms* FARGO F. & DAILY REPUBLICAN, July 9, 1918, at 6 (evening ed.) (threatening regional strike unless all jailed members released); *New Rockford Faces an I.W.W. Invasion*, FARGO F. AND DAILY REPUBLICAN, Sept. 16, 1916, at 2 (evening ed.); *Anamoose Prepared to Meet I.W.W. Threat of Releasing Members*, FARGO F. & DAILY REPUBLICAN, Aug. 10, 1916, at 1 (evening ed.).

263. *I.W.W. Element Warned to Quit Plan to March on Langdon, N.D.*, FARGO F. & DAILY REPUBLICAN, Aug. 31, 1921, at 1 (evening ed.); *Wobblies at Larimore*

Several reasons probably best explain the greater frequency with which vagrancy changes against organizers are described in the local press. One reason is surely that such arrests were simply considered more newsworthy. Another related reason is that organizers were likely perceived by both police and townspeople as more threatening to the social order and to "market" wages than rank-and-file Wobblies. Moreover, for obvious reasons these men probably were more committed to the union cause and therefore were more likely to stand their ground.

In any case, it is clear that organizers were especially vulnerable to vagrancy charges. No doubt this was an extremely effective method for thwarting organizing efforts, as it struck right at the heart of the delegate system. While organizers could work the trains and the rail yards or even the fields themselves, contracts were struck in town and town is where the workers were to be found when not actually working or traveling. If organizers were to have any hope of raising wages or imposing a semblance of a closed shop, they had to organize on the street corners and do so in the narrow window of time between the arrival of the harvesters and the commencement of the local harvest. Timing was everything. Five or ten days in jail would usually be more than enough of a disruption, and there was no real chance of an outright acquittal. It is also likely that the relentless persecution of organizers served to underscore to rank-and-filers and potential recruits the apparent futility of the union's cause and the sanctity of state-backed "market" wages. In this respect, authorities targeting organizers may have been an efficient way of controlling workers generally.

B. Other Means of Coercing Harvest Labor

It would be a mistake to suggest that the enforcement of vagrancy ordinances constituted the only mode of regulating harvest labor. Other local ordinances came into play. For example, both Minot and Fargo banned the carrying of concealed weapons. This was easily applied to harvest hands, as they were not only a rowdy, intemperate bunch, but even the tamest

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Quit, FARGO F. & DAILY REPUBLICAN, Sept. 2, 1921, at 1 (evening ed.); *Three I.W.W. Leaders in Langdon Invasion, Held*, FARGO F. & DAILY REPUBLICAN, Sept. 5, 1921, at 5 (evening ed.).

among them routinely carried weapons for protection on the freights and in the rail yards.[264] In quite a few cases, IWW members and organizers were prosecuted on weapons charges.[265]

Also relevant were ordinances requiring licenses for public speaking. In the wake of the 1913 free speech fight, this was used in Minot specifically to deny Wobblies the opportunity to speak.[266] On many occasions Fargo police too denied use of the streets for IWW functions.[267] In the fall of 1921, this practice apparently led to quite a confrontation: two Wobblies were arrested, one beaten up, and the chief of police was "overpowered by the crowd" of Wobblies and relieved of his gun.[268] On another occasion, Fargo police resorted to an obvious pretext to shut down the IWW's office in that town.[269] On yet another occasion, the Fargo City Commission denied a Wobbly the right to sell IWW books on the streets.[270] Moreover, in both towns,

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264. Act of Mar. 8, 1915, ch. 83, 1915 N.D. Laws 96; FARGO, N.D., CHARTER & ORDINANCES tit. 1, § 26 (1908); MINOT, N.D., CODE § 40 (1907).

265. *I.W.W. Leader Faces Trial in Barnes Court*, FARGO F. & DAILY REPUBLICAN, Aug. 18, 1916, at 2 (evening ed.); *Officers Called to Casselton*, FARGO F. & DAILY REPUBLICAN, Aug. 18, 1916, at 10 (evening ed.); *I.W.W. Arrested*, MINOT DAILY NEWS, Sept. 9, 1921, at 6 (evening ed.); *Wobbly Organizer Gets 3 Months for Carrying of Concealed Weapons*, MINOT DAILY NEWS, Oct. 11, 1922, at 2 (evening ed.); *I.W.W. Carries Billy; Chief Asks Warrant*, FARGO F. & DAILY REPUBLICAN, July 23, 1920, at 2 (evening ed.); *Two I.W.W. Held* FARGO F. & DAILY REPUBLICAN, Sept. 27, 1921, at 3 (evening ed.). *Cf. Radical Jailed When Gun-Carrying Charge is Made Against Him*, MINOT DAILY NEWS, Sept. 12, 1922, at 2 (evening ed.).

266. Martin & Smith, *Vice and Violence in Ward County, North Dakota, 1905–1920*, *supra* note 185, at 17; Haug, *Industrial Workers 1913–1917*, *supra* note 141, at 88–91. *See, e.g., I.W.W. Leader Wants to Speak on the Streets*, WARD COUNTY INDEP., Oct. 1, 1914, at 1.

267. *I.W.W. Denied Permission To Hold Meetings On Fargo Street*, FARGO F. & DAILY REPUBLICAN, July 25, 1923, at 1 (evening ed.); *I.W.W.'s Canot [sic] Meet on Streets of Fargo*, MINOT DAILY NEWS, Aug. 30, 1921, at 4; *I.W.W.'s to Be Refused Right of Streets for Sunday Meeting*, FARGO F. & DAILY REPUBLICAN, Aug. 28, 1919, at 12 (evening ed.).

268. *Fargo Police Use Guns on Citizens*, INDUS. WORKER, Oct. 1, 1921; *I.W.W. Leaders Arrested After Mob Assault Is Made On Police*, FARGO F. & DAILY REPUBLICAN, Sept. 16, 1921, at 1 (evening ed.). Almost 100 Wobblies attended the arraignment of the two arrested members. *I.W.W. Speaker Given $1 Fine*, FARGO F. & DAILY REPUBLICAN, Sept. 19, 1921, at 1 (evening ed.).

269. *Police Close Fargo I.W.W. Headquarters; Is Gunman Rendezvous*, FARGO F. & DAILY REPUBLICAN, Sept. 8, 1917, at 1 (evening ed.). *Cf. Fargo Will Be Asked To Close I.W.W. Quarters By Delegation*, FARGO F. & DAILY REPUBLICAN, July 25, 1921, at 2 (evening ed.).

270. *I.W.W. Asks Right To Sell His Books*, FARGO F. & DAILY REPUBLICAN, July 15, 1919, at 6 (evening ed.).

and probably across North Dakota, police routinely seized IWW literature and membership cards.[271]

In other cases, state laws came into play. One example derives from a provision of the state constitution making it a misdemeanor to interfere with another's attempt to gain employment.[272] Newspaper records indicate that at least by the early 1920s law enforcement officials were invoking this provision against IWW organizers.[273] In at least one case, from Fessenden, an organizer was prosecuted for extortion, based on his attempt to collect membership dues from unwilling recruits.[274] It was also, of course, illegal throughout to ride freight trains without permission. Newspaper reports again indicate that by the 1920s authorities had begun to work with railroad officials to selectively enforce this law against Wobblies.[275]

Yet another example concerns sabotage. The IWW explicitly embraced a policy of sabotage. However, while in some cases Wobblies likely did destroy farmers' property, the union generally understood sabotage to mean tactical "slow-downs" rather than outright destruction.[276] Although the existence of an earlier statute suggests a concern for sabotage that predates the arrival of the IWW, North Dakota did eventually enact a war-time sabotage statute.[277] In the end, a number of Wobblies were accused of and even investigated for sabotage. But no records suggest that any were actually convicted, much less that

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271. *Wobbly Demands Red Card be Given Him*, MINOT DAILY NEWS, Aug. 24, 1922, at 1 (evening ed.) (noting further that police destroyed the card "as they do all I.W.W. literature [sic] taken from prisoners"); *North Dakota Kernels,* FARGO F. & DAILY REPUBLICAN, July 3, 1918, at 4 (evening ed.).

272. N.D. CONST. art. I, § 23 (1889).

273. *Cass County Organized To Prevent Harvest Strike*, FARGO F. & DAILY REPUBLICAN, July 24, 1923, at 1 (evening ed.).

274. *Organizer for I.W.W. Arrested,* FARGO F. & DAILY REPUBLICAN, Aug. 31, 1922, at 2 (evening ed.).

275. Wobblies told the *Fargo Forum* in July, 1923, that "railroad officials, detectives, and representatives are waging a campaign to keep them off the cars." *I.W.W. Chieftains Say They Will Have 1,000 Men In Fargo Saturday*, FARGO F. & DAILY REPUBLICAN, July 20, 1923, at 1 (evening ed.).

276. FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, at 160–64.

277. Act of Jan. 30, 1918, ch. 12, 1918 N.D. Laws 14. This statute, which applied only to conduct engaged in during the course America's involvement in the war, proscribed both general acts of sabotage, as well as sabotage directed at the harvest. It provided for imprisonment of one to twenty years. The earlier statute was enacted in 1905. Act of Feb. 14, 1905, ch. 174, 1905 N.D. Laws, 313.

sabotage formed the basis of any coherent system of labor regulation.[278]

This legislation on sabotage was accompanied by several other state measures directed at the perceived threats of wartime unrest and disorder. One statute created an "investigation committee" dedicated to investigating, inter alia, "conspiracies to destroy or injure . . . the property, reputation, freedom, rights or business of" any public or private entity in the state.[279] Another created a "council of defense" with each member given the power of sheriffs and the duty to "promot[e] patriotism and loyalty" and to "consult with" farmers and labor organization about sustaining agricultural production.[280] While the council of defense eventually issued an order requiring mandatory labor from the able-bodied,[281] there is only scant evidence that it was used much against the IWW or harvest hands generally.[282]

A different, and probably somewhat effective, form of regulation of harvest labor that should be mentioned involved vigilantism. This type of extra-legal violence against workers, which combined both public and private features, never

278. *Tramps Burn Up Boxcar*, MINOT DAILY OPTIC-REPORTER, Sept. 25, 1914, at 8; *State News*, WARD COUNTY INDEP., Oct. 14, 1915, at 3 (supposed IWW alleged to have been found with incendiary device for burning threshing rigs); *A.W.O. Notes*, SOLIDARITY, Dec. 18, 1915 (Wobbly held 71 days on sabotage charges in Bottineau, then released for lack of evidence); *I.W.W.'s Attempt Mischief on Job at Kensal, N.D.*, FARGO F. & DAILY REPUBLICAN, Sept. 13, 1916, at 2 (evening ed.); *I.W.W.'s Responsible for Destruction of Ray Man's Separator*, FARGO F. & DAILY REPUBLICAN, Sept. 22, 1916, at 2 (evening ed.); *I.W.W. Agitators Held for Attempting Strike at Walford*, FARGO F. & DAILY REPUBLICAN, Oct. 4, 1916, at 2 (evening ed.) ("agitators" charged with sabotage of threshing rig); *I.W.W.'s Blamed: Accused of Causing Explosion That Wrecks Threshing Machine*, FARGO F. & DAILY REPUBLICAN, Sept. 8, 1917, at 2 (evening ed.) (alleged sabotage in New England).

279. Act of Dec. 11, 1919, ch. 41, 1919 N.D. Laws 71.

280. Act of Jan. 28, 1918, ch. 5, 1918 N.D. Laws 4, 5 & 6.

281. *Anti Loafing Orders Ready To Be Enforced*, MINOT DAILY NEWS, Aug. 1, 1918, at 1 (evening ed.).

282. Only one example appears in the newspaper records. *I.W.W.'s Caught in Enderlin Raid*, FARGO F. & DAILY REPUBLICAN, Aug. 19, 1918, at 3 (evening ed.).

In a few instances—and we have no way of knowing whether the practice was discriminatory—IWW members in North Dakota were also arrested for failure to register for military conscription. *Defies U.S. to Force Service: I.W.W. Agitator Arrested at Harvey for Failure to Register*, FARGO F. & DAILY REPUBLICAN, July 12, 1917, at 2 (evening ed.); *I.W.W. Jailed: Frank E. Smith Arrested at Rugby For Failing to Register*, FARGO F. & DAILY REPUBLICAN, Sept. 6, 1917, at 2 (evening ed.); *News About the Town: Transient Registered*, FARGO F. & DAILY REPUBLICAN, Oct. 30, 1918, at 5 (evening ed.).

reached in North Dakota the proportions it did in other wheat-belt states.[283] It was nonetheless an important factor in controlling the harvesters. By the summer of 1917, a number of vigilance committees had been established throughout the state.[284] Like the police, these committees also seemed to be dominated by urban interests. Their main function was clearly to filter out suspected IWW members and run them out of town, or to prevent them from entering in the first place.

In July of 1916, in the town of Redfield, about 250 "armed citizens" reportedly gathered to repel an expected "outbreak" of IWWs.[285] An August, 1916 edition of the *Ward County Independent* describes (with a hint of improbability) how "an army of nearly 500 I.W.W.'s" attempting to "invade" the town of Jamestown was repulsed by a "'reception committee'" of 200 "armed and ready" citizens. According to the paper, the Wobblies were sent on their way to South Dakota.[286] In August, 1917, the "Home Guard" broke up an IWW meeting in Fargo.[287] The next month, citizens of Sutton formed a committee that intercepted and escorted IWW members out of town.[288] And in 1923 citizens of Egeland formed a "patrol" to meet the IWW "menace."[289] In some instances these groups included local officials. This was the case in Fairmont, in 1921, when a group of armed men lead by a local policeman intercepted a trainload of Wobblies, who had earlier ejected a number of non-members

283. South Dakota, for example, was clearly a tougher place for Wobblies. A rather typical 1919 *Solidarity* article begins with the injunction, "A man going into South Dakota with an I.W.W. card may as well have his measure taken for a coffin before starting," and goes on to claim that a vigilante committee formed by the city attorney of Aberdeen, South Dakota, had beaten up at least 250 members. Victims, the article claims, were told after being beaten that if they were again "caught in that vicinity" they would be "riddled with bullets." *Aberdeen Nasty: Hoosier Burg More Hostile than Ever to Organized Harvest Workers*, SOLIDARITY, Aug. 11, 1919. A similar situation reigned in Oklahoma. *See* NIGEL A. SELLARS, OIL, WHEAT & WOBBLIES: THE INDUSTRIAL WORKERS OF THE WORLD IN OKLAHOMA, 1905–1930 (1998).

284. Charles James Haug, *The Industrial Workers of the World in North Dakota, 1918–1925*, 41 N.D. Q. 5, 6–7 (Summer 1973) [hereinafter Haug, *Industrial Workers 1918–1925*].

285. *Redfield is After I.W.W.'s*, FARGO F. & DAILY REPUBLICAN, July 28, 1916, at 1 (evening ed.).

286. *Brief State News*, WARD COUNTY INDEP., Aug. 10, 1916, §2, at 7.

287. Joe Hansen, *Another Meeting Broken Up*, INDUS. WORKER, Sept. 5, 1917.

288. *Sutton Citizens Organize—March "Wobblers" Out*, FARGO F. & DAILY REPUBLICAN, Sept. 21, 1917, at 8 (evening ed.).

289. *Patrol to Meet Menace of I.W.W. is Organized*, MINOT DAILY NEWS, July 16, 1923, at 2 (evening ed.).

from the train. The policeman, at the head of the mob, asked of the workers the wage they sought, deemed the amount of their reply too high, and ordered them out of town.[290] By the end of this period, vigilantism had become official state policy, aimed at IWWs and common criminals alike.[291] In other instances, such vigilantism was connected to accusations of sabotage.[292]

Given the extra-legal nature of vigilantism and the sources available, we have no way of knowing exactly how pervasive or effective a form of labor regulation this strategy ultimately was. But we do know that it was bad enough that in 1917 the populist governor of North Dakota, Lynn Frazier, was moved to issue a proclamation condemning vigilance committees and enjoining the state's law enforcement officials not to harass those who demanded higher wages or those who lacked means of support, and not to arrest individuals without warrant or cause.[293] It is not clear that this proclamation, which promised the removal of non-compliant officials, had much effect beyond contributing to Frazier's eventual recall from office.[294] It is

290. The article claims that the IWWs were ultimately able to argue their way out of this fix. *Harvest Hands Attacked by Mob of Boozy Bankers*, INDUS. WORKER, Aug. 18, 1921, at 1.

A similar case involved the mayor of Drake, who in September 1916, approached a group of idle workers with the challenge, "Do you want to go to work, you fellows?" The conversation eventually came around to wages, and when the workers suggested $3.50 per hour, the mayor responded, "Get out of town right now, you sons of b_____! . . . I'll shoot every damned one of you who refuse to go to work for $3.00!" Although the workers demurred, the threat came to naught. K. MacLennan, *A North Dakota Harvest Town*, SOLIDARITY, Sept. 23, 1916.

291. *See, e.g., Every Cavalier Town Organized*, MINOT DAILY NEWS, Sept. 6, 1924, at 4 (evening ed.); *Vigilance Committees Organized in County*, MINOT DAILY NEWS, Sept.2, 1924, at 1 (evening ed.); *Nestos Urges Organization of Vigilantes*, MINOT DAILY NEWS, Aug. 11, 1924, at 1 (evening ed.).

292. In some instances, such vigilantism was connected to accusations of sabotage. In Ambrose, in October, 1915, a man described as a Wobbly was beaten and chased down the street by a threshing crew for allegedly placing spikes in the wheat bundles, thereby wrecking the threshing machine. Rescued by a shopkeeper, the man (who managed to "lay[] out" one of his pursuers with a well-thrown rock) was subsequently charged with "being an agitator." *Brief State News*, WARD COUNTY INDEP., Oct. 21, 1915, at 6.

293. Haug, *Industrial Workers 1918-1925*, *supra* note 283, at 7. This move was reported in the IWW press. *I.U. 400 Notes*, SOLIDARITY, Aug. 18, 1917.

294. The *Industrial Worker* describes how two members were arrested and one of them searched that fall in Valley City by a sheriff who had no warrant of any kind. When challenged to reconcile this with the governor's instructions, the sheriff allegedly responded, "To hell with the governor; this is the law." *Law in the Dakotas*, INDUS. WORKER, Nov. 24, 1917.

likely, too, that vigilantism forced an undeterminable number of laborers to work and an even greater number to move along, and that it substantially frustrated IWW organizing. Along with the statutes described in this section, vigilantism probably also helped create (at the same time that it flowed out of) an ideology that condemned IWW organizing and endorsed the prevailing employment structures. Nonetheless, judging from its overwhelmingly more prominent incidence in the newspaper records, the dominant mode of labor regulation seems to have involved the use of vagrancy law by the police themselves.

C. The Demise of the IWW in North Dakota

By the end of 1918, the IWW was in trouble in North Dakota, and in fact nationwide. Part of the reason for this was a nationwide campaign of repression predicated on the absurd but effective claim that the IWW was simultaneously allied with the political anarchist movement, the Bolsheviks, and Imperial Germany. This culminated in the conviction of 165 members, most of them leaders, in a Chicago federal court on charges of violating the Espionage Act of 1917. As with other "Red Scare" prosecutions, the charges in this case had nothing to do with espionage and everything to do with the IWW's radicalism. Nevertheless most defendants, including several capable leaders of the agricultural union, were imprisoned; others eventually fled into exile. The resulting disruption of leadership, combined with pre-existing organizational shortcomings and countless less sensational acts of repression, seriously undermined the parent union.[295]

This deed did not improve Frazier's standing in the local papers, though. *See, e.g., Disclosures Connect Frazier, Lemke and Other Leaders with The Most Radical Movement in the World*, WARD COUNTY INDEP., Nov. 2, 1922, § 2.

295. *See, e.g.*, FONER, HISTORY OF THE LABOR MOVEMENT, *supra* note 102, *passim*; DUBOFSKY, *supra* note 118 *passim*. *See also* Francis Shor, *The IWW and Oppositional Politics in World War I: Pushing the System Beyond its Limits*, 64 RADICAL HIST. REV.74 (1996) (emphasizing the role of government persecution in undermining the IWW). As these authorities—among others—indicate, America's entry into the Great War came with a concerted campaign of government-enforced patriotism and xenophobia. In this context, the IWW's opposition to the war (which had nothing whatever to do with support for Imperial Germany), its anarchism, and its vague sympathies for the ideologically dissimilar Bolsheviks were all readily associable with seditious tendencies. Another, closely related development of this kind was the Bolshevik Revolution. For obvious reasons, this too both inspired and rationalized hostility to the IWW, which was accused of simultaneous complicity with both enemy camps. As with the general attitude toward

Probably more important to the organization's fate in North Dakota, however, were state and local policies. In addition to vagrancy and the other examples that we have seen, still others might be mentioned. For example, a number of state and local employment bureaus were established during the later part of this period for the express purpose of distributing agricultural labor.[296] While never effective enough to substantially displace direct bargaining between workers and farmers, these bureaus did play some role in filtering out IWWs and preempting their wage demands.[297] In other cases, localities resorted to different schemes—like rounding up urban volunteers—to mobilize labor and thereby undercut workers' bargaining power.[298] At the same time, increasing mechanization of the harvest began to erode the workforce itself.[299]

By 1924, the IWW was in steep decline in North Dakota, and indeed across the nation. Newspaper reports from 1924 still mention a fair number of arrests of organizers and warnings of the threat of an all-out organizing campaign, including a remarkable little battle of wills and wits between Minot police and one Louis Rasmussen, who talked his way out of jail several times only to be rearrested.[300] But they also suggest

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vagrants, though, it is also important to point out that such hostility to the IWW was rampant across the country, not just in North Dakota.

296. *See, e.g.*, Act of Mar. 9, 1921, ch. 117, 1921 N.D. Laws, 198 (establishing free state employment bureau focused on distributing agricultural labor).

297. On the role of these local harvest labor bureaus, see, e.g., *Harvest Labor Wage Advances to $4 Per Day As Supply Falls*, MINOT DAILY NEWS, Aug. 14, 1922, at 2 (evening ed.).

298. Local newspapers promoted, or otherwise applauded, various schemes to reduce dependency on regular harvest labor sources. *See, e.g., Businessmen Will Go into Harvest Fields: Ward County War Service Club Formed and Members Pledge Themselves to Assist in Harvest and Threshing*, WARD COUNTY INDEP., July 18, 1918, at 1; *Many Men for Harvest Work: Nearly One Hundred Have Been Given Jobs by City Employment Bureau*, MINOT DAILY OPTIC-REPORTER, Aug. 16, 1915, at 1; *Soldiers Go to Cando to Help in Harvest*, MINOT DAILY NEWS, Sept. 24, 1918, at 1 (evening ed.). The IWW saw these organizations as anti-union devices, designed to create local labor surpluses to drive down wages.

299. On the decline of the IWW in North Dakota, see Haug, *Industrial Workers 1918–1925*, *supra* note 283.

On the role of automobiles, changing railroad policies, and mechanization in the decline of the IWW in the wheat-belt, see Applen, Migratory Harvest Labor, *supra* note 12, at 173–95. Even though North Dakota was comparatively late in mechanizing, organizing efforts there suffered just the same from the collateral effects of a reduced transient labor force. *Id.* at 177–78.

300. *Vagrancy Accusations Made Against Alleged Organizers of I.W.W.*, MINOT DAILY NEWS, Sept. 9, 1924, at 2 (evening ed.); *I.W.W. Who Appealed Vagrancy Conviction Again Held in Lockup*, MINOT DAILY NEWS, Sept. 2, 1924, at 1 (eve-

the consolidation of official authority over harvest labor and the general decline of the IWW. For example, Minot area farmers and business people, working with the local labor bureau, announced a three dollar per day wage, which the chief of police immediately announced he would vigorously enforce by prosecuting all idle men.[301] The city also passed an ordinance that year essentially making it a misdemeanor to conduct labor organizing on the streets.[302] For their part, Fargo police renewed the "forty-eight hour rule."[303] But overall there were already noticeably fewer references to actual conflicts with the IWW. And these reports appear alongside other articles—including two accurately highlighting the adverse impact of the automobile on IWW organizing—that anticipate the IWW's imminent demise in that state.[304]

The failure of the IWW in the wheat-belt and in North Dakota particularly was not merely the product of technological advancement, "natural" economic forces, the work of employment bureaus, or even weaknesses within the organization itself. Federal repression was a collateral factor, but hardly decisive in North Dakota. Despite its important role in establishing employment bureaus, the state government, over which populist forces continued to exercise influence, did not strike the decisive blow either.[305] And while practically every

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ning ed.); *Organizers for I.W.W. Appeal from Vagrancy Convictions in Minot*, MINOT DAILY NEWS, Aug. 26, 1924, at 1 (evening ed.); *Organizers for I.W.W. Sentenced as Vagrants*, MINOT DAILY NEWS, Aug. 21, 1924, at 3 (evening ed.).

On the arrest of other organizers, see, e.g., *Vagrancy Charge Will Appear Against I.W.W.*, MINOT DAILY NEWS, Sept. 19, 1924, at 3 (evening ed.); *Wobblies Soliciting Converts On Streets Face Vagrancy Count,* MINOT DAILY NEWS, Sept. 16, 1924, at 8 (evening ed.). On the perceived threat of large-scale protests, see *I.W.W. Ready for Greatest N.D. Campaign Horner Says*, FARGO F. & DAILY REPUBLICAN, Aug. 2, 1924, at 1 (evening ed.).

301. *Wage For Harvesting Placed At $3 Per Day,* MINOT DAILY NEWS, July 30, 1924, at 3 (evening ed.).

302. *Ordinances Designed to Curb I.W.W. Evils Pass Second Reading*, MINOT DAILY NEWS, Oct. 7, 1924, at 3 (evening ed.).

303. *I.W.W. Ready For Greatest N.D. Campaign*, *supra* note 299.

304. *"Slim Pickings" for I.W.W. Here*, FARGO F. & DAILY REPUBLICAN, Aug. 27, 1924, at 3 (evening ed.); *Harvesters Use Cars and Avoid Wobblies*, MINOT DAILY NEWS, Aug. 25, 1924, at 3 (evening ed.). *See also I.W.W. Shun Cavalier Since Treatment in '21*, FARGO F. & DAILY REPUBLICAN, Sept. 6, 1924, at 3 (evening ed.).

305. Despite a pattern of relatively mild state repression, at various points in the period in question the governor and attorney general of North Dakota had the IWW infiltrated by private detectives for the purpose of destroying the organization. Haug, *Industrial Workers 1918–1925*, *supra* note 283, at 10; Haug, *Industrial Workers 1913–1917*, *supra* note 141, at 95.

other state subject to successful IWW organizing efforts (thirty altogether) eventually enacted "criminal syndicalism" statutes that all but explicitly outlawed the organization, North Dakota's legislature rejected such legislation.[306] Instead, the IWW in North Dakota was undermined largely by relentless local repression tied in with the regulation of harvest labor. In the end this proved as destructive as any other model. As we have seen, the linchpin of this campaign was the law of vagrancy.

V. CONCLUSION: VAGRANCY LAW AS LABOR LAW

In North Dakota in the 1910s and 1920s, vagrancy law formed the basis of a comprehensive, localized system of labor regulation, one that sought to regulate the fundamental rights of modern labor law: the rights to organize, to protest and withhold labor, and to bargain over terms and conditions of employment. Vagrancy law functioned in this context as a system of labor law.

There are startling differences, of course, between the system in North Dakota eighty or ninety years ago and the one that prevails across America today. While modern labor law administers these rights with a regime of civil law and civil agencies, the system revealed in this article relied directly on the criminal law and the criminal justice system. While modern labor law is (by its literal terms, if not actual effect) generally protective of these rights, in North Dakota the criminal law was used to dramatically abridge them in the interests of preserving employers' prerogatives to hire labor at "market" values unaffected by organizing, strikes, or bargaining. While modern labor law is almost exclusively a matter of federal and state administration, the regime we find here was almost entirely local.

This highly informal, violent, and relentlessly pro-employer regime is more reminiscent of that used to control black labor in the old South, or perhaps the antics of a contemporary authoritarian state, than one used on white labor in the

306. Three such measures were introduced in North Dakota between 1919 and 1921. According to the leading authority on the legislative history of such statutes, these measures were defeated by the legislators allied with the Non-Partisan League, who perceived such bills as efforts to paint the NPL, which was already perceived to be affiliated with the IWW, in unpatriotic, disloyal colors. ELDREDGE FOSTER DOWELL, A HISTORY OF CRIMINAL SYNDICALISM LEGISLATION IN THE UNITED STATES 92–93 (1939).

modern North. And yet there is no other way to interpret the evidence, which shows clearly quite common practices of harvest laborers being forced to work, made to move on, or stopped from striking or organizing, all with the threat of vagrancy prosecution. This is not to say that the pattern of regulation of harvest labor described in this article was absolutely ubiquitous, or that vagrancy law did not sometimes serve alternative purposes, including the persecution of blacks and as a foil to expand police authority generally.[307] A similar point can be made about the idea that vagrancy here functioned largely to control public space, aesthetics, and so forth. Many of these other functions were undoubtedly at play in North Dakota in this period, but in a manner often thoroughly intertwined with more explicit labor-regulating dynamics. Indeed, to return to a question posed earlier in this article, when is the control of public space, or the authoritarian implementation of cultural values, or even the prophylactic arrest of criminal suspects not connected to the control of labor? Who were these blights on the urban landscape, these presumptive criminals, but workers, trying hard in this case to advance their class interests and to assert their claim to space?

"There is no place in North Dakota for the Industrial Workers of the World"—so reads an August, 1913 edition of the *Fargo Forum & Daily Republican*.[308] Vagrancy law made this so. In many cases, as we have seen, workers, especially union members and organizers, were actually run out of town or jailed. This no doubt had a substantial and direct effect on organizing and protest, particularly by raising the real costs of organizing and protesting, and by depriving workers of the kind of initiative that is always vital to union success in labor disputes. An equally important point is that all harvest hands, whether only confronted by the police or arrested, faced an ever-present threat of persecution. In this respect, the evi-

307. *See, e.g., Pair Held for Vagrancy Following Shooting of Policeman Are Freed*, MINOT DAILY NEWS, July 29, 1924, at 1 (evening ed.); *Trio Suspected of Robbing Man On Train*, FARGO F. & DAILY REPUBLICAN, Sept. 25, 1922, at 2 (evening ed.) (robbers held on vagrancy charges pending further investigation); *11 Negroes Taken in Raid at Lake*, FARGO F. & DAILY REPUBLICAN, Aug. 25, 1921, at 3 (evening ed.) (blacks driven out of Devils Lake by vagrancy charges); *One Hundred Darkies in Minot*, WARD COUNTY INDEP., Dec. 16, 1915, at 1 (evening ed.) (suggesting disappointment that no charges could be filed); *Negroes Find Climate Bad*, FARGO F. & DAILY REPUBLICAN, Aug. 22, 1914, at 8 (evening ed.).

308. *The Minot Rumpus*, FARGO F. & DAILY REPUBLICAN, Aug. 12, 1913, at 4 (evening ed.).

dence overwhelmingly supports an instrumentalist account of the dynamics of class control via the criminal law. And while claims of this sort are inherently difficult to substantiate, the evidence also hints at an ideological function centered in the cumulative effect of so many arrests and confrontations, as well as in the transparently discretionary ways that this played out. Surely a worker in this context could not fail to be impressed by the relentless power of the state and its thoroughgoing endorsement of the sanctity of "market" wages and of the utter illegitimacy of radical unionism—even if he were never arrested or confronted by the police. All of this was well understood by the harvest workers, who—no doubt without bothering to distinguish the instrumentalist from the ideological—simply saw that the law was dead set against them. They could only hope, as organizer Ted Frazier put it, to "make our own justice."[309]

The evidence here also speaks to the nature of the police. As I mentioned at the outset, scholars continue to debate if and when the police in America traded a focus on class control for one on crime control. While this article can hardly be the last word on the matter, it clearly supports the view associated with Harring, that this transition was not so clean or decisive as others have suggested. Consistent with Harring's view, and in contrast to Monkkonen's, the police in North Dakota in the 1910s and 1920s were clearly still dedicated to a class control agenda. In saying this we must, of course, remember some unique aspects of this case. In particular, these harvest laborers enjoyed virtually no access to local political power and the whole drama played out in a context of relatively low urbanization. But this raises an important point in its own right: that geography and local social structure were likely just as important as broad patterns of social change in confronting this question.

On the other hand, while this article is concerned with North Dakota, there is little reason to suppose that the patterns evident here did not unfold in a similar way throughout the wheat-belt. While still rather underdeveloped, the existing scholarship, as well as IWW literature, suggest conditions simi-

309. Ted Frazier, *Where "The Law" Stands in N. Dakota*, SOLIDARITY, Nov. 5, 1915.

lar to what we have found in North Dakota in other wheat-belt states, particularly Kansas, Oklahoma, and South Dakota.[310]

In a somewhat different vein, we might ask, what does all of this finally say about our understanding of the development of American labor law? It is still fashionable in conservative quarters to regard New Deal labor law as a uniquely statist and coercive intervention into American labor relations. This article adds weight to a very different interpretation. However coercive the New Deal regime of labor law might have been (and it only slowly touched agricultural labor anyway) it can hardly be said to have defiled—to paraphrase Marx's sarcastic description of contract and labor in capitalist society—any Eden of the innate rights of humanity.[311] For much of the American working class, and for harvest laborers especially, the reality behind the ideal of free contract and free labor in the pre-New Deal era was not only a world of vicious economic compulsion, but of state coercion in the most unadulterated forms.

310. *See, e.g.*, SELLARS, *supra* note 265; Grosshardt, *supra* note 12; HALL, *supra* note 12.

311. The relevant passage reads as follows: "The sphere of circulation or commodity exchange, within whose boundaries the sale and purchase of labour-power goes on, is in fact a very Eden of the innate rights of man." 1 MARX, CAPITAL, *supra* note 28, at 280.