IDLERS, OUTLIERS AND DEPENDENTS: THE FREE LABOR ORDER IN INDUSTRIAL CHICAGO, 1870-1930

By

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For Jim and To Erin
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Idlers, Outliers and Dependents: The Free Labor Order in Industrial Chicago, 1870-1930

examines the rise and fall of what I term “the free labor order,” a parallel social order that patterned individual duties and obligations around wage work. Chicago’s new Municipal Court, opened in 1906, picked up—in part—where nineteenth century Police Courts left off. Enforcing the terms and tenets of the free labor order through specialized Morals, Domestic Relations, Vagrancy and Criminal branches, the Court evidenced the important association between steady wage work and social, legal and citizenship status. This association was further bolstered by a string of municipal investigations into vice, crime and race. The outliers of the free labor order are the active agents in this study, which explores the ways vagabonds, sex workers and Black migrants received—but also reshaped—the terms of the free labor order by contesting its social, legal and economic constructions of dependency, its labor hierarchies and its circumscription of their basic social and economic rights. By placing vagabonds, sex workers and migrants at the center of urban life, my study highlights the stories and struggles of a resilient but forgotten workforce and explores the racial and gendered characteristics of wage work, while examining the ways outliers formed their own relationships to the economy. The study concludes by
positioning the trials and experiences of the Progressive Era outlier as a critical, though neglected, narrative in the nation’s response to economic collapse in the 1930s.
“No honest man who is hungry will decline to work,” T. W. Harvey explained. As chairman of the Central Relief Committee the year Chicago hosted the World’s Columbian Exposition and then fought to fend off the Panic of 1893, Harvey struggled to grasp the poverty that blemished the White City. “I have observed that the worthy are good decent men who want to work,” he explained, and the unworthy—the ones he was trying to remove from the city’s streets and relief roles—idle tramps. The distinction he arrived at—that men who refused to work were dangerous—was common to the late nineteenth century. They idled in an era of progress and industry and stood stationary amid the “go-ahead spirit” that was building the nation. More significantly, perhaps, these failed breadwinners threatened their communities with dependent women and families. At best, they transformed mothers and wives into workers. At worst, they turned them into “White Slaves” like “Rose,” the daughter of drunken and hapless parents whose “innocence and childishness had not protected her from cruel wrong and worthless vice,” but left her pregnant and imprisoned at fourteen.

While Harvey agreed that good women were dependent on good men, he probably did not imagine they could be dependent on Black men. When Chicago’s Black populations exploded during the Great Migration, the city’s white supremacists and segregationists targeted migrants with a language of difference. The Black migrant’s manner and dress clearly set them apart from

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1 “Loafers To Leave.” Chicago Tribune 27 December 1893, 2; “Must Work Or Leave Chicago.” Chicago Tribune, 17 January 1894, 8.

2 According to Steven Sandage, the “go ahead spirit” was a common term in the mid-nineteenth century and described the ambitious, forward-looking, young man who appeared to embody the traits of “success.” Steven Sandage, A History of Failure in America (Cambridge, Mass: Harvard University Press, 2005), 83-85.

3 “Woman In Business,” Chicago Tribune, 11 February 1893, 16.

the rhythms of the industrial city, and inspired anxious whites to wax philosophical about the capacity of southern Blacks to labor steadily and become independent residents at all, “for whatever reason.”  

5 Journalist Henry Hyde announced in the early years of the migration, “it is a bad situation for the Negro race and for everybody else” and then invited migrants to return to their “home” in the south.  

6 Like his contemporaries, he did this without taking into account the rapid spread of *de facto* segregation, most conspicuously in residential neighborhoods and at sites of employment. Like tramps and sex workers, Black migrants were outliers of what I term “the free labor order,” a parallel social order that flourished in Chicago between the 1870s and the 1930s. In this study, I examine how those outliers intersected with and then reformulated the free labor order.

A basic grammatical distinction helps shore up the meaning of the free labor order: it’s an abstract noun rather than a noun modified by an adjective, “free-labor order.” It was also an abstract idea with concrete implications for Chicago’s working and unemployed poor. It patterned and organized social, legal and economic relationships around wage work, and in the process created roles in which white men worked steadily, white women were dependent on white men who worked steadily, and Black migrants only worked at menial tasks, or remained outliers. But these were also idealized roles and, in modeling them, the free labor order set the terms of social, legal and economic inclusion and exclusion. These patterns and the terms of inclusion were policed by a series of compulsions that dramatically restricted the social right and status of the outlier. As a result, dependent white men, independent women and self-sufficient Black migrants emerged as potentially combustible agents in the industrial city.


The patterns, models and compulsions of the free labor order organized urban life around wage work between the Civil War and World War II. But its terms fit poorly with the lives and the patterns of the marginal workers it was designed to control. By asserting economic, legal and social relationships and practices that were incompatible with the free labor order, this study examines how marginal workers contested the gendered, racial and class hierarchies that marked their subordination and asserted new patterns of urban organization drawn around the full and equal status of marginal men and women. Armed with an awareness of the entitlements of full citizenship and rights, they transformed the free labor order that was designed to control them.

The stories and struggles of Chicago’s marginal workers drive this investigation, which examines the labor, legal and social dimensions of the free labor order. By pushing labor analyses beyond stale dichotomies of producers and business unionists, or foreign and native workers, this study spotlights the role of a variety of economic relationships: the tramps who rejected steady labor, the women and girls who intermittently sold sex to supplement paltry and unsteady incomes, and the Black migrants who claimed jobs in restricted spaces. However, as these workers defined their relationships to the economy, they encountered and generated legal, social and economic discourses framed in terms of slavery: dependent men were defined as slaves, industrial labor resembled slavery, working girls and women risked white slavery, and skin color betrayed the status of a slave. As a result, contesting these terms of the free labor order involved neutralizing these discourses of slavery, which remained potent a half century after the Civil War. As a remedial measure, free labor was designed to substitute the bound practices of
the past for the equitable labor negotiations of the future; in practice, it sustained and replicated them.⁷

In the process, the debate over the free labor order also marked a point of constitutional and legal transition. Free labor’s constitutional narrative originates in the Slaughterhouse Cases when a dissenting Justice Field argued it was unconstitutional to interfere with an individual’s property in their labor. Amplified thirty years later in Lochner v. New York, the individual’s right to control, negotiate and contract their travails, discussed by jurists as a substantive right to liberty of contract located in the Fourteenth Amendment, dominated legal thinking about work in America for over half a century.⁸ Lochner cast a long shadow and its rise and eventual fall in the 1930s parallels the free labor order. But, the right to work outlined in Lochner easily became a duty, or compulsion, to steady labor, particularly when work was scarce or social forces excluded the potential worker. As a result, the idle and dissolute were made subject to vagrancy laws, domestic ascription and segregation, which fortified the compulsions of the free labor order.

Amy Dru Stanley ties this compulsion to contract.⁹ In this study, however, social rights as conceptualized by T. H. Marshall, rather than contract, emerge as the principal instrument of compulsion. In his famous lecture, “Citizenship and Social Class,” Marshall tied social rights to inclusion and equal status, and described them as “the right to share in the full social heritage and

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to live the life of a civilized being according to the standards prevailing in the society.”

While social rights can constitute a positive duty of membership and inclusion, in the absence of this positive duty—when tramps were barred from parks and transportation hubs, when sex workers were denigrated, harassed and driven from city streets, and Black migrants excluded from services, neighborhoods and worksites—social rights becomes an instrument of discipline and compulsion that mirrored the social control schemes of vagrancy law. The bane of idle and dissolute men since the Black Plague, vagrancy laws are also a reminder that like women and Blacks whose rights were frequently diminished and altered on pretexts, white men also had their social right taken away when they failed to abide by the tenets of social and economic organization. In examining the workings of citizenship and rights, historians sometimes miss these important voices.

As a statutory construction designed to touch the marginal and displaced and as an enforcement arm of the free labor order, vagrancy spotlights tensions that are sometimes written into laws, and exposes ways that laws create and enact distinctions between classes of people. Vagrancy laws were rife with frictions between civic and private reformers and the tramps, sex workers and Black migrants they compelled to steady labor, to virtue and domesticity and to

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11 My analysis builds on recent work by Barbara Welke, which identifies white men as holders of the highest from of citizenship in the “long” nineteenth century. In my study I suggest that in important ways poor white men were also subordinate to the laws of the free labor order and its patterns and saw their status diminished when they did not work steadily. See Barbara Welke, “Law, Citizenship, and Personhood in the Long Nineteenth Century: The Borders of Belonging,” in Cambridge History of Law in America, Michael Grossberg & Christopher L. Tomlins, eds., (New York: Cambridge University Press, 2008), 345-386. In the nineteenth century the basic rights of African Americans and women were modified and diminished by the Supreme Court in Dred Scott, which ruled that Blacks could never be citizens, the Civil Rights Cases, which ruled their social rights could not be constitutionally guaranteed, and in Plessy v. Ferguson, which ruled that the only right that mattered were political rights, and not social and civic rights. See Dred Scott V. Sandford, 60 U.S. 393 (1856); The Civil Rights Cases, 109 U.S. 3 (1883); Plessy v. Ferguson, 163 U.S. 537 (1896) Women’s rights and status was similarly changeable, particularly with regard to suffrage (Minor v. Happersett, 88 U.S. 162 (1874)) and labor (Bradwell v. Illinois, 83 U.S. 130 (1872); Muller v. Oregon, 208 U.S. 412 (1908), Adkins v. Children's Hospital, 261 U.S. 525 (1923)).
secondary citizenship and the outposts of industry. These tensions were replicated in legal categories—idle and dissolute tramps, casual and steady sex workers, subordinate and activist migrants—that created and duplicated the social and economic relationship of the free labor order in local law. As this study demonstrates, Chicago’s new Municipal Court, which opened in 1906, developed into the major legal venue for the city’s marginal workers that drew on discourses of innovation and reform to classify marginal workers in familiar categories of the “salvageable” and the “irredeemable.”

This study’s focus on the free labor order also offers some new perspectives for the well-worked fields of the Progressive-Era and Great Depression historiography. Most obviously, this study injects marginal voices into a Progressive-Era historiography marked by a middle class vision. Perhaps more importantly, the study brings a dose of skepticism to bear on the claims of Progressive urban reformers and their present-day scribes about the scope of reform and the change it produced. At the same time, this study of the free labor order spotlights the struggles and experiences of Progressive Era outliers in creating discourses of reform outside official venues of authority—Courts and government—during the Progressive Era, and then distinguish their Progressive Era voices and struggles in the new social, economic and legal discourses that arose during the Great Depression. As a result, this study illustrates a critical, though neglected, narrative that shaped the nation’s response to economic collapse in the 1930s.


13 William Link has argued that the paradox of southern progressivism was that it was able to operate apart from the state and in this way his analysis has challenged state-centered analyses of Progressive Era reform. In part, this study builds on Link’s insight to examine the role of the marginal. See William Link, The Paradox of Southern Progressivism (Chapel Hill: University of North Carolina Press, 1992).
By tracing the stories and struggles of tramps, sex workers and Black migrants, this project also intersects with social history. Initial studies, driven by the urban violence of the New Society and Civil Rights Movement, investigated the origins of de facto segregation, economic marginalization, ghettoes and urban violence.\(^{14}\) With the rise of the women’s movement, historians trained their attention on the poverty, labor and agency of young, and often urban, women.\(^ {15}\) Most recently, studies of tramps as aggregate pools of impoverished reserve labor, have allowed historians to examine undercurrents of male poverty and homelessness in America.\(^{16}\) These tramps provide the critical third leg in the marginal worker stool, and the point of departure in this study, which blends labor, legal and social analyses of economic relationships and slavery discourses, constitutional law and vagrancy, and the social history of marginal workers. By arguing that the struggles and activism of tramps, sex workers and Black

\(^{14}\) Arguably, St. Clair Drake initiated a new era in the study of Black urban life in the north in 1945 with *Black Metropolis*, a book that outlines the conditions of Black life in Chicago and highlights the costs and consequences of racial discrimination and marginalization. As the civil rights movement trained its focus on the north in the mid 1960s, new studies appeared. Alan Spear argued the rise of defacto segregation was a consequence of the Great Migration. Thomas Lee Philpott’s *The Slum and the Ghetto* placed housing at the center of a larger argument that the discrimination encountered by Black Americans was more profound and systematic than that encountered by any other racial or ethnic group. William Tuttle’s *Race Riot* traced the origins of the Chicago race riot to circumscribed economic opportunity. In a vein similar to Tuttle, Joe Trotter argues that the Black migrant’s status as an industrial worker, rather than a ghetto dweller, was most critical. See Drake St. Clair, *Black Metropolis* (Chicago, University of Chicago Press, 1945); Alan Spear, *Black Chicago* (Chicago: University of Chicago Press, 1967); Thomas Philpott, *The Slums and the Ghetto* (New York: Oxford University Press, 1977); William Tuttle, *Race Riot* (New York: Antheum, 1970); Joe Trotter, *Black Milwaukee* (Urbana: University of Illinois Press, 1985).


migrants overlapped, this study connects experiences that scholarship has treated as separate and argues that in scholarship, as in life, the marginal were linked together.\textsuperscript{17}

In order to tell the story of the free labor order, this study is organized thematically and chronologically into three sections. The study’s first section details the rise of the free labor order. The first chapter in this section examines the role of Chicago’s vagrancy laws, which emerged as a key tool in the city’s effort to map out and respond to unemployment, homelessness and vice. The second chapter in this section traces the emergence of a new Municipal Court System, which replicated and enforced the free labor order through specialized Domestic Relations, Morals, Vagrancy and Criminal branches. The study’s second section examines the application of the free labor order on the margins and considers the ways it was contested by tramps, sex workers and Black migrants. In the pages of the “Hobo” News, in “Hobohemia” and in West Madison Street’s Hobo College, tramps and hoboës castigated the industrial slave market and the city’s vagrancy laws. For their part, casual sex workers, who were often young women working at starvation wages, typically entered sex work for practical reasons: to eat and board. But by living independently and working, they also rejected paternal supervision and domestic duty. Meanwhile, Black migrants boldly contested their dependent status by strikebreaking, a strategy that galvanized Black workers and leaders alike, but netted few results. As this section demonstrates, work constituted both patterns of obligation and sites of resistance. By contesting the economic relationships and the legal compulsions of the free labor order, marginal workers reshaped its terms and its operation.

This reshaping is taken up more fully in the study’s third and final section, which examines the decline of the free labor order in the 1920s and 1930s. As the Great Depression swelled the industrial margins, it obscured white male dependency and transformed the economic subordination of marginal African American and women workers into an act hostile to national recovery. More importantly, it also produced new social, economic and legal discourses spotlighting the role of Progressive Era outliers in creating new legal and constitutional thinking about dependency.

This study is situated in Chicago because the people it discusses lived and worked there, and if they did not, they passed through. Yet, there are other compelling reasons to focus on that city. Turn-of-the-twentieth century Chicago was a geographical, commercial and intellectual center to the larger national experience of the free labor order. The city testified to the promise of the young nation. Immigrants flocked to its jobs, accompanied by women who left the countryside, migrating Blacks in search of opportunity outside the south, and tramps and hoboes who cycled through, spending their winters or staying longer to become part of the “home guard” in Hobohemia.

The city was also a center for men and women inspired to reform corruption and vice—much of it well documented by social scientists who saw in urban sociology a way to eradicate the blights and blemishes of urban life and to repair its residents to productive citizenship. Famous investigators captured the city they sought to correct. Ernest Burgess, Robert Park and Charles Merriam, and their throngs of students, like hobo researcher Nels Anderson, along with social workers Jane Addams, Louise deKoven Bowen, Edith and Grace Abbott, Sophonisba Breckenridge and Graham Taylor defined urban “problems” with authority. The city’s new and dynamic Municipal Court, led by Harry Olson and prominent associate judges extended that
authority through fixations on legal solutions to urban problems; they were among the many
drawn by curiosity, arrogance and mission to define the critical struggles shaping urban America.

This class of investigators and documenters, who set out between the 1890s and 1930s to
transform a city known to be wide open, into one ordered by the free labor order—along with
those who rejected their efforts—left a trail of materials, including court records; commission
studies on vice; crime and race; reform manifestos; visual resources; personal communications;
theses; annual reports; ballads; poems; advice manuals and popular novels. Deposits at the
University of Chicago Special Collections boast primary accounts of Hobohemia, along with
case studies of tramps and descriptive materials of sex workers in the Julius Rosenwald Papers
and the Committee of Fifteen deposits. The Municipal Court’s Annual Reports, which outline the
work the Court saw itself doing, are kept at the D’Angelo Law Library. Meanwhile, cases and
other material from the Municipal Court’s Domestic Relations, Morals, Vagrancy and Criminal
branches and housed at the Chicago Municipal Court Archives form the substance of this study’s
legal analysis. At the Chicago History Museum I uncovered invaluable Police Court records for
the “State Street Squad,” outlying vagrancy prosecution in the era before the Municipal Court,
along with materials critical to the study’s discussion of Black workers and middle class and
reforming women. The Ben Reitman Papers at the University of Illinois at Chicago and the
“Hobo” News, the principal rag of the nation’s hoboes in this time period, housed at the
University of Illinois at Urbana, have both helped capture the voices of tramps and hoboes.

While Chicago offers numerous advantages, a study like this also faces challenges. Men
and women identified alternatively as unemployed or temporarily employed, as vagrant or casual
sex workers, shifted their relationship to the economy and moved in and out of the shadows of
the free labor order, and in those shadows they left few records. Records that do remains are
snapshots of transitioning populations, typically taken by researchers, reformers and municipal
authorities whose adherence to distinctions that identified dissolution, immorality and inferiority
further obscure the identity of the subject under study. In order to flush out these hazy snapshots,
this study relies on structures of employment, statutory and municipal law, and local journalism
to illustrate the workings and the reach of the free labor order. All of these narratives, read in
conjunction with the work of the city’s documenters a century ago, make it possible to illustrate
the stories and struggles of the tramps, sex workers and Black migrants, who together constitute
a resilient, but often forgotten, industrial workforce.

The study’s title is intentionally contradictory, to spotlight the valuable but neglected
struggles of marginal men and women. Idlers, outliers and dependents were not peripheral but
central to the transformation in American law and life that this study describes. They shaped
social and economic developments that judges and Courts would follow. By locating new
thinking about law in this context in the 1930s and by arguing that marginal workers created this
context through their critiques of the free labor order, this study makes tramps, sex workers and
Black migrants essential to the new thinking that emerged about rights, status and equality that
constituted a moment—however fleeting—of social and economic equality and national
community in the late 1930s, and which left in its wake the ideas that would revolutionize law,
place and status in the twentieth century.18

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CHAPTER 2
“TO REACH A LOWER CLASS AMONG US”: VAGRANCY AND THE RISE OF THE FREE LABOR ORDER

In the summer of 1897 police picked up a “man of means and influence” one sweltering afternoon after he sank exhausted and unconscious in a hallway, and brought him to the local jail to serve a sixty-day sentence for vagrancy. Alarmed by his absence, his friends eventually notified authorities; a search was initiated and the man was discovered and released just before his sentence expired. In covering the story, the Chicago Tribune omitted the man’s name, occupation and home state—the story was that a “man of wealth and influence” was charged and convicted as a vagrant. The Chicago Tribune concluded, in dramatic fashion, that the penal system was “deficient.” Meanwhile, in the same story the paper reported that Sarah McGinty, “drunk and making a disturbance on State Street” was sentenced to thirty days in the workhouse. Her reputation was not cloaked in anonymity and her sentence was not an “indignation for which there is no adequate redress,” rather it confirmed what everybody knew about vagrancy law. It was a tool designed to control the poor and anonymous, the people Supreme Court Justice Douglas would describe some sixty years later as “the lowest class among us.” In turn of the twentieth century industrial Chicago, vagrancy laws patterned economic relationships and obligations along the urban and industrial margins.

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1 “Evils in the Police Court in Chicago,” Chicago Tribune, 23 May 1897, 29.
Illinois’ 1890 vagrancy law targeted begging, unemployment and unlawful employment with fines between five dollars and one hundred dollars and prison terms up to six months in the house of correction.\(^3\) Available records suggest that in late-nineteenth century Chicago, vagrancy was a common offense and penalties minor were normal.\(^4\) Despite the regular and systemic punishment of vagrants, the city’s dailies and police were impatient; they demanded swift punishment of the idle and dissolute and they railed against the “defective ordinance” and the criminals it failed to contain. This din cast marginal workers as outliers of the city and its industry and defined them as an intractable problem that required a dramatic and swift response.

The *Tribune* reported in 1892 that the procedure of the Cook County Police Court in dealing with vagrants was so “loose and lax that thieves and criminals of all classes are flocking to Chicago as their Mecca, where their liberty will be protected at the expense of the property and perhaps the lives of the decent and reputable citizens.” The “problem” was on the increase just before the 1893 Columbian Exhibition, according to police Chief Robert McClaughry. “We need an ordinance on the subject badly,” McClaughry complained. “Scores of well-known crooks are coming to the city, but we cannot arrest them [because] we cannot prove them thieves.”\(^5\) By presenting the idle and dissolute as a threat to decency, property and safety,

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\(^3\) The statute targeted those “who not having visible means of support live without lawful employment,” those begging, either “door to door,” on the street or in public places.” Jonas Hutchinson, *Laws and Ordinances Governing the City of Chicago*, August 2 1890, (Chicago: E. B. Meyers And Company, 1890), Statute 2190.

\(^4\) Records available for Chicago Central Detail, or “Lake Street Squad,” between 1875 and 1885, demonstrate that arrests for vagrancy rarely exceeded twenty-five percent of all arrests and were frequently less than ten percent of monthly totals. With few exceptions, sentences were under thirty days and fines less than fifty dollars. Chicago Police Departments. *First Precinct. Arrest Book*, January 2, 1875-June 30, 1885. Research Center, Chicago History Museum, Chicago.

authorities like McClaughry defined and charted the vagrant’s deviance. The city’s police were instructed to arrest them on sight.

McClaughry’s thinking about the idle and dissolute was underwritten, in part, by new thinking about work. Free labor proposed that work be steady, contracted and waged, and its expansion coincided with the dramatic expansion of routine and repetitive factory work in the late nineteenth century. Vagrancy law mapped the expansion of free labor from a regional to a national labor model. It targeted statuses that authorities like police Chief McClaughry would have defined as deviant: unemployment, homelessness, night walking, and drunkenness. And, by adding social, legal and economic dimensions, it diminished the people occupying them to the status of dangerous outsiders that threatened the community’s safety and its resources.

From the 1890 ordinance through the relatively unchanged vagrancy statute of 1930—when this study ends—vagrancy law emerged as a tool municipal authorities used to control the industrial margins. As vagrancy spotlighted unemployment, homelessness and vice, it proposed to map, define and resolve problems in industrial Chicago.

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7 William Chambliss and Jeffrey Adler debated the meaning of vagrancy in the late 1980s. While the exchange is a reminder that vagrancy is an elastic concept, the debate settled little. In the article that initiated the debate, Adler questioned the continued legitimacy of a Marxist interpretation of vagrancy law, and asserted the function of vagrancy law were multiple and should not be boiled down to strict economic analysis. This study agrees with Adler to the extent that vagrancy law typically does more than one thing. The driving forces of vagrancy law were economics and social. See William Chambliss, “A Sociological Analysis of the Law of Vagrancy,” *Social Problems,* vol. 2 no. 1 (1964): 67-77. Jeffrey Adler, “A Historical Analysis of the Law of Vagrancy,” *Criminology* 27, (1989): 209-229. William Chambliss, “On Thrashing Marxist Criminology,” *Criminology* 27, (1989): 231-238.

8 The Revised Code of Chicago, General Ordinance 1306 (1890): “All person who are idle and dissolute, and who go about begging; all persons who use juggling or other unlawful games or plays; runaways; pilferers; confidence men; common drunkards; confidence men; common night-walkers; lewd, wanton and lascivious persons, in speech or behavior; common railers or brawlers; persons who are habitually neglectful of their employment or their calling, and do not lawfully provide from themselves, or for the support of their families; and all persons who are idle or dissolute, an who neglect all lawful business, and who habitually misspend their time by frequenting houses of ill-fame, gaming houses or tippling houses; all persons lodging in or found in the night time in out-houses, sheds, barns, or unoccupied buildings, or lodging in the open air and not giving a good account of themselves; and all
This vision of order, in which contracted and negotiated labor relations patterned social, economic and legal relationships that stretched from the workplace to the home, the street, the salon, the courtroom, the park and beyond, it constituted a new plan of urban organization I call the free labor order. Before vagrancy conceptualized and spatialized dissolution and disorder in industrial Chicago, it was transformed by centuries of application in Anglo-American law, when it was seldom, if ever, subject to the resistance it would encounter in the early twentieth century from the workers it was designed to control. The free labor order has its roots in this Anglo-American history of vagrancy law.

“Refusinge to Worke”

Historically, vagrancy intersects categories of labor and social order and spotlights moments of crisis in the Anglo-American past. The first recorded Anglo-American vagrancy statute was enacted after the Black Plague obliterated huge sections of the English workforce and was designed to subordinate workers to fixed wages and to restrict their mobility, making it “unlawful to accept more [pay], or to refuse an offer of work.” Deployed to underwrite a larger feudal economic and political arrangement that bound workers to their masters, it curbed any persons who are known to be thieves, burglars or pickpockets, either by their own confession or otherwise, or by having been convicted of larceny, or other crime against the law of the state, punishable by imprisonment in the state prison, or in a house of correction of any city, having no lawful means of support, are habitually found prowling around any steamboat landing, railroad depot, banking institution, broker’s office, place of public amusement, auction room, store, shop or crowded thoroughfare, car or omnibus or at any public gathering or assembly, or lounging around any courtroom, private dwelling houses or out-houses or are found in a nay house of ill-fame, gambling house, tippling shop, shall be deemed to be and they are declared to be vagabonds, and upon conviction they are fined not to exceed one-hundred dollars.”

potential economic autonomy incurred by labor shortages.\textsuperscript{10} The statute was reborn in the sixteenth century amid the decline of feudalism and the emergence of market forces.

A series of Elizabethan Acts exemplified a new role for vagrancy law. Like the post-Black Plague vagrancy law, the Statute of Artificers (1562-1563) compelled every able-bodied person to work, and by establishing that wages be paid out annually dramatically restricted workers geographic and economic mobility and held them in place. It also reflected the rise of a commercial economy as well as concerns about the security of tradable goods. In an era when foreign things could be profitable, but also dangerous, the vagrant was dangerous. When official orders in 1570 England targeted the ‘idle person’ as a source of infections and called for “avoiding all such vagrant persons,” until they had been “cured and made cleane,” it connected the body of the vagrant to the act of vagrancy and made both dangerous and outlying.\textsuperscript{11}

Punishments for vagrancy could be gruesome. Upon conviction of a first offence, the legal branding became physical, and the guilty “greouslye whipped, and burnte through the gristle of the right ear.” A second conviction garnered an indenture, as vagrants were “to be deemed felons unless someone will take them into service for two years,” and after a third offence, vagrants were “to suffer as felons without the benefit of clergy.”\textsuperscript{12} These types of progressive justice


\textsuperscript{11} The heart of the Act for the Punishment of Vagabonds and for Relief of the Poore and Impotent remained workers, specifically “all Common Labourers being persons able in Bodye using loitering and refusinge to worke for such reasonable wages as is taxed and commonly given in suche parts where suche persons do or shall happen to dwell.” See 5 Eliz. C. 4 (1562); 14 Eliz. c. 5. (1572). Old English quoted in Ribton-Turner, C. J. \textit{A History of Vagrants and Vagrancy, and Beggars and Begging}. (London: Chapman and Hall, 1887), 101-107.

schemes, which recognize degrees of idle and dissolute behavior developed before the eighteenth century, when imprisonment began to replace a language of forced labor in English statute.

*Idle and disorderly persons, rogues and vagabonds and incorrigible rogues,*—all these are offenses against the good order and blemishes on the government of any kingdom… punishment of... idle and disorderly persons with one months imprisonment in the house of corrections; rogues and vagabonds with whipping and imprisonment not exceeding six months; and incorrigible rogues with the like discipline and confinement, not exceeding two years.13

Outside the state’s economic interest in productive bodies, the vagrant remained less recognizable, however. To be idle and dissolute in Blackstone’s days was a “high offense against the public economy,” vetted, he imagined in his *Commentaries,* by antiquity.14 As a result, the principal of vagrancy—the public interest in busy subjects and citizens—was made timeless at roughly the same time as the statute was expanded to the American colonies

The Massachusetts Bay’s *Book of General Laws and Liberties*—one of the earliest statements of law in the new American geography—targeted any “person, Householder or other [who] shall spend his time idly or unprofitably.” This type of provision empowered local constables to “use special care and diligence to take knowledge of offenders in this kind, especially of common coasters, unprofitable fowlers and tobacco takers.” Coasters, fowlers and tobacco takers were then subject to a discretionary and local legal authority and the “pain of such punishment as the Court of Assistants or County Court shall think to inflict.” Meanwhile, steady workers were rewarded in *The General Laws* with sufficient “time for food and rest.”15 In America, the vagrant was formative in the Colonial era.


14 As Blackstone saw it, when the Athens’ Court of Areopagus “punished idleness, and exerted a right of examining every citizen in what manner he spent his time,” it established a precedent for punishing vagrancy as a public offence. *Blackstone: Book 4,* “Public Wrongs Section” Stat. 198 Vagrants, Rogues and Vagabonds.

The principle elements of English vagrancy laws—restricted mobility and mandatory labor—were adopted enthusiastically in the colonies. Their adoption reflected regional, social and economic variations and concerns about security and status. In the Commonwealth of Virginia, the idle were impressed. “Able bodied men, as do not follow or exercise any lawful calling or employment, or have not some other lawful support and maintenance,” a Virginia statute provided, could be “enlisted”—and were enlisted—in imperial wars through the middle of the eighteenth century. The practice was sharpened into statute in 1756, “enlisting” those “loitering and neglecting to labor,” including the “vagrant, idle and dissolute.” Meanwhile, in the South Carolina colony, the “idle and dissolute” were enlisted to neutralize another consequence of colonial life: “negro insurrection.” In both cases, vagrancy was closely tailored to the interests of the state.

Popular forums like almanacs, “studded with aphorisms of the sinfulness of being unemployed,” bolstered vagrancy’s obligation to steady labor. Because labor starved colonies and their inadequate apprenticing systems were unable to keep up with demand for skilled workers, colonial governments in need of bodies refused to limit the immigration of the vagabond and the unemployed poor.

16 Chambliss, “A Sociological Analysis of the Laws of Vagrancy,” 75; Morris, Government and Labor in Early America, 4-5
17 Morris, Government and Labor in Early America, 24-25.
18 Morris, Government and Labor in Early America, 289.
19 Morris, Government and Labor in Early America, 289.
20 Morris, Government and Labor in Early America, 289.
22 Morris, Government and Labor in Early America, 24. Morris’ Footnote reviews of seventeenth and eighteenth century colonial vagrancy statutes.
This influx of idle population was already beginning to change by the early national period when vagabonds were among the three groups excluded from citizenship by the short-lived Articles of Confederation.\textsuperscript{23} In the new American nation, the vagrant prefigured a sophisticated labor hierarchy that included free laborers, indentured servants and bound slaves and exposed the critical relationship between work and status defined by that hierarchy.\textsuperscript{24} In the new nation’s oldest cities, new workhouses and jails built in response to fears over vagrants testified to ways that economic relationships could shape status.\textsuperscript{25} The development of vagrancy law in the new United States also reflected powerful shifts in thinking about poverty, wealth and freedom.

The expansion of a market economy and the entrenchment of African slavery in the eighteenth century destabilized the relationship between labor and independence—which underwrote the criminality of the vagrant—and gave way to dialectical contingencies of poverty and wealth, slavery and freedom, expressed differently at various parts along the Eastern seaboard. Gary Nash has discussed these shifts in the north in terms of the decline of a “communal ethic” and the emergence of market forces, which punished rather than provided for the idle and impoverished.\textsuperscript{26} Edmund Morgan has demonstrated that in other parts of the nation it was dispossessed whites “the able-bodied poor, nominally but not actually independent, who

\textsuperscript{23}“The free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States.” See Article IX, \textit{The Article of Confederation}.


spelled danger to liberty.”27 White men represented the essence of American freedom, and their independence delineated the status of all who were beneath them.28 The decline of the indentured servant status, as a middling status between slavery and freedom in which white men were temporarily owned like slaves, reflected the prominence of this dichotomy, as well as the increased importance of labor patterns to social origination.29 By the 1830s, distinctions between the employed and idle and the dependent and the independent could be found in federal law.

When the state of New York passed a law in the 1830s that compelled ship captains to submit passenger information, including name, date of birth and occupation, to the city’s administration upon docking, William Thompson, Captain of the Emily, balked. The Supreme Court reviewed the law in the 1830s, and found that the state of New York had a legitimate interest in protecting its residents "against the moral pestilence of paupers, vagabonds, and possibly convicts.”30 Anointing a state police power over paupers and vagabonds, the law declared dependent men dangerous and laws restricting their mobility a public benefit, or good. These types of laws were not only directed outwards, at American ports and borders, they were also directed inwards.

30 In his only majority opinion, Justice Barbour inaugurated a state police power as a reasonable “guard against the physical pestilence, which may arise from unsound and infectious articles.” City of New York v. Miln 36 US 10 102 (1837). Paul Finkelman argues that Miln was the genesis of police powers. See Paul Finkelman, “The Taney Court: The Jurisprudence of Slavery and the Crisis of the Union,” in Christopher Tomlins, The United States Supreme Court: The Pursuit of Justice (Boston: Houghton Mifflin, 2005), 79-80.
In 1832 John Moser purchased a lot in Forks Township, Pennsylvania, for twenty-five dollars and built a cabin and a frame house, which was described in the Court’s record as a “hovel.” When Moser failed to enter securities, without which he could not gain residence in the community, he was reclassified as a public charge. But, Moser was also a landowner. A Pennsylvania Court was asked in 1837 to resolve his standing and found that because he was not likely to be independent and that because the community was “not responsible to support him,” he could be relieved of his freehold and classified as a vagrant. The Court’s decision reflected dichotomies of dependence and independence, free and slave, which in later years would be foundational to the free labor order. In the 1830s, the issue was relatively clear: John Moser was a man who failed to be independent. These types of distinctions were much less apparent when women were involved.

In an age of coverture, treating women like dependents did not have the same implications as treating white men like dependents. In 1834, the Maine Supreme Judicial Court heard the case of a “vagrant woman” committed to a Portland “work-house,” and upheld the commitment, explaining that because she was sentenced to the Court at the behest of a “police measure,” her commitment was to her benefit. However, unlike the police power in New York v. Miln, in this case her commitment resembled something closer to quarantine than punishment. Twenty-five years later in In re Forbes, an 1860 New York City case, Catherine Forbes, a “common prostitute,” was convicted of vagrancy, despite the fact the statute made no provision for sex

31 Forks v. Easton 2 Whart. 405, 1837 WL 3175 (Pa.)

work because sex work was often not illegal. In re Forbes upheld the idea that vagrants drained community resources, but stopped short of punishing her for being dependent. Clearly, gender complicated the operation of vagrancy. By punishing a woman for living without lawful employment “whereby to maintain themselves,” vagrancy proposed to reconstitute social and economic relationships.

As an instrument of social and economic order, vagrancy also needed to be flexible. In 1880, twenty years after Catherine Forbes’ conviction, a Peoria County Circuit Court heard an appeal from Frank Hitchcock that the vagrancy conviction and sixty day sentence handed him by a Police Court violated his right to a jury. Judge J. McCulloch rejected the appeal and explained that Hitchcock had no right to a jury because vagrancy convictions produced small fines and short sentences and jury selection and deliberation threatened to clog the system and make vagrancy law unworkable. By the last quarter of the nineteenth century, vagrancy law was an efficient tool of social organization that had the power to remake social and economic relationships and define individual duties and obligations. For these reasons, it became a pillar of the free labor order.

**Vagrant Deviants: National and Regional Constructions**

The rise and fall of the free labor order parallels the rise and fall of classical liberalism—in theory, the notion that government infringes on individual freedom and liberty—in American law. In labor relations, classical liberalism underwrote liberty of contract, which also manifest as a compulsion engineered by the state. In essence, classical liberalism would come to depend on a federal authority it rejected, by definition. Vagrancy law exposed this discrepancy and brought a

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lengthy historical chronicle of labor relations to bear on its vision of industrial employment, alluding to “games” and “jugglers” that recalled Elizabethan influence, and highlighting efficiency and production—those who “habitually misspend their time”—that reflected deference to market forces in the late nineteenth century.\(^{35}\) Courts conceptualized free labor as generative, rather than exclusionary, individualizing economic opportunity and the individual’s relationship to the economy. By the early twentieth century, liberty of contract presupposed the equality of workers and rejected any effort to regulate the employment contract and served as the constitutional basis of the free labor order.\(^{36}\) The seeds of this development lay in the *Slaughterhouse Cases* and the Supreme Court’s acknowledgement of the centrality of wage work to social and economic organization.\(^{37}\)

In the *Slaughterhouse Cases* the Court split over the economic rights of butchers to operate their own facilities. At issue was an 1869 New Orleans’ law designed to shuffle butchers and their waste outside the city and away from their original workplaces, and thereby reduce the threat of disease; it was ostensibly a health measure.\(^{38}\) Workers saw matters differently: it was an attack on their independence, on their right to control the terms—and location—of their employment. In the case, the butchers threw everything they could find at the plan. Drawing on the recent Postwar Amendments, they argued in front of the Supreme Court that the law abridged


\(^{36}\) Cases like *Adair v. United States*, 208 U.S. 161 (1908) and *Coppage v. Kansas*, 236 U.S. 1 (1915), which banned ‘yellow dog contracts’ in federal and state law, exemplify the Supreme Court exultation of the right to contract. Also Kermit Hall, *The Magic Mirror, Law in American History* (New York: Oxford University Press, 2009), 266.

\(^{37}\) Any Dru Stanley has argued that the compulsion to free labor was predicated on concerns that dependency and begging approximated slave and bound labor. See Amy Dru Stanley, “Beggars Can’t Be Choosers: Compulsion and Contract in Postbellum America,” *Journal of American History*, 78 (March 1992): 1288-91.

the prohibitions on slavery in the Thirteenth Amendment and violated the privileges and
immunities and the equal protection provisions of the Fourteenth Amendment. They lost. Those
Amendments, Justice Miller explained in his majority opinion, were designed to aid freedmen
and not white butchers.39

Justice Miller made at least two other significant points. First, he argued that because laws
can be applied differently to different people, individual status matters. Second, he argued that
because laws can be applied differently in different contexts, context matters. The implication,
on both accounts, was that individual status defined the reach and application of law; the
constitution spoke different words to freedmen than it did to white butchers. In his dissent,
Justice Field expressed his unease with the majority’s parsing of the Postwar Amendments, and
criticized the majority’s assault on free labor, something he considered a “fundamental idea upon
which our institutions rest,” and “one of the most sacred and imprescriptible rights of man.”40
Field’s dissent foreshadowed the direction law would take over the next several decades. But in
the 1870s, it also demonstrated that classical liberal tenets and “capitalist property rights” were in
flux, and that Courts were often divided by them.41 The free labor order, which had a history in
vagrancy law, would find form in this flux.

39 The law granted a twenty-five year monopoly to the Crescent City Livestock Landing and Slaughter-House
Company and then compelled butchers to abandon their individually owned or leased worksites. See The
Slaughterhouse Cases 83 U.S. 36 (1873).

40 The Slaughterhouse Cases 83 U.S. 36 (1873).

767 (1985): 799-800. Scholars of labor and law disagreed about the ascent of classical liberal principles in American
law. Some scholars locate its rise in the postbellum era when free labor achieved supremacy. See Stanley, From
Bondage to Contract: Wage Labor, marriage and the Market in the Age of Slave Emancipation (NY: Cambridge
University Press, 1998); William Forbath, “The Ambiguities of Free Labor: labor and the Law in the Gilded Age,”
Wisconsin Law Review 767 (1985). Robert Steinfeld envisions the rise of free labor in the decades after the
Revolution, when workers began to exercise some control over their relationship with their workplace, over whether
to stay or to go, and against plantation slavery. See Steinfeld, The Invention of Free Labor (Chapel Hill, University
of North Carolina Press, 1991), 15. For other discussion of law and labor in this period, see Christopher Tomlins,
Field’s celebration of free labor found its most perfect expression in *Lochner v. New York*. *Lochner* had its origins in an 1897 New York hour’s law that sought to protect the health of bakers. The state defended the Bakeshop Act as a legitimate exercise of police powers to legislate on the health and safety of its citizens, while the Act’s opponents branded it an unnecessary state interference in the individual’s ability to contract his labor. In the case, attorneys for the state had reason for cautious optimism. Only a few years earlier the same high Court upheld a series of protective legislations in Utah designed to stop men from dying in mines and excluding women and children from working in mines and smelters entirely. These hopes were soon dashed. Instead, in *Lochner*, the Court upheld what it considered a substantive liberty of contract right, dismissing the hazards of flour dust and long days, and more importantly curbing the state’s ability to protect its workers. In dissent, Justice Holmes rejected what he interpreted as the majority’s social Darwinism and their commitment to a *laissez-faire* “economic theory;” Justice Harlan reiterated the health consequences raised by the state of New York. Neither, however, would dislodge the Court’s new commitment to independent and contracted manhood.

His vision of labor relations vindicated, Joseph Lochner retreated into relative obscurity. The decision bearing his name, however, helped established constitutional mooring for the free

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42 Justice Peckham wrote the majority opinion in *Lochner*. He explained his definition of economic liberty, as incorporated through the liberty and property provisions of the Fourteenth Amendment, less than a decade earlier in *Allgeyer v. Louisiana*. The liberty inscribed in the Fourteenth Amendment, Peckham wrote, protects a citizen’s rights to “live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.” See *Allgeyer v. Louisiana* 165 U.S. 578 (1897).

labor order, making steady labor both a right and an obligation. This compulsion attached a social and economic dimension to a constitutional principle by effectively criminalizing unemployment, either by choice or circumstance; *Lochner* would connect vagrancy law with the right to contract.\(^\text{44}\) By normalizing labor into a set of practices, steady wage work became a way to mark the vagrant.\(^\text{45}\) The social, domestic and legal patterns bolstered by this economic theory were extended to the home two years after *Lochner* in *Muller v. Oregon* (1908), which found women were not equal partners in the labor contract because their maternal and domestic duties were more important than their duty to labor. As *Muller* announced women’s dependence on the steady employment of men the Court described in *Lochner*, the free labor order diagrammed the obligations, duties and compulsions of workplaces and households, and the men and women that occupied each.\(^\text{46}\)

*Lochner* cast a long shadow and its unraveling in the late 1930s was marked by a change in vagrancy law. In 1941, President Roosevelt vetoed a federal vagrancy bill because he was “not willing to agree that a person without means of support, temporary or otherwise, should be subject to the risk of arrest and punishment,” under provisions he considered to be “indefinite


\(^{45}\) The process was well underway before Lochner. Problems associated with wage labor order were evident, for instance, when compiling information for Hull House Maps and Papers in the early 1890s, when men over 21 were treated as “families.” The author acknowledged this was misleading because it failed to account for the number of dependents, and notes “The theory that ‘every man supports his own family’ is as idle in a district like this as the fiction that ‘everyone can get work if he wants it.’ See, Hull House Maps and Papers (Chicago: University of Illinois Press, 2007), 61. On the inheritance of free, wage labor, see Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage and the Market in the Era of Slave Emancipation* (New York: Cambridge University Press, 1998), 109, 113, 116.

\(^{46}\) Muller modified classical liberal doctrine for women workers, citing their primary obligation as mother and caretakers to rationalize their limited participation in the labor market. See *Muller v. Oregon*, 208 U.S. 412 (1908).
and uncertain in their meaning and application as those employed in the clause.” 47 That same year, in *Edwards v. California*, the Supreme Court modified its previous decision in *Miln*, the case that originally allowed authorities to single out vagrants and vagabonds for special, and often critical, treatment at points of entry. 48

Mobility was also at the heart of *Edwards*, which tested a California law that made it a crime to bring “indigent,” non-residents into the state. The case developed from efforts to stem the tide of the dust-bowl “Oakies,” whose migration to California threatened—in the mind of the law’s framers—to swallow up the state’s resources. In addition to protecting the mobility of Americans, *Edwards* also resuscitated the Privileges and Immunities Clause of the Fourteenth Amendment, eviscerated in the *Slaughterhouse Cases*, upending two critical elements of the free labor order underwritten by vagrancy law: mobility and inequality. By upholding mobility as a fundamental right, and rejecting distinctions between classes of citizens, *Edwards* also struck a blow to the status-based criminality underwriting the free labor order, while it inspired a host of legal scholars to critical reflection on vagrancy law. 49 Federal case law between *Miln* and *Edwards* highlight the role of constitutional law and ways that constitutional thinking operated in


concert with vagrancy law to construct independent and dependent statuses around relationships to wage work. ⁵⁰

While the free labor order generally bent to the classical liberal arc in turn-of-the-twentieth century American constitutionalism, the enactment and enforcement of vagrancy law was nuanced and reflected regional dynamics and demands. In southern states, Black Codes supplied a legal pretext for the re-enslavement of Black Americans through the enforcement of local ordinances. ⁵¹ When the Civil Rights Act of 1866 outlawed Black Codes, southern authorities turned to vagrancy laws to round up the aberrant and African American and force them to steady labor, and emigrant agent laws, which leveled a crippling tax on labor recruiters scouring the south with job offers in the north. In the tradition of vagrancy, these laws also severely limited the mobility of freedmen. ⁵² Freedmen stuck in the south faced the prospect of being leased, or

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⁵⁰ The free labor order was further undercut after Edwards. Papachristou, a 1972 Supreme Court decision, brought an end to the use of vagrancy when it found that a Jacksonville, Florida vagrancy law encouraged arbitrary arrests, made criminal activities that were normally innocent, and granted police almost unfettered discretion. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).


⁵² Leo Alilunus explains that as the “exodus of the Negro to the north gained impetus, the emigrant agent licensing and taxing laws became decidedly more stringent.” See Leo Alilunus, “Statutory Means of Impeding Emigration of the Negro,” Journal of Negro History 22 (April 1937), 148. Emigrant agent laws led to “widespread legal harassment of emigrant agent in the south,” David Bernstein writes. Alabama, Florida, North Carolina and Virginia enacted laws after 1903. Laws in Georgia and South Carolina predated 1903. Meanwhile, the other southern states enacted emigrant agent laws when African American out-migration rose during WWI. See David Bernstein, Only One Place of Redress, 25.
“sold into slavery,” like the three young Black men brought to sale at public auction in Virginia in 1880.53

Labor was equally important in the north, where compulsions were orchestrated around free rather than bound labor practices. “Nelson (a mulatto)”’s conviction in the early 1860s intersected slavery and vagrancy. Nelson was subject to a state constitutional Amendment barring free Blacks from Illinois and allowing their labor to be auctioned off to pay their fine. An appeal of Nelson’s conviction asked that this provision be squared with the same constitution’s ban on slavery and involuntary servitude. The appellate court replied that the circumstances were “not unusual” and that the provision for the sale and forced labor of free Blacks was closer to vagrancy than slavery, as the individual’s status was “only reduced for a limited period.”54 As a status-based quasi crime, vagrancy allowed the Court flexibility in constitutional and criminal matters.

In 1873, ten years after Nelson’s conviction was upheld, the Illinois Supreme Court heard police officer James Stanley appeal his conviction in a lower court for assaulting and falsely imprisoning William Wells, a man he took to be vagrant. Upholding the lower Court’s conviction and Wells’ recovery of $100, the state Supreme Court took the opportunity to explain that vagrancy needs to be witnessed and that simply visiting a house of ill fame, saloon or railroad depot did not make an individual vagrant. The Court also noted that when he was arrested, Wells was in possession of several hundred dollars and “in the business of making tents.”55 As an employed—and therefore independent—person, the Court reasoned that Wells

54 Nelson v. People 33 Ill. 390 (1864).
55 Stanley v. Wells 71 Ill. 78 (1873).
could not be a vagrant. As Stanley’s conviction suggests, with vagrancy law in the north, the individual’s status as a worker could be more important than his race.

In Chicago, vagrancy law grew with the city and came to mark pockets of dissolution. “It is a common remark that Chicago was set forward ten years by the fire,” the Tribune mused in 1873. Confidence that the city would rebuild was one of the things that put it at the forefront of northern industrial growth. But rebuilding also had social consequences. “The mingled town and village aspects are gone,” The Tribune lamented, replaced with “a community of strangers.” Audiences at church and at the theater grew unfamiliar, and “as to knowing one’s neighbor, that has become a lost art.”56 Industrial growth came at the cost of familiarity, necessitating new ways of “reading” the city that would task law and local government with new policing responsibilities.57 Vagrancy law emerged as a critical instrument in this new task; it provided authorities with tools to recognize different statuses and then to act in ways that reflected those differences.

By the early twentieth century, employment was the single most important factor in determining a vagrant from a breadwinner. John Covey, “shown by the evidence to be a gambler,” challenged his vagrancy conviction in Municipal Court in March 1913. The Court of Appeals found that because Covey owned property, supported his family and paid his bills, the vagrancy conviction was inappropriate.58 The same month, William O’Keefe—“known to be a pickpocket” and not to be employed—also challenged his vagrancy conviction. In its decision, the Court of Appeal clarified its rule on vagrancy, declaring it “incumbent on [the accused] to

56 “Village Scandal,” Chicago Tribune, 30 March 1873, 8.
58 People v. Covey 179 Ill. App. 354 (1813).
show, if he can, that he has lawful means of support.” O’Keefe’s affinity for pick pocketing undermined his appeal. In the decades between Well’s vindication and O’Keefe’s incarceration, vagrancy codified around the individual’s employment status, a status that was not always easy for Court to interpret or the idle and dissolute to control.

Vagrancy was also shaped by a dynamic and rapacious capitalism that thrust the nation into cycles of boom and bust throughout the late nineteenth century. When Jay Cooke suspended payments on accounts financing his new railway to the Northwest in 1873, the financial world took notice and deflated. The ensuing Panic of 1873 triggered widespread homelessness and unemployment through the remainder of the decade, eventually stopping Chicago’s rebuilding effort after the fire “dead in its tracts.” Skilled and unskilled workers were thrown out of work, wages were cut and aid and relief organizations were overrun. For example, in the fall of 1873, road repair employees of the Michigan Central Railroad saw their daily pay cut from $1.375 to $1.25, and in early December 1873 country aid rolls witnessed increases of fifty percent. The swollen ranks of unemployed and underemployed men triggered a new round of calls for the incarceration of the idle and dissolute. The Tribune echoed these calls when it celebrated Judge Scully—for imprisoning the idle and dissolute “instead of fining vagrants, as had been custom”—as an official “worth more to the city than 100 policemen.”

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63 “Law for Banyon” Chicago Tribune, 5 September 1873, 4.
In the late nineteenth century, authorities were generally unmoved by the plight of the unemployed and job seeking. As the panic of 1873 entrenched, sweeping solutions to homelessness and unemployment emerged which centered on labor. Chicago Police Superintendent Michael Hickey grew frustrated with the slow pace of vagrancy prosecutions and proposed a “transfer [of the vagrant’s] labor to the House of Correction” as a “remedy for the evil.” His concerns were shared by Judge McCulloch when he dismissed Frank Hitchcock’s appeal that his vagrancy charge entitled him to a jury trial and they would be echoed in alarmist claims weeks after Hickey originally made them in major Chicago dailies declaring “The evil will grow to such a size as to defy laws.” Officials got to work on a new vagrancy law in summer 1877, a summer that was marked by a protracted railroad strike known as the Great Upheaval.

At the heart of the vagrant law of 1877 was a “protean character,” the Tribune defined as “broad enough to cover pretty much all varieties of the dangerous and vicious.” As a result of a new law, vagrants could be “arrested on sight without warrant.” However, in their enthusiasm to stem what they perceived as a vagrant tide, local authorities overreached. A writ of habeas corpus filed to release Hattie Brooks, a Black prostitute, from jail triggered a reexamination of the new law. In the hearing, Judge McAllister found the law was excessive, rendering the “liberties of the honest poor entirely at the mercy of the police force of this city.” The effect, the judge concluded, was to make poverty a crime, and the new vagrancy law “hopelessly

64 “The Vagrancy Law” Chicago Tribune, 1 February 1877, 8.
unconstitutional.”67 Superintendent Hickey’s enthusiasm blended popular and legal contempt that would mark the poor as a problem, specifically because they did not work. It also identified limits in punishing that problem.

McAllister’s overruling of Section 271 of the criminal code—the new section added in summer 1877—did not end the issue. Rather, Superintendent Hickey continued to complain about the “perils of the unemployed poor” and to sniffle that without the new section police were “to a certain extent powerless to keep this vicious class out of the city.”68 Hickey found a sympathetic ear when a “brother judge” on “another circuit” agreed with his concerns. When Peoria County Circuit Court Judge J. McCulloch upheld Frank Hitchcock’s vagrancy conviction in June 1878, he took aim at Judge McAllister, whom he felt had failed to read vagrancy as the central component of the free labor order, and instead took it as “an independent statement having no connection with that of which it proposes to be an amendment.”69

Judge McAllister disagreed with Judge McCulloch and rejected the social and economic relationships he read into the statute. When McAllister heard another vagrancy case in summer 1878, this one involving a revised Section 271, he restated his position about the new section’s failure to provide for a jury trial—consistent with his previous concern about the right of the accused—and threw the charge along with the revised section out of Court.70 However, the debate over the rights and obligations of the unemployed poor ultimately did little to immediately benefit Hattie Brooks. She was arrested again the following summer, 1879, along

with five other “inmates” of a house of “ill-fame.” While the constitutional implications of vagrancy made it contentious, in its practice and routine application on the street of Chicago and in the city’s Police Court it was subject to less much critical interrogation.

**Police Court: Lake Street Squad**

In the days of leather badges, before the fire of 1871, the crew at the Lake Street Squad was composed of “the best looking men on the force,” and charged with patrolling “the fashionable retail thoroughfare of the city.” However, as the “burnt district” was rebuilt after the fire, the retail district “shifted” to another part of town, the city’s population grew and the Squad became “Central Detail;” its headquarters were moved to City Hall. Assigned to police the area between Van Buren on the south, the river on the north, the lake on the east and the river on the west “during the day time, [the Squad] also covered the railroad depots, steamship landings, public halls, [and] newspaper offices” at night, which would have brought them into contact with the idle and dissolute.

While the successful appeal of Hattie Brooks’ prosecution points to judicial vigilance and the limits of police discretion in the application of vagrancy law, the Court records from the “Lake Street Squad,” suggest vagrancy prosecutions were routine in the Police Court. Surviving records illustrate that those arrested by the “Squad” for vagrancy and convicted by the Police Court between 1875 and 1885, received fines between five and sixty dollars and sentences ranging between fifteen and sixty days in the local jail. However, the six month sentences Irishmen Thomas Prendergras landed for vagrancy in August 1875 and the six months American

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71 “City Brevities,” *Inter Ocean*, 15 August 1879, 8.

72 Joseph Flinn, John Elbert Wilkie, *A History of the Chicago Police from the Settlement of Community to the Present Time*, (Chicago, Police Book Fund, 1887), 115, 461. Flynn and Wilkie note that Central Detail was not the same thing as Central Station, also run out of City Hall.
William Barkley received in July 1877 suggest police magistrates enjoyed a fair amount of discretion in sentencing. Prendergras and Barkley were also indicative of the vagrant demographic, which on the rolls at the Lake Street Squad was overwhelmingly composed of single men of working age, predominately American born and with the exception of a couple peddlers, a cigar maker, clerk and saloonkeeper, unemployed.

Although vagrancy was a regular part of business at the Police Court, prosecutions spiked during labor actions. Vagrancy arrests skyrocketed between July and November 1877, as the city responded to the Great Upheaval armed with a potent and new, though short-lived, vagrancy statute. Of the fifteen persons police charged with vagrancy in July alone, only Charles Gibbs and twelve year old Lizzie Well had their cases dismissed. The remaining thirteen who were charged received fines between twenty-five and one hundred dollars, and sentences between thirty and ninety days in the House of Correction. In the two months—October and November 1877—before judge McAllister neutralized the city’s new vagrancy clause, police at Lake Street were preoccupied with vagrancy cases, which constituted roughly half of all its arrests.

Fines and incarceration handed out by the Court were similar to those made in July, and evidence suggests that everyone that was charged was also convicted. Moreover, with the exception of Samuel Burnham and Ellen Weymer, both of whom were over sixty, and John Eagan and John Ashaled, both of whom were children under fifteen, all were of prime working age, between seventeen and forty-seven years old. Unemployed during a massive labor


74 Of sixty-one total arrests in October and November 1877, twenty-eight were for vagrancy. It was the highest arrest rate for vagrancy in any two-month period between 1875 and 1885. See Chicago Police Department. First Precinct Arrest Book, January 2, 1975-June 30, 1885. Research Center, Chicago History Museum, Chicago.

upheaval, men and women targeted by vagrancy laws reflected growing anxieties about the idle and dissolute and the drifting and dislocated peopling Chicago’s streets in growing number throughout the 1870s and the 1880s.

In their response to these concerns, police developed a number of strategies; it was not uncommon for officers conducting sweeps to arrest the idle and dissolute in groups of two or more. Chicago police officer Alexander Bold was a stand out in this regard. Born in Deahn, Bavaria, on September 1, 1850, Bold moved to the United States in 1865, and lived briefly in Ohio and New York before settling in Chicago in 1871. Bold joined the police force in 1878 and served at several stations, including Harrison Station, West Lake Station and the Central Detail Station, where he appears in the Lake Street arrest records.76 Described by chroniclers as an “energetic and industrious officer,” Bold was also a prolific arrester of vagrants.

John Prescott and Andrew Miller were arrested together by Bold and charged with vagrancy in November 1883. The following September 15, 1884, Thomas Kennedy and John Wilcox were arrested together for vagrancy. The enthusiasm of Officer Bold, listed as the arresting officer in each case, was met by a tepid Police Court, which handed down nominal fines under ten dollars. The following January, 1885, Bold arrested six men, who like Prescott and Miller, and Kennedy and Wilcox, were young men, single and unemployed.77

Officer Bold’s fervor intersected efforts to use law to bring individual social and economic relationships in line with free and steady wage work, to enforce the criminalization of white male dependency—including their reliance on alms and charity—that “menaced the discipline of the

free market.” But, in industrial Chicago, this compulsion to steady wage work was predicated less on principles of contract than on the social rights and social equality of marginal workers. The failure to comply with these new patterns, which constituted the free labor order, diminished the social status of the marginal, while compliance renewed or bolstered that status.

But at the same time, the diminished social status of criminal dependents failed to account for the “chronic uncertainties” injected into the lives of most workers by market forces and industrial capitalism. At-will employment exemplified this contingency. Typically discussed as the brainchild of Horace Grey Wood, a New York state attorney and treatise writer, at-will reorganized legal thinking about the employment relationship to reflect new industrial economic necessities, injecting flexible, indeterminate hiring into America’s labor market. At-will also established that workers were replaceable, while it shielded employers and industrialists by downloading the risks and burdens of industrial capitalist crises onto individual workers. As a result, workers were not just vulnerable; they were made vulnerable to the same market forces that were being hailed for building the American economy.


79 There is some debate about whether the origins of at-will lay in common law or economic necessity. The role, however large, of economic forces and the implications of at-will for employees are critical to the rise of free labor order. Stanley, From Contract to Bondage, 101. For the At-Will origins debate, see D. A. Ballam, “Exploding the Original Myth Regarding Employment At-Will: The True Origins of the Doctrine,” Berkeley Journal of Employment and Labor Law 1996 17 91.


Chicago thrived on this new economic and industrial development, even while the specter of poverty, labor strife, and mass unemployment threatened to silence “the most sensational city in the world.” In order to meet these challenges and to guarantee the city’s bright industrial and economic future, authorities used vagrancy and its principle elements to map Chicago. In the process, they spotlighted critical struggles over the meaning, constitution and application of the free labor order that connected *laissez-faire* with progress and growth.

**Mapping With Vagrancy: Work, Home, Vice, Place**

By the end of the nineteenth century, the idle and dissolute were increasingly subject to the patterns and organization of the free labor order, most spectacularly its ability to identify and define unemployment, homelessness, crime, vice and public space as flashpoints of social and economic dissolution. Together, these elements remapped deviance and identified outliers in Chicago and promised—or threatened, depending on one’s view—to reform them to the statuses of steady laborers and steady wives in the free labor order. As intersections of vagrancy and the free labor order, unemployment, homelessness, vice and public space identified the path subsequent reform would take and, when taken together, introduced new patterns of social, economic and legal organization in the industrial city.

The strike at McCormick’s Harvester Works was front-page news the day the Haymarket bomb exploded in May 1886. That morning the city’s dailies castigated “Professional agitators” who “have urged the crowd of idle men to use violence as a means of victory for the laboring classes.” Striking workingwomen were singled out in the *Tribune* as “Shouting Amazons,” as neglectful mothers and wives made aberrant by industry, “affected with a malignant form of the

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82 Boosters like to dramatize imminent threats to Chicago. “Twenty years ago, when Chicago had just entered on its career as the most sensational city in the world, and when all mankind seem to have combined to urge it on to metropolitan greatness, this city acquired an unbelievable reputation for recklessness and criminality.” See “Crime in Chicago,” *Chicago Tribune*, 27 January 1878, 4.
eight hour malady." In the hours and days before the bomb at Haymarket exploded, idle men and active women were causing all sorts of problems.

This activism appeared much more dangerous after the bomb exploded. The *New York Star* advised workers “to recognize these people as more their enemies.” The *New York Times* advised that sympathy would be “worse than wasted on these ruffians” and their grievances, closer to home, the Chicago *Tribune* envisioned “the dawn of a new era in Chicago for their kind.” Five years after the anonymous bombing at Haymarket, the *Tribune* held the line separating adherents to the free labor order and its outliers, explaining that rights “belong to law abiding citizens” and not to the idle.

Haymarket was a polarizing event that hardened social, economic and legal distinctions in ways that complemented the symmetries of the free labor order: employed and unemployed, dependent and independent, sheltered and homeless, virtuous and dissipated, sober and vice addled. These types of distinctions heightened the visibility of outliers in a polyglot and heterogeneous city. These types of distinctions were important as Chicago newspapers turned their attentions to the model town of Pullman, located a dozen miles south of Chicago, in 1894, where wage cuts triggered a massive, national railroad strike. The *Tribune* spotlighted the role

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84 New York Time and Star were quoted, along with other national presses, in the *Chicago Tribune*, 5 May 1886, 2.


86 The strike at Pullman began in May 1894 and was directed Eugene Debs’ American Railway Union and boiled down to the cuts in employee’s wages after the economic panic of 1893. Because most trains pulled a Pullman sleeper, the strike quickly shut down activity on most of the nation’s railroads. In an era without viable alternative transportation, the closing of the railroads, which more quickly than anything else made local issues into national issues, almost immediately threatened to arrest the economic development of the country. When Illinois Governor John Peter Altgeld refused Pullman military assistance in ending the strike, President Cleveland responded with national troops, despite Debs’ assurance that mail cars would not be obstructed.
of the city’s dailies in creating the free labor order, as it filtered the events at Pullman through Haymarket and the Great Upheaval to describe an “infestation” by “unruly hoards” that were “defying law and authority” in Chicago. By filtering Pullman through other labor actions, Pullman strikers became rioters and their dissent from the steady wage labor the dangerous expression of outliers. In this context, the Tribune attacked the city’s plans to “furnish employment to the idle” as a dangerous expansion of dependency and an impediment to industry and steady work—that activity that promised to order rebellious workers. Echoing these sentiments, Federal Commissioner of Labor Carroll D. Wright declared the Pullman “workingmen not justified.” By the end of the nineteenth century, the free labor order defined economic relationships at several levels of civic and political life.

The use of the free labor order to construct events at Pullman was not without a hefty dose of irony. The model town of Pullman countered rather than replicated the free labor order and its steady and independent workmen. “The pretty dream of a perfect natural order of things brought about by the free play of unrestrained social forces has vanished,” journalist Richard Ely lamented in 1885. He questioned whether neat, well built cottages, a theater, a market space and a library “elegantly furnished with Wilson carpets and plush covered chairs,” made better workers, or repackaged rank and “benevolent, well wishing feudalism.” Run on the complete subordination of its employees, Pullman replicated the dependencies strikers and “agitators” were accused of fostering. Among the principal ideas that Pullman—the model town and the

87 “Great Strike of ’77,” Chicago Tribune, 8 July 1894, 16.
88 “Great Strike of ’77,” Chicago Tribune, 8 July 1894, 16.
89 “Pullman Strike Not Warranted,” Chicago Tribune, 11 December 1894, 3.
namesake—advanced was that safe and sanitary housing made better workers. Municipal authorities picked this idea out of the rubble of Pullman and ran with it, straight into the twentieth century.

Census material from 1870 put the city’s population at just under three hundred thousand people, triple what it had been in 1860, but half what it would be in 1880. The vast majority of Chicagoans lived within three miles of State and Madison Streets. The fire allowed the city to rebuild where people lived. But it also introduced soaring land prices and the latest in fire precaution, which together excluded the poor from downtown and consigned them to a ring that arched west two miles from the lake between Fullerton and Halstead Streets in the north and 55th and State Street in the south.

Rebuilding was directed by new concerns about health and safety. A plan to temporarily shelter 40,000-50,000 people was rejected over concerns it might spawn “promiscuous and involuntary association,” and “idleness, disorder and vice.” Meanwhile, concerns about the home and the productivity of the people living in them hardened distinctions between legitimate and illegitimate housing. By the end of the nineteenth century the dilapidated housing, privies

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91 The Illinois Supreme Court agreed, and upon Pullman’s death in 1897, ordered the company town dissolved because it was incompatible good public policy. See People ex rel. Molony v. Pullman’s Palace-Car Co. Supreme Court of Illinois, October 24, 1898, 175 Ill. 125. On the dissolution of the model town Pullman, Louis Menand notes that Pullman left his sons, who he thought “dissolute and unworthy,” $3,000 a month and his model town $1.25 million. This, rather than the town’s public policy merit, was likely the origin of the suit. Louis Menand, The Metaphysical Club: A Story of Ideas in America, (New York: Farrar, Straus, Giroux, 2001), 316.


93 Karen Sawislak, Smoldering City, 94.
and general disrepair characteristic of working class housing constituted “the shame of Chicago.”

But the city didn’t start off that way. Boosters liked to brag immediately after the Civil War that the absence of tenement housing marked Chicago’s greatness; “thrifty workmen” owned their homes, boosters claimed, and the not so thrifty could “still hire a whole house.” Working class prosperity defined a landscape in which “seven tenths of Chicago consist[ed] of small wooden houses.” This vision continued after the fire when Sidney Myers, Manager of the Merchants, Farmers and Mechanics Savings Bank, constructed “neat and comfortable wooden cottages” for workingmen outside the city limits, where fire codes were reduced or non existent.

As Chicago’s population and its housing demand boomed, the well heeled and intentioned got particular about the relationship between housing, workers and urban stability. Reflecting on housing reform efforts in the 1870s, Edith Abbott explained that authorities typically viewed housing in terms of health and disease and not minimum standards. Consequently, if there was not a cholera outbreak, then there was not a problem. Reformers sought to introduce some urgency and shift the terms of regulation. The association between housing and the free labor order had yet to solidify.

Initially, privies galvanized housing reform. “It is very true that good sewers do not supply the sum total of necessities for a good living and healthy life,” the Chicago Board of Health

94 Robert Hunter, Tenement Conditions in Chicago (Chicago: City Homes Association, 1901).
95 “Housing,” Atlantic Monthly, 30 March 1867, 326, 328, 339.
96 “Workingmen’s Homes” Chicago Tribune 18 April 1875, 6.
97 Abbott, The Tenements in Chicago, 44.
acknowledged in 1877, “but in large cities they are the most important factor.” Outhouses were at the forefront of housing reform. Three years later the Chicago city council passed an ordinance addressing overcrowding in housing and provided for the regular inspection of privies in workshops and tenements. Minimum standards were beginning to replace the city’s previous reflexive-epidemic approach. Through these minimum standards authorities were able to address workers and their economic relationships.

The relationship between good housing and good workers, as exemplified by the model town of Pullman, solidified in the early 1880s. A committee formed to address working-class housing identified “the wretched conditions of workers crowded in “pestilential tenements,” as the principal “underlying cause” of urban disorder, namely labor organizations and “socialistic principles.” This sense that slum housing was a radicalizing agent found statutory expression in Chicago in 1884, when the privy vault was declared a “public nuisance” because it housed vagrants and vermin. The city of Chicago took steps to eliminate the outhouse in 1893, the year Chicago put itself on display to host the world at the Columbian Exposition. As issues of morality and industry coalesced around housing, the conditions of temporary housing and the plight of the provisionally homeless, housing began to distinguish outliers of the free labor order.

The housing of young employed women who flocked to Chicago, where they entered the work force at roughly three times the rate of women nationally, received special attention. In 1880 roughly half of these women boarded under the surveillance of host families. By 1910, only

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thirty percent of working girls and women in Chicago boarded with families. The rest lived “adrift” under various degrees of supervision, with roughly a quarter boarding in lodging or rooming houses and the remainder living alone, heading household or sharing with roommates.\footnote{These statistics reflect national census material. See Meyerowitz, \textit{Women Adrift}, 47-48, 71.} Authorities imagined that for women, much more than men, homes provided a way to counteract the dangers of the city, while it located women in traditional, gendered space.

Men on the move had more options. Five-cents bought access to a “double decker, iron bedsteads,” “dirty” bedding and “indescribably foul” air. A dime bought the same, but with some privacy, while fifteen to twenty-five cents secured a private room, sectioned off by “corrugated iron or wooden partitions, covered on the top for the most part by wire netting.”\footnote{Frances Buckley Embree, “The Housing of the Poor in Chicago,” \textit{The Journal of Political Economy}, 8 (June 1900): 375-376. Secondary accounts adhere to the three types of housing for migrant men. Philpott notes that that for two cents you could get accommodation on the floor of a “flophouse,” while some saloons allowed patrons to sleep on the floor and men without money found shelter in stables and outhouses. See Philpott, \textit{The Slum and the Ghetto}, 98; Robert A. Slayton, “The Flophouse: Housing and Public Policy For the Single Poor,” \textit{Journal of Public History} vol. 1, 4 (1989): 379-381.} For the nickel-less, local police stations provided free shelter—a proposition highlighting the informal, criminal dependence of idle and dissolute men. In Chicago’s wintry months they could accommodate upwards of 30,000 men.\footnote{According to Embree, Chicago police station housed over thirty thousand men between November and February 1895. See Frances Buckley Embree, “The Housing of the Poor in Chicago,” \textit{The Journal of Political Economy}, 8 (June 1900): 373. Also see Eric Monkonnen’s, ed., \textit{Walking to Work: Tramps in America}, (Lincoln: University of Nebraska Press, 1984), 8, 10-12, 58, 174, 193-195, 97.} Reformers were spurred to action by the failure of these men to labor steadily to support homes and wives and children.

Chicago’s depressing temporary housing landscapes inspired the City Home Association, a private reform agency, to uplift the idle and dissolute through better homes. Robert Hunter, a
reformer heralding from Indiana and only recently employed by the Chicago Bureau of Charities, took the lead and produced an influential study of tenement conditions in Chicago.\textsuperscript{104}

Tenement Conditions in Chicago argued that bad housing undermined the free labor order, while good housing sustained it. Pauperism, crime and disease, Hunter explained, “are fed from the same sources.” Unsanitary housing conditions, he claimed, “reduced industrial efficiency, promoted exhaustion and weariness, and was a potent cause of the growth of a large dependent class.” Hunter also argued that poor housing conditions “increase[d] the number of men who are unable continuously to make a living,” and “destroy[ed] the spirit of independence.”\textsuperscript{105} But Hunter and the City Homes Association took this claim a step further when they declared that those living in tenements and temporary facilities were, in fact, homeless. “The fact is,” Hunter explained “that the mass of people in tenements have not what people commonly call a home,” but a “place of shelter for the sleeping hours of the night.”\textsuperscript{106}

According to Hunter, and many other reformers early in the new century, the minimally housed could be classified as homelessness and vagrant. Locating substandard housing at the forefront of the era’s ill, social scientist Frances Embree argued in 1900 “the home and not the saloon is responsible for a large part of the drunkenness of the poor.” Embree reasoned that substandard homes “attract[ed] to the city a worthless, floating population” that exhausted local resources and lived homeless, idle and dissolute lives.\textsuperscript{107} By the twentieth century, housing

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\textsuperscript{104} Philpott, The Slum and the Ghetto, 26-27.
\textsuperscript{105} Robert Hunter, Tenement Conditions in Chicago (Chicago: City Homes Association, 1901), 145-146.
\textsuperscript{106} Robert Hunter, Tenement Conditions in Chicago, 71.
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marked and defined outliers and threats to the patterns and urban origination of the free labor order.

Vice formed a third critical intersection of vagrancy and the free labor order. Chicago did not have an Anthony Comstock, whose Society for the Suppression of Vice set the tone for moral surveillance in New York, and though the United States Post Office in the mail boxes of men and women across America. In fact, Gilded-Age Chicago betrayed a comfort with the illicit that Comstock might have found chilling. Containment was the city’s response to vice until the early twentieth century and while police and reformers targeted the overt they generally overlooked the inconspicuous. It was, Bessie Pierce recalled decades later, “about the best that could be done.”

Reformers responded to vice with what Richard Hamm describes as Mosaic Law, an inflexible vision of moral perfectibility that did not reflect life on the streets and did not appear to garner wide acceptance in Chicago, at least until the early twentieth century. At the heart of this transition to a Mosaic Law was the sex worker—and for the purposes of this study the female sex worker. Discourses involving women’s “fall” and “ruin” punctuated discussions of the wage earning women who, flouting domestic dependency and obligation—even temporarily—for the lights, shops, excitement and independence in the city, and by not


embracing roles as mothers and wives, appeared to threaten the very foundation of the free labor order. Women’s status as wage earners would drive changes in the policing of vice.

The centrality of the sex worker to urban vice in the early twentieth century has led Alan Hunt to argue that her work and her body “encompassed the ways in which the ills that beset society were perceived.”111 In the free labor order, where women’s work was domestic and her sexuality intimately connected to her duties as wife and mother, the sex worker was a dangerous figure whose autonomy and economic production linked her analogously to wage workingwomen. At the same time, sex work presented wage workingwomen with a potentially dangerous “escape from the bad conditions of the average wage earner.”112 Alternatively similar and distinct, at turn of the century Chicago, sex work and wage work made women and girls into outliers of virtue and domesticity. In the second decade of the twentieth century, the struggles of sex and wage workingwomen would link women’s work, low pay and vice in powerful ways in two major investigations into the conditions of sex work and sex workers.113

Effort to reform the painted and fallen date from Chicago’s earliest decades. The House of Good Sheppard began reforming begging, unsupervised and homeless girls and women, who might be “found in a house of ill fame or in a house of prostitution,” in 1858. At the House,


113 Timothy Gilfoyle, “Prostitutes in History: From Parables of Pornography to Metaphors of Modernity,” The American Historical Review, 104 (Feb., 1999): 135, 138; Vice Commission of Chicago, The Social Evil in Chicago: A Study of Existing Conditions with Recommendations (Chicago: Vice Commission of Chicago, 1911), 199. Notably, annual misdemeanor charges for prostitution in a House if Ill-Fame in the dozen years after the turn of the century was well below one thousand, and amounted to only one or two percent of charges for disorderly conduct, a broad charge that includes drunkenness. See Report of City Council Report on Crime, Chicago, 1915, p. 88c.
premises were clean and ordered, and residents were instructed in cooking, embroidery and knitting habits, as well as some reading and writing, with the hopes that “when [women] are placed in a better moral atmosphere they [will] endeavor to lead good and virtuous lives.”

Work had a history of being redemptive, and it would continue into the twentieth century.

In the Mosaic patterns drawn by Chicago’s reformers and reflecting the specific concerns of those reformers, virtue connected all forms of vice. Temperance Day celebrations in the 1890s, for instance, sermonized about the social and economic consequences of alcoholism, which “extends its ravages amongst our women.” As coffee houses and carts began to replace saloons at sites of employment and in tenements throughout the city, philanthropic organizations like the YMCA began to compete with saloons by offering employment agencies, reading rooms and entertainment.

If sobriety reinforced the home, a victory in the battle over women’s bodies would further augment the compulsions of the free labor order. Women’s wage work—and their diminished “helper wages”—ensured their domestic duty remained the prominent feature of their status in the free labor order.

Through unemployment, homelessness and vice, vagrancy law turned public and semi-public space into contested space and tied its uses to the compulsions, duties and patterns of the free labor order. The restricted use of public space—sidewalks, streets, parks, squares and buildings—targeted the marginal, the poor and unemployed who could be reached through these

114 The House of Good Sheppard was situated on the block bordered by Elm, Market, and Hill Streets. “A Noble Work,” Chicago Tribune, 8 February 1886, 3.

115 “Aid to their Cause,” Chicago Tribune, 11 October 1894, 1.


117 Because the stipend was low, high numbers of pensioners were also wage earners. Joanne L. Goodwin, “An American Experiment in Paid Motherhood: The Implementation of Mother’s Pensions in Early Twentieth Century Chicago,” Gender and History, 4 (Autumn 1992), 329.
spaces because they were dependent on them. Consequently, the social rights of marginal workers, which involved their access to public space and to equal treatment within that space, made social rights a major instrument of urban industrial organization. Diminished social rights, in the form of social exclusion, represented a “stick” of compulsion, while equal social rights, in the form of community membership, represented a “carrot” of compliance, inclusion.

Vagrancy was not only about compulsion. Its elements also constituted a vision of the city—defined by obligations and duties and relationships—and the idea that controlling and defining the landscape could shape and then resolve urban problems. In this regard, the free labor order ran with the land as it emboldened civic authorities to claim the power to dictate the uses of public space, to restrict practices incompatible with the free labor order, and punish tramps sleeping in a park or sex workers soliciting from a second story window. These were not arbitrary prohibitions; rather, they were designed to rescind the marginal worker’s hold on public space.

Vagrancy’s social policing impulses were complicated significantly by the arrival of tens of thousands of Black southerners, who unlike the tramp and sex workers could not vacate that feature that singled them out for special treatment—their skin color. It also came to mark them as dependent racial inferiors and agricultural outliers of the industrial city and the free labor order. For Black Americans, their social inequality undermined their potential as independent free laborers and orchestrated their economic dependency and their exclusion from neighborhoods and workplaces. For Black migrants in search of work, geographical exclusions resulted in jobs in restricted spaces. Because they could not meet the compulsions to steady work because they

118 Mary Ryan, Civic Wars: Democracy and Public Life in the America City During the Nineteenth Century (Berkeley: University of California Press, 1977); Christine Stansell, City of Women: Sex and Class in New York, 1789-1860 (Urbana: University of Chicago, 1987).
could not obtain the jobs, they were made into perpetual outliers of the free labor order. In the public spaces and landscapes, the patterns and organizations of the free labor order mapped the industrial city. In the years to come, the patterns and organization of the free labor order would also encounter resistance from the marginal men and women they were designed to control.

Conclusion

At the end of the nineteenth century, University of Missouri Law Professor Christopher Tiedeman wrote a lengthy treatise on police powers and the ability of state and federal governments “to restrict the liberties of individuals.” Tiedeman’s principal concern was the arbitrary nature of government regulation, and vagrancy laws struck Tiedeman as arbitrary. “If he has sufficient means of support,” Tiedeman explained, “a man may spend his whole life in idleness and wandering from place to place. The gist of the offence, is the doing of these things, when one has no visible means of support, thus threatening to become a public burden.” The vagrancy act, he continued, “is especially intended to reach this class of idlers, as a means of controlling them.” The law was suspect, Tiedeman argued, decades before Justice Douglas, because it only reached the “lowest class among us.”

Tiedeman also thought vagrancy was arbitrary because it provided for incarceration without the commission of a crime. Put another way, it criminalized a status rather than an act. By targeting select groups and punishing status like poverty, homelessness and unemployment as though criminal, vagrancy exposed systemic problems with the free labor order, the statuses, compulsions and duties it created and defined and the patterns and organizations it implemented: it was predicated on the construction of difference and on the diminished status of marginal

120 Tiedeman, Christopher Gustavus. A Treatise on the Limitations of Police Power in the United States: Considered From Both a Civil and Criminal Standpoint (St. Louis, 1886), 118, 120.
Americans. As a new Municipal Court was sprung into place to manage these diminished
Americans, to map their dependencies and orchestrate solutions, it provided a new and expansive
legal foundation to the free labor order.
“They got to put up a little bluff when the reformers get after ‘em,” Wyoming Silvers explained to Josiah Flint in 1900, by way of describing the nature of urban reform in Chicago. Silvers was a self-proclaimed tramp and by his own account had not “done a stroke of work for the last ten years.” Flynt was by this point in his career a famous investigator of poverty and vagrancy. His previous writing examined life on the margins and his attention now turned, in the pages of *McClure’s Magazine*, to Chicago’s idle underclass. As long as the “gang stays together,” Silvers predicted, “Chi is going to be all right for the likes of you and me.” Flint’s point was unmistakable: the idle and the politically corrupt were somehow connected, and the prominence of the idle somehow indexed “the character of the local municipal government.” Their security, Flynt explained, announced that “municipal authorities [were] not ‘on the level.’”

Silvers’ point was equally unmistakable: reformers were windbags and their intrusions were easily neutralized.

Less than a decade later, George Kibbe Turner, a well-known reformer in his own right, re-examined crime and tramps in Chicago in the same popular magazine. But the idle and dissolute that Turner studied were seemingly more concentrated and dangerous, a criminal class including sex workers and a slew of economic derelicts preying “upon the civilized and orderly population among them.” As the unemployed and criminal were identified as sensational threats in the city, reformers waxed dramatic: Chicago was an epicenter of vice, corruption and disorder where the

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“savage” threatened the “civilized” and promised to “dissipate” virtue. Rhetorically at least, the vagrant and vice addled constituted an expansive danger in the industrial city. The rhetoric of dissipation and decline had grown heated.

Chicago was a city of immigrants and economic and legal outliers in the late nineteenth century. But it was also a city where Jane Addams was involved in Americanizing those immigrants and outliers. Her efforts, like the comments of Flynt and Turner, presumed that something normative, or quintessentially American, existed, and that sanitized housing, tapered vice and steady employment denoted “normal.” In contrast to Addams, however, Flynt and Turner seemed to agree the immigrants were not the chief problem. Radicalized by constructions of “normal,” native-born Americans also appeared to be undercutting the viability of the free labor order in the city.

Foreigners were non-American by definition. Radical acting native-born workers and vagrants, operating on the margins of industrial America, and illustrated by Wyoming Silvers and the criminal class he symbolized, presented reformers with a different type of threat, and one that eschewed the native-foreign dichotomy. After developing his point about a criminal, native element, Turner concluded his article on an upbeat, noting Chicago “has just replaced the corrupt and archaic police magistrate Courts by a more modern institution.” The new Court, Turner hoped, might reconstitute the “dissipated” through a specialized legal apparatus, using local law to subordinate the idle and dissolute to the free labor order. The hopes of Chicago’s reforming

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class, as expressed in a pitched rhetoric of social and economic decline and municipal uplift and remediation, would cling to this new Court.

This new Court was the Chicago Municipal Court, which opened in 1906. It was designed to reform local law by renovating the city’s Police Court, which was subject to the intensifying criticism of political and social reformers, and was increasingly a scapegoat for urban ills. Mandated to punish a slew of quasi-crimes that beleaguered the city, the new Court was proactive and forward looking, and actively engaged social context. Chief Justice Harry Olson traveled nationally to inform progressives of the work of the new Court. Before a room full of reformer-types in San Francisco he explained that law needed to be more like business and look forward, rather than backward. By swapping precedent for social and environmental considerations, Olson proposed a new type of role for local law, as social reformer. At a time when Supreme Court Justice Oliver Wendell Holmes railed against the “unnecessary confusion” moral consideration wrought in law, and legal historian Willard Barbour advised legal scholars to “plant their feet firmly” in the familiar, and then “go backward into its origins,” Olson advocated that law consider both moral consequences and future outcomes. As he stood before his San Francisco audience, Olson wanted other reformers to appreciate the innovation of his work and his Court. In a flurry of articles heeding a dynamic, flexible and responsive law, Roscoe Pound, the dean of sociological law and University of Chicago Law Professor at the

5 Michael Willrich and David Tannenhaus have examined ways the Municipal Court actively controlled the lives of the poor. See Michael Willrich, City of Courts, 3-20; David Tanenhaus, “Growing Up Dependent: Family Preservation in Early Twentieth-Century Chicago.” Law and History Review, 19, 3 (Autumn, 2001), 557.


opening of the new Court, supplemented Olson’s vision with his own insights. Pound and Olson agreed, law had a social context and an obligation and a capacity to reform that context.

Sociological law played a critical role in constituting the patterns, obligations and dependencies of the free labor order. It operationalized categories of domesticity and morality, each of which would become the subject of new specialized branches of the Court. Obligations to family, shaped by conceptions of mothers and wives, or fathers and husbands, developed legal statuses and dovetailed with the period’s overarching social and economic objectives—that wage labor ensured independent domestic units and productive citizens, while protecting state resources from the impoverished, destitute and dependent.

While its packaging was new, however, the work of the Municipal Court closely resembled the efforts of its predecessor to manage the marginal. The reform of urban life by municipal law amounted to the reorganization and the institution in law of the terms and tenets of the free labor order. Like the child character in the fable *The Emperor’s New Clothes*, for the idle, the “fallen” and the migrating, novelty masqueraded as reform at the new Court, as little substantively changed. Unlike the child in the fable, protests from the margins fell on deaf ears, initially at least. Put another way, reformers did not alter the forces of marginalization as much as they fit the marginal into new uplift schemes. While the meaning of “reform” depended on one’s view of


9 This analysis builds on work by Michael Willrich which treats the Municipal Court as a new departure in American, urban law. In my study I suggest that in important ways, reform meant the impoverished and marginal were made subject to new schemes and patterns of order that reflected the insecurities or local authorities, rather than the improvement of life in the margins. For marginal workers, I argue, little had changed See Michael Willrich, *City of Courts*.
the urban landscape, the new Municipal Court, awash in the language of reform, actively subordinated the industrial margins to the free labor order though its own discourse of uplift.

“Dueling Parables”¹⁰

In the late nineteenth century, the idle, dissolute, economically marginalized and unemployed were subject to the dueling parables of social investigators. Their poverty and living conditions introduced many Americans to the world of the “other half,” and divided investigators into two groups: one viewed the poor as misfits and failures left behind by American industry and progress and the other viewed poverty as evidence that the nation’s priorities and values were skewed.¹¹ Startled by rapacious capitalism and by wealth concentrations that cultivated gospels of wealth, avarice and accumulation, late nineteenth century reformers invented corrective proposals that involved land redistribution, tax reform, expanded educational opportunity and moral uplift. The reforming impulse that gave rise to the Municipal Court drew from these quarters and commotions and was inspired in large part by the meaning of economic marginality. The rhetoric of reform was shaped by efforts to define a problem that was as potent as it was elusive.

Stalwarts of laissez-faire industrialism blamed the homeless and unemployed for their failure to be independent providers. It was the responsibility of everyman, William Graham Sumner declared in What Social Classes Owe Each Other, to “take care of himself and his


¹¹ Among the most prolific of the gutter muckraking investigators was Jacob A. Riis, How the Other Half Lives: Studies Among the Tenements of New York. New York: C. Scribner's Sons, 1890. Also see Henry George, Progress and Poverty (Casino Classic, 2005; org. pub. 1879); Lester Ward, Dynamic Sociology (New York, D. Appleton and company, 1897); Hull House Maps and Papers (Urbana: University of Illinois, 2007; orig. pub. 1895), 57; Henry Demarest Lloyd, Wealth Against Commonwealth (Englewood Cliffs, N.J.: Prentice hall, 1963; orig. pub. 1894); William Stead, If Christ Came to Chicago (Chicago: Laird and Lee, 1894), 24, 31.
family.” Sumner considered poverty an act of aggression, laying “siege” on the propertied, and being mistrustful of government and protective of wealth he rejected any “political authority to appropriate taxpayers’ rightful earnings” under redistributive schemes. Dissolute and dependent men and families, and anyone else in the “gutter,” each the social Darwinist explained, are “just where he ought to be.” Sumner was not alone. Francis Wayland brought the prestige of Yale University to bear on his judgment that the unemployed and dependent were “unfit” and “degenerate.” Their conditions were the consequence of their inferiority, Wayland reasoned, rather than “technological change and the erratic demand for labor within American industry.” This first parable painted the poor contradictorily, as an inferior but also dangerous menace to progress and industry.

The second and competing parable did not completely reject this idea, but shifted perspectives to examine social context and to consider the odds that were stacked against the marginal and impoverished. Henry George wrote Poverty and Progress in the late 1870s after being struck by the gulf between rich and poor, particularly in cities. Interrogating the idea that “wealth is but the reward of industry, intelligence and thrift, and poverty but the punishment of indolence, ignorance, and imprudence,” George asserted that the disassociation of wage and production in the factories and the private ownership of public resources “upon which everyone

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12 William Graham Sumner, What Social Classes Owe Each Other (N.Y 1972; orig. pub. 1883), 39


depended,” catalyzed poverty and inequality. As George understood it, individuals were not solely responsible for their poverty.

George’s solution to the problem did not match his analysis of the problem. He thought market relationships might be altered through land and tax reform schemes. In an era of widespread labor violence, wealth disparities and abject poverty, both represented limited avenues of reform. His criticism, however, did betray growing discomfort with the inequities produced by industrialization and spurred new investigations into its origins. Lester Frank Ward, whose foundational Dynamic Sociology helped to invent the discipline, also rejected Sumner’s social Darwinism in favor of social and environmental explanations. “Scientific intelligence,” as Ward called it, might improve society and repair disparities by identifying the laws and rules that govern it. He repeated the argument throughout the late nineteenth century: “The yoke of an outgrown social system weighs heavier than ever,” he lectured, adding that sociology provided the “essential prerequisite to successful reform measures.” Dynamic Sociology, he added, was first intended to be “such an attempt.” The study of social context, Ward argued, rejected the “gospel of inaction” and the “policy of resigning all into the hands of nature” that he associated with social Darwinists and laissez-faire economics.

To other reformers, laissez-faire masked corruption. When one-time Chicago Tribune editor Henry Demarest Lloyd’s indicted the Standard Oil Company in 1881 for exploiting free

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enterprise, and crushing competition by colluding with the railroads to inflate prices, he went above employers, market forces and individual “fitness” to target corporations “working decay in all our parts.”\textsuperscript{20} The prevalence of millionaires and paupers testified to skewed priorities, he argued, that placed industrial “profit hunting” above “public serving entrepreneurs.”\textsuperscript{21} \textit{Laissez-faire} did not create “fitness” Lloyd and others argued; rather, it created disparities and dependencies.

George, Ward and Lloyd rejected Social Darwinism and turned their attention to the role of social forces in creating individual inequalities. In the 1890s, two social activists, settlement house founder Jane Addams and \textit{Review of Reviews} editor, Reverend William Stead, identified wage work as a principal social force in diminished social status. Addams recognized steady labors as a condition of community membership and equal status, and she worried that the “lumber-shovers and garment workers,” and armies of casually and temporarily employed were “too far” from the “sanity of mind in which quiet inculcation and moral principle is possible.”\textsuperscript{22} But while Addams worried about how erratic employment degraded workers, and their capacity to become independent, Stead saw in steady labor the processes of rebuilding a society waylaid by the “gospel of wealth.”

When William Stead visited the margins and slums of Chicago in late 1893, he railed against distinctions between rich and poor that placed the idle and dissolute “outside the pale of human sympathy.” In the famous parable he authored during his visit to Chicago in late 1893,

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\textsuperscript{22} Hull House Maps and Papers (Urbana: University of Illinois, 2007; orig. pub. 1895), 57, 148, 144, 139.
\end{flushright}
Stead dithered over the meaning of Christian charity, but not on its function. Like Addams, he seized on wage work—free and remunerative—as something that would protect workers while neutralizing the ethics of Wayland, Sumner and their ilk. It was in the primacy of wage work that the dueling parables found common ground. Whether it protected workers from greedy capitalists or protected greedy capitalists from dissolute workers, the compulsion to steady work and the principal of self-sufficient households entered the twentieth century integral to patterns of urban organization. The free labor order and the new Municipal Court shared a historical interest in the social consequences of industry, in the distinction between steady and idle workers and patterns of urban uplift, all of which were handled in the nineteenth century Chicago by Police Courts.

**Chicago’s Police Courts**

Even as it lost pace with the progress of the city, Chicago’s forty-year old Police Court system was still held in relatively high regard as late as 1890. Major dailies printed folksy accounts of prominent magistrates. Readers of the *Chicago Tribune*, for instance, learned that Justice John Summerfield preferred to be lenient “where the offence was not grave” and to employ “kind advice” rather than fines, particularly with “unfortunate women.” For his part, Justice Daniel Scully instructed those before him to “go and sin no more,” at least in circumstances where “the offence was not too flagrant, and where the offender was not too frequent in appearance.” Local justice in 1890s Chicago seemed to reflect the values of what Paul Boyer describes as a “village social order,” rather than the “new reform energies” percolating in the industrial metropolis. The idea that the Police Court was removed from new

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24 “Our Old Police Court,” *Chicago Tribune*, 14 December 1890, 33.
ideas about vice, crime and poverty expressed in the works of Addams, Lloyd and Stead became a centerpiece in reform rhetoric calling for a new legal order in the industrial city.\(^\text{25}\)

In the 1890s criticism of the Police Court intensified. Toward the end of the decade reform impulses led Judge Hall, a member of the Court, to complain about the handling of petty offenses, and the way the Court’s fees system—which generated judge’s salaries—compromised local law.\(^\text{26}\) These and other “serious evils” marked the Court as “too antiquated and ancient for the present needs of the city.”\(^\text{27}\) In his criticism, Hall’s formed an unlikely ally; Josiah Flynt’s tramp, Wyoming Silvers, claimed that Police Court’s were willing to “fine anything from a nanny goat to a horse block, if there [wa]s any likelihood of the fine bein’ paid.”\(^\text{28}\)

By the early twentieth century, the police were complaining too. Police Chief O’Neil accused the Court of being imprecise, of collapsing dissimilar offenses into a general “disorderly conduct” category and of issuing “absurdly small” fines. Muckrackers and reformers pulled together a handful of cases to make O’Neil’s point. In 1903, Robert Murray, charged with stealing hats, Edward Powers, charged with stealing a horse and buggy, and John Williams, charged with larceny and threatening to kill, were each convicted of disorderly conduct and fined


\(^{27}\) “Evils in the Police Court of Chicago,” *Chicago Tribune*, 23 May 1897, 29; “Justice for the Poor,” Liberty (Not the Daughter but the Mother of Order) April 7, 1894, 4. According to Almena Dawley, the Police Court was largely a “political organizations” that “obeyed the orders of alderman” who instructed magistrates to “liberate the prisoner or to assess a heavy fine.” Those violating misdemeanors often “escaped prosecution.” As the result of delays, some “misdemeanor cases were not tried until the expiration of from three months to three years after the offense had been committed.” The Police Court’s inefficiency was at times strategic and political. Almena Dawley, *A Study of the Social Effects of the Municipal Court of Chicago* (M.A. Thesis, University of Chicago, 1915), 3-4.

fifty dollars. O’Neil’s larger point was that the Police Court lacked the nuance and sophistication that urban life required. The city was outgrowing “village” law, this narrative suggested.

The violent labor conflicts at the Stockyards in 1904 and the Teamsters Strike of 1905, in which twenty-one people died and 400 suffered serious injury, seemed to make this point in dramatic fashion. When individuals charged in those strikes were brought before the Police Courts, most of their cases were dismissed and other defendants sent away with small fines. The Court appeared completely unable to police the terms of the free labor order, to discipline the idle and dissolute and compel them to steady labor and steer women to domestic duty. The Police Court had not fallen out of step with the city; rather, it had fallen out of step with the free labor order. In 1905, the Illinois Bar Association backed a new legal system that would replace the Police Court.

The new Municipal Court would be judged by its ability to arbitrate the free labor order, to restore family units to self-sufficiency by restoring husbands and fathers to steady labor and mothers and wives to domestic duty. Scholars have interpreted the socialized law linked with the Court as a response to anti-legislative and laissez-faire oriented late nineteenth century jurisprudence that inspired judges to consider the role of social context in legal decision-making. This turn toward regulation has led these scholars to identify a tension between this new socialized law and individual rights. Roscoe Pound reversed the relationship to make the

29 “Courts Blamed For Outlawry,” Chicago Tribune, 29 November 1903, 3.
31 Willrich, City of Courts, 119-120; Hall, The Magic Mirror, 23.
32 David Tannenhaus, A Century of Juvenile Justice, 67; Willrich, City of Courts, 119-120.
same point when he argued, “social interests are endangered by individual freedom of action.”

However, in the realm of the free labor order, the relationship between the two might be viewed as less antagonistic and more complementary. The new Municipal Court that emerged in 1906 was preoccupied with individual social, legal and economic status and cast men as breadwinners, women as homemakers and aberrations of either status as outliers. By meeting the burdens and duties of independent and dependent statuses, however, individuals were guaranteed a full set of rights. Put another way, compliance ensured full status; socialized law diminished, but also sanctioned, rights.

**A New Municipal Court Act**

As pressure for a new Municipal Court mounted, the Chicago Civic Federation drafted an amendment for the State Assembly that proposed the creation of a Municipal Court system in Chicago and the simultaneous abolition of the Police Courts. It passed with broad support. However, despite the Amendment’s sweeping tone, it was not immediately clear how big the change would be and if abolishing the fee system, and putting judges on salary constituted enough, or even too much, reform. Both would have updated and professionalized the old Court system. But, plans were in the works to make a more dramatic statement. A Charter Convention, composed of august corporate, political and legal elites, formed and hired local attorney Hiram Gilbert to draft together the elements of the bill they proposed. The plans laid out by this convention would come to shape the new modern Municipal Court.

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34 Willrich, *City of Court*, 34-35.

35 The Charter Convention was composed of men deeply invested in industry, including Mayor Carter H. Harrison II, then completing his forth term; Circuit Court Judge Murray F. Tuley; Attorney John S. Miller, employed by
The “Original Plan,” as conceived by Gilbert, proposed to completely remake the local Court, granting it original jurisdiction in “all cases criminal.” The second, or “Substitute” plan, provided that the Municipal Court do “much the same work as the present justices of the peace,” though conceivably with some minor alterations. In February 1905 the Illinois legislature debated the two plans; the nature and extent of the reform preoccupied legislators, as they debated the impact of the new Court. Before an audience at the posh Urban League of Chicago, Gilbert recalled that members of the state assembly were concerned about the new Court’s ability to manage the poor. In creating that Court’s structure and organization, its ability to mold life on the industrial margins prefigured its viability in the industrial city. In this regard, Gilbert’s Original Plan was most appealing.

When the Municipal Court Act passed the Assembly in late April 1905, the Tribune announced an “escape from the justice of the peace system.” A chief justice—a position Harry Olson, formerly a successful prosecutor in the Cook County State Attorney Office, was tapped to fill over Hiram Gilbert—would lead the new Court. Behind Olson, an army of 27 associate judges operated on six-year terms out of courthouses around the city. Despite the fervor accompanying the new Act, its innovation was relatively modest.

Standard Oil; attorney John P. Wilson; Civic federation President Bernard E. Sunny, also western manager for the General Electric Company; and Robert A. Eckhart, a merchant. See Willrich, City of Court, 36.

36 “Deadlock Over City Court Bill,” Chicago Tribune, 28 February 1905, 4.


39 Willrich, City of Courts, 47-49.
Like the Police Court, it remained organized by branches and enforced laws developed by city and state officials. Section four gave the Court control over its finances. Section eight called for monthly meetings where judges might discuss the meaning and function or municipal law. Both provisions gave judges a level of autonomy and discretion over municipal law that was comparable to that of a businessman or general manager. It also severed old political relationships, which in an era of muckraking journalism were shorthand for corruption.

Reflecting on the ethos of industry and uplift, and the garb of reform, the Court’s renovators characterized the new Act as “ample and complete to effect any reform or adopt any new business method.” What ensued were efforts to make new meaning of an old institution. Pitched rhetoric and enthusiasm cast the new Court in the torrents of urban reform as uplift and progress, as a departure from the past that also signaled powerful new patterns of urban organization.

Scraping off “barnacles of jurisprudence” the new Municipal Court became everything its predecessor was not. The Police Court system of old was branded a “cancer,” a “barnacle,” and a “mill,” known to be “petty,” “infamous,” “malignant,”—and in the words of the assistant to Judge Olson, J. Kent Greene—“pernicious.” In this discourse of progress, the success of the new


Court system was axiomatic.\textsuperscript{44} Swollen rhetoric in social science journals rationalized Chicago’s new legal apparatus as progress: independent, contained, business-like and efficient. In fact, business metaphors appealed to many trying to describe the new Court.

“The Municipal Court Act,” Gilbert announced, “is framed upon the theory that the administration of justice is a matter of business and that it should be conducted on business principles.” The benefits of prompt and efficient justice were obvious to Gilbert, as he wondered how well Marshall Fields would fare if it were saddled with the lengthy delays and external meddling characteristic of the Police Court.\textsuperscript{45} John Wigmore, Dean of the Northwestern Law School, also saw the future of law in business practices. He agreed that a business model ensured not only “efficient justice,” but also “probably the best justice in the United States.”\textsuperscript{46} Wigmore’s counterpart at Harvard, Roscoe Pound, took it a step further when he characterized “doing things that are wholly unnecessary,” as tantamount to “denial of justice.”\textsuperscript{47} Even in his office, Chief Justice Olson was not alone in his admiration for businessmen. His assistant, J. Kent Greene, considered the Chief Justice analogous to a “general manager of a large business concern.”\textsuperscript{48} It was an image that Olson cultivated.


\textsuperscript{46} Defends Court of Chicago,” \textit{Chicago Tribune}, 20 December 1908, A4.


In his speech to social workers at the St. Francis House in San Francisco, Olson boasted that, “the court should be organized like a corporation.”\textsuperscript{49} Olson’s appeal to a business model of justice is not surprising, considering the corporate stewardship of the Municipal Court Act. But at the same time, the values and reform entailed in this corporate model, which gauged progress in terms of speed, efficiency and might, rather than human dignity and merit, mirrored the ethic that Lloyd, Stead and Demarest indicted in the late nineteenth century because it imposed on the poor a model of justice characterized by inequality. This efficient justice was marked by the efforts of reformers and social scientists, now claiming to operate as “handmaidens in the service to the people.”\textsuperscript{50} Olson’s business model was principled not by profit, but by the perfected reform of those brought before the Municipal Court. Like profit, in many cases this perfection would come at the cost of those it operated on.

The new Court’s business identity, tailored to the efficient administration of justice and its internal administration, positioned the new Court to re-imagine local law in Chicago, by remedying “congested conditions” through “prompt dispatch,” performing, in the words of its Chief Justice, “public business in an efficient way.”\textsuperscript{51} Marked by speedy trials, strict bail regulations, and an emphasis on correction over imprisonment, it appeared to eschew the jurisprudence of the village for the complex demands of the city.\textsuperscript{52} But ultimately, the success of

\textsuperscript{49} Harry Olson, “The Municipal Court of Chicago: An extemporaneous Address” (San Francisco: Rincon, 1916), 4.

\textsuperscript{50} Harry Olson, “The Municipal Court of Chicago: An extemporaneous Address,” 4.


the Court hinged on the “day to day causes of the poor.” The success of Chicago’s new Municipal Court, defined by innovation and the alteration of urban law, would hinge on its management of the marginal, idle and dissolute and their restoration to the terms of the free labor order. The Court approached this complex task armed with an innovative and new legal theory: sociological jurisprudence.

Sociological jurisprudence was defined by efforts to make the legal system more responsive to urban, industrial life. The Municipal Court, some scholars have argued, was an early expression of this legal thinking, alternatively described as “socialized law.” In either case, sociological law legitimated the Court’s forays into the private lives of workers and wives, where it acted as instrument of the free labor order.

Roscoe Pound is the legal theorist most directly associated with this new legal thinking because he coined the term and wrote prolifically about law’s social context. “There is no one absolute form of law or absolute type of law making,” Pound advised judges, but multiple forms and types. And, those forms and types needed to be “applied liberally according to the circumstances of each use.” As Pound understood it, law was in a “crisis,” its status was diminishing and social cohesion was splintering under the pressures of urban life. Law needed to leave the courtrooms and enter the homes and workplaces, where it could reach into intellectual,
moral and economic realms. Pound’s law of social uplift and urban reform, which would promise to reorganize the city around the free labor order, developed in part from the work of nineteenth century French and Austrian legal theorists and thinkers.

The rise of sociology as a tool of scientific inquiry identified sets of urban and social “problems” with common economic origins. According to Alan Hunt, in the United States this transition was most pronounced because of the “momentous changes that were producing modern industrial capitalism.” These industrial challenges, Hunt added, introduced a series of “tensions and crises within the existing legal system.” This was the context that drove Pound to make the case for a new type of law that patterned and organized individual obligation—namely breadwinning and domesticity—around wage work. As Courts availed themselves of the tools of fining and incarceration, they aspired to uplift and reform dependent men on the tramp and independent women sex workers and restore them to their obligations in the free labor order. As Pound understood it, sociological law marked a transition and a new moment in urban order; as Courts assumed roles and responsibilities “the past left to the home and church.”

The compulsions of socialized law and the free labor order saw the marginal put upon in familiar ways. Vagrancy laws intersected the state’s interest in busy wagemakers and urban

57 As Pound understood it, “Absolute theories of morals and supernatural sanctions have lost their hold. Conscience and individual responsibility are relaxed. In other words, the law is strained to do double duty, and more is expected of it than in a time when morals as a regulating agency are more efficacious.” See Roscoe Pound, “The Causes of Popular Dissatisfaction with the Administration of Justice” Crime Delinquency 1964; 10; 355. Also see Pound, “A Paper Read by Roscoe Pound, of Lincoln, Nebraska, at the Twenty- ninth Annual Meeting of the American Bar Association, held at St. Paul, Min- August 29, 1906,” 370.


60 Hunt, The Sociological Movement in Law, 5.

stability just as laws targeting sex work indexed anxieties over the home. Turn-of-the-century treatise writers expressed alarm over the law’s reach and the free labor order’s grasp of vagrancy and sex work. Pound’s re-imagined law troubled Christopher Tiedeman and University of Chicago law professor Ernst Freund. Recognizing an individual duty to “take care of himself and prevent his becoming a public burden,” Tiedeman reminded proponents of the free labor order that “[t]o produce something is not one of those duties [to the state], nor is it to have a fixed permanent home.”

As Tiedeman saw it, the free labor order created a new category of outliers and then targeted them with the “crime of being.” Freund was also troubled by the ways the free labor order diminished the status of outliers. As dependents they were subject to merciless cycles of reform and uplift. But as criminals, they could at least avail themselves of existing protections and remedies. As Freund and Tiedeman explained, from the perspective of workers, sociological law, urban reform and the free labor order and its compulsions and organizations appeared to strengthen social and economic inequalities embedded in a rhetoric of progress and uplift.

By abiding the categories of the free labor order, workers and wives acquired rights and status in their communities. By rejecting its categories, they lost that status and those rights. In either case, the free labor order made plain that the marginal never had rights or status that could

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62 Tiedeman, Christopher Gustavus. *A Treatise on the Limitations of Police Power in the United States: Considered from Both a Civil and Criminal Standpoint* (St. Louis, 1886), 118.

63 Tiedeman, Christopher Gustavus. *A Treatise on the Limitations of Police Power in the United States: Considered from Both a Civil and Criminal Standpoint* (St. Louis, 1886), 125.


not be taken away. The new Court and its leaders diagramed those statuses into the Domestic and Morals branches, opened in 1911 and 1913 respectively, where discourses of vice, unemployment, idleness and dependency constituted legal discourses of order and status in the industrial city, and branches of municipal law in the Court system.

**A Court for the Free Labor Order**

As the new Municipal Court parsed out the rights and duties of breadwinning men and their dependent wives and children, the definition and conception of vagrancy, as a category of idle dependency, underwent transformation. Vagrancy remained tied to a classical liberal vision of “legitimate” waged work and independence embedded in the patterns of the free labor order. But by the mid 1910s, authorities began to apply the vagrancy status regularly to petty criminality and commercialized vice. So, while the “idle” vagrant remained a low character and outlier, the “dissolute” vagrant emerged as a new and dangerous urban threat. This broadening of vagrancy, from individual laborers to pickpockets, gamblers and panderers [pimps], helped to refocus vagrancy while extending its reach.

The Chicago Commission on Crime was formed in response to this dissolution and a perceived “crime wave” in Chicago in the spring of 1914. The Commission, which blended local political leaders and social scientists, investigated crime as a dynamic and multifaceted industry in Chicago. In the Commission’s report, the Chicago School’s Edith Abbott constructed a prototype of a criminal; he was a young, unsettled, unmarried and unskilled man—one of

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66 Justice Taney equated revocable rights with non-existent rights to explain why Dred Scott, and all Black Americans, could never be citizens. A similar distinction appears with outliers of the free labor order: They could also loose and gain rights and status. See *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

Chicago’s working (or non-working) poor. For his part, Northwestern University’s Robert H. Gault delved into the underlying causes of crime and argued that crime would decline if men’s economic responsibility were tied forcefully to their families to keep them from becoming vagrant. Put another way, idle and dissolute men fostered the conditions of criminality. Meanwhile, the Commission’s political and social scientific branches came together in chair Charles Merriam, an elected city alderman and respected University of Chicago political scientist. The investigation’s social scientific bent spotlighted faith that the study of crime would lead to its eradication. The Commission’s final report bolstered the image of the criminal as an idle and dissolute who shirked work and concluded by asking how the “vagrancy law might be used” to rid “the city of professional criminals.”

The thing that gave authorities fits over vagrancy law—its vagueness, the difficulty of securing evidence for a charge—also made it attractive to the crime Commission, whose members wanted to use it to purge the city of “undesirables.” They also found it appealing

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68 Edith Abbott’s statistical work, drawing on materials from 1913, adds form to crime in the city. Those arrested and convicted were overwhelmingly men, typically single and native born, and disproportionately employed as unskilled laborers or skilled laborers. In addition, the greatest number of men and women arrested and charged with a crime were between twenty and thirty-nine years of age, prime working age. According to Abbott’s, in 1913 white Americas earned 59.4% of conviction, with Black Americans earning 7.4%, and foreign born 33.4% of convictions. Unskilled laborers were 38% of those convicted and skilled laborers 14.7%—together composing more than 50% of arrests, they were also the largest and second largest occupational categories 1913. Meanwhile, age was also important, as men aged 20-39 constituted 69.2% of those arrested, and women of the same age 78% of those arrested. Chicago City Council, Report of the City Council Committee on Crime (Chicago, 1915), 52, 57, 46.

69 Professor Gault undertook the “economic question.” In contrast to Pound, Gault identified the home, school, church and “other educational agencies” as groups that “must control crime,” by developing individual self-control, and “equipping them with the work habit.” According to Gault, economic stability could only be secured by controlling the “heads of the family.” Chicago City Council, Report of the City Council Committee on Crime (Chicago, 1915), 94-95.

70 The committee spent ten months gathering statistics and conducting investigation, and produced its report in March 1915. The study examined the causes and prevalence of crime in the city, and recommends a number of preventative schemes. Perhaps the most outstanding element of the study was that it collected, organized and publicized all available information on crime in the city, from arrests and prosecutions to the criminal complaints catalogued in the police department’s “squeal book,” previously regarded as “private police document.” Chicago City Council, Report of the City Council Committee on Crime (Chicago, 1915), 170.
because, unlike a disorderly conduct charge, a vagrancy conviction came with a sentence of up to six months. To make use of the law, the Commission shored up its deficits with a “card index system,” designed to keep track of “all suspicious characters” through steady surveillance.\textsuperscript{71} The cards were intended to allow police to collect the name and location, such as a gambling house or saloon, and most importantly, to provide evidence of an idle and dissolute status. According to this scheme, after a certain number of recorded encounters or observations, a person, or group of person’s, could be arrested and convicted of vagrancy, and the time card used as evidence in their case. “All you have to do is to find them there a few times, [and] after you find they have no lawful means of support, you can arrest [them] all for vagrancy. It is not hard to secure a conviction under this statute, if handled properly.”\textsuperscript{72}

In its enthusiasm for record keeping, the committee showed no compunction in targeting and surveilling individuals on dubious or non-existent grounds; it did not explain, beyond idle lounging, how it would identify those worthy of surveillance. By targeting pickpockets, confidence men, thieves and gamblers—generalized in the study as “habitual criminals who commit 90\% of crime”—vagrancy was expanded to include all forms of urban menace, from the chronically idle to those who preyed on steady workers. By opening a Vagrancy Branch in 1918, the Municipal Court announced its commitment to combating the new and expansive vagrant threat.

This new vagrant was criminally dissolute rather than criminally idle, a thief and a predator, rather than a tramp or hobo. The distinction found its way into the enforcement of vagrancy law. Instead of using the law positively, to compel the itinerant and idle to steady work,

\textsuperscript{71} Chicago City Council, \textit{Report of the City Council Committee on Crime} (Chicago, 1915), 171.

\textsuperscript{72} Chicago City Council, \textit{Report of the City Council Committee on Crime} (Chicago, 1915), 172.
the Court applied vagrancy in its negative sense, and reasoned that in the absence of evidence of legitimate employment, livelihoods must be earned illegitimately. In short, by enjoining illegitimate employment with unemployment and criminality and treating it as a dangerous generalized vagrant threat, the Vagrancy Court targeted a colorful array of petty criminality, including shoplifters, “safe blowers,” “jack rollers,” “purse snatchers,” “wagon thieves,” and charged them all as vagrants, with business-like efficiency. The Vagrancy Court released a report after six months of operation that provided an overview of the work the Court performed and reiterated the criminality of those before it. Boasting of its accomplishment, the Court was particularly proud of statistical evidence suggesting that its efforts, and all efforts to round up vagrants, produced a reduction in crime and the number of vagrants in the city.

Opened when the city was “overrun with crime,” the Vagrancy Court enforced the tenets of the free labor order—“They were tried on the record at time of arrest, and not on promises” to get work—and, in the eyes of its supporters, made the city “safer.” Tramps, pickpockets, confidence men were rounded up along with the thieving and homeless. Women generally fell into a single category in front of this branch, and “night-walkers” who had visited the Morals Court “several times,” could also targeted as vagrants. Unlike men, however, they were not

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74 According the city councils statistics, total crime rates for larceny, robbery and burglary in the first five months of 1917: January, 1540; February, 1333; March, 1666; April, 1525; May 1508. For the same months 1918, January 974 February, 750; March, 852; April, 776; May, 801. The report does not address the role of the Selective Service and America’s entry into the war in this decline. Chicago City Council, *Vagrancy Court: Report of the Activities From January 29, 1918, to June 24, 1918* (Chicago, 1918). Folder 35. Research Center, Chicago History Museum, Chicago.


punished for dependency. In the age of coverture, women were supposed to be dependent. They were singled out for their independence, which they flaunted openly in public. These were dissolute women.

This strain—punishing women for being independent—would prove fatal to the free labor order, but later. In the meantime, distinctions between dependent women and outliers held. So did the stated purpose of vagrancy law: to “vag known criminals” and, in the words of the Vagrancy Court’s first report, “cause that class to leave Chicago.”

In the dozen years before the Vagrancy branch opened in 1918, the Municipal Court enforced the tenets of the free labor order through compulsions to steady labor and domestic duty, and by managing the status of individuals that came before it.

The first half dozen years of the new Court brought municipal law directly into the lives of marginal Chicagoans and bound them to the free labor order; their status was remade by their relationship to wage work. Spotlighting the role of the free labor order in its founding, the Municipal Court’s new justices quickly proposed a new vagrancy law, providing “hard labor” up to sixty days and fines up to one hundred dollars. The state assembly passed a new law that punished the “habitual vagabond or hobo” along with the “rovers who do not and will not work” with what “they most abhor”—work. By the end of its second year, the judges of the Municipal Court were discussing a City Farm Colony for the “correction” of vagrants and as a solution to imprisonment that was “better for the prisoner and better for the public.”


78 City of Chicago, Municipal Court, Second Annual Report of the Municipal Court of Chicago: For The Year December 1, 1907 to December 6, 1908, Inclusive (Chicago: Henry O. Shepard Co. nd), 32-33.
success, it remained unclear how the Court planned to incentivize steady labor when steady labor was also punishment.

Persistent complaints that “little has been accomplished” under the new vagrancy law, likely pushed Olson to engage chief of police Leroy Steward about a recordkeeping scheme that would allow police to furnish the Court with “proof that he was in fact habitually idling.”79 But the police were not always united on vagrancy issues. In early 1908 Associate Municipal Court Justice Hosea Wells, then working the Court on Maxwell Street, clashed with Stewart’s predecessor, Chief George Shippy, after Wells refused to convict someone “without actually having committed an offense.” As Shippy understood it, the purpose of the Act was to “drive undesirables out of Chicago.”80 Municipal judges typically sought creative solutions to reform rather than “drive” the idle and dissolute from Chicago.

Atop the campaign poster he used in his failed bid for Circuit Judge in 1909, McKenzie Cleland announced “Let Us Do Justice To The Wrong-Doer, But No Injustice To His Family.” The circular spotlighted the steady worker’s obligation to provide. Elected among the first round of judges to the Court at age forty-six, contemporaries compared Cleland’s appearance, manner and acumen to that of an urban missionary; he also had relatively little legal experience. On the bench he was a bit of a renegade and his innovative efforts to tailor law to the free labor order drew attention from media.81 Cleland saw law, and vagrancy in particular, as an instrument of reform. In McClure’s Magazine in 1908 he complained that vagrancy law disproportionately impacted the poor, who needed uplift and not punishment. He described the neighborhood

80 “Police and Judge in Steady Strife,” Chicago Tribune, 30 January 1908.
81 Willrich, City of Court, 63-65.
around his Maxwell Street bench by its “tumbled down stairways, defective plumbing, overflowing garbage boxes [and] the unclean streets and alleys.”

The Maxwell “ghetto district”—as he called it—housed many of the poor Cleland thought the law disproportionately affected. To restore these outliers to the tenets of the free labor order, Cleland saw no other choice but to enter the homes and private lives of “ghetto” dwellers. Cleland’s practice put Roscoe Pound’s socialized law to the test.

However, Cleland’s strategies riled the likes of Christopher Tiedeman and Ernst Freund, treatise writers uneasy with the excesses and interferences of the free labor order. But Cleland disregarded these types of complaints and pushed forward with his plan to “wholly reform without imprisonment.” According to Cleland, incarceration left the criminal “a less desirable member of society,” his “employment gone,” his “reputation injured” and his family dependent. In lieu of prison Cleland came up with an informal probation system in which members of the middle and upper classes supervised “their poor and unfortunate neighbors.”

Under Cleland’s program of engaging the community in the reform of the idle and dissolute, it “became a common thing for substantial business men to appear in court and offer employment.” Cleland also rejected fining, which he considered “more than useless” for a strategy of steady and remunerative work, which he envisioned as a solution to poverty, crime and dependence because it upheld the breadwinner ethic and aligned men with their jobs and their families. In Cleland’s theory of socialized law, stability operated around paternal

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85 “Husbands to be Paroled,” *Chicago Tribune*, 31 January 1907, 1.
breadwinning and maternal homemaking; the solution he advocated for idleness and petty crime was not prison labor, but steady waged labor. As with vagrancy, however, for the unemployed the threat of prison lingered.

Cleland’s probationary hearings, which often processed dozens of couples at the same time, packed his courtrooms and drew in aldermen, comptrollers and on at least one occasions, Mayor Edward Dunne, to watch the judge ask wives whether husbands were sober and working and whether probation should be continued. Cleland imagined the strategy might be extended to hundreds of couples and families within months. For Joseph Levi, Emil Hejinalec and Ludwig Krestenach, however, this imagined possibility was real and immediate; in exchange for their commitment to sobriety, they were all kept out of jail. “Unless you help me to keep this man straight,” Cleland told Mrs. Levi, “I can’t do anything to make him better. Come back in two weeks.”

Cleland’s innovation came to mark, in dramatic fashion, the outer limits of local law’s accommodation of the free labor order.

The Municipal Court also took a public interest in “wrongs against women and children,” a category including abduction, abandonment, bastardy and failure to support, and it formalized that interest with a Court of Domestic Relations. The new branch defined its relationship to the free labor order immediately, explaining, “the family is the unit around which all else that is good must be built, and anything that destroys that unit works evil to the public good.”

86 “Husbands To Be Paroled,” Chicago Tribune, January 31, 1907, 1; “Judge Paroles 50; Wives are Happy,” Chicago Tribune, 2 February 1907, 1.


family the new Court self-consciously separated women from quasi-criminals—vagrants pickpockets, drunkards, and the “lewd” circulating around most Municipal Court branches—during processing. As the nature of these harms were better defined, familial roles and responsibilities were sharpened.

Although it was charged with keeping women and juveniles away from tobacco, liquor and gambling and guarding against their “improper exhibition and employment,” the principal function of the new Domestic Relations Court quickly became the enforcement of non-support laws. Drawing from his discretionary authority in sections four and eight of the Municipal Court Act, Olson launched the Domestic Relations Branch in August 1911 to compel breadwinners to support. It was armed with an agenda to “keep husband and wife together,” to compel “delinquent deserters” to support, and to “provide watchful care over deserving and unfortunate women.” The Court reflected a state interest in keeping men, women and children off state and charitable relief, and proposed to do this by reforming outlying men to the position of independent patriarch, and compelling them, under threat of a term in the house of correction, “to support those dependent on him.” At the same time, the Domestic Relations Court failed to account for women-headed homes and was complicit in—and ignorant of—the obstacles many of these women encountered. They were required to work and earn, and provide for themselves and others, but they were compensated for their work as wives and mothers, as dependents.

Because of this commitment to patriarchy, nonsupport claims dominated the operation of the Court. Of the 3,699 cases disposed of in its second year, 2,432 were “for wife or child


90 City of Chicago, Municipal Court, Fifth Annual Report of the Municipal Court of Chicago: For the Year December 5, 1910 to December 3, 1911, Inclusive (Chicago, nd), 68-72.
abandonment, or for failure to properly support the children.”

Moreover, although the Court recognized difficulty in securing employment—noting, “demand far exceeds the supply”—and supported the creation of a free employment agency, it would continue to view casual employment and unemployment as criminal and aberrant statuses. The duty to provide, the Court reasoned, could not be subordinated to the cycle of the labor market. As the Domestic Relations Branch extended a middle class, nuclear, domestic arrangement to the working and unemployed classes, it also found itself, almost immediately, in need of new and more expansive quarters.

The Domestic Branch’s new facilities boasted antechambers adjacent the courtroom, in which Court officials staged the domestic arrangements of the free labor order. In these rooms women rocked in comfortable chairs next to “proper reading materials,” while children engaged available kindergarten materials beside a “small bed” for babies. Milk was also made available. These sites, produced to replicate “domesticity,” also provided the Court with a research laboratory, of sorts, to investigate the causes of domestic dissolution.

Information compiled from interviews held in these rooms highlighted the viability of the free labor order and the failure of dependent families to abide its tenets. Of the 499 bastardy actions brought before the Court in its first year, fifty-one percent of the women worked as domestics, twenty one percent in factories and six percent as saleswomen. In addition to shifting

91 City of Chicago, Municipal Court, *Sixth Annual Report of the Municipal Court of Chicago: For the Year December 4, 1911 to November 30, 1911, Inclusive* (Chicago, nd), 84.

92 City of Chicago, Municipal Court, *Fifth Annual Report of the Municipal Court of Chicago: For the Year December 5, 1910 to December 3, 1911, Inclusive* (Chicago, nd), 72.

93 Michael McGerr has argued the principal characteristic of the Progressive Era was the dramatic expansion of middle class norms and practices. See Michael McGerr, *A Fierce Discontent: The Rise and Fall of Progressivism in America* (New York: The Free Press, 2003), introduction.
their dependencies outside the home, they drew inadequate earnings. More than half of them earned less than eight dollars a week, a bare, subsistence-level wage in the 1910s. In addition, these Court officials argued that too many women failed to guard their virtue; just over half of the interviewed women identified “broken marriage promises” as the reason for their “downfall.”94 Moments in which they exercised autonomy over their labor and their bodies, the Court reasoned, had disastrous consequences.

As the Domestic Relations Court understood it, these women were in a difficult position because men failed to provide for them and not because they were denied the right to work and become independent. In fact, independent women did not register with a vision of the family organized around male responsibility. The United States Supreme Court had made the point a couple of years before the opening of the Domestic Relations Court in *Muller v. Oregon*. It was history, Justice Brewer explained in *Muller*, which “disclose[d] the fact that woman has always been dependent upon man.” Her obligation to raise and rear “the future of the race” rather than lead and direct families, rested on her “inherent difference” and that difference made her duties as wife and mother “an object of public interest.”95 But the Court also made this point in circumscribing but not prohibiting women’s work. The status of workingwomen would complicate the free labor order beginning in the second decade of the twentieth century.

In its daily operations, the Domestic Relations Branch typically assigned culpability in family breakdown to men, because it considered them independent. Non-domestic women—exercising independence over their bodies—more often fell under the purview of the Morals

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94 City of Chicago, Municipal Court, *Sixth Annual Report of the Municipal Court of Chicago: For the Year December 4, 1911 to November 30, 1911, Inclusive* (Chicago, nd), 84-86. The eight-dollar mark was also used in the Senate Report on Vice, to gauge the impact of low wages on sex work. See Illinois General Assembly Senate Vice Committee, *Report of the Illinois Vice Commission* (1916), 111.

Court. Opened at the behest of the Chicago Vice Commission, which produced a sensational investigation announcing the entrenchment of commercialized vice in the city—to the city—the Morals Court exercised a plenary jurisdiction over everything “tending to debauch the public moral.” Moral “crimes” ranged from salacious pictures and books, to abduction, seduction, pandering, fornication and concubinage, to keeping, maintaining, patronizing or leasing a house of ill fame: each of which threatened women’s status as mothers and nurturers.96 The principal clients of the Morals Court, however, were sex workers.97 Like the Domestic Relations Court, the Morals Court was equal to the task of extending middle class domestic expectations of domestic duty and service to sex workers, many of whom were young working women, unmarried and underpaid.98

While the Morals Court replicated the domestic vision of the Domestic Relations Court in a number of powerful ways, when it came to workingwomen, it would challenge that vision. Judges of the Morals Court encouraged women’s transition away from sex work and steered them toward steady wage work.99 But, at the same time, the Morals Court did not reform these girls and women to the status of equal workers. Women’s waged labor was constructed as a buffer to commercial vice and a “helper” supplement to the family economy. While this

96 City of Chicago, Municipal Court, Seventh Annual Report of the Municipal Court of Chicago: For the Year December 2, 1912 to December 30, 1913, Inclusive (Chicago, nd).
97 Willrich, City of Courts, 195.
99 City of Chicago, Municipal Court, Tenth and Eleventh Annual Report of the Municipal Court of Chicago: For the Year December 6, 1915 to December 2, 1917, Inclusive (Chicago, nd), 85; Christine Stansell made this point in her study of New York’s working class “city of women.” See Christine Stansell, City of Women (Urbana: University of Illinois Press, 1987). Also see Julia’s and Lyda’s stories in Chapter 4.
distinction was reflected in the Courts, it was shaped by the struggles of and experiences of marginal women and girls.

African Americans who migrated to Chicago for work encountered no single specialized branch of the Municipal Court. And, of course, expectations that they engage steady wage work dovetailed neatly with the aspirations of most southern migrants, who moved to the city because it offered industrial and economic opportunities unavailable in much of the south. For many, moving north was a constitutional statement; it announced their right to participate in the economic, civil, social and political life of a community as an equal member. Their experience in Chicago, however, would be defined by exclusion and segregation. They were treated as outliers and outsiders of the city and its industry and would have to battle for place and status.

For their part, Black men responded as strikebreakers. Theirs was a physical and sometimes violent claim to jobs held in exclusive space and to the forces of white supremacy that vowed to keep them out. The Black migrant’s struggle was against discrimination; it was a struggle to be included in the free labor order as a breadwinner and provider, to be counted among the steady ideal workers, with the same benefits as other workers, and to exercise their claims to jobs and to the spaces that encased those jobs. As an aspirational actor in early twentieth century industry, the experiences of Black workers intersected those of the sex worker, in that they were similarly excluded, and inverted those of the tramp, in that they would have to


fight to establish a place inside industry while the tramp had to fight to establish a place outside of it.\textsuperscript{102}

Early twentieth-century Chicago marginal workers found themselves subject to conflicting currents of status and steady labor, molded by the intersection of social, legal and economic forces. In the first, the Supreme Court’s decided in \textit{Lochner v. New York} that the right to contract and negotiate employment was not only the hallmark of independence, but also a general affirmation of the principal of equality. However, \textit{Lochner} also gave rise to market forces that exacerbated inequalities, highlighting class difference, stratifying that difference and undermining social equality. In the second, social rights—which T. H. Marshall defined as shared, common membership contributing to a relatively equal status—were undercut by market forces, which were developed and nurtured by that community.\textsuperscript{103} As a result, workers were organized into hierarchies: some were pushed out of the workforce, some into relief organizations, and others left to beg for alms. The expectation of support—previously a badge of the individual’s membership in the community—was reduced with the rise of the free labor order in the late nineteenth century to a criminal status.\textsuperscript{104} As a result—and this is the crux, or paradox—some people were denied independence by the economic systems that made them

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\item \textsuperscript{102} In his examination of Black citizenship and rights, Jack Balkin has argued that different groups of people had different sets of rights. In part, this analysis build on Balkin’s insight and adds gender as a discursive category, critical in the economic sphere in determining different sets of rights. Jack Balkin, “Plessy, Brown and Grutter: A Play in Three Acts,” \textit{Cardozo Law Review} (2005).
\item \textsuperscript{103} T. H. Marshall, \textit{Class Citizenship and Social Development} (Garden City: Doubleday, 1964), 71-80.
\item \textsuperscript{104} Tiedeman, Christopher Gustavus. A Treatise on the Limitations of Police Power in the United States: Considered From Both a Civil and Criminal Standpoint (St. Louis, 1886); Ernst Freund. \textit{The Police Power: Public Policy and Constitutional Rights}. Chicago, 1904; Marshall acknowledges that distinctions between these rights are not hard and fast, but mutable. Civil rights generally involve the legal system. Political right refer to the political process, and included voting, running for office and speech, “to participate in the exercise of political power.” Social rights involve how you interact with other people and your society, including your “right to a modicum of economic welfare and security” and the “right to share in the full social heritage and to live the life of a civilized being according to the standards prevailing the society.” Marshall, \textit{Class Citizenship and Social Development} (Garden City: Doubleday, 1964), 71-2, 74-80.
\end{itemize}
unequal, at the same time, the legal system criminalized their dependence, or subsequent act of dependency. As the free labor order developed in Chicago, it dramatically shaped and altered the lives of the city’s marginal workers, namely its tramps, sex workingwomen and strikebreaking southern migrants, each an outlier negotiating a place for him or herself from positions made untenable by conflicting market, social and economic forces and expectations.

These positions varied. The free labor order stripped rights from white men on the tramp, and then premised their restoration on steady work, a demand tramps by definition rejected. It diminished the status of workingwomen, stripped the rights of sex workers and then premised their restoration on domestic duty, a demand lone woman and heads of household could not even contemplate. Aspiring Black migrants began from a status of diminished social rights, which severely limited their economic opportunity and then separated them out from the progress of the city. Many had already left the south because this was a status they could not accept. Increasingly, gendered and racial thinking about steady employment and social space would shape the statuses of tramps, sex workers and Black strikebreakers as outliers. And, it did this predominantly by manipulating social rights. However, while the logic of vagrancy law


106 Local authorities wrote domestic duty into laws protecting patriarchal family arrangement. The Funds to Parents Act, established in 1911, declared that the county would provide for dependent mothers and their children. This Act was restricted in 1913 to citizens and would exclude women divorced, unmarried or deserted. The language of the Funds to parents Act: “If the parent or parents of such [a] dependent or neglected child are poor and unable to properly care for the said child, but are otherwise proper guardians and it is for the welfare of such child to remain at home, the court may enter an order finding such facts and fixing the amount of money necessary to enable the parent or parents to properly care for such child, and thereupon it shall be the duty of the County Board, through its County Agent or otherwise, to pay to such parent or parents, at such times as said order may designate the amount so specified for the care of such dependent or neglected child until the further order of the court.” (Laws of Illinois (Springfield: State Printers, 1911), 126. See David S. Tanenhaus, “Growing Up Dependent: Family Preservation in Early Twentieth-Century Chicago,” *Law and History Review*, 2001. Cook Counties Charities reported of the Funds to Parents Act in 1912, “it is a step in the right direction and will mean much to the families concerned.” see US Department of Labor, *Physical Standard for Working Children*, (Washington: Government Printing Office, 1921), n10.
underwrote the development of the free labor order, it also set the terms on which it would be contested, and in cases, remade.

**Conclusion**

In early twentieth century Chicago, reformers and civic authorities constructed a municipal legal system around the tenets of the free labor order. Its affinity for contemporary business principle’s and practices not only made the new Court current, it also made it an important instrument of the free labor order, expanded in short order to Domestic, Morals and Vagrancy branches. Previous historical treatment of the Court locates it in a tradition of progressive reform, as an early expression of the state welfare system and sociological jurisprudence, highlighting its innovation, as well as the expansion of the state. However, this treatment overstates the extent of reform, particularly from the perspective of the marginal, and it does not fully account for the Court’s economically rooted vision of urban patterns, relationships and organization. But for the marginal workers and civic reformers, law also proved to be a double edged sword: it provided a discourse of repression and subordination as well as a language—and the terms and ideas—with which marginal people could complicate and even repel the compulsions of the free labor order. The new Municipal Court marked an important stage in the development of the free labor order. The next section examines its application, and more specifically, the ways in which that vision was contested by the actions, assertions and alternatives envisioned by tramps, women sex workers and strikebreaking Black migrants, living and toiling in the margins of the industrial city.
CHAPTER 4: INTERLUDE
AT THE FAIR

In the summer of 1893, the eyes of the nation and the world turned to Chicago. The World’s Columbian Exhibition announced American technology, innovation, industry, art and science to the world. The Exposition’s immaculate grounds designed by Frederick Law Olmstead connected the stately buildings of Daniel Burnham’s White City, and amid the chaos and poverty of industrial Chicago expressed a vision of an ordered, tranquil, peaceful—and imagined—metropolis. Staid and decorous, the White City marked a geography of progress and held out the promise of a world without the idle and dissolute and the vice, crime and corruption associated with them. It did this at the same time as the vagrancy underpinnings of the free labor order were expanding from white men to include marginal women and African Americans.

Tramps made a menacing, if spotty, appearance in the parks, railroad cars and outhouses surrounding the fair.1 They congregated outside the Art Institute in late October 1893 and discussed Joseph Coxey’s initiative for improved roads.2 So rare was their appearance that the sight of vagrants and tramps on or near the Exposition grounds was newsworthy.3 The White City’s design, its gated surroundings, as well as the price of admission, were intended to keep them out, to demonstrate what a city without problems could look like.4 The sentiment that “the tramp is a pariah and we ought to keep him out” extended from the White city to the metropolis

2 “Itinerants Meeting” Chicago Tribune 29 October 1893, 36.
4 Daphne Spain, How Women Saved the City (Minneapolis: University of Minnesota Press, 2002), 16.
that surrounded it.\textsuperscript{5} The Exposition would announce in other ways the tramp’s obsolescence.

Frederick Jackson Turner’s “Frontier Thesis,” presented for the first time at the Exposition, indicated that America no longer had room for the itinerant, or wanderer; it argued that forces of modernity and progress doomed those they left behind. The America he described was purposed by stability and settlement, and not itinerancy and idleness.\textsuperscript{6} Like the White City, Turner edited the tramp out of the national narrative.

Women wage earners were also denied membership in the White City. “Until recently,” Bertha Palmer announced in 1892, “it has been universally held to be unwomanly for one of our sex to engage in any work outside the domain in the home.”\textsuperscript{7} To mark this historical change, Palmer, wife of Chicago real estate magnate and hotelier Potter Palmer, placed women’s work at the forefront of the exhibits in the Women’s Building. But the women who formed the Board of Lady Managers soon disagreed over what work to exhibit.\textsuperscript{8} Tensions erupted at a meeting in late 1892. “Within a short radius of this hall,” Dr. Dickinson declared, “there are dozens of poor women working at starvation wages.” Annoyed by Dickenson’s reference to what she considered the wrong type of work and women, Palmer responded, “This is not the time or the place for

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\textsuperscript{5} Quoted in William Stead, \textit{If Christ Came to Chicago} (Chicago: Chicago Historical Book Works, 1990 [Orig, 1894]), 23.
\textsuperscript{7} Mrs. Potter Palmer, “Women’s part in the Columbian Exhibition,” \textit{Journal of American Politics} (August 1892), 124.
\textsuperscript{8} The Board was composed of elite and philanthropic women—those concerned with suffrage, equality and access to the profession. These divisions also helped give rise to debates over the meaning of work. Gayle Gullett, “‘Our Great Opportunity:’ Organized Women Advance Women’s Work at the World’s Columbian Exposition if 1893,” \textit{Illinois Historical Journal} vol. 87 (Winter, 1994), 261.
\end{flushright}
such a discussion.”9 “[P]oor women working at starvation wages” was not the story of women’s progress Bertha Palmer wanted exhibited in the Women’s Building.

Palmer ignored the lives and experiences of Chicago’s workingwomen, and she did so despite the fact that her husband’s real estate investments—and by extension her comfort—preyed upon the unskilled workers, vagrants and prostitutes peopling the Levee District.10 As Palmer and her Board of Lady Managers endeavored to “universalize the experiences of white affluent women,” workingwomen were rendered symbols of “moral decay” and outliers of industrial progress.11 However, the hard distinction Palmer drew between women of different classes collapsed within weeks of the Exposition’s closing, as the effects of the Panic of 1893 set in. “[L]arge numbers of women, virtuous and otherwise,” all “honest and hardworking” the Daily Inter Ocean explained, needed “immediate aid to keep them from falling into the hands of the

9 “Work of the Women. Yesterday's Session of the Board of Lady Managers,” Inter Ocean, October 20, 1892, 10.

10 Bertha’s husband, Potter Palmer, was one of Chicago’s pioneering capitalists and a trendsetter. He began in the 1860s, investing in a dry goods store, and made a fortune, along with contemporary Marshall Field in the business, before shifting his interests to real estate. His economic success parlayed into social status and was reflected, Bessie Louise Pierce describes, in the castle he built north of the city on the lake, “with its embattled tower and turrets, deep set square windows, and pretentious porte-cochere.” It “gave prestige to the new Lake Shore Drive, which soon blossomed with other mansions,” spurring the movement of the elite to the Gold Coast. Porter’s investments in real estate helped to assure his continued wealth, and included a building on State Street, between Polk and Taylor, which he leased to Jerry Monroe, and which housed Monroe’s, a variety theater. The lease to Monroe survived Potter’s sale of the building to M.E. Dorman and Clinton C. Clarke around 1890, and Monroe’s continued, The Inter Ocean claimed, to “disgust anyone who was not drunk before he got inside,” where it boasted “one hundred or more prostitutes,” who work and time had relieved the “charms that are marketable in the fashionable houses.” To reformers milling about in Chicago’s famed vice district, the Levee, in the early 1890s, prostitutes presented as cautionary tales, despite the fact that their labor supported the likes of Bertha Palmer and her tribute to women’s work at the Fair. See Bessie Louise Pierce, A History of Chicago: Volume 3, the Rise of a Modern City. (Chicago: University of Chicago Press, 1957), 60; “The Gate to Hades.” Inter Ocean, February 4 1882, 9; Alice Freeman Palmer, “Some Lasting Effects of the World’s Fair,” Forum, December, 1893, 523. (517-523).

11 Joanne Meyerowitz, Women Adrift, xix; Gulett, “Our Great Opportunity,” 261, 267. The work Palmer was interested in displaying diagramed women’s “progress” and contribution and therefore consisted of “the most brilliant achievement of women of every country.” Mrs. Potter Palmer, “Women’s Part in the Columbian Exhibition,” 127.
designing and the wicked.” Like tramps, working women had no place in the industrial city. Also like tramps, they would become the subject of major reform crusades in the following decades.

Like tramps and workingwomen, the stories and experiences of African Americans were also excluded from the Columbian Exhibition. Anti-lynching advocate Ida B. Wells and abolitionist Frederick Douglass, together with educator Irvine Garland Penn and Chicago Conservator publisher Ferdinand Barnett mobilized to produce a pamphlet excoriating the Exposition and its organizers for the omission. Organizers quickly responded with a “Colored People’s,” or Jubilee, day and scheduled it for August 25, 1893. Wells and Douglass split over the opportunity; Wells thought it was pyrrhic and Douglass thought she was missing the larger point. The August 25 date, however, did provide a target for the release of The Reasons Why the Colored American is Not in the World’s Columbian Exposition. Made available April 30 for the cost of postage, the pamphlet berated the Columbian Exposition before expanding its criticism to include American law and its failure to uphold tenets of social, political and economic equality. From the contempt public lynching visited on the rule of law to the failure of the post-Civil War Amendments to standardize legal protection, in their pamphlet Wells and Douglass discussed law was an instrument of caste—and not liberty—in America.13

Black leaders also gathered at the World Congress on Labor, which coincided with the fair. At the World Congress, Douglass, Wells, Booker T. Washington and a slew of labor luminaries, organized by Jane Addams and William Lloyd Demarest, explored antipathies


13 In other sections, the pamphlet also traced the “progress” made by African Americans since slavery, and glossed the political developments that lead to their exclusion from the Fair. Ida B. Wells et. al. The Reasons why the Colored American is Not in the World’s Columbian Exposition. (Urbana: University of Illinois, 1999) 7-22, 29-43.
between labor and capital, but also debated the future of race relations. Washington announced in his paper “The Progress of Negroes and Free Labor” that racial conflict would pass “when the black man gets hold of the things the white man wants and respects,” and that this would happen in the south through the mechanical training of freedmen. In response, Wells asked out loud why “the colored people [in the south] never seem to get out of debt”—referring to the South’s infamous peonage system—and then asked why they do not share in the wealth they produce. In his position as panel chair, Douglass acknowledged Wells’ point that the mortgage and script system in the south reinvented slavery through poverty wages. Both agreed that free labor presented a valuable tool in the struggle for Black equality and opportunity. But, Black leadership remained deeply divided. Over the next several decades, they would also come to realize that as a tool of social and economic equality, the path of free labor was marked with obstacles and contradictions.

As I show in the chapters that follow, tramps, female sex workers and Black strikebreakers were outliers of the free labor order in the industrial city; their diminished social rights announced their reduced status. Denied membership in the White City and a place in the forward march of industry, they would work to claim it in the Exposition’s industrial host, where they often found themselves outliers of the free labor order. Moreover, the intersection of free labor with the struggles of Black workers spotlighted important and tenacious discourses of slavery, which survived into the twentieth century where it modified the social, legal and economic relationships of tramps and hoboes who railed against slave labor and slave markets, sex workers

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who constituted a panic over “white slavery” and Black migrants, whose skin color, southern manner and agricultural ways appeared to mark them as slaves.

Municipal law and Courts proposed resolution to the clashes over the various meaning of slavery. But, in weighing the interest of reformers, municipal authorities, industry and sometimes even marginal workers, local Courts and law typically upheld the tenets and exclusions of the free labor order. In the process, these branches of municipal authority failed to distinguish between unlucky and dissolute tramps, they consigned women to inadequate helper wages—which entrenched their dependence—and in statute they defined the Black migrant’s claim to the worst jobs and housing the city had to offer. Extending the geographies of exclusion that set marginal workers apart from the progress and the city and the nation, the World’s Fair also helped to set the terms of exchange between the industrial city and its outliers.
CHAPTER 5
ON THE TRAMP: IDLE AND DISSOLUTE MEN IN INDUSTRIAL CHICAGO

The tramp burst on to the national scene in the years following the Panic of 1873 as the
\textit{bête noire} of industrial capitalism and the wage labor economy, igniting a host of legal,
economic and moral condemnations in popular, middle class media that lasted through the end of
the nineteenth century. The criminalization of begging, as reflected in the rise of vagrancy laws,
was intended to protect the city from the men these laws branded “idle and dissolute.”¹ At the
same time, vagrancy laws revealed fundamentally different views of wage work: for urban
reformers and civic authorities, unskilled industrial work was associated with independence and
discipline, for the tramp it was associated with slavery.

Beginning in the early twentieth century, itinerant wageworkers in Chicago began to
identify as hoboes and to shoot back at the refrains of industrial labor discipline and middle class
disdain. From the parks and sidewalks of the city, at the Hobo College on West Madison Street’s
“Hobohemia,” and in the pages of the International Brotherhood Welfare Association’s “\textit{Hobo}”
\textit{News}, they rejected the economic model under which they were persecuted, and asserted a right
to define their relationship to the economy.² The ensuing conflict between urban reformers and

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² Hoboes and tramps have received steady attention in the past ten years. Amy Dru Stanley has argued the
persecution of tramps and the unemployed in the 1870s betrayed the limits of “free” labor while highlighting the
role of compulsion in the labor relationship. Meanwhile, in asserting their centrality to Progressive Era labor
regimes, Tobias Higbie demonstrates that hoboes were politically active and critical members of the communities
they occupied. Todd Dipastino positions the homeless, including hoboes, at the center of a larger discussion of
inequality and homelessness in twentieth century America, while Kenneth Kusmer provides an overview of official
and municipal responses to poverty in America since the early national period. Each account owes some debt to Erin
Monkkonen’s volume locating the tramp in the context of an expansive industrial capitalism after the Civil War. By
examining the tramp as an agent of change and transformation, this article builds on discussions of tramp and hobo’s
agency, articulated by Depastino and Higbie, but also demonstrates ways in which they drew on legal and economic
thinking to contest discourses about wage work and to generate alternative economic relationships. Amy Dru
Stanley, \textit{From Bondage to Contract: Wage Labor, Marriage and the market in the Age of Slave Emancipation} (New
idle wageworkers was taken to the city’s new Municipal Court, which in the early twentieth century was tasked with reconciling the competing demands of tramps and vagrancy laws. However, while the idle and dissolute provided a model for vagrancy law—the idle were unlucky and out of work while, the dissolute were criminal and dangerous—the two statuses were typically conflated in statute and at Court.

Building on the stories and experiences of the tramping, vagrant and homeless, this article demonstrates that the “tramp menace,” which was in large part a creation of middle-class media in the late nineteenth century, was responsible for producing new categories of male poverty and criminal dependency. At its most extreme, this discourse equated the tramp with the slave. Vagrancy laws, which were designed to neutralize the tramp also maintained the boundaries of the ideal worker: punctual, sober, productive—and from the perspective of the employer—cheap. But instead of submitting to steady labor, tramps rebelled and rejected a compulsion that they understood alternatively as something akin to slavery, or as something that made them into slaves. In rejecting the terms of the free labor order, they announced alternatives to steady wage work that were designed to contest and alter the meaning of poverty, homelessness and the free labor order in the industrial city.

**Genesis**

Scholars locate the genesis of the modern tramp in “habits born” of the Civil War, such as foraging for food, traveling in small groups, and setting up camps. However, these analyses do

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not account for the economic origins of these “habits.” The abolition of slavery following the War, coupled with the expansion of the railroad and northern industry, launched a new, diffuse labor order into the center of postbellum American life: free labor.\(^4\) It became a principal legacy of the Civil War, a new measurement of progress, cast with a remedial authority to reject bound labor, ushering in a new era of “free”—negotiated and contracted—employment. The tramp helped to both define and test this new order.

Free labor did not emerge in a vacuum, but accompanied the appearance of mass-producing factories, which eviscerated what remained of artesian production, and by extension local control over work. Perhaps most importantly, it remade labor relationships by reengineering the employment relationship around fundamental power imbalances between workers and managers or owners. Recent critical legal scholarship highlights similarities between free labor and its bound labor predecessor, noting the failure of free labor to account for and redress entrenched and systemic inequality.\(^5\) The idle and dissolute noticed too. However, despite remarkable similarities between the two, free and bound labor presented civic authorities, media and reformers in postbellum America with an attractive conceptual binary. As free labor


\(^5\) Amy Dru Stanley argues free wage labor was not as dramatic a departure from slavery as we imagine, but that it incorporated elements of the bound labor into the free-labor economy. The prosecution of vagrants, and their consignments to workhouses, Stanley writes, was perhaps most emblematic of this incorporation. Part of this was due to the operation of the market. “Wage labor contracts obeying the market”, she writes, “revolved around the same quid pro quo as slavery.” Additionally, “the untrammeled freedom of the marketplace was only ultimately assured by legal coercions.” Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of the Slave Emancipation* (New York: Cambridge University Press, 1998) 137, 163.
emerged as a watchword for independent manhood and citizenship, dissenters—most alarmingly the tramp—became outliers and their practices both conspicuous and potentially criminal.  

In addition to the persecutions and harassments they encountered at the hands of urban reformers, police, Courts and other civic authorities, tramps were particularly vulnerable during times of economic instability. As a “lost son,” on the road the tramp was often denied access to public and private relief reserved for married men. These itinerants were also subject to informal seniority systems that protected the job of breadwinners and “provided for the laying off of single men during depression periods.”

Life on the tramp was difficult, as one itinerant recalled in the winter of 1875. “Tens of thousands of men are wandering listlessly, hopelessly in search of work. Footsore, heartsick, shivering in the bleak winds of a severe winter, they roam to and fro.” Recalling the struggles of the Civil War, he added, “Was it for this we fought?” A couple years later, as the effects of the Panic of 1873 lingered, another tramp complained in the Labor Tribune, “The world is a desert to us. I have no friends. I have no roof to live under, no table to eat at, no clothes to distinguish me from thieves.” The lives of the idle and dissolute could be lonely, as men sought shelter, status and companionship. In the words of a young miner outside Braidwood, Illinois, “I wish I was a married man.”

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These types of stories and struggles rarely appeared in mainstream media devoted to the principles of free labor and contemptuous of “perambulating paupers who would not even do the work offered to them,” and men who lost all “sense of the degradation usually attach[ed] to absolute and involuntary dependence.”

Chicago, the *New York Times* explained, was particularly “cursed with a large number of [these] professional ‘lodgers,’” simultaneously cunning, ingenious and lazy. But early on, this criminal dependency was also somewhat speculative and tentative. Free labor principles—independence, self-sufficiency, industrial discipline and sobriety—marked the tramp’s deviance and tied the “tramp menace” to labor. By merging economy and law in one popular forum, middle class magazines and media generated both the tramp’s deviance and the terms of his redemption: steady labor.

**Defining the Tramp**

The Chicago Relief and Aid Society, created after the fire of 1871 to feed and house the poor and homeless in the city, was made subject to this new thinking in 1875. “The poor and needy of Chicago have fared better than the same class in cities that suffered no special calamity,” the *New York Times* explained, arguing that relief agencies now risked acting as a disincentive to steady labor.

Harper’s announced the following summer, 1876, that “[d]angerous stragglers have of late become a recognized class in our community” frequently

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13 Tim Cresswell has argued the tramp was a composite of social and economic anxieties, and “made-up” by “various forms of knowledge.” Tim Cresswell, *The Tramp in America*, (London: Reaction Books, 2001), 13.


“alarming women and children” who are “subject to these vagabonds.” And *Scribner’s* shortly followed suit, explaining that in addition to threatening the hearth, they also “set forest fires, and commit burglary and murder whenever it may be desirable.” But, just because these accounts were sensational does not mean they were without effect. In Chicago, 3,535 tramps were arrested in 1877, leading Police Superintendent Michael Hickey to announce that, “[t]ramps require the attention of police at all times.”

Alarmist media accounts, together with the declarations of city officials, transmitted two critical but conflicting messages, which outlined the difficulties involved in punishing tramps. First, tramps were a threat, and new or strengthened laws were required to deal with them. “The law appears to be almost helpless against them,” *Harper’s* asserted lamely in 1876. Six months later, however, the magazine was discussing a new law directed at the tramp’s “incipient criminality,” which had increased “within [the past] three to four years.” In addition to the new law, plans were in the works for a new workhouse, “where they will be compelled to support themselves.” The second element, however, would create problems for the first: it was nearly impossible to distinguish between the predatory tramp and the unlucky and unemployed workingmen, whom *Harper’s* celebrated as missing work “even more than the money he earns by it.”

20 “Prisoners and Vagrants,” *Harpers Weekly*, 3 March 1877, 162.
“would not work at any wages if they could.”\textsuperscript{22} While the distinction between the tramp and the unemployed worker was conceptually neat, the two statuses—and the men belonging to each—were not immediately distinguishable.

Nevertheless, middle-class media continued to define itinerancy and unemployment in terms of a “tramp menace” and to define solutions in the form of municipal workshops where tramps could exchange their labor for public aid.\textsuperscript{23} Harper’s Weekly encouraged New York mayor Robert Roosevelt to “get up some work for these idle hands,” adding “the great army of tramps [is] an omnipresent witness to the situation.” But, the editorial made another more salient point; when it argued that municipal authorities should take responsibility for the idle and dissolute, it implied a municipal obligation to the poor.\textsuperscript{24} Opponents of this type of idea complained about the cost and argued that any municipal aid weakened men and turned them against steady labor.\textsuperscript{25}

Yale University’s Francis Wayland led anti-aid forces and outlined some of his reasons in a speech before the Social Science Association in 1877. Identifying the poor as a problem, he proposed three solutions. The first increased taxation and distributed aid through paid officers. The second increased taxation and distributed aid through a municipal board. The third solicited voluntary donations, which were then distributed by unpaid officers. Wayland advocated the third option because it discouraged the “idea the state is responsible for the idle poor.”

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\textsuperscript{22} “Once More the Tramp,” Scribner’s Magazine, April 1878, 882.
\textsuperscript{23} “Prisoner and Vagrants,” Harper’s Weekly, 3 March 1877, 162.
\textsuperscript{24} “Alms and Wages,” Harper’s Weekly, 22 September 1877, 739.
\end{flushright}
“Indiscriminate giving,” Wayland cautioned, “fosters a danger to society.” In Chicago, the same year Wayland explained that tramps were a “danger to society,” municipal authorities introduced a new vagrancy ordinance. At the heart of the vagrant law of 1877 was a “protean character,” the Tribune defined as “broad enough to cover pretty much all varieties of the dangerous and vicious”—the vagrant could now be “arrested on sight without warrant.” The law was found to be “hopelessly unconstitutional” that same year—by Judge McAllister in the Hattie Brooks case—because it made poverty a crime. It also spotlighted a larger effort to curb the “tramp menace”—the men who rejected continuous and free labor—by diminishing the rights and status of the tramp.

It was in this vein that Josiah Gilbert Holland, a medical doctor turned writer and then editor of Scribner’s Magazine, excoriated the tramp in 1878. According to Holland, the tramp “has no rights, but those which the society may see fit of its grace to bestow upon him. He has no more rights than the sow which wallows in the gutter,” Holland declared as he reflected on the merits of banishment and colonial servitude for tramps. Holland’s argument extended Wayland’s opposition to public aid, by criminalizing male dependency. More strikingly, however, it also reduced the tramp to the status of a slave. Echoing Justice Taney’s argument twenty years earlier in Dred Scott v. Sandford that slaves have “no rights which the white man

26 “How to Give Alms,” Harper’s Weekly, 6 October 1877, 779
28 “The Vagrancy Law,” Chicago Tribune, 7 December 1877, 3.
29 “Once More the Tramp,” Scribner’s Magazine, April 1878, 882.
was bound to respect,” Holland suggested, to use Taney’s words, that the tramp “like the negro might justly and lawfully be reduced to slavery for his benefit.”

But, as the tramp’s opponents grew stronger they also began to encounter opposition. “What strikes me as most extraordinary,” Samuel Leavitt announced in *Forum*, “is the apparent total unconsciousness [to] the fact that the poorer classes of the United States had recently emerged from at least seven years of unparalleled misery.” Leavitt explained that it was not until 1878, the year *Scribner’s* published Holland’s article, that there was “any general movement to enact tramp laws throughout the United States,” and he argued that stripping the casually employed and unemployed of their rights was both preposterous and dangerous. Reiterating a point *Harper’s* made a decade earlier, Leavitt argued that communities had a responsibility to provide a place where tramps could be cleaned, fed and “pay for the hospitality by work,” rather than “work out a five hour sentence on a stone pile, with ball and chain,” as proscribed in Illinois.

By the late nineteenth century, vagrancy law was also the domain of legal theorists, those who interpreted law. William Blackstone considered “Idleness in any person [a] high offense against the public economy,” and argued the state held both an interest in the economic lives of its citizens and the authority to compel them to “legitimate” work. However, reflecting on the same issues a century later, at the end of the nineteenth century, American legal theorist Christopher Tiedeman disagreed. Part of the problem, as he saw it, was that vagrancy only targeted some people. “If he has sufficient means of support, a man may spend his whole life in

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30 *Dred Scott V. Sandford*, 60 U.S. 393 (1856).


idleness and wandering from place to place. The gist of the offence,” Tiedeman explained,” is the doing of these things, when one has no visible means of support, thus threatening to become a public burden." Tiedeman, along with University of Chicago Law Professor Ernst Freund, were equally troubled by vagrancy law’s tendency to single out groups—like the poor and unemployed—for special punishment and for treatment outside the standard operations and protections of law. Vagrancy laws, they complained, treated individuals as less than full citizens.

In Chicago the idle and dissolute would continue to be singled out and by 1890 the city had a robust vagrancy statute, which targeted poverty, homelessness, and in particular, those “who not having visible means of support live without lawful employment,” with fines and prison sentences. It was roundly criticized as ineffectual. Journalists bemoaned the city’s status as a “Tramp Mecca” and complained, “authorities hardly know how to handle it.”

Chicago Mayor Hampstead Washburne announced in 1892 that the vagrancy laws were “so faulty as to impede

33 Tiedeman, Christopher Gustavus. A Treatise on the Limitations of Police Power in the United States : Considered From Both a Civil and Criminal Standpoint (St. Louis, 1886), 118,120.


35 The 1890 Revised Code of Chicago boasted a broad vagrancy ordinance that covered numerous facets of poverty and unemployment, including, “All person who are idle and dissolute, and who go about begging; all persons who use juggling or other unlawful games or plays; runaways; pilferers; confidence men; common drunkards; confidence men; common night-walkers; lewd, wanton and lascivious persons, in speech or behavior; common railers or brawlers; persons who are habitually neglectful of their employment or their calling, and do not lawfully provide from themselves, or for the support of their families; and all persons who are idle or dissolute, an who neglect all lawful business, and who habitually misspend their time by frequenting houses of ill-fame, gaming houses or tippling houses; all persons lodging in or found in the night time in out-houses, sheds, barns, or unoccupied buildings, or lodging in the open air and not giving a good account of themselves” along with thieves, prowlers, convicts, loungers and anyone “declared to be vagabonds.” Jonas Hutchinson, Laws and Ordinances Governing the City of Chicago, August, 2, 1890, (Chicago: E. B. Meyers And Company, 1890), Statute 2190.

conviction.”37 Branding the Cook County Police Courts “lax” he complained that Courts protected tramps “at the expense of the property and perhaps the lives of the decent and reputable citizens.” 38 The problem was clear to Police Chief McClaughry in 1893, the year of the Columbian Exposition: “We need an ordinance on the subject badly. Scores of well-known crooks are coming to the city, but we cannot arrest them [because] we cannot prove them thieves.” By “ordinance,” McClaughry meant the right to arrest on sight.39 That “right” would continue to elude municipal authorities into the twentieth century.

City officials continued to bemoan the lack of a “suitable” vagrancy law to deal with “the vicious idler and beggar” throughout the 1890s. Meanwhile, the city’s dailies ratcheted up their rhetoric. “Steeped in vice and utterly devoid of character,” The Tribune declared the tramp an ongoing threat to urban stability.40 Convinced by 1898 that tramps had grown too comfortable in the city, Major McClaughry of Chicago’s Anti-Tramp Society demanded direct and immediate action. Echoing Professor Wayland, he proposed “[t]hose unwilling to work should be imprisoned and compelled to work and kept at it until the habit is broken.”41 McClaughry’s worst anxieties were confirmed as Chicago entered the twentieth century a “Mecca for tramps.”42 The concerns and anxieties of reformers, legal scholars and municipal authorities would propel new

37 “City Ordinances are Defective,” Chicago Tribune, 10 December 1892, 3.
38 “City Ordinances are Defective,” Chicago Tribune, 10 December 1892, 3.
40 “Live by Imposture: Chicago Baggers and Their Tricks and Manners,” Chicago Tribune, 10 February 1893, 10.
41 “Sure Cure For the Tramp Habit,” Chicago Tribune, 18 February 1896, 7.
42 “City Ordinances are Defective,” Chicago Tribune, 10 December 1892, 3; “Calls Chicago Tramp Mecca,” Chicago Tribune, 17 November 1900, 1. The latter article summarizes the opinion of William Hunter, secretary for the Chicago Bureau of Charities, on the dearth of vagrancy prosecution in the city.
scientific efforts to distinguish between the worthy and the unworthy—the worker and the tramp—extending the compulsions of the “tramp menace” into the twentieth century.

Reforming the Tramp Menace

In 1893, amid another pronounced economic panic, J. J. McCook, a sociologist at Trinity College in Hartford, published his “tramp census.”43 The study reaffirmed the tramp’s deviance; but, it also suggested that decades of punditry vilifying the tramp was articulated without a clear sense of the subject. This was reflected in a methodology that identified the main characteristics of the tramp from a sample chosen because its participants looked like tramps.44 However, by examining the lives and conditions of tramps, the study represents an important early composite of the American tramp as relatively young, healthy, skilled, mobile, literate and law abiding. These were not parasites, but unemployed men in search of work.45

Ten years after the publication of McCook’s study Alice Solenberger began collecting information for her study One Thousand Homeless Men, which consisted entirely of men who


44 McCook’s research is based on a sample of 1, 349 men, who were offered a night’s lodging in exchange for their response to thirty-two questions that were designed to identify the dominant characteristics of the tramp. The study found that American nativity predominated, at just over fifty-six percent. Just over half, or fifty-seven percent, of the sample identified as skilled workers and forty-six percent engaged in employments that required their mobility. Those included in the sample were also relatively young, with seventy-five percent under forty years of age and sixty percent under thirty-five years of age. Meanwhile, just over eighty-five percent identified their health as “good.” The study also found that nearly eighty-three percent of men took to the road in search of work, and that less than five percent had been on the road for more than one year. McCook’s statistical summary also found that literacy rates were over ninety percent, while roughly sixty-three percent of respondents claimed to be “intemperate.” In the study, the tramp’s attitude toward alcohol was explained by two statistical summaries: less than six percent of tramps admitted to having committed a crime, but over thirty-eight percent admitted to having been convicted of drunkenness. “Possibly they regarded drunkenness as no crime,” McCook quipped. Before concluding with a list of suggestions for solving the tram p menace, McCook identified the “cost” of these “public burdens” as approximately “one half the cost of the navy.” J. J. McCook, “A Tramp Census and Its Revelation,” Forum, August 1893, 753-766.

45 Sidney Harring makes a similar point in a different context in his Marxists analysis of McCook’s “census” and Coxe’s “petition in boots” in 1894. See Sidney Harring, “Class Conflict and the Suppression of Tramps in Buffalo, 1892-1894, Law and Society Review 11 (Summer, 1977): 873-911.
visited the Chicago Bureau of Charities between 1903 and 1904. The one thousand men Solenberger studied reflected the demographic properties of McCook’s tramps, including age, marital status and skill level. Ultimately, it fell to the social scientist to identify the major characteristics of the tramp; they would also undertake the task of reaffirming his deviance.

While they focused on poverty and homelessness, McCook’s and Solenberger’s studies also reflected new anxieties about the city and its poverty, vice and dissolution. In this vein, McCook also offered solutions, including an end to housing tramps in police stations, their separation from the “criminal section” in police station and—as though confirming their status as social and economic parasites—their careful inspection for vermin. The study also recommended a new registration system, possibly with a passbook and stamp. This strategy of conspicuous surveillance, involving passbook or discharge paper, was common in the south after the Civil War, and as with freedmen made the tramp’s mobility suspect and contingent on the permission of others. It was also popular a generation after McCook’s study, when the Chicago Crime Commission recommended a passbook to supervise and prosecute the idle and dissolute. The

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46 Although the study was published in 1911, it was based on material gathered in 1903-1904. See Alice Solenberger, One Thousand Homeless Men (New York, Charities publication committee, 1911).

47 Of the 1000 men surveyed, seventy-four percent were single, just under eight percent married and roughly twelve percent widowed. Moreover, the bulk of men surveyed, just under seventy-two percent, were prime working age between fifteen and forty-nine. While a small percentage identified as professionals and businessmen, twenty-one percent identified as skilled workers, nine percent identified as partly skilled and just over one third of the entire sample identified as unskilled workers. McCook’s study of the Northeast and Solenberger’s study of Chicago presents the tramp as a man most likely to be under forty, unmarried, in relatively good health, and a skilled or unskilled worker. Alice Solenberger, One Thousand Homeless Men (New York, Charities publication committee, 1911).


49 Chicago City Council, Report of the City Council Committee on Crime (Chicago, 1915), 171.
adoption of social scientific knowledge by forces sympathetic to business and industry would further erode compassion and understanding of the unemployed into the twentieth century.\textsuperscript{50}

Urban reform—derived in part from the “tramp menace” and the compulsion to steady labor—defined Chicago in the early twentieth century, and led its most prominent sociologists to discuss urban reform as “a kind of popular ‘indoor sport.’”\textsuperscript{51} In the reform schemes of early twentieth century progressives, government had a new and dynamic role to play in cities and in the lives of its “problems.”\textsuperscript{52} In her study of these problems—the idle, dissolute and itinerant—Solenberger arranges her subjects by classification: temporarily dependent men “could again become self sufficient;” chronic dependents, or “hopelessly inefficient men,” presented as aid worthy; the “parasite,” or “chronic beggar, local vagrant [or] wanderer,” did not.\textsuperscript{53} Solenberger’s declining scale of human redemption reflected a long-standing desire to distinguish between the worthy and the unworthy. But, her analysis was easily frustrated by the actions and practices of tramps.

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\textsuperscript{50} In this regard, Dorothy Ross makes at least two key points. Firsts, labor struggles, and the disorder they wrought, drove the rise of American social sciences. Second, labor struggles signaled a contested social order. The impetus to social scientific inquiry Ross argues “was oriented first toward the social transformation of industrialization and the fate of the working class.” This changed. While the appearance of local and national unions, dissident political parties, strikes and violence certainly allowed the “the working class to make its existence know in palpable ways,” it also came to overshadow concerns about workers “increasingly tied by machine process to wage labor and to the vicissitudes of the business cycle.” Business benefited from the association of workers and disorder and invested heavily in universities and social scientific research. Consequently, deviation from a certain economic ideology came to matter more than the conditions it fostered. Dorothy Ross, \textit{The Origins of American Social Sciences}, 139.

\textsuperscript{51} Robert Park et al., \textit{The City}, 28.

\textsuperscript{52} Park explained reform as “some sort of restriction or governmental control over our activities.” Robert Park et al., \textit{The City}, 28.

\textsuperscript{53} Solenberger, \textit{One Thousand Homeless Men}, 10.
Workers at the Chicago Bureau of Charities were baffled by the attitudes of the tramps and homeless they encountered. Solenberger recalls a man, “overcome” by “some odd streak of honesty,” confess,

‘I have this peg leg, and I could get work enough any time, without any help from you folks… if I wanted too, but I don’t. You treated me white so I thought it wouldn’t be honest not to tell you, but there’s no use pretending I’m going to give up drinking, the way I promised you and go back to work, for I’m not. I like to travel and I can get a living without working. I know you don't like the way I’ll get it, but I’ve made up my mind; I’m done with work. There’s no use in trying to argue with me, for I know what I’m going to do, but you treated me so white I thought I ought to let you know.’

“He was apparently good to his word,” Solenberger recorded. “Within a week he was reported to the office as begging.” In another exchange, a Bureau of Charities worker implored a man to think of the future, and encouraged him “to take the ice [cutting] work, on the grounds he could save a little money if he did so.” The discussion brought the tramp’s labor ethic into direct conflict with the charity worker’s. “What should I save for?” he responded.

‘I don’t need to. I have no one but myself to look after. If I was a married man and had children it would be different. A man with a family ought to work year ‘round… I’m real sorry to disappoint you, Miss, since you seem so set on the idea of me working on the ice, but to tell you the truth I really wouldn’t think it was right to do it. I’d just be taking the work away from some poor fellow who needs it, and it wouldn’t be right for a man to do that when he has plenty of money in his pocket.’

Solenberger’s study spotlights the stalemate between charity workers and tramps, while it marks the ways in which the tramp continued to wreak havoc on the plans of reformers and municipal authorities. Solenberger’s research, along with McCook’s, combined the original

54 Solenberger, One Thousand Homeless Men, 81.
55 Solenberger, One Thousand Homeless Men, 81.
56 Solenberger, One Thousand Homeless Men, 143-144. Italics added.
critique of the tramp developed in the postbellum period, with the tools of the social sciences. However by 1910, the year Solenberger’s study was published, the “down and out of West Madison” had organized into a community and were becoming, in the words of one scholar, “increasingly unwilling to accept a cultural system of definitions in which they were merely a ‘problem.’”58 By the early twentieth century, the tramp had come to identify as a hobo, a semantic rejection of the tramp brand and an affirmation of the dignity of the marginal, itinerant and unemployed. Much of his activism unfolded in Chicago’s Hobohemia, the unrivalled “main stem” of urban America.

**Hobohemia, Hobo College and the “Hobo” News**

Located on West Madison Avenue between Desplaines and Jefferson streets, Chicago’s Hobohemia served as the social, economic and cultural hub to the city’s hobo population in the opening decades of the twentieth century. Peopled by migrant and stationary casual workers, and stocked with restaurants, saloons, employment agents, flophouses and entertainment, in Hobohemia the hobo’s casual employment, mobility—and possibly even his dress—announced his status as a member of a larger community of outliers. An impromptu speech delivered at Chicago’s Hobo College, the principal education facility for the city’s hoboes, articulated hobo self conception.

“I see a few visitors who very possibly never before came in so near contact with this movement, and who, hearing the word, ‘hobo,’ saw in their mind a picture of a human derelict, covered with rags and filled at least half full of fire water. But I hope that their image will change. They will find that this just mentioned mental picture covers only small exceptions to the rule.”59

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59 Harry M Beardsley, “Along the Main Stem With Red: Being an Account of Hobohemians,” March 27, 1917, Box 127, Folder 1, Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
Despite these types of pleas for compassion and dignity, the hobo was often isolated. In 1913, Robert Wilson’s short-lived Hobo Union solicited an endorsement from the Chicago Federation of Labor in its “scheme to declare all vagrancy laws unconstitutional.” A public endorsement would have bolstered the hobo’s status as a worker, entitled to the rights, dignity and protection of other workers.60 The Federation declined the request, instructing, “[a]n itinerant toiler must go his own way.”61 However, the solicitation, though unsuccessful, revealed the hobo’s broader interest in laws, which was taken up in print and speech. By the early twentieth century, a collective hobo identity and consciousness emerged around a rejection of the compulsions to steady labor specifically, and the assertion of a dynamic alternative to the “outer world” more generally.62 For these reasons, famous hobo researcher Nels Anderson dubbed Hobohemia “Chicago to the down and out.”63

According to Anderson, Hobohemia was primarily a “slave market,” a place were the hobo’s labor—like the slave’s and the vagrant freedman’s labor in the south—was bought and sold by others. Hoboes rejected what they understood as an effort to make them into slaves and asserted equality and a right to place. A hived-off section of the city on the Near-North Side, appointed with parks, buildings and its own college, Hobohemia was made for and by the hobo, and served hundreds of thousands of “migratory men,” who passed through each year, as well as

60 Union Men Hear King of Hoboes,” Chicago Tribune, 13 November 1913, 3. Robert Wilson initially formed the Hobo Union in 1906 to “encourage habits of thrift and industry, [and] to provide them with employment.” Noting that “many hoboes are well informed,” Wilson confirmed “one of the first steps of the new organization will be to secure a modification of the vagrancy law as will insure the hobo against police as long as they are guilty of no actual crimes.” See, “Hoboes Form a Union For Their Protection,” Chicago Tribune, 22 April 2006, D3.

61 “Union Men Turn Down Hoboes,” Chicago Tribune, 17 November 1913, 3

62 Harry M. Beardsley, “Along the Main Stem With Red: Being an Account of Hobohemians,” March 27, 1917, Box 127, Folder 1Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.

a sizeable settled “home guard.”" The “hobo lives in two worlds,” journalist Harry Beardsley discovered upon investigating the district for the Chicago Evening News in 1916, the world of law and order, “which does not recognize him,” and an “inner world, inhabited only by his kind—Hobohemia.” However, rather than housing the “uneducated, [and] stupid, with on average the mind of a child about eight,” as University of Chicago Sociology student Charles Allen claimed after exploring the community in 1923 for Professor Burgess, Hobohemia was a tool with which the hobo could reshape both “inner” and “outer” worlds through debate, activism and education.

In Hobohemia, free labor outcasts and outliers were absorbed into what Carl Sandburg—an occasional resident—famously hailed the “City of the big shoulders.” In this city they might have imagined themselves “[b]ragging and laughing that under his wrist is the pulse,” and that “Under his ribs the heart of the people.” Occupied by the rhythms and patterns of the city and constituting reserve pools of industrial labor, Hobohemians imagined themselves as people capable of initiating and transforming discourses of steady work and urban order. The International Brotherhood Welfare Association’s (IBWA) Hobo College emerged as a critical site in efforts to define work and status—and read outliers as the “pulse” and the “heart”—in the industrial city.

64 Anderson, On Hoboes and Homelessness, 32, 35.
65 Harry M Beardsley, “Along the Main Stem With Red: Being an Account of Hobohemians,” March 27, 1917, Box 127, Folder 1, Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
66 Chas W. Allen, “Sociology Term Paper, March 16, 1923,” Box 150, Folder 1, Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
The College was an extension of the activities of hobo philanthropist James Eads How, grandson of James Buchanan, the designer of the Eads Bridge connecting St. Louis and East St. Louis across the Mississippi River, and son of the James F. How, General Manager of the Wabash Railroad. Born to privilege and educated at Harvard and Oxford Universities, How spurned his upbringing, reportedly handing the $20,000 he inherited upon the death of his father to the mayor of St. Louis “asking that it be turned over to the people who had earned it—the poor.” With a subsequent inheritance, and the moneys earned from the toll on the Eads bridge, How launched a “crusade for social justice. The benefactor of his work was the American hobo.” How, who lived and traveled as a hobo, founded the International Brotherhood Welfare Association (IBWA) in 1905 and branches soon sprung up in a number of American cities, including Chicago.

Ben Reitman, a medical doctor and something of an institution in Hobohemia, locates the origin of the Chicago Hobo College in a chance stop over in St. Louis in 1907 on his way home to Chicago. Recalling a newspaper advertisement for a “Hobo Meeting” that afternoon, Reitman visited “the big empty store on Olive Street,” and joined “Hobo King,” and meeting chairman, Robert Wilson, along with How and three hundred other hoboes. At the meeting Reitman addressed the crowd: “Friends, we ought to do something to stop the police and the sheriff from picking up men and sending them to jail for vagrancy.” Invited by Wilson to become an IBWA member, Reitman immediately paid his dues and then joined How and “the others” at a “cheap


69 Depastino, Citizen Hobo, 105.
restaurant.” After spending the next day with How and IWBA officers, Reitman returned to Chicago with plans to open a Hobo College.70

Commonly attired in a cape and top hat, Reitman was no stranger to Chicago’s vagrancy and disorderly laws; his first offense came in 1890, when at age eleven he landed in the Harrison Street Police Station for picking up coal at “Sixteenth Street and the tracks.”71 Inspired by his meeting with How, Reitman penned a tentative plan for a “Reitman College of Vagrants,” purportedly to be opened in October 1907 in an old college building on the West side. There is no evidence the school ever opened. But, considering Reitman’s subsequent role as director of the Hobo College, which opened the following year, in 1909, and that College’s commitment to the idle and dissolute, his business plan provides a unique glimpse into concerns shaping hobo life on West Madison street.

The plan was detailed. The College’s mission was to “show society that the vagrant is a large part of it,” Reitman explained, “and will endeavor to demonstrate that he can be made a useful member by education.” As a consequence, it targeted “habitual vagrants only,” the people excluded from Solenberger’s schemes of rehabilitation. Reitman envisioned a two-week matriculation, “room and board free.” Coursework filled the vagrant-student’s day and, Reitman promised, “Students will be obliged to learn their lessons.” Reitman even thought about potential faculty, composing an eclectic list that included Dr. Ruben, who would cover “vagrant diseases, [and] industrial accidents;” railroad officials would “show how the railroads make vagrants, [and

70 Reitman recalled after the meeting that, “for the first time in my life I really had something to say and an audience to say it to.” See Ben Reitman’s unpublished biography, Ben Reitman “Following the Monkey,” pages 186-187, Ben Lewis Reitman Papers, Box 2, Folder 23, Special Collections and University Archives, University of Illinois at Chicago, Chicago. For a different overview, drawing on the same document, see Robert Burns, The Damndest Radical, 24-25.

71 For vagrancy arrest in Chicago at age eleven, see Burns, The Damndest Radical, 11.
examine] the cost of confrontation;” judges would “lecture on the vagrant laws, how they work;” police would lecture on the likelihood of arrest and jail terms; and—testifying to the growing importance of sociology and the study of the city—a professor from the University of Chicago would lecture “on the vagrant’s duty to society and society’s duty to the vagrant.”

By bringing together all parties connected to vagrancy—law, philosophy, science, academia, policing, business and the vagrant—Reitman imagined a solution predicated on the dignity of the vagrant, on his status as a worker and not as an industrial slave. Unlike Solenberger’s United Charities, the “Vagrant College” also put the casual worker on equal footing with the hobo’s detractors, and by extension with other workers.

Reitman’s College For Vagrants never opened. But a Hobo College did the next year, in 1908, just off Chicago’s West Madison Street. And, Ben Reitman ran it. While its precise location changed several times, “it always remained on or close to West Madison and always secured a hall large enough to accommodate one hundred persons.” Visiting the college in 1917, cognizant that “many people think the institution is a myth,” and hobo education “too much of a paradox to be assimilated,” Chicago Evening News journalist Harry Beardsley described “a narrow staircase [that led] from the street to [a] second floor, housing a “lounging room” and IBWA office where “labor fanatics and visitors from the IWW congregate to discuss the labor question.” A second staircase, this one “circular and narrow,” led to a third floor where an auditorium “with calico curtains, a stove, a piano and a hundred or so camp chairs,” was

72 “The Reitman College for Vagrants” Ben Lewis Reitman Papers, Box 30, folder 376, Special Collections and University Archives, University of Illinois at Chicago, Chicago. Underlined in original. Reitman also expected that a saloonkeeper “will show why a vagrant drinks;” a physiologist will compare amounts of energy “a man expends when working and when not working;” a representative from an employment agency will instruct students “how to get a job;” and, “a reverend will teach the influence of religion, home and women upon a man’s life.”

73 Depastino, Citizen Hobo, 107.
walled off from a “dining hall-library-kitchen” area where “meals are served at cost,” and reading material made available.74

A visitor, roughly six years later, in 1923, provided a similar account of the layout of the College, and described at the entrance an “almost indiscernible sign with the words: United Brotherhood College printed on it, and over [those] words scribbled—‘‘Hobo College.’”75 The activities at the college proved less instrumental, but as varied, as those conceived by Reitman’s in his “College for Vagrants.”

The College offered classes in economics for workers, public speaking, English composition, literature and law, where hoboes were “taught the [vagrancy] statutes in various states and cities, and [were] informed of new legislation which [sic] them.” The school operated five nights a week, with Friday “devoted to labor history and debates.” Sunday was an open forum, and music, theater and debates “from time to time.”76 While the college did not degree professionals, the rebuke, “if the college in Chicago has done anything, it has helped a number of ‘soap-box orators’ to find themselves,” overstated the criticism.77

The term “Hobo College” might have been idiosyncratic, but it underscored a broader commitment to the education of the hoboes, and his equal status in the community, while it signaled a departure from the reform initiatives promulgated by the “outer world.” The curious listened to people like Municipal Court Judge Harry M. Fisher lecture in the spring of 1917 on

74 Harry M. Beardsley, “Along the Main Stem With Red: Being an Account of Hobohemians,” March 27, 1917, Box 127, Folder 1, Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
75 Chas W. Allen, “Sociology Term Paper, March 16, 1923,” Box 150, Folder 1, Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
76 Harry M. Beardsley, “Along the Main Stem With Red: Being an Account of Hobohemians,” March 27, 1917, Papers 127, Folder 1, Ernest Burgess, Special Collections, Regenstein Library, University of Chicago, Chicago.
77 Anderson, On Hoboes and Homelessness, 92.
the city’s vagrancy law. “The great flaw in the average vagrancy legislation,” Fisher explained, “lies in the fact that the law punishes individuals not for the actual omission or commission of any act, but for being in a condition, which in many cases the individual cannot help.” It’s conceivable the hoboes present would have nodded along in agreement with Judge Fisher, and his portrayal of their rights. “Only in such instances where proof is established that a man arrested is willfully without occupation, and has refused opportunities to work,” Fischer explained, “should the vagrancy law be enforced.”

Fisher’s critical point was that hoboes had rights that vagrancy laws vacated, but should not. This position was taken up more fully in the “Hobo” News, the premier rag for the nation’s hobo Community in the 1910’s and 1920s and a critical forum in the hobo’s efforts to transform the terms of the free labor order.

The eclectic sixteen-page circular was run free of advertisements, and included poems, essays and articles “reflecting the tramp’s life and representing his interests.” Published in St. Louis and Cincinnati, it reached a maximum circulation of twenty thousand copies in winter, [with] lower numbers in the summer months, “when all the men [were] out of town, on the job.” Distribution provided enterprising hoboes with a livelihood, as copies of the “Hobo” News sold for ten cents apiece of which the hobo kept five cents. “You got to catch their eye,” one entrepreneurial huckster explained. “If you catch their eye, you got them.” Moreover, the News was not radical in the traditional, political sense. Their policy was “to keep the reds out.” And, while the paper was not opposed to work, it was opposed compulsions to steady work and

78 “Hoboes: Judge talks to the About Their Rights Under the Vagrancy Laws,” Chicago Tribune, 2 March 1917, 15.

79 Anderson, Hoboes and Homelessness, 92-93.

80 “Document 104: Jewish Tramp, Sells papers, Tin Worker, Served Time in Jail on Wife Desertion,” Box 127, Folder 3, Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
it provided a popular venue to challenge the legal, constitutional and economic patterns that diminished their status as failed wageworkers.\textsuperscript{81}

The hobo’s efforts to negotiate his status invariably turned to language and definition, the most famous of which belonged to Ben Reitman, who claimed “[t]he hoboes works and wanders, the tramp dreams and wanders, and the bum drinks and wonders.”\textsuperscript{82} Although Reitman’s definition suggests that some hoboes internalized the categories introduced by the “tramp menace” and its social scientific cronies—McCook and Solenberger, and later members of the Chicago School—alternative definitions also delineated the hobo from the tramp. A. Schickmeyer made a historical argument. Before 1893, he argued, the tramp traveled in relatively “narrow circles.” Afterwards, “distance was no barrier to him—he no longer hoofed it, but made his way on the iron steed.”\textsuperscript{83} This development, according to Schickmeyer, made itinerancy a ubiquitous and national phenomenon. Hobo E. J. Irvine explored this sentiment in ballad.

\begin{verbatim}
In every land but Russia
   You meet him on the street
A lean and hungry creature
   With swollen, weary feet

He’ll split his last crust with you
   He’ll rise to heights untold
Yet on the auction block of life
   This son of God is sold \textsuperscript{84}
\end{verbatim}

\textsuperscript{81} Anderson, \textit{Hoboes and Homelessness}, 93; Depastino, \textit{Citizen Hobo}, 102.

\textsuperscript{82} Anderson, \textit{Hoboes and Homelessness}, 61.

\textsuperscript{83} A. Schickmeyer, “Evolution of the American Hobo,” \textit{Hobo World}, November, 1923, 2-3, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

\textsuperscript{84} E. J. Irvine, “The Hobo,” \textit{Hobo News}, December 1921, 9-10, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.
But, if the hobo worked, wandered and was everywhere, why was he still an outlier? In cases, the question prompted frustration. “It seems to be taking the average person a long time,” Louis Anger Young wrote the “Hobo” News the summer of 1920, “to learn that the hobo is not a bum or a lazy shiftless person.”

To others the hobo’s dignity was innate; that was how W. B. Lamb felt when he announced, “We are the salt of the earth!” Hobo balladeer Henry Herbert Knibbs agreed in his Ballad of the Boes:

We are the true nobility!  
Sons of rest and outdoor air!  
Knights of the tie and rail are we,  
Lightly meandering everywhere.

For others, politics seemed to distinguish the hobo from the tramp and the freedman or slave. In summer 1922, hobo J. J. O’Connell called on “every intelligent worker to think and act for the uplift of his class,” and “without fear use his influence and voice his opinions on the economic and political field for that purpose.”

But for many, the principal issue remained class. Nels Anderson recalled an old hobo explain why he rejected the worker’s bargain. “If you go out and work for thirty cents an hour all you do is add one more man to the boss’ cause. That is what they want.” It was “wage slavery,”

85 Louis Angus Young, Itinerant Philosopher: A Study in Wanderlust,” “Hobo” News, July 1920, 6-7, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

86 Editorial, “Hobo” News, August 1922, 12, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

87 Henry Herbert Knibbs, Songs of the Outlands: Songs of the Hoboes and Other Verse (New York, Houghton Mifflin company, 1914), np.

88 “Editorial,” “Hobo” News, June 1922, 12, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

89 “Document 77: Man Forced to be Idle by Hard Times Learned to Get Along, Later Refused Work,” Box 127, Folder 2, Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
hobo Dan O’Brien explained, and as wage slavery, a “violation of natural liberties.” This view distinguished the hobo from the slave; he had choice and the liberty to define his relationship to the economy. When Nels Anderson published *The Hobo: The Sociology of the Homeless Man* a couple years later, it was roundly criticized in the *News* for failing to appreciate the autonomy of the hobo.

But in large part, the tone in the *News* expressed a desire to be included. The cover page of the November 1921 issue was emblematic. It pictured five unemployed men, seated around a newspaper in an urban park, scanning job adds. The caption paraphrased President Harding’s 1920 campaign motto pledging a “Return to Normalcy.” “Normalcy,” hoboes understood, meant a return to the margins, a particularly unwelcome development after expanded wartime employment. “How full of promise were those rhapsodies about the new world of labor,” Elmer T. Allison opined in the summer of 1920, adding that “[t]he economic condition of the worker has grown more precarious” since. Reflexively, Allison instructed hoboes to alter their social and economic relationships and obligations: “Let us enjoy the world we have made, instead of making it a… hell for ourselves.”

D. H. Horn echoed this sentiment. As he saw it, the issue was not only economic it was also legal. “How much justice do we find when the waged working class of this country enjoys NO LEGALLY RECOGNIZED RIGHTS to work for a living… and yet our politicians make it a

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90 Dan O’Brien, “Wage Slavery,” *Hobo* *News*, June 1921 [page mutilated, no page number], Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

91 “Book Review,” *Hobo* *World*, November 1923, 13, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

92 “Back To Normalcy,” *Hobo* *News*, volume 9, no. 11, November 1921, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

93 “Phanton (sic) Democracy” *Hobo* *News*, July 1920, 13, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.
crime of VAGRANCY when a man, through no fault of his own, is without work and without food?”

While reformers and authorities saw work as a liberating agent, for hoboes like Horn it remained something that brought them closer to servitude. News columnist Bill Quirks echoed the sentiment: “Work as performed today under our present industrial system is degrading and demoralizing.” Branding free labor slavery, Quirks asked, “[w]ho is it that howls most about the ‘dignity of labor?’” Hoboes were criticizing, but also defining, economic relationships and the urban hoboes depicted on the November 1921 cover gathered around an open newspaper may still have been looking for jobs, but they might also have been reflecting on social, economic and legal structures and inequalities, or on the ways steady work made them less like men and more like slaves.

In an era when urban, industrial wage work was ascendant, dime novels and other popular media cast the hobo amid the pastoral where his resourcefulness and independence recalled a bygone era. These types of narratives highlighted his status, which like the slave status, were alien to urban, industrial life. Ray Livingston’s “A No. 1” series, which produced twelve volumes between 1908 and 1921, epitomized this trend of marketing hobo obsolescence to a mass audience. Adhering to one of three models—autobiography, “tale-telling” or novel—the series affected hobo living through salty characters and a “smattering of hobo lingo” and


95 Bill Quirks, “Work,” “Hobo” News, February 1922, 9, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

96 The “A-No. 1,” series was written by Leon Ray Livingston, who “grew up a pampered, well educated child” to a wealthy California family. Livingston began publishing his stories through his “vanity press” in Cambridge Springs, Pennsylvania, but moved operations to Erie in the mid-1910s. Patterned “physically and in plot structure” on dime novel adventure tales, the “A-No. 1” series was designed for popular reading, and marketed toward boys and young men. Lynn Marie Adrian, Organizing the Rootless: American Hobo Subculture, 1893-1932 (PhD Diss: University of Iowa, 1985), 236, 239-41.
platitudes. The series followed the short adventures and mishaps of characters wandering through bucolic fields and camping at railroad hubs.\textsuperscript{97} \textit{Hobo Camp Fire Tales}, published in 1911, narrates whimsical encounters with tramps on trains, in “jungles” and around campfires in brief, affectionately-titled chapters, such as “How Pacific Jimmy Held Up the Sheriff,” and “The Tramp and the Owl.” Meanwhile, in many of the books, secret communication through symbols denoted the receptiveness of local police and railway officials, or warned hoboes of danger ahead.\textsuperscript{98}

While the hobo presents in these stories as courteous, sober and quaint, brimming with a lifetime of experiences on the road, his is ultimately a cautionary tale. The preface to \textit{Hobo Camp Fire Tales}, for instance, reminds the reader that entertainment is often parable, explaining, “The aim of this book is to warn others [by] showing what a miserable life even the best of tramps have,” and cautions “the tramp is constantly hounded by the minions of the law.”\textsuperscript{99}

And, located somewhere between the \textit{Hobo “News”} and popular, fictive treatments like the “A No. 1” series were advice manuals instructing the would-be hobo. Roger Payne’s 1919 pamphlet, \textit{The Hobo Philosopher}, typified this genre while it complemented the efforts of hoboes to introduce alternatives to steady labor. The pamphlet adopted Lester Ward’s insight that knowledge might “teach us to live better lives,” and drew inspiration from Henry Thoreau’s experiment at Walden Pond to support its claim that the hobo might work one day each week and

\textsuperscript{97} Lynn Marie Adrian, \textit{Organizing the Rootless: American Hobo Subculture, 1893-1932} (PhD Diss: University of Iowa, 1985), 248, 259.

\textsuperscript{98} Ray Livingston (“A-No. 1”), \textit{Hobo Camp Fire Tales} (Cambridge Spring, Penn: A No. 1 Publishing, 1911), Preface, 11, 26, 99.

“live” the other six. Luxuries and comforts, Payne argued, were of “counters [i.e. counterfeit coin] for which we have been taught to sacrifice our true inheritance of dignity and leisure.”

The hobo, as Payne understood him, was allegorical; his austerity provided a “lesson” of sorts in self-control, and his opposition constituted a promise to redraw economic relationships around leisure. By the early twentieth century, the hobo and not the tramp led these efforts.

The “tramp menace” and the less-menacing hoboes that seemed to replace it elicited similar anxieties among reformers and urban authorities. Unlike the tramp, however, the hobo was better able to respond to these anxieties; in the News, in debates about economics, law and labor at the Hobo College and on the streets of Hobohemia they rejected the idea they shared a status with slaves. Economics, law and labor—the hobo might have argued—were not the stuff of dangerous predators or servants, but issues germane to the lives of most Americans. Despite this, calls continued to ring out for the stricter enforcement of vagrancy law in the early decades of the twentieth century.

With the passage of a new vagrancy ordinance in 1905, Chicago Police Chief John Collins anticipated a new “way to imprison or drive from the city the hoards of disreputables (sic) against whom no specific charge can be evidenced by police.” Collins acknowledged, “they may not be doing much harm to the community, [but they are] certainly doing no good.” “The disorderly charge,” he surmised, “will fit nicely in almost every instance.” It would fall to

104 “Vagrancy Writs to Sweep City,” Chicago Tribune, 8 September 1905, 4.
Municipal Courts to balance the claims of vagrancy laws and the reformers and authorities supporting them against the claims of Chicago’s hoboes.

The Municipal Court

The Municipal Court had its work cut out for it. Opened in December 1906, the Chicago Municipal Court was one of the first of its kind in the United States; garbed in discourses of novelty and innovation, it was a testament to the influence of urban reform and represented a new municipal legal system designed to “tackle the problems of social life in the modern city.”

In practice, the new Court substituted a professional, efficient and state funded legal apparatus that embraced the values of swift, efficient and socialized justice, for a Police Court, which, however outdated and politically compromised, nevertheless did much the same type of work.

Most critically to this study, it was a principle site where the hobo and the vagrant were linked. Reformers and hoboes, split over the compulsion to wage labor, met in the city’s municipal courtrooms.

The new Court’s initial position on vagrancy law was unambiguous. Less than a year into its existence, Chief Justice Harry Olson “proposed an amendment to the statute prohibiting vagabondage.” Adhering to the principle announced during the “tramp menace”—that the economically impotent vacated their rights—Olson argued “persons found guilty of vagrancy


106 According to Almena Dawley, the Police Court was rife with political corruption. The Justice of the Peace was appointed by the Governor, but operated on a fee basis, a “pecuniary motive for increasing the amount of litigation and the number of continuance.” It also leads to “judgments for the plaintiff” particularly if they were “in the habit of patronizing that particular court.” Meanwhile, bailiffs were vetted by aldermen, and “owed their first duty to the alderman, their second duty to the court.” Clerks were similarly indebted to Aldermen, and typically “received a list of numbers each morning corresponding to the number of certain defendants on the police magistrate’s list.” These numbers were instructions to either “liberate the prisoner or to assess a heavy fine, what ever the facts may be.” See Almena Dawley, *A Study of the Social Effects of the Municipal Court of Chicago* (master’s thesis, University of Chicago, 1915), 3-4.
shall serve a term on the ‘rock pile.’” With the goal of “clearing the scum of the earth from Chicago,” Olson proposed to confront the “crooks and loafers” with two options: “work at honest labor,” or “get out of Chicago.”¹⁰⁷ Olson not only supported this new law, he actively lobbied the state legislature for the law, reviewed drafts and personally advised legislators on the wording of a new vagrancy law.¹⁰⁸ In fact, his truculent approach to vagrants even drew national attention as it raised expectations. In a paper read the same year at the National Conference of Charities in Minneapolis, O. F. Lewis would praise Chicago’s new Municipal Court: “here and now is the place in time to begin the end of the tramp era in Chicago.”¹⁰⁹

A “menace” constructed by nineteenth century media, developed by social science and then typified by the idle, itinerant and dissolute, was calcified in ordinance and statute. The vagrancy problem was now resolved, or so it seemed. In practice, punishing the idle and dissolute proved more difficult than imagined. In summer 1907 frustration emerged. “The new law went into effect last Monday,” the Tribune huffed, “but they have not fled.”¹¹⁰ By the following winter, January 1908, Municipal Court judges came under fire, accused of being “unduly tender in the administration of vagrancy law.”¹¹¹ Police Chief Leroy Steward entered the fray soon after, pledging to “sweep the city streets” of vagrants, and to “strengthen the methods of former crusades” with an old, but familiar, idea: a “clearinghouse for ‘vag’ reports.”¹¹²

¹⁰⁸ Judge Harry Olson, “Correspondences addressing the 1907 Vagrancy Law,” Box 1, Folder 3, Chicago Municipal Court Records, Research Center, Chicago History Museum, Chicago.
¹¹² “Police Must Check Crime,” Chicago Tribune, 28 November 1909, 1.
McCook suggested the “clearinghouse” scheme in 1893, and it found new life in the city’s Crime Commission, which organized in 1915, and proposed to collect “records of every person found conducting himself in a manner making himself amenable to the vagrancy act.” Shockingly, this type of proposal, which would grant broad authority on vague pretexts—and permit intrusions into individuals’ living arrangements, arrest history, location, occupation, disposition to work, and general reputation—all on the off chance that a conviction for a misdemeanor might be obtained—saw tools analogous to those of southern racial order applied to hoboes well into the twentieth century.

In practice, and despite the enthusiasm of its Chief Justice, the Municipal Court resisted calls to treat the idle and dissolute like slaves—to round up and imprison all of them—and in this regard checked an escalating discourse of free labor, compulsion and criminal dependency. This was partially because the local Court was not interested in filling local jails with the idle and dissolute, because undermining rights in rhetoric was different than doing it in practice, and because vagrancy was not the only crime in town. But at the same time, the Court did not draw as clear or thoughtful a distinction as it might between the idle—the unemployed, hapless and harmless—and the dissolute—potentially criminal and dangerous—in its caseload. The Court’s principle instrument in vagrancy trials was a checklist called the “Vagabond Information by Individual,” which itemized the twelve principal elements of the vagrancy law, including begging, drunkenness and night walking (the only element principally applied to women), idleness, unemployment and outdoor lodging. In most vagrancy cases, the judge elected item number ten: “habitually neglectful of employment and calling and did not lawfully provide for

113 Chicago City Council, Report of the City Council Committee on Crime (Chicago, 1915), 171.
himself and for the support of his family.” This provision marked a single-minded preoccupation with work, while the checklist granted judges discretion in the prosecution of vagrant, which records indicate they chose not to apply. Like the vagrancy laws, they read the idle and dissolute as equally dangerous.

Theodore Ryanovsky, Henry Geloss and Edward McNamara violated provision number ten in 1914 and 1915. Ryanovski, whose arrest sheet identified him as a 17 year old, single American arrested twice previously for larceny, was picked up in early February 1915, and charged with “Being a Vagabond.” Upon pleading guilty, Judge Sullivan sentenced Ryanovsky to six months at the House of Corrections. Later that month, Henry Geloss, an 18 year old, unemployed American, was convicted of “being a vagabond” and sentenced to the House of Correction for thirty days. Meanwhile, Edward McNamara, picked up for vagrancy, for being “habitually neglectful of his employment and calling,” on July 18, 1914, waived his right to a jury, pled not guilty and had his case dismissed by Judge Caverly on July 20. The prosecutions of Ryanovski, Geloss and McNamara developed from their failure to work, a key element at the center of even more diffuse applications of vagrancy law.

Also in 1915, David Miller and Ed Brown were picked up for vagrancy, charged with violating Section ten of the Court’s “Vagabond Information” index. Miller pled not guilty and


charges against him were dismissed on September 9.\textsuperscript{118} Ed Brown pled not guilty on September 24 and was “found guilty of being a vagabond and sentenced to thirty days and a twenty five dollar fine and a nine dollar tax.”\textsuperscript{119} In both cases William Callahan, a “business agent” posted bail. Callahan listed his own financial worth at $10,000 and acknowledged he was a surety for someone else in the city, prior to Brown’s arrest. The wealth of this surety suggests that Miller and Brown may have been working outside the wage labor economy. It was this type of application of vagrancy law—implying something criminal about unemployment—that led W. B. Lamb to write in the “\textit{Hobo}” News, “We want justice. We want the thieves and robbers pulled off our backs.”\textsuperscript{120}

By not distinguishing between types of vagrancy, the law could be used to target hoboés individually and \textit{en masse}. In summer of 1922 Judge Joseph S. LaBuy presided over the prosecution of more than fifty tramps in thirty minutes. “Bring ‘em all in,” LaBuy instructed. “Empty the hull pen. Let’s get this thing over with.” As “all the down and outs of West Madison” crowded into the courtroom, the judge swore them in. “How many of you are working men?” LaBuy inquired. When nobody responded he rephrased the question, “Is there anyone here that’s not a working man?” One hand went up. The clerk then called out names. The first to respond to his name was “dismissed with a warning,” and “complimented on remembering his name.” Attempting a new tack, the judge asked “How many of you men will go to work?” In

\textsuperscript{118} \textit{People v. David Miller}, September 16, 1915, case 136202, Municipal Court of Chicago Criminal Records, Chicago Municipal Court Archives, Chicago.


\textsuperscript{120} Editorial, “\textit{Hobo}” News, August 1922, 12, Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.
response, “every hand went up.” Threatening a fine of two hundred dollars plus costs, “if I see any of you back here again,” LaBuy dismissed all the men.121

A small fine or short jail term remained the principal legal remedy for Chicago’s idle and dissolute. And, enforcement remained discretionary under a broad vagrancy law that was generated to target large sections of Chicago’s underclass and to define that underclass by their relationship to wage labor. In practice, the punishment for vagrancy was neither as severe as police, politicians and reformers wanted—and certainly did not reflect their rhetorical pitch—nor was it as mild as indignant and aggrieved tramps and hoboes would have liked. The exchange between the two groups highlights ways in which the free labor order and the compulsion to steady labor survived into the twentieth century, casting all unemployed under the pall of dissolution; critical distinctions between the worthy and unworthy poor—between the idle and dissolute—remained largely unresolved. Perhaps most importantly, however, it demonstrated that the struggles of the idle and dissolute, the Hobohemian, vagrant and itinerant were woven into discourses of slavery that made hoboes slaves in the eyes of civic authorities and reformers, but made the conditions of industrial wage work a form of slavery in the eyes of hoboes.

**Conclusion**

In the late nineteenth century, tramps were branded parasites and criminal dependents and accused of withholding their labor and refusing to work. When tramps and hoboes balked at continuous labor as wage slavery, reformers, municipal leaders, middle class media and jurists fretted about a “tramp menace” and found an instrument of compulsion in vagrancy law. But, they struggled to develop and impose a sweeping ordinance or statute that would reliably round

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121 “Document 80: Report of a Visit to Police Court, Hoboes Tried at Rate of One a Minute, August 28, 1922,” Box 127, Folder 3, Ernest Burgess Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
up and punish all idle and dissolute. Galvanized by their ostracism from the “outer world,”
tramps and then hoboes in Chicago organized. At the Hobo College and in the pages of the
“Hobo” News they interrogated the forces of free labor that made them outliers; in their ballads
and editorials they announced their social roles and worldly labors. Above all, they rejected what
they perceived were efforts to make them slaves, to allow their relationship to the economy to
diminish their social, legal and economic statuses. By challenging the discourses and
compulsions of free and steady labor, and asserting their own relationships to the economy, the
idle and dissolute modified the slave discourses and vagrancy laws that were designed to target
them. In the process, they altered the meaning of work in the industrial city, and highlighted the
centrality of slave discourses to free labor, half a century after the Civil War. But, tramps and
hoboes were not the only group descending on Chicago in the late nineteenth century. As we will
see in the next chapter, women also flocked to the city. Their poverty and marginality, along
with their sex and waged work, modified and also replicated the struggles of tramps and hoboes,
and form the substance of the next chapter.
CHAPTER 6
THE CASUAL AND DISSOLUTE: INDUSTRIAL WOMEN

In the early 1920s two women placed themselves up for sale in the “Hobo” News. One woman offered a percentage of her wages in exchange “for a room in some quiet home.” A classified advertisement summarized the story of the other woman,

Personal: For Sale—Woman. Have walked the streets looking for decent employment until my money is gone. My shoes are worn out and my feet are so tired. I have a beautiful gift of god five years old. There seems to be no place for us to earn a living. Will offer myself to the highest bidder in order to support my angel.”

Destitute women were not new to 1920s Chicago, but reflected a larger and well-established trend. From the late nineteenth century, women traveled an increasingly well-trodden path to the industrial city from the farms and towns of the Midwest, in search of work and opportunity. Wage-earning women relocating to Chicago encountered similar poverty as hoboes and tramps, and had their status defined by their relationship to wage work. Unlike idle and dissolute men, however, they were expected to be dependent upon and subordinate to male breadwinners. In the free labor order, work was gendered masculine and independent. For the non-domestic women who worked, perils were mapped out in dramatic fashion in the city’s reform-oriented dailies.

In late summer 1887, the Daily Inter Ocean, one of Chicago’s leading reform-oriented dailies, launched a series entitled the “Woes of Working Girls.” These stories were front-page

1 “Hungry Woman Offers Self to Highest Bidder,” “Hobo” News, November 1921, 11. Rare Books and Manuscript Library, University of Illinois at Urbana-Champaign, Urbana.

2 Elizabeth Dale has captured and summarized a handful of narratives of at-risk workingwomen published in the Inter Ocean during the first half of 1887. In each, wage work is presented as a dangerous threat to women. One story addresses the abduction of two young women—both had been obedient and stayed at home at night until they met their seducers (5 December 1886, 6); Another is a story of an infanticide case in which the 19 year old mother was seduced by her husband’s employer (1 January 1887, 3); A young women of good reputation is found dead. She traveled from Wisconsin to Chicago to find work. Speculation is her death was the result of a botched abortion (17 April 1887, 2); A 12 year girl came to Chicago to find work, fell in love with two men who took her to their room and tried to rape her (7 June 1887, 7); A 17 year old girl killed herself. She worked as domestic and was abandoned by a laborer who impregnated her (4 July 1887, 8); Second story on the 17 year old, example of no support or help (5 July 1887, 7); A 30 year old women seduced, pregnant and threw herself into a lake (7 July 1887, 3); Report of a
news, and used different scenarios to outline the impact of industrial capitalism on the city’s wage-earning women. Principally examining the experiences of seamstresses, domestic servants and clerks, the stories turned repeatedly to the way low wages, long days, and poor working conditions undercut working women. “The road of a working girl is exceedingly slippery,” the first installment announced, they “toil for a mere pittance day after day, and wear their lives out.”3 But, by highlighting the way wage work strained physical and mental resources, the daily was making a bigger point: wage work invariably compromised virtue. In the reform dailies of Gilded-Age media, wage work was not entirely distinguished from sex work.

In the late 1880s, the Inter Ocean tied together waged and sex employment in at least three ways. One narrative involved “ruin” at the work place. A representative scenario described a “young girl just over 16 years of age” who worked for a man who “flattered the girl.” In this narrative, “[o]ne evening he kept her at the office quite late and when she left she was ruined.”4 A second narrative attributed “ruin” to low pay and was related in the story of “a hard working girl in a large concern in the heart of the city.” Surviving on $4.50 a week, she admitted, “[i]t’s pretty hard, but I scrape along somehow. I pay mother $2 a week for board and that leaves me $2.50 for clothes. Father is a carpenter and does very well. I could not get board for that price anywhere else.”5 This narrative described the world outside the family economy as perilous for young women. “The world to them seems dull and sorrowful in the path of virtue.” It became dangerous when they saw “some of their companions suddenly rise from the dead level of the

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3 “Woes of Working Girls,” Inter Ocean, 21 August 1887, 1.
4 “Woes of Working Girls,” Inter Ocean, 21 August 1887, 1.
drudges and blossom forth into what seems to them a luxurious existence.” In this case, her “fall” was a decision to enter sex work, the daily warned, which produced the “ultimate destruction of their gay companion.”

A third scenario ties the first and second together to demonstrate that working girls and women could not be good wives and mothers, and by extension could only be outliers. In this scenario, “a young woman” leaves her useless husband for “employment in a well-known retail store.” After some time, she files for divorce and shared custody of their child. However, her husband casts a pall on her fitness when he explains to the Court “his wife was employed in a store in which it was well known no woman who was virtuous could work.” Regardless of the latter “young woman’s” maternal claim, her steady waged employment made her virtue and dependency—and by extension her ability to perform domestic duty—suspect.

Sex workers and reformers share a long history in urban America. As late as 1880 prostitution appeared on the national census as an occupational category, and in Chicago that year it accounted for the employment of four percent of women, just ahead of more traditional and familiar employments as schoolteacher, rooming-house keeper and clerk. In the late nineteenth century, however, the status of sex workers was beginning to change, as opposition to prostitution intensified.

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9 These numbers are based on census work performed by Joanne Meyerowitz. See Meyerowitz, *Women Adrift*, 29. Prostitution last appeared as a category for employment for census purposes in the 1880 census.
The Protective Agency formed in 1886 to defend the virtue and purity of women, and often targeted working women. The prospects for working women were bleak, according to Mrs. Dye, clerk of the Agency: “for the self dependent girl to announce her shame, is to weigh her hands and feet with lead, to take hope out of her heart.” But many were forced to take that step in the late nineteenth century, shifting their dependencies from the household to the market, where domestic and maternal expectations reduced their value and self sufficiency made their virtue suspect. When the panic of 1893 turned large numbers of women out of work, charity and aid workers became alarmed about unemployment “driving helpless women into that vortex,” or toward a “worse fate than starvation.”

The expansion of women’s involvement in wage work was one of the forces driving this change and from the late nineteenth century helped draw attention to the “painted and powdered,” who “sold their sexual services on occasional nights for gifts or extra money.” But unlike the series in the *Inter Ocean*, many of the city’s dailies were drawn to sensational accounts of “ruin” to constitute depravity, which both trivialized and publicized the difficult circumstances in which many young, marginal women found themselves. Discourses of women and “ruin” and virtue typically concentrated on the Levee District—the downtown vice region bordered by Van Buren, Twelfth, Clark, and State Streets—and the “nightly orgies of the


maddened and dissolute,” and “jail-birds, thugs and heartless, hardened, irreclaimable wretches and vagabonds,” it housed.  

These types of accounts also made it clear in the late nineteenth century that woman wageworkers operated with a diminishing set of rights. The free labor order rationalized their diminished economy as a condition of their social status and community membership. At the same time, however, it set the conditions—domesticity, maternity and subordination to paternal authority and male breadwinning—upon which these social rights could be reclaimed. For the tramp or hobo, independence and citizenship were tied to steady labor. Women were subject to different patterns and compulsions, which defined their citizenship status in terms of their dependence.

By the early twentieth century, local Courts were an important player in domestic relations. Michael Grossberg has termed their role—by which family relationships came under the purview of law and judges decreed on domestic life—“judicial patriarchy.” This development saw the values of the free labor order replicated in law, while it brought women—more specifically marginal and outlying women—under the control of the Courts, which took up those responsibilities abandoned by failed and hapless men. Because domestic dependency was not an option for many working class women, their challenge to the terms of the free labor order was shaped by their poverty and marginality.


15 Following T.H. Marshal’s model, I argue women were deprived political rights, namely the right to vote, and had civil rights circumscribed by restriction on their legal participation. Their social rights really depended on their status as mother or wife, or her status as a wage of sex worker. In this regard, her social rights changed with her relationship to the economy. See T. H. Marshall, Class, Citizenship and Social Development (Garden City: Double Day, 1964), 71-73.

Scholarship examining the lives and conditions of marginal women tends to treat sex work as a choice, as an affirmation of independence—like wage work—or as an expression of “sisterhood” and community, or an act of economic survival.\(^\text{17}\) In either case, these scholars argue, these women were not crushed under the weight of sexual exchange outside the home.

Kathy Peiss has demonstrated that sex and waged workers shared economic and social place.\(^\text{18}\) Sometimes, however, they were also the same people, an anxiety manifest in “white slave” discourses, which cast sexual exchange outside the home as an act of enslavement, highlighting the continued importance of slave rhetoric to social, economic and legal relationships.

\(^{17}\) This chapter examines how people with secondary social, legal and economic statuses shaped the conditions of their lives in the industrial city. Two recent books—Sarah Deutsch’s *Women and the City* and Lara Vapnek’s *Breadwinners*—make the point that in cities women occupied multiple statuses and exercised degrees of control through labor and civic and institutions. This study takes a similar aim, but looks outside formal institutions and organizations, to examine how social, economic and legal forces shaped women’s status. See Sarah Deutsch’s *Women and the City: Gender, Space, and Power in Boston, 1870-1940* (New York: Oxford University Press, 2002); Lara Vapnek’s *Breadwinners: Working Women and Economic Independence, 1865-1920* (University of Illinois Press, 2009). In order to do these things this chapter builds on a wealth of mature scholarship. Beginning in the 1970s and 1980s, historical studies of sex work proliferated, as part of a larger effort to uncover the history of women specifically, and “regular” people generally. Ruth Rosen’s investigation reconstitutes prostitutes as agents, who made “choices” to pursue sex work as a means of “economic survival,” and in doing so played a “highly visible role in shaping” urban America. At the same time, however, historians like Alice Kessler-Harris have pointed out that many women also adhered to “personality traits considered feminine,” and internalized gender dictates, as they negotiated their own roles, particularly when they involved activity outside the home, such as work. Those negotiations, particularly for young, independent, urban women “adrift,” Joanne Meyerowitz argues, involved decisions around food, housing, wage labor and casual prostitution and resulted, particularly in cities, around the construction of communities or “subcultures” that reflected their needs and interest and shifted their dependencies, away from men to each other. Casual prostitution practiced in this context—and manifest alternatively as dating—signaled an extension of women’s control of their work and their bodies. Meanwhile, Timothy Gilfoyle’s study of the policing of urban prostitution has sustained these earlier insights and presented prostitution as a flashpoint for urban reform. Reassertion of paternal control, on behalf of the state, over women’s sexuality sought to bring women’s dependencies in line with domestic duty and classical liberalism, the overarching economic arrangement of the period. However prostitution, Amy Dru Stanley has argued, not only threatened to undermine women’s dependence on men, but also obviated the fundamental distinctions between free and unfree labor—as prostitution “complied with the spirit of the market,” but traded in an unrecognized commodity. In the logic of the market was an illegitimate employment that left the sex worker standing outside “legitimate contracts of labor.” In short, prostitution, and the agency it proffered was delegitimized by the logic of the market and demands for urban stability. Consequently, sex work might be understood to intersect many of the things that made women secondary citizens of the workspace, the city and the home. See Ruth Rosen, *The Lost Sisterhood*, xiv; Kessler-Harris “Independence and Virtue the lives of wage-Earning Women, 1870-1930,” *Gendering Labor History* (Urbana: University of Illinois Press, 2007), 119, 127; Joanne Meyerowitz, *Women Adrift*, 219-220, 258; Timothy Gilfoyle, *City of Eros*, 306, 380; Amy Dru Stanley, *From Bondage to Contract*, 218, 243.

This chapter traces the relationship between wage and sex working women. As the elements of the free labor order defined good women as domestic, maternal and dependent beings and solidified that status through their economic relationships, sex work came under heavy attack for diverting women away from these qualities and practices. However, it would not follow that the eradication of prostitution made all women into good mothers and housewives. Economic relationships shaped the thinking of reformers and the conditions of working women. While scholars have linked economic thinking and the plight of sex workers—namely, by examining ways anti-trust and anti-monopoly discourses shaped the perspective of anti-vice reformers who read “white slavery” into a larger battle against corporate trusts—this chapter traces the construction of a second-class status for working women.\(^\text{19}\) I argue that through tenacity and daily struggle, independent and outlying women forced a reconfiguration of the social, economic and legal tenets of the free labor order. As the Chicago Municipal Court distinguished between sex and wage working women and celebrated working women as potential wives and mothers, it found itself—as it had with tramps—unable to distinguish economic relationships to wage work and upheld the diminished, second-class status of working women, preserving a critical impediment to their independence.

\(^{19}\) Mara Keire has argued that vice reformers often couched their criticisms in anti-trust and monopoly discourses, which gave Progressive Reformers the language and the tools to tackle what they understood as the problems of vice. Consequentially, the problems of vice and capitalism were related. Mara Keire, “The Vice Trust: A Reinterpretation Of The White Slavery Scare In The United States, 1907-1917,” *Journal of Social History* 35.1 (2001) 5-41.
“Tempted and Betrayed”

In late nineteenth century Chicago, women increasingly took industrial work, spurring a five-fold increase in the number of women wage earners. In Chicago, numbers tell part of this story, as census materials suggest that the number of native-born women migrating to Chicago “outnumbered young men” in the half-century after 1880 and that women’s participation in wage labor increased from 2.6 million to 10.8 million, three times the rate of increase for working women in the “nation as a whole.” Chicago was growing and women’s work was an important reason for that growth. Addressing the growing numbers of working women, Federal Labor Commissioner C.D. Wright publicly rejected the disparaging of working women, announcing in the late 1880s, “the working women of this country are as honest and as virtuous as any other class of our citizens,” and “entitled to the respect of all honest-minded people.” Sensitive to the status of working women, Wright added, it “should not be possible to classify her as the forgotten woman.”

But many were forgotten. When her father’s health took a turn for the worse in the winter of 1887, thirteen-year-old Julia Burnhardt filled in for him at the policy shop where he worked. Initially, Julia’s employment at 125 Clark Street was irregular, until Frank Mumford, a married man in his forties, offered to make it steady, at $3.50 a week: “The family was poor, her father

20 Women’s Christian Association, After Twenty-Five Years: 1868-1893. (Cleveland, Ohio. Western Reserve Historical Society, 1893). Quoted in Daphne Spain, How Women Saved the City (Minneapolis: University of Minnesota Press, 2002), 156.

21 This growth in Chicago was measured between 1870 and 1890. Pierce, A History of Chicago, 237. Some popular historical treatments argue—convincingly—that at the turn of the twentieth century women traveled to Chicago to enter sex work as well. See Karen Abbott, Sin in the Second City: Madams, Ministers, Playboys, and the Battle for America’s Soul (New York: Random House, 2008).


was sick; the ‘generous’ offer was accepted.” Mumford also liked to treat Julia, by paying her entrance to dime museums, an entertainment she could not otherwise afford. Only a short time later, Officer Schweig of the Chicago Police Department watched the two enter a “disreputable resort” together, noted the age difference and decided to follow up. Both were arrested immediately. The sexual relationship that had developed between Mumford and Burnhardt elicited popular outrage in the coming weeks.

At his first hearing in 1887, Mumford rose to request a change of venue. But, before he could speak, he “received a terrific backhand blow to the mouth, which stretched him almost senseless on the floor.” Julia’s father returned to his seat, sobbing, “[t]his miserable man has ruined my child.” Current law was less equipped for this type of a case. Mumford’s crime preceded the passage of a law that raised the age consent from ten to fourteen; it was awaiting the Governor’s signature. Julia was thirteen. Abduction presented another possible course of prosecution, as it involved anyone who “entices, or takes away an unmarried female of a chaste life” either for the “purposes of prostitution or concubinage.” But, Julia testified in Court that she went along willingly. Disappointed, Judge Collins concluded “there is no statute in the state of Illinois to punish a crime of this class.”

Lyda Stinger was four years older than Julia Bernhardt and her story came to light just after her body was retrieved from Lake Michigan, at the foot of 22nd Street. In June, 1887, Lyda

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25 The conditions for statutory rape were narrow, including “Every male person of the age 14 years and upward, who shall have carnal knowledge of any female child under the age of 10 years, either with or without her consent.” “No Law to Punish Him. Frank Mumford, the Despoiler of Little Julia Bernhardt, a Free Man” *Inter Ocean*, 26 November 1887, 5; “A Broken Hearted Father.” *New York Times*, 26 April 1887, 2; “Save the Girls. Who Will Watch the Trial of Mumford, the Betrayer of Little Julia Bernhardt,” *Inter Ocean*, 30 April 1887, 13.
was an orphan “with no mother to advise, no father or brother to watch over her and protect her:” she was “dependent for existence upon her own exertions and so obtained employment as a domestic.” When she developed a relationship with Louis Michael, “a young man working for the Seipp Brewing Company,” they were engaged to marry. In the parlance of the day, Lyda “fell,” and “a few months [later] the consequences of their mutual sin became apparent.” Meanwhile, Louis fled “to his home in Canada, leaving the girl to bear her shame alone.” Lyda quit her job and moved in with a friend temporarily, but “seeing nothing but disgrace and darkness ahead,” she crept down to the lake. “The suicide was but 17 years old.”

Driven to wage labor by necessity, both Julia and Lyda worked outside the home. Without protections and controls, the free labor order narrative explained, they were exposed and vulnerable to the predations of men. Chicago’s dailies repackaged their lives as cautionary tales; their eventual demise was the result of earlier and far more severe “falls.” But, the two stories also reflect another trend, the desire of judges, in Julia’s case Judge Collins, to institute protections for women and girls and then argue that law and judges—and their “intricate standards of proper domestic conduct”—should take up the role of protector, or at least provide a legal language for domestic relations. No longer exclusively the job of husbands and fathers, exposed virtue invited law—and the municipal enforcements of the free labor order—into the lives of women and their work, most commonly in domestic, clerical and needle work. To the thinking of contemporary reformers and civic authorities, these women’s failure to live dependently and subordinated to the free labor order premised their decline as well as the intrusion of reforming bodies.

26 “Save the Girls,” Inter Ocean, 5 July 1887, 7.

27 Michael Grossberg, Governing the Hearth, 302.
Industrial Working Women

In his 1889 survey Carroll D. Wright identified working women as predominantly young, single, native born and poorly paid. Poverty wages and poor living conditions, Wright explained, characterized labor in the “Big Cities.” Two decades later, in 1909, the Chicago School’s Edith Abbott studied women workers for a different reason: to neutralize the idea that “the presence of women in industrial life is a new phenomena and one to be viewed with alarm.” Illustrating examples of women’s employment in the colonial era mills, boot, shoe and cigar making, printing and clothing industries, Abbott argued that far from being a new development, women have “been from the beginning of our history an important factor in American industry” as secondary workers.

Abbott identified “lower standards of life, expectations of marriage, and her consequent shorter working life, [along with] the lack of organization among women” as contributing to women’s diminished status at work. These reasons, according to Abbott, helped explain why women’s work was not “unequal pay for equal work, but unequal pay for different and probably inferior work.” The free labor order drew on these patterns in establishing women’s domestic

28 According to Wright, of the 17,000 working women he surveyed just over 14,000 of them were native born and over 15,000 of them were single. Their ages ranged, with an average of twenty-two years and seven months. But, the greatest concentrations were eighteen years old. He also found that, in line with broad assumption that women only worked for short period before marriage, the young women he surveyed had held their jobs for an average of four years and nine months. The workers were also “particularly girls.” In Chicago, where “the sanitary condition of houses and streets is bad,” the “rents are high, the market was “inconvenient and the cost of living greater than in any other western city.” Despite these challenges, he found that young women working in Chicago earned $5.74 a week, while the average earned by working women in the twenty-two cities studied was fifty cents less. The wages of young working women were, in short, barely adequate. See “Our Working Women: Annual Report of C. D. Wright, Commissioner of the Department of Labor,” The Daily Inter Ocean, February 1, 1889, 5.


obligations in the late nineteenth century amid explosive growth in their participation in the labor force.

Fining schemes—common to sex and waged work—represented one effort to undermine the relationship between work and independence. “In order to ensure prompt attendance,” Wright disparaged in the late 1880s, employers have “adopted an oppressive system of fines.”31 Fining targeted clerical errors, such as those committed by one clerk, who in the early 1890s was fined thirty-five cents in one week—more than ten percent of her salary—fifteen cents of which was for a “mistake in a check.”32 Twenty years later, fining remained common, as female clerks in department stores were charged ten cents “an error.”33 In addition to fining, women were usually relegated to fields of employment that were marked by low pay, manual labor and instability: clerical work, domestic service and the needle trades.34 In each case, wage work jeopardized women’s virtue, health and morality; their employment was used to entrench their dependency at a moment when that dependency and the terms of the free labor order were contested.

Chicago department stores became a major employer of young women by the early twentieth century, and subsequently a focal point for investigations into wages and working conditions. As clerks, stenographers, bookkeepers and cashiers, they were also singled out as


33 Chicago Vice Commission, The Social Evil in Chicago, 206.

34 Women’s employment as clerks, needle workers and domestic servants shifted dramatically over the next several years, however. According to Meyerowitz, participation in needle trade work declined significantly between 1880 and 1910, from 48 percent to 20 percent, a reflecting increased urbanization and women’s movement to the city. Meanwhile, in the same period, more women entered service and clerical work, which increased from 19 percent to 28 percent and 4 percent to 14 percent, respectively. The shifts represented dramatic changes in business and industry in Chicago, and new employment opportunities available to women. Joanne Meyerowitz, Women Adrift: Independent Wage earners in Chicago, 1880-1930 (Chicago: University of Chicago Press, 1988), 29-32.
“responsible for a very large number of cases of delinquency among girls.”\textsuperscript{35} The accusation echoed William Stead’s observation several years earlier, that women’s wages in department stores appeared “fixed at a rate which assumed that they would be supplemented by the allowance of a “friend.”\textsuperscript{36} The economic marginality of working women, Edward Filene explained, was the result of several factors: “underpay, the strain of work, and, for some, [the] instability of work.”\textsuperscript{37}

The Women’s Auxiliary of the Retail Clerks International Protective Association addressed pay, instability, and delinquency in a 1908 pamphlet. The pamphlet was strategic, asking “Can a half starved, poorly clothed woman clerk give your business the energy—physical and mental—the clearness of thought, the cleverness of work, the care for detail which means trade and income to you?” Calling on the better paternal instincts of employers, the pamphlet cautioned that low pay “opened the doors of shameful possibility to [these] girls?”\textsuperscript{38} It was the owner’s responsibility to control and protect workingwomen, the Association argued, and that included a living wage.

But poor pay and instability marked most occupations available to women and Jane Addams saw something less obvious but equally destructive in department store work. “[w]hile factories shielded girls from the opulence of the modern city,” Addams worried that the


\textsuperscript{36} William Stead, \textit{If Christ Came to Chicago} (1894), 245.


\textsuperscript{38} Women’s Auxiliary of the Retail Clerks International Protective Association, “Are Your Women Clerks Earning A Living Wage?” (The Auxiliary: 1908), 3, 6.
“department stores dangle it in front of them.” She imagined girls surrounded by a bewildering mass of household fabrics, jewelry and household decorations, such as women covet, gathered skillfully from all parts of the world.” Assuming the women were defenseless in the face of glittered fabrics and gilded accessories, Addams endorsed a narrative of vulnerable women encountering “white slavers,” who dangled ornaments and promises, and targeted them with surreptitious invitations to dinner or the theater, at work. In this regard, department store work was both a dangerous thing and a place where dangerous things happened. It threatened their virtue through low pay and created the possibility they might exchange their virtue—and in the process enslave themselves—for jewelry, decorations and fabrics. Despite claims that the “upright, honest [and] faithful,” found “many chances for advancement,” discourses of sexual enslavement and exchange would overshadow department store work.

Domestic service offered few if any opportunities for advancement while it shifted concerns about sexual enslavement to private homes. It was not highly desirable, but it was work. When Miss Newton of Chicago’s Siegel Cooper and Co. Employment Agency informed a room full of unemployed women in December 1893 of a job performing housework in Sterling, Illinois, interest was uncharacteristically high. “The trouble suburbanites used to have in obtaining help was all done away with now,” The Inter Ocean explained. “Women [are] glad to

39 Brian Donovan, White Slave Crusade: Race, Gender and Anti-vice Activism, 1887-1917 (Urbana: University of Illinois Press, 2006), 68.
41 “The Girl Who Comes to the City,” Harpers Bazaar, October 1908: 42 (10) 1005.
42 Characterized by low pay, long hours, isolation and restricted independence, domestic employment was not highly desirable. Meyerowitz, Women Adrift, 28.
go anywhere, no matter how lonesome, just so they got a job.”

Domestic work was difficult and unpleasant. One worker from Peoria, Illinois, recalled several years after Miss. Newton placed desperate women in unpleasant jobs: in domestic service “you are like a machine, wound up in the morning, and you work till all hours of the night. They simply don’t care how many hours you work in domestic service.”

Because domestic service was unskilled, it employed girls as young as twelve, but more commonly between fourteen and seventeen. Also, although wages were low, it typically provided room and board. However, the dangers in domestic service, according to reform-oriented chroniclers of the period, resembled those in other types of work: the girls were “drudges, exposed to temptation, separated from their families, and only too often with no protection substituted for that which their families might have supplied.”

Moreover, because domestic service took place in middle and upper class homes, it was subject to less scrutiny, possibly over concerns about casting shame on the homes of the city’s leading and reforming men and women.

As a result, predatory employers were shielded and young women were left at the mercy of the men and breadwinners imagined to protect them. Social worker Mary Conyngton observed in 1909 after interviewing “fallen” women in prison’s and reformatories that significant numbers “fell” during stints in domestic service, because they are “the type of

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45 Sophonisba Breckenridge, *The Delinquent Child* (1912), 78. These statistics are based on a sample of girls at the Illinois State Training School, between 1904-1909. Breckenridge found that 31 of 77 girls from Chicago worked as Domestics, while 31 and 25 worked in factories and stores, respectively. Meanwhile, 84 of 104 “country girls” worked as domestics.

46 Deutsch, *Women and the City*, 57.
girl most likely to be tempted and least likely to resist.”  Like department stores, private homes were also potential sites of coerced sexual exchange.

The needle trades, where women faced physical if not immediate sexual “ruin,” had a long history of employing women. In the “garment trades,” where women typically outnumbered men by two to one, hours were long, conditions unsanitary and workloads heavy. Production was often characterized by a sweating system—a term denoting the pace of sewing-related work and the cheapness of the goods produced—labor activist Florence Kelly explained, both of which were “attained solely at the cost of the victim,” or worker. The needle trade was a staple of urban, working class and subsistence-level employment throughout the nineteenth century. But, as a longstanding source of urban poverty, it illustrated perhaps better than anything else that women could not become independent through steady work. The needle trade employed roughly one fifth of foreign and native-born workers, and was subject to efforts to reform women to the free labor order.

In 1894, with a thousand dollar grant from Bertha Palmer, the impromptu Emergency Relief Association (ERA) staged safe and virtuous work places for mothers and wives. Applications to participate in these workplaces were carefully screened to ensure positions were


51 By 1910, twenty three percent of foreign-born white workers and eighteen percent of native-born white workers were employed in the needle trades. Meyerowitz Women Adrift, 32.
filled with “worthy women in want” with “the opportunity to earn an honest living.” While it is not clear how the ERA would salvage women it already deemed virtuous, it nevertheless envisioned itself in the best possible terms, as a barrier between “two, three, four and even six persons and starvation.” In short order, the Association looked to expand its charity-as-work scheme and pleaded with the city’s well-heeled matrons that if they “only employ some of these [women] at low wages and have the patience to teach them housework, they would do a grand thing for them.” Otherwise, the ERA hinted, their virtue was in jeopardy and their “fall” imminent.

Discourses of working women tended to highlight their vulnerability to sexual exploitation. Ironically, or circuitously, reformer’s emphasis on virtue—on women’s sexually subordinate status and secondary earning capacity—helped create the conditions necessitating sex work, which reformers were then trying to fight. Efforts to make working class women dependent under the terms of the free labor order introduced a host of complications and acts of resistance as working class women wrestled with municipal reformers and authorities for control of their bodies.

William Stead arrived in Chicago on the eve of the Columbian Exhibition in late 1893. At a public forum in Chicago in mid-November 1893, he announced to an audience of reformers that the “greatest evil” in the city was the “intermittent work, low wages, overwork and long hours of labor.” The city was beginning to experience the economic panic that had seized the rest of the nation, but which the Columbian Exposition had kept at bay. After berating police for “raiding houses of ill-fame,” he turned to his principal theme—Christian hypocrisy—to announce that he would “rather take his chances on the day of judgment with” sex workers and

52 “Saved by the Needle,” Chicago Tribune, 4 January 1894, 13.
vagrants “than with many of the men and women to be found in the churches and chapels of Chicago.”

Stead spent the next several months visiting with tramps and prostitutes in “those places.” Collecting the stories and struggles of the “submerged tenth,” he published his insights in a lengthy Christian parable entitled *If Christ Came to Chicago*. Stead’s tiring study rejected hierarchies of reforming and marginal Americans, but did little to resolve the struggles confronting what the Chicago Vice Commissions termed—two decades later—the “vanishing material of society.”

For their part, casual sex workers—whose status inspired reformers of clerks, domestics and needle workers—left few records. Compounding this invisibility, they frequently shifted between the statuses reformers laid out for them: worker, mother or wife, and sex worker. The stories of casual sex workers do violence to these distinctions. Poverty was a motivator to casual sex work, which presented an option for women who in many cases could not afford the luxuries of virtue. The few surviving records outline ways in which young women approached their decision to enter casual sex work.

Gerty was eighteen years old in 1913 and worked in a department store at six dollars a week. She met with two “steady fellows” each week at a “room downtown,” collecting two dollars from each. Meanwhile, Rosie, employed as a dressmaker, visited dance halls “because if she [stayed] at home she would be sewing, and when she worked by gas light her eyes hurt.” At one hall, her story continues, she finally went out with a fellow who offered her $5. When she “saw she should make money so easily, she made up her mind it was better than ruining her eyes

53 “Mr. Stead on Chicago.” What the London Editor Thinks of the Garden City,” *Inter Ocean*, 13 November 1893, 1.

and her health by sewing.” Similarly, “Paulette, twenty two, worked in a department store for $6.00 a week. She told State Senate investigators in 1913 “it was impossible to make a living where I was. And, even while I was in the store I made money on the side. I was in the habit of taking men to hotels, one, two or three times a week when I wasn’t too tired. After I had been working two months I left.” In each case, low wages drove women to the decision to enter sex work.

In other cases, sex work was closer to dating, a reminder that these were also young women looking for relationships. Twenty-one year old Mag from Kentucky, who “could not make enough money waiting on tables,” met up with a “fellow who took her out, bought her some clothes, gave her money and not long afterward they took a room together. He left her and is now tending bar. She then went ‘on the turf for the money.’” Similarly, nineteen-year-old Lizzie, earned five dollars a week in a department store. Unlike Gerty and Rosie, Lizzie was wary of pitfalls; she “will go out for a ‘good time,’ but will not take any money. Her friend gave her a bracelet last week. He is a clerk in the same store.”

Casual sex work might not have been ideal, but for many it supplemented meager “helper” wages and “‘beat the department store game to hell.’” Worker’s stories detail how the economic and social patterns of the free labor order—its ascriptive dependencies and uncompensated duties—steered many young women to the decision to enter sex work. By steering their bodies to sexual exchange outside the home, casual sex workers rejected discourses

55 Most of the material for the Senate Vice Commission was collected in 1913. Illinois General Assembly Senate Vice Committee, Report of the Senate Vice Committee (1916), 932 N8.


57 Chicago Vice Commission, The Social Evil in Chicago, 204.
of white slavery, asserted their status as independent, outlying women and defined their challenge to the terms of the free labor order.

**Defining the Social Evil**

Prostitution did not strike everyone as a social evil. Without patrons the trade would not exist, and for women walking the streets or working in houses—along with managers, maids, servants, waiters, musicians, door people and others invested in sex work for an income—the sex trade was a job. Upon returning to towns and cities after seasonal employment, hoboes “often spent their money on prostitutes, gambling and excessive drinking.”

Sex workers were reportedly abundant in Hobohemia and provided an opportunity to enjoy “female company without giving up freedom.” No matter how mobile or independent a man imagined himself, one tramp explained to J. J. McCook in the early 1890s, “a man can’t get along without that—it’s God’s arrangement.”

For the women of the road—and there were some—sexual exchange conflated the sex worker and tramp statuses, creating “the only form that the female presence assume[d].” Prostitution “was not vice or perverse morality,” “Boxcar Bertha” Thompson explained, but an “expressed use of one’s body as capital.” In this way, it was no different from the work most men performed; in both cases workers acting independently temporarily traded their bodies for money.

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59 Depastino, *Citizen Hobo*, 84.

60 Statement made by a tramp in J. J. McCook’s Tramp Census in 1893. Quoted in Todd Depastino, *Citizen Hobo*, 84.


Not everyone agreed. According to labor activist Elizabeth Flynn Gurley, sex work was not a statement of will or affirmations of choice. Instead, it was an offshoot of industrial “wage slavery.” Emma Goldman, who argued “the economic and social inferiority of women [was solely] responsible for prostitution,” shared this sentiment. The eradication of prostitution, she added, would only come about with “the abolition of industrial slavery.” While for Gurley and Goldman sex work marked yet another reason for revolution; it testified to iniquitous working conditions and women’s reduced status. But as critics themselves, Goldman and Gurley were not going to change women’s status. More conventional, middle class women had a better shot, and they became increasingly less willing to endorse women’s dependent and diminished status, if that dependency supported sex work.

Before the rise of professional reform organizations, the plight of sex workers was often framed by religious organizations. The Sisters of the Good Sheppard, or “Magdalen Asylum,” charged itself with saving the souls of “destitute women” in Chicago between 1859 and 1911. But the organization “seldom ventured into the broader causes of social problems,” and it left issues of causation to a new class of social scientists. From the last decade of the nineteenth century, reformers such as Francis Willard, Clifford Roe, and Jane Addams began to discuss sex work as an allegory of urban “evil,” and testament to individual “ruin,” and to connect work to virtue, domesticity and dependency in ways that upheld the tenets of the free labor order.

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64 Ever critical, Goldman also ridiculed crusades against vice in general—“it is significant that when ever the public mind is to be diverted from a great social wrong, a crusade is inaugurated against indecency, gambling, saloons.” See Emma Goldman, “The Traffic in Women” in *Anarchism and Other Essays*, 179, 177, 194.


The Women’s Christian Temperance Union’s (WCTU) response to prostitution was not initially reflexive. In the early 1890s, a small group of Chicago police escorted Union members, who—“convinced a trip to the levee would be a practical aid to their purpose and work”—encountered “‘the other half of the world,’” and then shuddered. Collecting stories “to enlighten future audiences,” they discovered that “nearly all the inmates had come to Chicago seeking work.” But, because it was fixated on temperance, the organization shied away from a broader engagement with sex workers, explaining after the Levee tour “the union cannot cover too wide a field of action.”67 Toward the end of a decade that saw a dramatic increase in women’s participation in waged work, however, sex work began to matter in ways it had not previously. At the 1897 World WCTU Biennial meeting in Toronto, Francis Willard announced, “[t]he foundation and the keystone in the arch of heathenism is the sacrifice of women’s purity.”68

By the early twentieth century, the WCTU was targeting winerooms in Chicago, explicitly because they were thought to foster sexual exchange, and called upon every “resort keeper and inmate” in the Levee district “to quit the evil life.”69 They viewed sex work as something that undermined women’s moral superiority, and by extension the family unit.70 In subsequent “[s]ocial purity” initiatives that outlined “strict sexual and moral standards” and restricted sites of sexual exchange to the home, the WCTU had brought “the moral and Christian influence of

67 “Go Through Slums.” Chicago Tribune, 23 October 1893, 1.
68 “Purity for Motto,” Chicago Tribune, 24 October 1897, 12.
69 “Place for Nice a Near-by ward, Chicago Tribune, 19 October 1903, 3; “Fight Levee Vice with Hymn Books,” Chicago Tribune, June 14, 1907. 5
70 Willard typically viewed independence and domesticity as complementary, and her demands for women’s independence led her to challenge gendered inequities in law and economics. “The femme covert” Willard asserted, “is not a character appropriate to our peaceful homelike communities.” It was her desire to make marriage “an affair of the heart and not of the purse.” Frances Willard, A White Life For Two (Chicago. 1890), 6, 11.
middle and upper class women” to bear on working class homes.\textsuperscript{71} But, where temperance campaigners saw sex workers as misguided, high profile xenophobes envisioned a concerted assault on virtue.

Clifford Roe linked the “white slavery” to the “moral failings of immigrants,” and advocated they be shut out at the nation’s borders.\textsuperscript{72} Roe’s rush to border enforcement sustained another important principal, however: women are dependent and their virtue needs to be protected, this case by federal authority. Roe’s enthusiastic chauvinism spurred Jane Addams, who rejected his view of immigrants, but took seriously the protection of working girls, arguing that if more could not be done to protect them, they needed to be made independent. By working, women were forcing a modification of the free labor order.

Roe’s White Slave was the subject of Jane Addams’ book \textit{A New Conscience}, which attempted to generalize awareness of commercialized vice as a social “evil.” The working girl, Adams reasoned, “is exposed to dangers at the very moment when she is least able to defend herself.”\textsuperscript{73} Arguing that poverty and dependency were a dangerous combination, Adams related the story of young, native-born factory workers.

When the shoes became too worn to endure a third soling and she possessed only ninety cents toward a new pair, she gave up her struggle; to use her one contemptuous phrase, she ‘sold out for a new pair of shoes.’\textsuperscript{74}

\textsuperscript{71} Jean Matthews, \textit{The Rise of the New Woman}, 20; Donovan, \textit{White Slave Crusades}, 45; Donovan, \textit{White Slave Crusades}, 41.

\textsuperscript{72} Brian Donovan, \textit{White Slave Crusades}, 57; In one of his many treatises on white slavery, Roe called for the creation of a Federal Bureau of Immigration in “great distributive centers,” such as Chicago, to stop the “steady stream,” of international pandering operations. Cautioning that immigrant panders were innately devious, he instructed immigration officials to beware their “various simple subterfuges.” See Roe, Clifford Griffith. \textit{The Great War on White Slavery, or, Fighting for the Protection of Our Girls : truthful and chaste account of the hideous trade of buying and ...}, c1911, 391, 98, 211.

\textsuperscript{73} Jane Addams, \textit{A New Conscience and an Ancient Evil}, 28

\textsuperscript{74} Jane Addams, \textit{A New Conscience and an Ancient Evil}, 76.
Economic marginality, Addams explained, not only undermined the domestic aspirations of young women, it also left them unprotected. Long hours and low pay “cruelly and unjustifiably postpone[d] marriage,” and reinforced among many women “the conviction that she is rapidly losing health and charm.” It was this sense of helplessness, Addams explained, that helped produce “that hideous choice between starvation and vice which is perhaps the crowning disgrace of our civilization.” Adams’ analysis associated the free labor order with the “weakness and degradation” of outlying women, and added an important voice to the argument that the tenets of the free labor order might be dangerous to growing numbers of working women.

It also introduced another way of thinking about unprotected and uncontrolled women. While critics ranging from Emma Goldman to Francis Willard ascribed the genesis of the outlying sex worker to forces ranging from “industrial slavery” to a collective failure to achieve “the supreme result of Christianity,” they could agree that inequality and the things that produced inequality—like the double standard—were responsible. However, as sex work appeared to undermine the roles of mothers and wives, as well as the father and husbands who visited sex workers on the sly, a premium was placed on a single standard that might be used to restrict

75 Jane Addams, A New Conscience and an Ancient Evil, 63, 77
76 Jane Addams, A New Conscience and an Ancient Evil, 59, 49.
77 Jane Addams, A New Conscience and an Ancient Evil, 93.
78 Jean Matthews, The Rise of the New Woman: The Women’s Movement in America, 1875-1920 (Chicago: Ivan R. Dee, 2003), 20. The double standard annoyed women across the political spectrum. Emma Goldman writes, “Society considers the sex experience of a man as attributes of his general development, while similar experiences in the life of a women are looked upon as a terrible calamity.” Jane Adams viewed it in terms of policy. “Every movement therefore which tends to increase women’ share of civic responsibility undoubtedly forecasts the time when a social control will be extended over men, similar to the historic one so long established over women.” Jane Addams, A New Conscience and an Ancient Evil, 212; Emma Goldman, “The Traffic in Women” in Anarchism and other Essays, 185, 194; Frances Willard, A White Life For Two. Chicago. 1890, 11.
roaming men.\textsuperscript{79} As sex work clashed with the tenets of the free labor order, alarmed civic authorities organized a major investigative commission into vice in Chicago, which would significantly alter the meaning of the free labor order and its development in state and federal law.

**The Constitutionality of Working Mothers**

Federal and state courts vacillated on the fullness of women’s right to work, and typically made decisions that presumed incompatibility between women’s work inside and outside the home. When Myra Bradwell asserted her right to work as an attorney in Illinois, she was rebuffed because she was a woman. Her case ultimately made it to the United States Supreme Court, where she argued that her right to work was a privilege and immunity of citizenship, protected by the Fourteenth Amendment. In rejecting this claim, the Court announced in *Bradwell v. Illinois* an outstanding interest in women attending to their “respective sphere,” where they could perform their duties as mothers and wives.\textsuperscript{80} Twenty years later, however, in 1895, the Illinois Supreme Court rejected an 1893 hours law, which had been created “under the leadership of Hull House” to improve the working conditions of tenement garment workers by restricting women’s daily work hours to eight, and weekly work hours to forty-eight. In *Ritchie v. People*—a case dealing with unskilled workers rather than professional women—the Court found “no reasonable ground for fixing upon eight hours” and no “injury to her physique”


\textsuperscript{80} *Bradwell v. Illinois*, 83 U.S. 130 (1873).
derived from such work. The hour’s law, the Court held, was tantamount to a violation of the fundamental right of women to contract employment, which in this case—and in the context of working-class women—the state’s high Court understood as more important than the duties of wives and mothers.

Women’s status as workers and their liberty of contract was clarified in 1908, and bridged *Bradwell* and *Ritchie*. *Muller v. Oregon* ultimately upheld the State of Oregon’s use of its police power to restrict women to ten-hour workdays. As in *Bradwell*, the Court upheld women’s domestic responsibilities and announced in *Muller* a state interest in “healthy mothers,” determining that "woman's physical structure and the performance of maternal functions placed her at a disadvantage in the struggle for subsistence.” At the same time, however, it recognized, as the Illinois Supreme Court did in *Ritchie*, a limited right to contract employment and participate in wage labor. In using law to extend middle class domestic expectations to the mothers and wives of working class households, *Muller* reflected ongoing tensions over women’s dependent status in the free labor order. But, if dependency compromised working women, it protected others. Angela Napolitano and Mrs. Ludiscopo, for example, were guarding their dependent status when they shot spouses who failed to support them, in separate occasions in 1911, the same year the Chicago Municipal Court opened a Domestic Relations branch.

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82 Legal acclamations of an individual’s fundamental property interest in their labor—liberty of contract—articulated in the 14th Amendment, were not initially gendered. However, one early manifestation of the concept was articulated in a case involving butchers in New Orleans, who were presumably male. See Justice Field’s decent in *Slaughter-House Cases* 83 U.S. 36 (1873).


84 “Shoots Husband Who Won’t Work,” *Chicago Tribune*, 20 July 1911, 5. Although Napolitano was sentenced to die in Sault St. Marie, Ontario, her case and “her brutal” husband created outrage among Chicago’s society women. “Baby Pea to halt Hanging Judge, *Chicago Tribune*, 7 July 1911, 4.
The Court’s retreat from a fundamental right to contract, established only a couple of years earlier in *Lochner v. New York*, reflected a broader consensus in the social scientific community that was captured in the Brandeis Brief; and authoritative in the *Muller* decision. The brief, compiled by Louis Brandeis and his sister-in-law Josephine Goldmark, was an extra-legal collection of statistical, medical and sociological material arguing that long work hours were detrimental to women’s health. But, concerns about women’s morality also figured into this analysis, namely the “degeneracy” and possible “ruin” wage work produced in women.  

This strand of thinking was potent and persisted in labor law for decades, through *West Coast Hotel v. Parrish* in the late 1930s, which saw the Court severely modify and restrict liberty of contract and suggest minimum wages might be a good thing for men and women, while upholding the state’s interest in the morals of working women and minors.  

By highlighting the relationship between low pay and immorality, the Supreme Court codified the primary correlate of the Chicago and Illinois Senate vice commissions nearly a generation after those studies were undertaken. And by acknowledging a circumscribed right to employment, they provided some of the legal thinking for the nation’s first urban Morals Court, which opened in Chicago in 1913. The commissions themselves developed in response to evolving concerns about sex work and whether or not the problems associated with sex work could be solved by its containment in vice districts.  

**Statutory Constructions of Vice**  

Sex work was never legal in Chicago. But, in the last quarter of the nineteenth century it was not entirely illegal either; even though public solicitation upset some people, its prosecution  


86 *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).
produced few “righteous verdicts.” In early 1878 the Tribune condemned deplorable conditions on downtown’s State Street: “It was hoped the greatest thoroughfare in the city was to be freed from the domination of the prostitute, the thug and the ‘masher,’ and given over to the use of law abiding citizens.” In addition to constructions of “law abiding citizens” and law-breaking prostitutes, major dailies described in provocative detail the “painted prostitutes of every grade, from the whitened sepulcures (sic) who survived the great fire, to the 15 year old strumpet newly started upon the town.” Not surprisingly, Mayor Harrison’s “halfway” reform measures drew criticism, and conspicuous solicitation drew most criticism. “Once upon a time,” the Tribune waxed, “there was police regulation in Chicago… that demanded the blinds of such questionable houses should be kept closed.” “This apparently does not apply to the furnished rooms of State Street.” “Decent people have rights,” the daily declared, which “prostitutes ought to be compelled to respect.” Discussing prostitutes as distinct from “decent people,” civic reformers resorted to a number of schemes to regulate sex work.

In 1879, Mayor Carter Harrison proposed licensing houses of prostitution, if for no other reason, than it would allow him to “reach them through police.” But, the bid had been made before. A “system of licenses was proposed in the early 1870s” as a possible way of “obtaining what moral suasion and public disapproval seemed unable to prevent.” However, reformers, led by the Ladies’ Social Evil Association, “objected vigorously,” and the licensing scheme died in the state legislature. As a result, an “unofficial policy” emerged whereby vice was contained.

87 “Justice Triumphs at Last.” The Daily Inter Ocean, 17 September 1890, 9.
88 “State Street.” Chicago Tribune, 2 July 1879, 6.
89 “Mayor Harrison’s Views: He Believes in Licensing Houses of Prostitution.” Inter Ocean, 7 July 1879, 3.
When Mayor Harrison renewed his scheme in the early 1880s, the city’s dailies charged his “sympathy for the fallen” was “misplaced.” In one sense, however, the formal licensing of prostitution was a fait accompli, as businesses housing sex workers annually contributed fifty-two dollars “to the city treasury.” Although sex work remained a contained public activity in the late nineteenth century, local and municipal authorities explored new laws to manage and restrict the sex worker. Their efforts did not go uncontested.

Laura Raymond appealed her prostitution conviction to the Illinois State Court of Appeals in 1881. She had been found guilty of “patronizing a house of ill-fame by being an inmate” in Alexander County, located in the southern tip of the state, and fined fifty dollars and costs. In its decision, the Appellate Court ruminated on the meaning of “patron” and decided that the “patrons of a house are not those who are occupied in a house, in and about the business of a house.” The question was not whether Laura was a prostitute—she lived in a house of prostitution—it was whether laws targeting prostitution also targeted prostitutes. According to the Illinois Court of Appeal in 1881 they did not.

Ten years after Laura Raymond successfully argued that prostitution laws did not reach sex workers and overturned her conviction, “the Notorious Molly Monroe Receive[d] Her Just Deserts.” Charged with keeping Mary Hamlin, a girl under eighteen in her “dive on Fourth Avenue,” Monroe was convicted in Circuit Court and handed eighteen months in the

91 By the early 1880s, the criticism of Harrison’s segregated vice was focused on the social implications of sex work, and asked rhetorically whether those who have “wreaked their own lives [should] have every advantage for wreaking others?” See “The Gate to Hades,” The Daily Inter Ocean, 4 February 1882, 9.


93 In order to back up their strict construction of statutory intend, the Court also turned to legislative intent, announcing that if lawmakers wanted to include the women with the keepers and patrons “apt language to express such an intent would have been used.” Laura Raymond v. The People. 9 Ill. App. 344, 1881 WL 10866.
penitentiary. A recidivist, previously charged with “the same crime or even more heinous ones,” Monroe’s case fit precisely the language of the statute, targeting those who “shall suffer or permit any unmarried female under the age of 18 to live, board, or room in such houses.” Again, the conviction in the case was not explicitly about prostitution, but about keeping a girl under eighteen as an inmate in a house of prostitution. Despite the prosecuting attorney’s concluding appeal to “manhood and love of female virtue,” the scope of this prosecution remained narrow.⁹⁴

The “love of female virtue” had its limits in Chicago, and the prosecution of sex work in the city’s Police Courts was somewhat ceremonial: occasionally a number of sex workers were rounded up and prosecuted and handed small fines and then left to go on their way. Police Court Records from the city’s “Lake Street Squad” in the 1870s and 1880s suggest that prostitution laws were enforced through blitzes rather than steady enforcement, reflecting a middling status on the hierarchy of crime. On June 27, 1885, Officer A. S. Ross took credit for three raids on houses of prostitution. The first, at 42 S. Clark Street produced eleven arrests, eleven charges of disorderly conduct, and eleven fines of two dollars. In the second blitz, at 161 La Salle Street, Ross picked up Josie Howard, Jennie Spencer, Hattie Lawrence and Alice Wright. Each was identified as a sex worker, charged with disorderly conduct, and Josie, Jennie and Hattie were fined two dollars, while Alice, who was likely the keeper, was fined ten dollars. The third crackdown unfolded at 104 Randolph Street. In this raid, Emma Adams and Annie Emerson were each charged fifty dollars, each convicted of being a “Keeper of a House of Ill-fame,” while Maggie Paterson, Nellie Smith, Tellie Walker, Mary Gibbons, each listed as “day shift,” were fined two dollars for disorderly conduct. Amid the myriad misdemeanor charges in the rolls of the Lake Street Squad, this crack down on sex work stands out as the only concerted legal raid

⁹⁴ “Justice Triumphs at Last.” The Inter Ocean, 17 September 1890, 9.
on sex work in the first six months of 1885. The Court’s relief in small fines and disorderly charges points up either a weak application of anti-prostitution statutes, an ambivalence in the prosecution of sex work—particularly of the workers themselves—or both.

Vagrancy presented authorities another tool to address “sexual vice peculiar to women.” Like disorderly charges, vagrancy fit a myriad of different circumstances, and it drew its authority, according to turn-of-the-twentieth-century legal theorists, from the police power of the state, ostensibly its obligation to uphold the health, welfare and safety of the community. In his treatise on police power, the University of Chicago’s Ernst Freund tied sex work to the free labor order when he argued that the common prostitute “as a rule answers to the description of a vagrant, for she is without legitimate means of support and is apt to manifest her illegitimate livelihood in an offensive manner. She may therefore be dealt with under the laws of vagrancy, vagabondage and criminal idleness,” he concluded. In short, according to Freund, prostitution and vagrancy shared similar legal and ideological territory, in that both could be dissolute and a threat to their communities.

However, at the same time, Freund worried about the “deprivation of liberty” under vagrancy law, particularly in cases like prostitution, when the “disposition which justifies the original detention would also justify its continuance.” Also like vagrancy, prostitution was about status. The municipal Court would come up with a model to treat sex workers that created

95 The first raid on Clark Street captured six women and five men: Kathie Snoorer, Mary Finneson, Hattie Adams, Anna Miller, Lizzie Lawrence, Jennie Lee, along with Fred Adams, Frank Simms, Harry Miller, Charles Anderson and Walter Pierce. It is not clear from the records what function each person held, as charges and fines are identical. Chicago Police Departments. First Precinct. Arrest Book, January 2, 1875-June 30, 1885. Research Center, Chicago History Museum, Chicago.


a distinction between dissolute recidivists and women who might be restored to domestic duty. Before doing this, however, the Court would follow another trend established by vagrancy law and begin to restrict the public space and use of public space by sex workers.

Statutory restrictions to prostitution emerged slowly and relatively quietly. In the early 1880s, the city’s dailies announced Amendment 1662 to the city’s municipal code “declaring houses of prostitution a nuisance, and calling upon the superintendent of police to abate the same.” This new provision was printed in the *Inter Ocean* between announcements that “wagons not be washed in the street or alley,” and “ash gatherers shall not gather up the ash from the street between the hours of 8 a.m. and 6 p.m.”98 Dirty carts and ash collection are not the context of moral indignation—banning sex work was a low priority. This point was restated by the classification of prostitution as a nuisance, typically a property violation involving uses that annoy neighbors. Nuisance was unlikely to inspire much concern in areas vice was concentrated.

A decade later, a city ordinance organized under the heading “Miscellaneous Practices,” targeted the “maintenance and support” of a “House of ill-fame.” Under the statute, maintenance and support extended to all forms of assistance, including patrons, providing for fines up to ten dollars. Also under the same general heading, keepers could be charged one hundred dollars for every twenty-four hours a house was kept open after it was ordered closed. While the nuisance charge persisted in these newer laws, new criminal sanctions emerged targeting men and women meeting “for the purpose of prostitution.” Eviscerating the Court of Appeal’s interpretation of a

“patron” in 1881, Chicago’s 1890 Criminal Code classified an inmate as “every person found in a house of ill-fame.”

Despite new laws, statutory efforts to restrict prostitution remained relatively impotent through the end of the nineteenth century. The reform efforts of Mayor Roche in the late 1880s failed to eliminate, “the gilded dens of infamy” and the “polluting presence of abandoned women.” Meanwhile, a subsequent 1892 ordinance restricting vice in public places, such as salons, massage parlors and hotels also “proved a failure.” When William Stead visited the city later the next year, he found that the “statutes made and provided for the protection of young girls are in many states a grim and ghastly commentary upon the traditional respect of Americans for their women.” However, as reform momentum and laws restricting prostitution codified in the city’s Revised Code of 1905, they bridged the concerns of the previous century about nuisance and public decorum and sharpened their aim at workers and patrons of the sex industry.

The city’s revised 1905 code expanded “criminal” behavior inside the house to include “fornication” and “lewdness,” and continued to target anyone “found in” a house of ill fame. However, it also extended the nuisance element of the ordinance to public space to include “night walkers,” or persons of “evil fame and report,” for “plying their vocations on the streets, alleyways or public places of the city;” public space was being defined against the use of sex workers. This new critical element of nuisance targeted the social rights of sex workers. The statutory provision for “public nuisance” in “ill-governed or disorderly houses,” included

99 Harry Binmore, Laws and Ordinances Governing the City of Chicago, (Chicago: E.B. Meyers, 1890), Ordinances 2194, 2196, 2197.
102 William Stead, If Christ Came to Chicago (Chicago: Laird and Lee, 1894), 243.
idleness, gaming, drinking, fornicating, “or other misbehavior.”  

By grouping prostitution with vice and public space, the city code of 1905 helped to create new legal space for the active prosecution of women’s sex work where none previously existed. The new law vacated the social rights and community membership of sex workers: they were not only outliers of the free labor order, but also outliers of the city. In this regard, social rights became a tool municipal authorities could use to compel women to stop selling sex, or at least reward those who did. The free labor order powerfully shaped these new statutory restrictions and in the process introduced new impediments to the survival of marginal women in the industrial city.

Initially, the city’s leaders were not entirely in agreement over the need to end sex work. Mayor Harrison announced “sham reforms,” which targeted things like “winerooms,” partitioned compartment in saloons “once legitimately used to sample wine or drink privately” they now offered temporary cover for sexual exchange.” The law was quickly ignored. 

But the days of segregated vice were numbered, and in 1910 the City Council granted authority for a commission to form and “inquire into the conditions existing in the limits of the city with reference to vice of various forms including all practices which are physically and morally debasing and degrading, and which affect the moral and physical welfare of the inhabitants of the city.”

While authority for the Vice Commission was predicated on the police powers of the mayor, its mission as described in “General Ordinance” was nebulous in that it made no mention of specific types of vice. This flexibility was critical, and “by not hardening their legal position

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and definition,” granted investigators the authority to respond to “both individual cases and changed legal and social settings.”

**Investigating With Purpose: Vice Commissions**

The Vice Commission brought together concerns about women performing their maternal and domestic duty, their dependency, their employment and sex work. At the same time, it expressed alarm over the idea that waged and sex work were analogous. But by ending quasi-legal sex work in Chicago—which was what the study did—authorities also restricted the options available to women dependent on inadequate wages for survival. Although women had worked as prostitutes in Chicago for decades, their accelerated participation in the wage labor economy from the 1890s separated the two and ignited the process of recasting sex work as a threat to legitimate wage work, in the process making women’s wage work legitimate and preferable to sex work. By separating sex work from wage work, authorities christened a distinction between legitimate and illegitimate women’s employment. But by keeping women’s status as secondary “helper workers” intact, Domestic Relations, Morals and Criminal Courts ensured that working class women would remain dependent on something in addition to wage work. In short, the premise of the free labor order, which ensured that women were dependent, subordinated working-class women to an obligation that it was impossible for them to meet. Investigations into vice played an important role in shifting the terms of women and work, to reconcile what it would expose as a contradictory premise: self-sufficient women.

In 1910, nearing the end of his term in office, Mayor Fred Busse appointed thirty prominent academics, jurists, businessmen and religious leaders—including Municipal Court

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Chief Justice Harry Olson, Sears President Julius Rosenwald and prominent civic reformer Graham Taylor—to the Chicago Commission on Vice, “the first municipal commission to study the existing condition of a great city respecting vice.”

Although it was tasked with a sweeping investigation into vice, the committee quickly limited the scope of its study to sex work. And, while its resolutions were not binding, the report’s declaration that commercialized vice was a multi-million dollar industry that damaged and enslaved thousands of young women had an enormous impact and appeared designed to align anti-vice with other progressive reform initiatives.

The task of enforcing its conclusion—that segregated vice be abolished—fell to the re-elected Carter Harrison, a longstanding proponent of segregated vice and son of the popular Mayor who advocated licensing thirty years earlier. Released within a year of the Commission’s founding, the report addressed women’s work, domesticity and virtue, with particular attention to the economic forces underwriting sex work.

The Commission’s final report hitched itself ideologically to the remedial possibilities of free labor, but in this case applied them to women, branding “while slavery” more “terrible than any black slavery.” The substance of the report was made up of stories, statistics, interviews and the experiences of wage working women, all of which tended to support this point. This narrative was equally important a couple years later when a State Senate Commission


110 In the context of domesticity, the report berated men “who lost that fine instinct of chivalry and that splendid honor for womanhood,” and reminded them, with a direct shot at the double standard, that “there is only one moral law—it is alike for men and women.” *The Social Evil in Chicago*, 25, 26, 47.
investigated the relationship between waged and sex work. In both of these studies, the
dependence of working women earning low wages emerged as a central problem, while their
independence, through higher wages, presented as a possible solution. Together, the reports
produced at least two principal results: they argued that the conditions of waged employment
compelled women to sex work, and then demonstrated that not all women could be dependent.
The casual sex worker was forcing a modification of the free labor order.

According to the Chicago Vice Commission members, the problem was straightforward;
“They cannot live on the wages paid them.”111 It was a view the Senate report confirmed:
“poverty is the principle cause, direct and indirect, of prostitution.”112 The immediate implication
was that low wages subjected women to dangerous circumstances and threatened the home.
“Any wage inadequate to the proper sustenance of a normal family,” the senate study elaborated,
“will inevitably promote immorality and prostitution.”113 Keenly, the senate investigation tied
wages to “the chastity of our women and the sanctity of our homes,” things the free labor order
was designed to orchestrate, but seemed to be jeopardizing.114 As a result older ideas about
gender and wage work in the study were confused by economic conditions.

As a professional prostitute, where brains, virtue and all good things are nil [a girl earns]
more than four times as much as she is worth as a factor in the industrial and social
economy where brains, intelligence, virtue and womanly charms should be worth a
premium.115

113 Illinois General Assembly, Report of the Senate Vice Committee, 35.
115 Chicago Vice Commission, The Social Evil in Chicago, 204.
Most reformers already acknowledged that prostitution undermined virtue, but by undermining wage labor as well, vice studies connected virtue and wage work, re-asserting a compatibility that was glimpsed in the working mothers described in Muller.

Increasingly, then, sex work and “white slavery” appeared to threaten wage work. However, the economic incentive to sex work was strong: a prostitute could earn twenty-five dollars a week, the Chicago study found, while “the average paid in a department store [was] $6.00 per week.”¹¹⁶ Efforts were made to minimize the economic benefits of sex work through explanations that it was “now a business in which but a small part of the profits are paid to women.” But this was a critique of capitalism, and waged employees seldom fared better. The critical problem, Chicago Vice Commissioners acknowledged, was that a “certain class of women have discovered that luxuries and ease come to them when they sell their bodies, rather than the work of their hands.”¹¹⁷ By opening the door to an interrogation of wage labor, and an interrogation of employers preying on girls “alone in the city and thrown on [their] own resources,” the Commission made the independence of female wage workers a central feature in its plan to end commercialized vice.¹¹⁸

By intersecting low wages and vice, each Commission highlighted a class of casual sex workers. Typically young and living away from home, this class was characterized by the Chicago Commission as “ignorant and untrained” despite a “good appearance on the street.” In the report, however, their casual sexual exchange—“resid[ing] in houses of prostitution, but soliciting on the street two or three time a week”—made them distinct from full time sex

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¹¹⁶ Chicago Vice Commission, The Social Evil in Chicago, 204.
The committee’s struggle to eradicate vice came to hinge on the reconstitution of this marginal, intermediary worker, Joanne Meyerowitz termed “adrift.” The Senate Commission initiated its version of reconstituted womanhood with an interrogation of employers.

When the Illinois Senate Vice Committee convened at the La Salle Hotel in Chicago in early March 1913, thirty-one year old Lieutenant-Governor Barratt O’Hara confronted a pillar of Chicago’s philanthropic and corporate community when he questioned Sears-Roebuck President Julius Rosenwald about the gap between wages paid female employees and their actual living expenses. Through a series of questions, O’Hara established that Sears employed “4,732 women and girls,” and that those under sixteen began at five dollars a week and those over sixteen began at six dollars a week. In total, 1,465 women working at Sears earned less than eight dollars a week, a subsistence-level wage according to the Commission. In his defense, Rosenwald explained that they were paid a helper wage as dependents because it was expected they lived at home.

“Now Mr. Rosenwald,” O’Hara began, “you are a public spirited citizen and a benefactor widely known; may I ask you if you think that low wages have anything to do at all with the immorality of women and girls?” Rosenwald responded, “I would answer that as I said before the [Chicago] vice commission, that I think the question of wages and prostitution has no practical connection. I think there is no connection between the two.” As the questioning expanded, Rosenwald reaffirmed his conviction that employers have “no moral responsibility for

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[a girl’s] down fall.”¹²² When asked later if he planned to use any of the company’s seven million dollar profit in 1911 to increase wages, he responded that his company “endeavor[ed] to pay all our employees what we feel are fair wages and will always continue to do so.”¹²³ However, a legislated wage increase for workers, Rosenwald cautioned, “would cripple any business” and “put Illinois in a position where it could not compete with other states.”¹²⁴ The economy’s survival, Rosenwald explained, was predicated on the dismal wages and dependent status of young women. In fact, women’s dependent status in industry ensured that the economy would continue to work, Rosenwald reasoned, putting himself at odds with an investigation increasingly interested in making women independent.

O’Hara’s suspicions of Rosenwald’s labor practices were confirmed by former Sears employees. Eleanor Benson worked at Sears for four years, beginning in 1910 when she was fourteen. She recalled “drivers” or “office scolders,” who pushed girls to produce when “they didn’t get as much work out of [them].”¹²⁵ Emily Houck, another Sears employee, testified that she “never heard any parent speak to any girl the way that forelady spoke to some of the girls.”¹²⁶ Both Eleanor and Emily recalled that only half of the girls making between $4.50 and $8.00 per week actually lived at home. And, when pressed about the turn some women and girls took to sex work, Emily’s response differed from Rosenwald’s: “I wouldn’t excuse the girl, but I

think her employer would be most to blame.”  

O’Hara’s interview of Benson and Houck spotlighted a failed paternal protection and control that underwrote the free labor order.

But, it also asserted complicity between business and commercialized vice, in a way that reflected poorly on industry. O’Hara’s suggestion that Rosenwald was a failed patriarch who pandered working girls for big corporate profits also brought criticism upon the Commission. Rushing to Rosenwald’s defense after his testimony, Jane Addams questioned the methods and effects of O’Hara’s Commission. She accused O’Hara of “snatching” the eight dollar number “out of the air” without any consideration to variety in worker’s needs.

Through the entire investigation the paramount objective of the committee seemed to be to establish some connection to wages paid to women and girls and immorality. The questions that should have been considered are: (1) How much can a given industry afford to pay its workers? (2) How much is required by a worker to enable her to live decently?

The effect of this method, Addams claimed, was that O’Hara “told ignorant, hard working and often tempted girls, in the name of the state of Illinois, that wages less than $8 excused them from unchastity (sic)!” The strategy, Addams continued, rendered the Commission’s report “useless.”  

But, Addams’ criticism was also curious in light of her charge only a couple years earlier that “certainly employers are growing ashamed to use the worn out, hypocritical pretense of employing only the girl ‘protected by home influences’ [living at home] as a device for reducing wages.”  

Addams’ defense of Rosenwald may have reflected a desire to deflect


128 “Miss Adams Hits Nail on the Head,” Inter Ocean, 1914.

129 Addams, A New Conscience and an Ancient Evil, 91.
criticism implicating her associates or the authority of her class. Nevertheless Addams’ complaint, published in a major city daily, spotlighted the relationship between private business and private reform. Her criticism might also be understood to highlight a need for public agencies in urban reform.

While vice commissioners debated on the recoverability of sex workers, holding out “hope” for those “not attached to a house,” it remained that, for many young women, sex work and wage labor were mutually constitutive. As sex came to encompass, in the words of Alan Hunt, “the ways in which the ills that beset society were perceived,” Courts began to renegotiate the dependencies of workingwomen and to view labor as a viable solution to urban vice, in the process shifting the free labor order to salvage women. The city’s new Morals Court led this effort

Upon the release of the Chicago Vice Commission report, local media demanded the “immediate initiation” of a Morals branch to the Municipal Court. It was one of the report’s principal recommendations. Municipal Court Chief Judge Harry Olsen agreed: “The city should accept the recommendations of the vice commission as the opinion of experts.”

Opened April 5, 1913, on the eleventh floor of City Hall, Olson appointed Judge Jacob Hopkins to preside over its first year. The new Court would have jurisdiction over all criminal and quasi-criminal offences associated with “keeping, maintaining, leasing and patronizing houses of prostitution

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130 Sarah Deutsch argues that in turn of the twentieth century Boston reforming women typically hesitated to question the moral authority of men in their own class, as the status of reforming women was often to linked to that of spouses and prominent associates. Deutsch, Women and the City, 64.


132 Willrich, City of Court, 182; Alan Hunt, Governing Morals, 79.

133 “Vice Key Would Jolt he Nation,” Chicago Tribune, 26 June 1911; “5,000 Souls and $15,000,000 a Year Tribute to Vice,” Chicago Tribune, 6 April 1911. Located in Harry Olsen Disassembled Scrapbooks, Resource Center, Chicago History Museum, Chicago.
and places for the practice of prostitution.\textsuperscript{134} In practice, efforts to uplift the “fallen” in the Morals Court developed along two trajectories. The first organized women by virtue and isolated the sex worker. The second dealt with this isolated group and drew a distinction between the casual and the steady sex worker. In this model, the casual sex worker was redeemable while the steady prostitute was irrecoverable. These distinctions were created and practiced by Courts, reformers and the young women who constituted such important subjects of reform.

**Reforming the Casual and Dissolute**

Like the abolished vice district, the Morals Court extended the principle of segregation to the Courts, providing authorities “a place for the gathering up of unfortunate offenders.” The benefit of a separate branch, Morals Court Judge Harry Fisher would claim, was that “respectable people are not forced to come in contact with this unfortunate class, nor listen to their stories.” If Fisher had his way, the Morals Court would have been moved away from City Hall, and “the congested district of the loop.”\textsuperscript{135} At their most dramatic, these isolationist measures bred contempt for marginal women, which Municipal Court Judge Arnold Heap had internalized by 1920: “Will the public ever wake up to the necessity of isolating this class of

\textsuperscript{134} The Court especially targeted those, “enticing females into or detaining females a in houses of prostitution,” but also police a gamut of moral activity, including those engaged in “other notorious acts of indecency tending to debauch the public morals” such as fornication, adultery, abduction and pandering.” City of Chicago, Municipal Court, *Seventh Annual Report of the Municipal Court of Chicago: December 2, 1912 to November 30, 1913, Inclusive* (Chicago, n.d.), 81.

\textsuperscript{135} City of Chicago, Municipal Court, *Tenth and Eleventh Annual Reports: For the Years December 16, 1915 to December 2, 1917, Inclusive* (Chicago, n.d.), 85, 86. The proposed separation also reflected a desire to isolate sex workers from the business of the city and signaled a new trend toward isolating prostitution and prostitutes. Michael Willrich has argued this isolation of prostitutes mirrored the Levee in another way, as pimps often stopped by the Morals Court “in search of ‘girls’ they had lost track of.” Willrich, *City of Courts*, 187. The Municipal Court was interested in drawing a number of distinctions. Notably, isolationist policies and crude designations of “feeble mindedness,” reflecting a novel psychological approach to crime and further undermined claims made by Chicago’s casual sex workers and concentrated their free labor deviance. Fisher asserted Court often ascribed “feeble mindedness” as the “underlying cause for prostitution in more than half of those cases.” Willrich, *City of Courts*, 90.
unfortunates.” Heap’s request represented one of two principal trajectories in the Court’s response to sex workers: punishment and reform.

The fanatics and crusaders at the Committee of Fifteen had been at work on Heap’s request for years. The Committee was obsessed with prostitution. The Committee of Fifteen approached sex work with child-like complexity and ignored the effects of low wages, unstable work and second-class citizenship, while appealing to the disciplinary instruments of law to punish and imprison marginal women. The group originated initially in the efforts of white slave activist Clifford Roe, then an “energetic, young assistant in the states attorney office.” Initial members of the Committee, including Clifford Barnes, Joseph Rosenwald and packer Harold Swift, secretly furnished Roe with money for “special investigations and prosecutions.” Although the Committee was initially formed to fight pandering, it reorganized itself in 1911, the same year as the Chicago Vice Commission, and began to target prostitution almost exclusively. Through the work of Roe and other reformers, “white slavery” shored up the boundaries of women’s duty in the free labor order.

The committee’s strategy was also simple. It deployed investigators throughout the city to chart vice and evidence accusations in informal reports. Investigators,

Sought leads in Downtown stores, saloons and dancehalls throughout the city. In pairs they walked the streets of the city’s sin districts checking out names, addresses and phone numbers, and carefully recording in police-report fashion each proposition as well as


137 Clifford Barnes recalled that decision a few years later, noting, the committee had never “taken formal action against the practice of prostitution when thoroughly segregated, and certain of its members were still of the opinion that careful regulation was the best method of handling the social evil.” Ultimately, the committee turned against regulated vice completely, “confident the city [would] be morally in a far more wholesome state than was possible with a protected red-light district.” See Clifford W. Barnes, “The Story of the Committee of Fifteen of Chicago,” Journal of Social Hygiene, vol 4, number 2, 1918, 145, 146, 148. Perry Duis, “An Evening with the Committee of Fifteen.” University of Chicago Special Collections; Brian Donovan, White Slave Crusades: race, Gender and Anti-Vice Activism, 1887-1917 (Urbana: University of Illinois Press, 2006), 163N27.
other illegal activity they encountered. Then after a night’s travels, they turned in sealed examples of drinks and swore out affidavits. These were used to contact police and property owners and threaten court injunctions and publicity, unless the disorderly occupants were evicted.”

Despite its numbed approach to the problems of the city, records left by men posing as “Johns” were single minded in their pursuit of the rates and names of sex workers, and provide valuable information on the conditions of sex work in Chicago. With the shuttering of the Levee District, the purchase of sex got more expensive between April 1917 and April 1924, from about two dollars to roughly five dollars per “jazz,” or “visit to the holy land.” Individualized cases suggest this may have also been in part because sex work was getting risky. In November 1920, an Innkeeper quizzed an inspector, “as to being a government man or reformer.” Satisfied, he invited the investigator inside where he paraded women in front of him, inquiring, “do you like? If not, I have some more.” A couple years later, in April 1922, Peggy Holmes, “the keeper of the place,” informed an investigator “she had to be very careful with whom she did business because of being watched by the Committee of Fifteen.” Increased risk of prosecution also brought about innovation, reflected in the use of “call flats,” where sex workers could negotiate price and location over the phone, and plan to meet in hotels or rooming houses. However, in a number of other ways, sex work remained unchanged.

139 Committee of Fifteen Records, April 8, 12, 1918, Special Collections, Regenstein Library, University of Chicago, Chicago.
140 Committee of Fifteen Records, November 1, 1920, Special Collections, Regenstein Library, University of Chicago, Chicago.
141 Committee of Fifteen, April 24, 1922, Special Collections, Regenstein Library, University of Chicago, Chicago.
142 Committee of Fifteen Records, November 10, 11, 15, 1920, Special Collections, Regenstein Library, University of Chicago, Chicago.
Women continued to make good money at sex work. “Bobby Morton” explained to one investigator in April 1918 that she made “$25/night” when “they have tricks coming up at all hours.” Similarly, “Ruth” who investigators ran into at the “Perfecto Bar” that same month, claimed she always made “between $20 and $30 on a Saturday, “but worked until 7am.”

Also, sex workers continued to engage clients at a range of public and private sites, from sidewalks, streets and parks, through the quasi-public grounds of cafes and saloons, and the ostensibly private domains of houses and hotel rooms. Operating at arm’s distance from police, who committee investigators liked to write up for drinking and complicity in vice, the Committee’s crusade remained exclusive and secretive.

The Committee was singled out for special attention in the Morals Court’s First Annual Report for its “sincere spirit of helpfulness and cooperation,” and several years later the Court again commended the Committee’s resolve, which has “filled many lawbreakers with fear and despair.” As a feeder group to the Court, whose active surveillance cast a chill on sex work in Chicago, the Committee highlights the role of extra-legal reform organizations in shaping and

143 Committee of Fifteen, April 8, 20, 1918, Special Collections, Regenstein Library, University of Chicago, Chicago.

144 Investigator’s surveillance often extended beyond prostitutes, to include police caught drinking in uniform. Such was the case with officer #1260, caught “drinking the full contents of a bottle of malt marrow” in April 1918, and a week and a half later, officer #230 who enjoyed “two glasses of whisky over the bar.” Standing at arms length from local officials, vigilante Committee investigators viewed their mandate broadly, and in some cases viewed police as a threat. Such was the case when investigators noted in their report that uniformed officers, working for the keeper at the Fountain Inn in April 1918, “watched us and tried to get close to us.” The independent nature of the Committee of 15 was made apparent a several years later, when police arrested a couple investigators in a raid just before midnight on March 5, 1926. While their detachment from police may have reflected concerns about police corruption, it also underscored the exclusivity of the Committee’s secretive, corrective crusade. See, Committee of Fifteen Records, UCSC April 9, 18, 1918, UCSC; April 13, 1918, March 5, 1926, Special Collections, Regenstein Library, University of Chicago, Chicago.

enforcing a naïve public morality and then supervising enforcement in the Morals Court. In its pursuit of women and moral order, the Committee represented an effort to return women to an abject dependent status in the free labor order. However, despite the Morals Court’s fêting of the Committee’s efforts, its approach clashed with the second principal trajectory of the Morals Court—reform—defined by restoring sex working women to steady wage work.

The Morals Court’s first case was about wage work. It involved a “women of 35, living in Washington Boulevard” and “charged with soliciting,” something she had done for “eighteen years, since the death of her baby daughter.” “‘Did you ever work?’” Judge Hopkins asked the defendant. “‘Yes, at a power machine in [a] factory. They paid me $3.50 a week, and I couldn’t live on it, much less support my parents. Then I worked,” she continued, “in a cigar factory and later tried running a rooming house. But I couldn’t make them go.” As though oblivious to her deposed work history, Hopkins asked, “Will you work if a job is secured for you.” Restoration to steady work shaped the second trajectory of the Morals Court and formed the substance of working women’s modification of the free labor order.

Identified by the Vice Commission as a major catalyst to sex work, wage work now provided the new Morals Court with a solution. Upon completion of his term, and the Court’s first year, Judge Hopkins identified some limitations of the Court, complaining, “the only thing the Court can do in the Morals branch is to fine the person.” And, if unable to pay, “she goes to the house of correction.” Fining and imprisoning was not the type of reform of sex workers that Hopkins had in mind. The search for alternatives gave way to debates about the dependent

146 “‘All Get a Chance in the Morals Court,’” Chicago Tribune, 8 April 1913, 3.

status of women and Judge Hopkins became an advocate of training women in “cooking, sewing, laundry work and other methods of earning a living wage.”\textsuperscript{148} Convinced that fining encouraged the ‘wrong’ type of work, Hopkins brought the legal disciplining of sex workers in line with the disciplining of the tramp. In an environment where wage work was gendered male and epitomized self-sufficiency, Hopkins rubbed the outer limits of the reform model when he glimpsed gender equality through work. The rest of the Court did not, and the fining of prostitutes, as practiced in the Police Courts, would continue in the Morals Court through the 1920s, over repeated objections it “resulted[ed] in stimulating them to greater activity” by re-entrenching women’s dependence on sex work.\textsuperscript{149}

Judge Hopkins was not alone in his attempt to re-negotiate the terms of women’s dependency in the free labor order. In the mid-1910s, Judge Harry M. Fisher also relied on a distinction between steady and casual sex workers when he argued that “casual offenders” who “in other respects [are] law abiding citizens” should be “permitted to leave Court without any record,” while the “professional prostitute” be vigorously prosecuted: “this keeps the streets clean and the business [of sex work] hazardous.” Meanwhile, the steady sex workers—the panderers, keepers and “parasites”—should be “shown no quarter.”\textsuperscript{150} Fisher’s hierarchy of progressive justice related directly to the feasibility of restoring sex workers to wage labor—and mirrored efforts to do similar things with tramps—while it moderated the free labor order and


\textsuperscript{149} City of Chicago Municipal Court, \textit{Nineteenth, Twentieth, Twenty-first and Twenty-Second Annual Reports for the Municipal Court of Chicago for the Years December 1, 1924 to December 2, 1928, Inclusive}, 113; Willrich, \textit{City of Court}, 175.

\textsuperscript{150} City of Chicago Municipal Court, \textit{Tenth and Eleventh Annual Reports of the Municipal Court of Chicago for the Years December 6, 1915 to December 2, 1917}, 87, 92.
sustained a principal tenet of judicial patriarchy, that Courts and judges had a responsibility to protect workers.

Although Fisher considered correlating wage work and prostitution “a vicious slander against the great body of working women,” he also understood that the two were not “entirely disconnected,” and that women were “kept there by the financial advantage the life offered” and the financial disadvantages of steady wage work. It was an advantage, he recognized—just as the Vice Commission had before him—with which wage labor could not compete.努力 Efforts to address this advantage announced new ideas about independent and earning women. Ideas forged by the crisis over commercialized vice, and anxieties over “white slavery” and women’s dependency in the free labor order saw the experiences and struggles of marginal workers shift the terms of the free labor order through local law. At Court, the prosecution of sex work was focused at the top of the sex work hierarchy.

The Morals Court had an immediate impact on sex work in Chicago. The number of pandering cases—a category that first appeared in the records in 1910—was fairly low, dissipating over the 1910s from a high of ninety-two. At the same time, cases involving houses of ill-fame, which the Court classified separately from disorderly houses in its records, exploded from 205 in 1911, two years before the Court opened, to well over 3,000 in 1913 and 1914, and then back to under 1,000 subsequently.努力 It is possible that authorities may have targeted panderers under the auspices of laws punishing keepers because the burden of proof was lower, and because relationships between individual panderers and sex workers were difficult to pin

151 City of Chicago, Municipal Court, Tenth and Eleventh Annual Reports of the Municipal Court of Chicago for the Years December 6, 1915 to December 2, 1917, Inclusive (Chicago, n.d.), 93.

down. When possible, however, it appears that the Morals Court shot for those at the top of the sex work hierarchy, and in this way acknowledged an employer-employee relationship in sex work—or super imposed one—which allowed them to identify the female worker as most vulnerable, and then act in ways that would protect her.

Adam Lewicky’s trial for pandering bolstered this narrative, pitting a cunning predator against an innocent female victim. Lewicky met twenty-year-old waitress Stella O’Connor, while she was dining at a chop suey restaurant on Monroe Street in late May 1911, and offered to buy her dinner. When she refused to accompany him in a taxicab afterwards, he instructed an officer to arrest her for the theft of fifteen dollars. But in a Desplaines Street Municipal Courtroom the next morning, Judge Stewart instead held Lewicky, the plaintiff, and ordered Stella O’Connor to swear out a pandering warrant against him. He then dismissed her case. At some point over the next couple months, 19-year old Anna Turren, who also worked with O’Connor, and Helen Blewski, Lewicky’s “housekeeper,” corroborated O’Connor’s story. Lewicky was subsequently tried and convicted of pandering, but earned a new case “on the ground[s] the information was not properly made out.” As a result of a series of delays the case was not decided until the next summer, when Lewicky was handed a $500 fine and sentenced to nine months in the House of Corrections.153 The Lewicky case, however, conceals more than it explains.

The Morals Court’s operationalization of categories of prostitutes and panderers disciplined a myriad of disparate experiences to bring them in line with recently criminalized sex work. These criminal categories created new ways of understanding women’s relationship to the free labor order, through powerful discourses of vice. This shift was evident in the first year of

the pandering law. When Edith Connors charged her husband William with pandering in August
1910, Judge Hines dismissed the case from the Desplaines Street bench with instruction he meet
his domestic obligation, and “take care of his wife and support her.” William Connors “promised
he would.”\(^{154}\) It was a decision that reinforced Edith’s subordination and her dependency, but in
this case, it also subordinated William to his duties, as outlined by the free labor order.

The next month, Irene Bowering charged Claude Powers with pandering, claiming he put
her “in the family way” and then tried to put her in a house of ill fame. The circumstances of the
case were not entirely different from the tragic experiences of Julia and Lyda in the 1890s, but
the consequences were dramatically different. Powers plead guilty to bastardy in front of Judge
Going in October and he was fined $550. The pandering charge, however, was dropped, “on the
grounds that Irene could not locate the house of ill-fame,” and because as a “poor girl [who]
needed the money toward the support of her bastard child” her claims were suspect.\(^{155}\) The
pandering law ultimately provided Irene leverage to secure Claude’s financial support. In other
cases, women used the law to their advantage more directly. When Edith Scott was arrested for
soliciting on the street in October 1916, she turned on her lover, C. W. Scott (no relation) and
accused him of pandering. She was let go, but he was convicted the next month by Judge Fisher
in the Morals Court and fined $1,000 and sentenced to a year and a half in the house of
correction, a penalty much more severe than those typically received by sex workers.\(^{156}\)

\(^{154}\) People v. William Connors, Committee of Fifteen Records, volume 25, page 85, Special Collections, Regenstein
Library, University of Chicago, Chicago,

\(^{155}\) People v. Claude Powers, Cof15, Volume 25, page 86, Special Collections, Regenstein Library, University of
Chicago, Chicago.

\(^{156}\) People v C. W. Scott, Committee of Fifteen, Volume 26, page 44, Special Collections, Regenstein Library,
University of Chicago, Chicago.
At the same time, these cases and their legal categories of redemption allowed ordinary people new ways to use law to invoke their civil rights. Just as these strategies could provide leverage in a domestic dispute, as it did with Ida Connors and Irene Bowering, it could also assist sex workers looking to distance themselves from their husbands or keepers. When George Wine was accused of confining twenty-one-year-old Sophie Smith to a small room and ordering her to “hustle between River and Chicago Avenues and take her clients to the Hotel Mayer,” he was fined $300 and sentenced to one year in the House of Correction. Smith was taken to the Coulter House, a “private refuge that regularly received young women on referral from the Morals Court.”\(^{157}\)

Similarly, when seventeen-year-old Charlotte Venos moved to Chicago from La Porte, Indiana, after a quick marriage to Theodore Venos, she claimed that he had her “hustle prostitution on the street.” Theodore’s one-year sentence and $300 fine for pandering allowed Charlotte to return to her family home in La Porte.\(^{158}\) In a curious turn, the Court’s interest in stabilizing families and households, combined with its interest in eradicating vice, required it to treat women as potentially independent actors, capable of negotiating their domestic and employment arrangements. However, these exceptions typically stemmed from the failure of men to provide and protect, and not necessarily a new independent status for women.

Women’s dependent status also proved problematic in other ways. The Funds to Parents Act, created in 1911, pledged state money to parents without means. Administered through

\(^{157}\) *People v. George Wine*, Co15, Volume 25, page 294, Special Collections, Regenstein Library, University of Chicago, Chicago. Kate Adams ran the Coulter House and was the namesake of the Illinois State law, passed in June 1915, that made it a misdemeanor to be an “inmate” of a house of ill fame, or to solicit on the streets. Willrich, *City of Court*, 185.

home-based and institutional tracts, the Act was designed to “ensure that families met their legal obligations to provide for their relations.” However, the Act raised concerns about rewarding adult dependency and was restricted in 1913 to exclude non-citizens, the divorced, unmarried and deserted. Not surprisingly, older standards of morality and virtue prefigured allotments of mother’s pensions—they were given help because they were dependent. At the same time, the small amount of money allotted required mothers “continue to work for wages rather than rely [solely] on subsidies.” As a result, high numbers of pensioners were also wage earners. What appear to be a contradiction and check on overspending, however, might also be understood as a new and emerging status of working women that was sanctioned by the state.

The state’s interest in stable family economies was also evident in the Municipal Court’s other branches. When Pearl Bingham hauled her husband John, a 33-year-old advertising man, before the Court of Domestic Relations in early 1920 and charged him with wife and child abandonment, John was convicted and paroled on the condition he pay the Clerk of the Court ten dollars each week for one year for the care of his son, John Bingham, Jr.

But the majority of the Morals Court’s operation remained tied to the punishment or reform of sex workers. Between 1908 and 1912, the five years before the Morals Branch opened, the Municipal Court disposed of between 1,569 and 1,665 night walking cases each year, representing in the words of one historian, an already expansive “state interest in the morality


162 People v. John Bingham, Case #256712, Municipal Court of Chicago Criminal Records, Chicago Municipal Court Archives, Chicago.
and bodies of women.” 163 That interest expanded with the end of segregated vice, and not surprisingly night walking cases shot up in the new Court’s first three years, ranging from 1,846 to 2,254 cases each year. The numbers then fell off significantly. 164 Mary Carter, employed as a maid, Rose Murphy, a housekeeper, and Pearl Lucas, a stenographer, were included in this sweep of casual sex workers when officers Jensen, Boss and Stewart picked each up at a different locations downtown at 12:40am in April 1917. Arnold Prowes, a “barber” whose personal wealth exceeded $17,000, “above indebtedness,” paid the bail of each girl. When the women, all in their twenties, returned to Court a couple weeks later, on May 9, Rose was found not guilty, but both Mary and Pearl were convicted, and fined five dollars plus Court costs, which they “paid in full that day.” Likewise, when Marcie Murphy, a housekeeper, and Ethel Smith, a clerk—each arrested on separate days—were convicted in May 1917, they were assessed similarly low fines. 165 As the dependent in the employment relations, sex workers inspired the city’s judicial patriarchs to protect marginal women, to dispense mild punishment and to implement in law the modifications of the free labor order underwritten by municipal and senate vice commissions. As with hoboes and vagrant men, models of idle and dissolute, or casual and steady sex work, were subordinated to the mechanics of fining and incarceration that transitioned independent women from outliers to “helper” earners in the free labor order.

163 Willrich, City of Courts, 198.


165 People v. Mary Carter, People v. Rose Murphy, People v. Pearl Lucas, People v. Marcie Murphy, People v. Ethel Smith. #187532-187537, Municipal Court of Chicago Criminal Records, Chicago Municipal Court Archives, Chicago.
Conclusion

The criminalization of prostitution in the early twentieth century focused municipal law on the margins of urban life, drawing on the lives and experiences of marginal workers and casual sex workers, and in the process, reconstituted the terms of the free labor order. This shift coincided with a change in thinking about women’s waged employment—forced in large part by the experiences of working women, commissions studying them and Courts managing them—away from a status analogous to prostitution in the late nineteenth century and toward a recognition of the independent working woman in the early twentieth century. In the process, the nature and meaning of their dependent status had been transformed. While the operationalization of new categories of sex and waged work provided some women the opportunity to use the law for redress, these new distinctions also began to classify women’s waged employment as something desirable and stabilizing—an astonishing recognition of their right to work and earn, which in the early twentieth century glimpsed an independent status for working women that threatened to alter the terms of the free labor order.

But as I show in the next chapter, Black women had a different experience. Confined principally to service and laundry work, they earned less than their white counterparts and were overrepresented among the city’s sex workers. One reason for this, Francis Kellor explained on the pages of Charities, was because “Negro women who are led into immoral habits, vice and laziness have in many instances received their initiative from questionable employment agencies.” Work and the free labor order constituted life in the industrial city, particularly as


tens of thousands of southern Blacks migrated north during World War One with an expectation of opportunity and fair treatment. The experiences of these migrating Black men and women workers forced a new and critical intersection of social right and economic opportunity, which further redefined the terms and the meaning of the free labor order in the industrial city.
CHAPTER 7
MIGRANT AND DISSOLUTE: RACIAL OUTLIERS IN INDUSTRIAL CHICAGO

In early 1914, twenty-two year old African American Nannie Ambler and her thirteen-day-old baby were ejected from county hospital penniless. Ambler was spotted by police soliciting roughly a week later and upon her arrest, both the baby, and a disease “which made her a frightful menace to the community,” were discovered. At the Court of Domestic Relations, where she was charged with contributing to the delinquency of her now twenty-day old daughter, she explained to Judge Uhlir that she was too weak to work at washing or housework. Unwilling to send Ambler and her nursing daughter to the Bridewell, or local jail, Uhlir sought out treatment possibilities. Though he was unable to find any place “willing to take the girl and treat her” he insisted something “be done for her,” and he negotiated her “treatment” at the jail, without commitment. Uhlir had just discovered what Ambler knew and what a generation of Black migrants would find out, race indexed difference and exclusion in Chicago.\(^1\) Ambler’s story is devastating, but it also highlights the racialization of dependency beginning in early twentieth century Chicago. Even more than sex-working women and idle and dissolute white men, the diminished social rights of Black workers severely restricted their housing, employment and place in the industrial city.

The emergence of racial segregation in Chicago was striking, in part because in the late nineteenth century the city had a fairly stable Black middle class and in part because it exposed the promise of the free labor order—that steady workers become independent citizens—as an empty promise for Black migrants. In the coming century, however, Chicago’s race relations

would be shaped and reshaped by two singular, but related events: the Great Migration, which placed constitutional freedom in economic terms as it set tens of thousands of southern Blacks afoot, and the 1919 Race Riot, which developed from frustrations with obstacles to economic opportunity, housing and second class citizenship. More importantly, the migration and riot exposed the gap many Black Americans experienced between the expectation that brought them north and the world they encountered after they arrived. For new migrants, and “old settlers” already living in Chicago, daily life by the 1910’s witnessed the emergence of an insidious, *de facto* racism and practice of racial separation. However, against the backdrop of the vicious caste system extant in the south, Black expectations of social and economic rights, of a place in the city and an opportunity to make a living, continued to propel many North as it sustained others in their struggles in the city.

As the Great Migration reconfigured northern race relations, sympathetic municipal authorities opposed white supremacy though symbolic gestures. Chicago Mayor Bill Thompson, for instance, appointed several African Americans to his cabinet, citing his desire to “elevate rather than denigrate” and to address instances where their “right to be among the laborers of this city has been challenged.” However, articulating the terms of social equality was a little more difficult and less common. Writing in 1920, WEB DuBois broached the issue with some caution, asserting social equality was a social right, granting everyone the “moral, mental and physical fitness to associate with one’s fellowman.” Sensitive to difference in public and private space, DuBois acceded that privately the social right was controlled by someone else, and reached only “those who wanted to associate with him.” Publicly, however, he argued it was carried by “anyone who conducts himself gently,” a vague designation that shifted the burden of conduct to

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the benefactor of the right.³ DuBois’ efforts to identify a place for Blacks in the city went well beyond the vision of opportunistic and sympathetic politicians and looked to use a language of social rights to secure a place over the objections of white supremacists and whims of elected officials. Unfortunately, DuBois’ vision cut against the grain of early twentieth century race relations. As racial inferiority and economic marginality were linked, they helped to carve out a dependent status for Black Americans in the free labor order. Consequently, independent Black migrants became outliers and threats to patterns of urban organization. Like tramps and sex workers, Black migrants contested the terms of the free labor order. However, unlike like tramps and sex workers, who engendered discourses of wage slavery and “white slavery,” the Black migrant literally embodied the status of a slave.

Industrial employment appeared to provide Black migrants with the instruments of independence. However, most arrived in Chicago as economic and social outsiders in a world they traveled to join and their experience during the first decade of the migration was defined by struggles to secure a place in the city and its industry. From the perspective of the city, discrimination had caused incalculable damage, as the “failure to give him an opportunity to make an honest livelihood after having induced him to migrate to this section of the country, simply adds to the already far too great number of hoodlums that infest our city.”⁴ This chapter, which builds on recent trends in the scholarship of Black urban life, examines Black worker’s intersection with the free labor order and traces his struggle to become a steady workers.⁵


⁵ Scholarship of Black urban life can be organized into two models of scholarship, a “ghetto model” that developed in response to the urban crisis in the 1960s and a subsequent “labor model,” which was developed to spotlight labor and economic issue and to complicate the ghetto model with narratives of Black agency. This chapter builds on a
Strikebreaking epitomized this struggle to take by force jobs held in exclusive spaces and to reject efforts to orchestrate their dependency in the industrial city.

**Separate But Equal At Work**

In the decade after the Civil War, race relations were remade in federal law. However, as the Postwar Amendments designed to make freedmen into independent citizens were weakened, their social and political rights and their equal claim to space were diminished; on issues of social rights and community membership, the federal judiciary sanctioned restricted rights and deferred to a state authority seldom inspired to moderate the excesses of individual prejudice.\(^6\)

Third model, which might be called a “status model” which combines on the two previous models and identifies legal, economic and social status as among the most important facets of Black urban life. A number of “Ghetto model” books have held their value. William Tuttle’s *Race Riot: Chicago in the Red Summer of 1919* (NY: Antheneum, 1970), possibly the best available social historical account of the riot, highlights conflict at sites of industrial employment before the riot. The quintessential study on Black housing at this time, Thomas Lee Philpott’s, *The Slum and the Ghetto: Neighborhood Deterioration and Middle Class Reform* (NY: Oxford University Press, 1978), views the riot and ancillary racial conflict as a product of disputes over housing. Alan Spears’ *The Making of Negro Ghetto, 1890-1920* Chicago: University of Chicago Press, 1969) argues that in the decades before the riot fluid race relation gave way to fixed segregation. The riot, according to Spears was a final and definitive step in this process. The labor model is marked by an interest in labor and agency and by scholarship, including Joe Trotter, *Black Milwaukee: The Making of an Industrial Proletariat, 1915-45* (Urbana: University of Illinois Press, 1985), which examined working class formation in Milwaukee’s small Black community and James Grossman’s depressingly titled *Land of Hope: Black Southerners and the Great Migration* (Chicago: University of Chicago Press, 1989) trace out the decisions of Black southerners to move to Chicago. The “status model” is deeply indebted to “ghetto” and “labor” model, but it develops more assertive claims to citizenship and opportunity and includes Adriane Lentz-Smith, *Freedom Struggles: African American and World War One* (Cambridge, Mass.: Harvard University Press, 2009) and Kenneth W. Mack, “Rethinking Civil Rights Lawyering And Politics in The Era Before Brown,” *Yale Law Journal* 115 (2005): 256.

In the postbellum decades federal law was critical to making and unmaking Black dependence, as a handful of legal decisions and legislations renovated American race relations. It is a path well tread by historians of American law, and follows from expansive the postwar amendments that guaranteed voting, prohibited slavery and crafted Black citizenship around privileges and immunities, due process and equal protection. The racial construction of the Fourteenth Amendments was restated by the Court in the *Slaughterhouse Cases*, in a decision that also impaled the Amendment’s Privileges and Immunities provision. A decade later, the Court undressed the 1875 Civil Rights Act by vacating the social rights provisions outlined in its first two sections and determined the reach of congress ended at the door of an Inn; in short, private business could excluded private consumers, unless the state determined otherwise. By the 1890s, concerns about the “badge servitude” Justice Harlan raised in his Civil Rights Cases dissent occupied few state legislators bent on the spatial separation of the races. In *Plessy v. Ferguson*, southern state laws relegating Black Americans to separate quarters were given official sanction by the Court in a decisions that restricted Black choice in the name of public safety and welfare. The years after Plessy, the Supreme Court vetted state restrictions on Black voting. Although these restriction typically did not reach northern states, they underscored the political powerlessness of Black Americans in most of the south by the turnoff the twentieth
The second-class citizenship and racial confinement arrived at in “separate but equal” undercut Black social rights and economic opportunities, and did so in at least two fundamental ways.\(^7\) The first involved the racialization of types of work. Hoang Gia Phan has argued that the *Slaughterhouse cases* and *Plessy v. Ferguson* reified race as a fixed category, and checked “too free an application of language that might extend the amendments… to the world of free labor.” As a result, race was identified with specific labor regimes that reflected racial hierarchies.\(^8\) Howard University’s Kelly Miller recognized this trend a century before Phan when he explained, “[t]he public becomes accustomed to a scheme of things from which the negro (sic) is excluded and soon comes to look upon it as a fixed, natural order.”\(^9\) In northern industrial employment, this was manifest in the concentration of Black workers in particular industries.\(^10\) Second, as African American populations in Northern cities grew, ascriptions of “separate but equal” that originated in southern law and then expanded to federal law, transcended the spatial allocation on rail cars to travel north with migrating Black workers. As Black migrants exiting the south in the 1910s would find, discrimination ran with the work and it ran with the land.

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10 “Minutes of Chicago Race Commission: Summary of Industrial Questionnaire to Date,” Box 6, Folder 4, Joseph Rosenwald Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.
An Earlier Migration

Diminished Black status was carefully cultivated in the late nineteenth century. In much of the south, for instance, vagrancy law was used to reinstate the labor patterns of slavery and to force “idle” Blacks to work. ¹¹ For many Black Americans, vagrancy laws were predatory. Designed initially to target idle, white tramps, they were now used to victimize a southern Black population upon which the southern economy depended yet held in such low regard. ¹² As the “badge of servitude” survived nineteenth century constitutional law intact, northern states and metropolises wrestled with race relations in ways that shaped both Black life and the city. In the north, vagrancy also set the terms for community membership. By satisfying the domestic, labor and housing elements outlined in vagrancy law, Black migrants authenticated their status as members of their community. Upon arriving in Chicago, however, many would find themselves excluded and treated like vagrants. The history of Black settlement and assimilation in Chicago exposes ways the free labor order created a status of Black migrants as vagrants.

Illinois’ history of race relations both replicated and rejected federal standards in the antebellum era, when the state’s Black Codes officially excluded or restricted Blacks, free and bound. ¹³ In the postwar decades, African Americans leaders successfully campaigned against


¹³ Illinois Black code were relaxed under pressure from advocates such as John Jones, a successful Black tailor who challenged the constitutionality of these codes, and pushed for the ratification of the Thirteenth Amendment. Jones’ pamphlet was titled The Black Laws of Illinois, and a Few Reasons Why They Should Be Repealed. The state’s Black codes originated in its first General Assembly, March 30, 1819 and provided “no Black or mulatto could reside in the state without a certificate of freedom” and prohibited manumission. In 1829, bond for entrance from African Americans, free and slave, was set at $1,000, and a revision in 1845 prohibited miscegenation. As late as 1862, a constitutional convention received significant popular support to sustain the exclusion. Paul M. Angle, “Illinois Black Laws,” Chicago History, vol. 8, No. 3 (Spring, 1967): 65-75.
segregated schooling and sponsored a statewide Civil Right Act; the state’s commitment to the segregation of the races might be described as “sportsman-like”: active but not resolute.\textsuperscript{14} By the late nineteenth century, Chicago had a small, but prominent Black professional class, capable of wielding political clout, and forming private organizations.\textsuperscript{15}

Ferdinand Barnett was emblematic of this middle class. He graduated from Northwestern University with a law degree in 1878, and in the same year founded the \textit{Chicago Conservator}, an influential Black newspaper, that circulated between 1,000 and 1,200 copies.\textsuperscript{16} In an era of political presses and editorialized news, the paper was unremarkable. However, its commitment to racial equality singled it out. When parts of Clarksville, Tennessee, burned in an 1878 fire, Barnett quickly responded to charges it was set by local Blacks.

\begin{quote}
If the colored people of Clarksville did fire the town we regret the necessity, but not the Act. If they had been denied rights and privileges of men; if, by studied persecution their hearts have been hardened; if goaded by oppression to desperation they have lost all interest in and love for their homes; we are proud to see them have the manhood to witness its destruction… The people of Clarksville have broken the ice, god grant it be extended from Virginia to Texas.\textsuperscript{17}
\end{quote}

\begin{footnotes}
\footnotetext{15}{In the late nineteenth century, Black organization included the Colored Masons, The Colored Men’s Library Association, which offered lectures and reading material, along with two Black newspapers, the Chicago Conservator and Chicago Observer, and a number of educational and benevolent associations. The existence of Black middle class is evidenced by the publication of a Black professional and business directory from 1885. See Bessie Louise Pierce, \textit{A History of Chicago, Volume III: the Rise of the Modern City} (Chicago: University of Chicago Press, 1957), 48-49; Elizabeth Dale, “Social Equality does not exist among themselves, nor among us,”: Bailies v. Currie and Civil Rights n Chicago, 1888,” \textit{American Historical Review}, vol. 2, no., 2 (April 1997), 314.}
\footnotetext{16}{Only snippets of the \textit{Conservator} survive and are printed in Ralph Nelson Davis, \textit{Negro Newspapers in Chicago} (M.A. Thesis, University of Chicago, 1939), 10, 17, 20, 26.}
\footnotetext{17}{Ralph Nelson Davis, \textit{Negro Newspapers in Chicago} (M.A. Thesis, University of Chicago, 1939), 11.}
\end{footnotes}
Although Barnett left the Conservator to practice law in the early 1880s, his education and status revealed the opportunity the industrial city held for ambitious African Americans, and led Barnett to consider Chicago a “pretty fair place for Negroes.”

But, the vast majority of Chicago’s late nineteenth century Black population toiled in unskilled labor, typically in domestic and personal service. Moreover, as the city’s overall population exploded from the late nineteenth century, its African American population kept pace, and consistently hovered around two percent over the next several decades, fuelled by migration from southern states, principally Kentucky and Tennessee. Economic opportunity and better

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19 R R. Wright Jr. has demonstrated with census material that in Chicago in 1900, “8,381 of the 13,005 Negro males in gainful occupation were in domestic service, and 3,998 of the 4,921 females were similarly employed… [as was] typical of the Negro at work in the large cities in the north.” See, R. R. Wright, Jr., “The Negro in Unskilled Labor,” Annals of the American Academy of Political and Social Science, Vol. 49 (September, 1913), 25. Also see Bessie Pierce, History of Chicago, 517-519.

20 In 1900, Illinois had 53, 768 African Americans. Of those, 53.7% were born out of state: Virginia (3,473), Mary (693), NC (1,073), SC (649), Kentucky (10,587), Tennessee (10,237). R. R. Wright, Jr. “The Migration of Negroes to the North,” Annals of the American Academy of Political and Social Science, Vol. 27 (May, 1906), 99. Thomas Philpott has used census data to chart the growth of Chicago’s Black Population in the century after 1840.

<table>
<thead>
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<th>Year</th>
<th>Total Population</th>
<th>Black population</th>
<th>Percent Black</th>
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<td>1850</td>
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<td>109,260</td>
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<tr>
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<td>503,185</td>
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<td>4.1</td>
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<tr>
<td>1930</td>
<td>3,376,438</td>
<td>233, 803</td>
<td>6.9</td>
</tr>
</tbody>
</table>
wages, along with the south’s “double standard” in law, society and economics drove migrants north.\(^{21}\) And, in the decade before the Great Migration, the distinction between the north and the south appeared definite.

But, race relations in Chicago also remained unsettled through much of the late nineteenth century. Illinois’ 1885 Civil Rights Act came just two years after the Supreme Court overruled the federal Civil Rights Act of 1875, finding that federal laws could not be applied against individuals, and that states may enact their own laws governing race relations. Illinois’ 1885 Act was designed to secure full and equal enjoyment of accommodations, inns, conveyances, land, water, and in this way pick up where the *Civil Rights Cases* vacated Black social rights in 1883. It survived a legal challenge in 1888, and was upheld in *Baylies v. Curry*. Ten years later the same state Supreme Court questioned the Civil Rights Act when it decided its language was too vague to be enforced. The state legislature promptly amended the Act, extending it to hotels, soda fountains, saloons, bathrooms, skating rinks, concerts and cafés, the elevated train, buses, railroads and similar sites.\(^{22}\) By the turn of the twentieth century, law became an important instrument of social equality.

Unfortunately, it was also widely ignored, exposing a gap between law in the Courts and ‘on the ground.’ Despite the difficulties involved in enforcement, there were some successes. In

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the spring of 1888, the Brevoort house was fined twenty-five dollars after it charged a Black customer “$3.55 for a thirty-five cent order of roast beef and a five cent cup of coffee.”\textsuperscript{23} When a few years later a bartender at Chaplin and Gore’s restaurant refused to serve drinks to a Black man at the bar, directing him instead to a side room to drink, he sued under the act and was vindicated when a judge imposed a twenty-five dollar fine on the restaurant.\textsuperscript{24} These types of cases typically involved people with the time and money—like Josephine Curry, the plaintiff in Baylies v. \textit{Curry}—to challenge violations of the law. Curry’s challenge raised other important issues. She believed that her status granted her the economic right to participate on the same terms as others and to occupy whatever place her position allowed her to purchase.\textsuperscript{25} As Curry understood it, her economic and social rights and status were mutually constitutive, and efforts to alter and diminish one altered and diminished the other.

\textbf{Landmarks of Dependency}

The landmark Supreme Court decisions in \textit{Lochner v. New York} and \textit{Plessy v. Ferguson} defined the social and economic status of Black Chicagoans. In \textit{Plessy} the Court declared that the right to exclude trumped community membership. Nearly a decade later in \textit{Lochner}, the Court created a liberty of contract—the idea that independent and ostensibly equal men individually contract their property in labor free from government regulation—and made individual equality a key principal of labor relations. However, the presumption of equality spotlighted diminished Black status and exposed worksite as places where inequalities and dependencies could be

\begin{itemize}
  \item \textsuperscript{23} \textit{Chicago Tribune}, 24 April 1888.
  \item \textsuperscript{24} “Mixed Drinks,” \textit{Chicago Tribune}, 8 February 1893.
\end{itemize}
generated. Mirroring T.H. Marshall’s argument that ascendant market forces diminish individual social rights, *Lochner* and *Plessy* helped to ensure that thousands of Black workers entered Northern industrial life and workplaces at a disadvantage.²⁶

*Plessy* and *Lochner* announced new ideas about social and economic rights that reverberated in Chicago and around the nation. Depicting free labor as aspirational, University of Pennsylvania sociologist Carl Kelsey announced fifteen years after *Curry* that “The absolutely crucial thing is that [Black migrants] learn to work regularly and intelligently. The lessons begun in slavery must be fully mastered.” Because Black men remained, early in the twentieth century, “not ready to work alone and get the best results,” Kelsey reasoned, “economic freedom ha[d] not developed a sense of responsibility.”²⁷

As this type of sentiment entrenched in Chicago, Jane Addams wrote in the pages of *Crisis* magazine that Black Americans appeared to lack “responsibility” and “control.” And while she claimed to lament “the contemptuous attitude of the so-called superior race,” she had no problem using it to caution African Americans that their “primitive instinct” might undermine their industrial potential.²⁸ Black Scholar R. R. Wright peddled a similar brand of paternalism, intersecting racial progress and liberty of contract to argue that Black workers were incapable of “estimating the value of work and its relation to wages,” and for this reason could not become free laborers.²⁹

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Gradualism marked and defined Black progress. At Quinn Chapel in Chicago in 1905 Booker T. Washington announced, “[o]urs is only a child race.” True to his Tuskegee mission, he then declared that in work “the Negro will find his chief protection and development.”

According to Washington, the failure of African Americans to “bear up under the pressures of new industrial conditions,” only reflected the ills that beset the Black community—“shiftlessness,” along with “working mothers and broken homes”—as their evasion of the tenets of the free labor order. Not everyone was as quick to blame the individual African American for a failure to “bear up.” Kelly Miller observed that exclusion was replicated at worksites, explaining, “[t]he Negro workman is thus compelled to loiter around the outer edges of industry and to pick up such menial work as odds and ends[,] pursuits as white men do not care to undertake.”

In Chicago, Louise deKoven Bowen added, limited opportunity was crowding African Americans into “undesirable and underpaid occupations,” resulting in a “consequent tendency to lower the already low wages.” Inequality and exclusion was threatening to transform aspiring Black workers into vagrants.

While small numbers of Black Chicagoans held technical and lower supervisory jobs, the vast majority found work beneath the “job ceiling” in domestic service and a range of unskilled and domestic employment “clinging precariously to the margins of the economy.”

30 “Work the Hope of the Negro Race,” Tribune, 4 April 1905, 3.

31 “Negroes in the North Crowd into Cities,” Tribune, 10 October 1905.


33 Louise de Koven Bowen, The Colored People of Chicago: An Investigation Made for the Juvenile Protective Association (Chicago: 1913), np.

labor and domestic service were growth industries between 1910 and 1930, as the proportion of Black servants increased from twenty to thirty-four percent and Black manual laborers from two to nine percent.\textsuperscript{35} In the decades before southern Blacks migrated north to fill jobs made available by reduced European immigration, steady industrial employment came to symbolize independence, community membership and social rights.\textsuperscript{36} In short, Black workers did not have social rights that needed to be respected by others.\textsuperscript{37} The world that awaited migrating Blacks in Chicago had become a less hospitable place in the decades before the Great Migration. But, for many, this made the journey no less worthwhile.

**Migration and Housing: “I Hear You Calling Me. Good-bye Dixie Land”**\textsuperscript{38}

Potential industrial employment in the north generated hope and a few bold acts. In the mid-1910s, Hudmon Carr, an African American well digger on a farm in Monroe County, Alabama, communicated to his employer his intention to move north. He was immediately confronted with a pistol and “told if he dared leave he would be severely thrashed.” Carr’s response was to jump his employer, take his pistol, run and board a train that eventually took him to Chicago. A warrant for Carr followed, instructing the Chicago Police Chief to “pick up a big


\textsuperscript{36} Josiah Lambert addresses the correlate between independence and labor by explaining that in the Progressive Era the right to strike was bound up with individual rights of habeas corpus, due process and freedoms of association, assembly, speech and press. Although these rights were not always recognized by business and government, and were sometime asserted violently by labor, they formed the critical materials of labor conflict and resolution. See Josiah Lambert, *If the Workers Took a Notion: The Right to Strike and American Political Development* (Ithaca: Cornell University Press, 2005), 64-84.

\textsuperscript{37} In his decision in *Dred Scott* Justice Taney made the point that because Black rights could be taken away, Black Americans never really had them. Less than thirty years later in the *Civil Rights Cases*, the Supreme Court made this point when it announced federal enforcement of Black civil rights did not extent to individual actors, in effect repealing the first two sections of the 1875 Civil Rights Act, which pertained to social rights. Because Black rights were revocable, they were not independent. See *Dred Scott v. Sanford*, 60 U.S. 393 (1856). See Justice Harlan’s dissent in *The Civil Rights Cases*, 109 U.S. 3 (1883).

\textsuperscript{38} Song Lyric quoted in Defender Editorial. *Chicago Defender*, 7 October 1916.
Black nigger buck that is dirtier than a skunk and meaner than a rattlesnake. He is charged with
the larceny of a pistol valued at $10.” For unknown reason, Carr’s case was tried in Chicago’s
Morals Court, where Justice Uhlir threw the case out, over the complaints of a southern sheriff
who had traveled north “to get his prisoner.” The significance of Carr’s trial went beyond the
courtroom and the *Defender* was there to explain it: “The second bow of slavery will never be
welcome so long as the north is widening its doors to race members.”

The Great Migration of southern Blacks to northern cities coincided with Europe’s descent
into the First World War, which reduced European immigration to the United States. Over the
1910s, Chicago absorbed 50,000 southern Black migrants. The *Chicago Defender* acted as an
ambassador to the Migration and it literally put the prospect of northern jobs in southern hands
through its broad circulation. Topical columns, features and promotional essay competitions sold
readers on the benefits of northern life. In addition to defining the migration and its rewards,


40 Scholars also identified the expansion of the devastating boll weevil across the south and the prevalence of
equally destructive credit and debt peonage systems as immediate and principal stimuli to the migration in the
1910s. Incentives to migration were equally multiple but centered principally on economic opportunity and legal
protection. See James R. Grossman, *Land of Hope: Chicago, Black Southerners and the Great Migration* (Chicago:

41 James Grossman explains, “The decision to go to Chicago rather than Detroit, New York of one of the many other
smaller cities, rested on a variety of factors whose impact changed over time. The first from an area to leave for
Chicago probably chose the city because of its position at the head of the Illinois Central and its particularly high
visibility in the Black south. Chicago’s baseball teams, its reputations as the center of Black business enterprise, and
its reputations based on visits from conventioneers, as well as mail order catalogues which were found in homes in
rural and urban communities all complimented the monumental importance of the *Defender*. There were jobs in the
city’s mills and packinghouses, but there were jobs elsewhere too. Those who chose to go to Chicago went because
they knew about those jobs and that particular city. This knowledge multiplied as migrants settled in Chicago.”
James R. Grossman, *Land of Hope: Chicago, Black Southerners and the Great Migration* (Chicago: University of
Northern City* (Chicago: University of Chicago Press, 1993 (Orig. 1945)), 58.

42 James Grossman argues that the *Defender* communicated “easily with so many Black southerners,” combining
editorial “militancy” and “sensationalism” with a “vast promotion and distribution network” that saw circulation
rocket along with the Great Migration from 33,000 in 1916 to 90,000 in 1917, 125,000 in 1918 and 130,000 in 1919,
“pumping a constant flow of trusted information” into “some of the most remote corners of the south.” See, James
R. Grossman, *Land of Hope*, 79-80. The *Defender* self-consciously placed itself at the center of narratives of
editor Robert Abbott described the Black worker’s place in the free labor order as “employed and making a comfortable living for themselves and their families.” This key feature of migration encountered some significant opposition in the north.

“Black Man Stay South,” the Tribune editorialized in early summer 1917. “They have come north. It was a huge mistake. They escape barbarous punishment for their occasional crimes while wining no appreciation for their habitual virtues. They are disliked.” A couple months later, Henry Hyde expanded the admonitions published in the Tribune. In summer 1917, Hyde explained why the thought Black Migrants were like vagrants: “They are compelled to live crowded together in dark unsanitary rooms; they are surrounded by constant temptations in the way of wide open saloons and other worse resorts; they find a complete absence of all restrictions as to their use of the street.” It is small wonder, Hyde summarized “that in a vast number of instances the recent Negro immigrant loses his head completely… the Negro problem has moved north with a vengeance.” Like the tramps that preceded them a generation earlier, Black migrants appeared to many in Chicago as an uncontrolled and unprotected menace.

The wartime migration was not the first large movement of southern Blacks north, but it was one of the first migrations to include large numbers of working class Blacks. Earlier


43 Chicago Defender, 9 January 1915.

44 Vagrants Infest Harlem,” Chicago Defender, 31 December 1921, 9; “Worthless People,” Chicago Defender, 10 July 1915, 8.

45 “Black Man, Stay South,” Chicago Tribune, 30 May 1917, 6.

46 Henry M. Hyde, “Half a Million Darkies from Dixie Swarm the North to Better Themselves,” Tribune, 8 July 1917, 8.
migrations from the 1890s were typically composed of the affluent and educated.\textsuperscript{47} Observing the Great Migration, contemporaries struggled to explain the phenomenon. “[t]here is something more behind their going, something that lies deeper than a temporary discontent,” DuBois published in \textit{Crisis}.\textsuperscript{48} While “bad treatment” and “low wages” in the south were listed repeatedly by DuBois and in other contemporary accounts in describing the Migration, he wrestled to make sense of a grassroots, leaderless mass movement, to understand a collective decision by many to sacrifice so much for distant and uncertain rewards. He sensed something awesome was underway.

\textit{Defender} editor Robert Abbott was sure he had the story and pinned DuBois’ indefinite sense down to social rights and community membership, reminding Southern Blacks equivocating over a move north, “[y]ou see they are not lifting their laws to help you. Are they? Have they stopped their Jim Crow cars? Can you buy a Pullman Sleeper where you live? Will they give you a fair deal in Court yet?”\textsuperscript{49} But Abbott also had a tendency to contrast the north and south in the most dramatic possible terms and to fail to account for parallels between the two geographies on issue of race.

In 1916, Chicago’s first Black Alderman Oscar De Priest proposed a city ordinance granting the mayor the power to revoke the licenses of businesses excluding African Americans. The \textit{Tribune’s} editor complained, “[t]hey are already protected by law which everyone knows is not strictly enforced or enforceable and will not be in this generation.” Announcing it “a fiction


that the Negro has full civil, meaning full social, rights anywhere in any American community,” the editor rejected the creation of any new law designed to secure those rights.50

*The Tribune’s* coverage of support for restricted social rights inspired attorney George W. Ellis, who shot back in the pages of the *Chicago Defender*: “The confusion of civil rights with private social relations and courtesies is an old southern trick, adopted to secure in peace in the north what the south had lost in war.” Ellis reasoned that an exclusion from a “theater, hotel or other public place” not only left him to “bear the odium of discredit among his fellows,” but also established a precedent in which he may even “be excluded from Chicago.” Ultimately, the restriction of social rights, Ellis continued, struck at “the very root of life, culture and democracy.”51 While the city’s dailies debated the merits of social rights legislation, white racial antipathy entrenched around housing, which in addition to steady wage work engaged a second critical tenet of the free labor order, while providing another important leg in the stool of Black dependency in the industrial city.

Before the Great Migration, segregated housing was a reality in Chicago that left many Black Americans destitute. Noting their exclusion from YMCA dormitories and homes, along with the Salvation Army and most hotels, neither of which “will give a Negro a bed to sleep in or permit him to use their reading rooms and gymnasiums,” Ida B. Wells asked “[w]hat, then, is the Negro to do?” “Those of us who realize the condition of this great, idle, proscribed class and view with pain and shame this increasingly criminal record have absolutely no money to use in


helping to change these conditions.” As with Nannie Ambler a couple years later, exclusion from sites of public and private aid threatened to create an idle and dissolute vagrant class.

Exclusion beget exclusion, from theaters and hotels to neighborhoods and communities. In her analysis of Black life in Chicago, Louise deKoven Bowen documented the use of extralegal tools to exclude, from protests to insults and threats to keep African Americans out of “white” neighborhoods and concentrated in the bleak and deteriorating confines of the Black Belt. By 1910, nearly eighty percent of Chicago’s Blacks lived in the “Black Belt,” a thirty-block strip of land running south from the warehouse and industrial district abutting the southern edge of the Loop district.

Contemporary surveys tracing the settlement of Black migrants in the “Black Belt” identified deplorable conditions. These were not homes, in the sense of ordered domestic space; this was shelter without plumbing or running water, and characterized by “rickety staircases without handrails, gaping rents in the plaster, leaky roofs [and] wet basements.” The Chicago Daily News also noted that “[i]ndiscriminate refuse and dirt abounded,” and menaced those it encountered, while Dr. George Hall identified these housing conditions as a threat to racial progress and “the greatest cause for demoralization among colored people.” For Ed Felix, a white businessman on South Dearborn Street for over thirty years, it wasn’t the housing that


harmed the people, rather it was a dissolute “class of tenants” that harmed the housing.\textsuperscript{55} Instructively, it was Felix’s warning, rather than Hall’s, that spurred action as residential associations on the south side rallied to contain Chicago’s booming wartime, Black population, and in the words of Walter White “put ten gallons of water in a five gallon pail”\textsuperscript{56}

Containment would set new terms for racial conflict. In 1915, Charles H. Davis, an African American, hired Ms. Josephine Mulcahy to purchase a house for cash at 4506 Forestville Avenue, in the Northwest region of the white Kenwood-Hyde Park District. She made the purchase and transferred it to Davis for costs and a fifty-dollar commission.\textsuperscript{57} Once they realized the real owner of the house, white neighbors promptly raised $5,000, the amount Davis paid, to buy him out. “It was all settled,” the Tribune reported. But Davis consulted his lawyer and explaining that if he accepted the purchase price he would take a loss financially, he announced his intentions to move in. Local whites responded that although they were “not looking for trouble,” they were ready for it.\textsuperscript{58} A Black man moving into a white neighborhood apparently constituted trouble.

Davis changed his mind, and set new terms the next day; in exchange for an apology he would sell. Wallace Clark, who represented the white property owners, was thrilled, “I could tell the minute I saw him that Davis was an honorable man.” Backtracking on the thinly veiled threats that accompanied Davis’ proposed move, he added, “[t]he residents on the block never had any hard feeling against him personally, we assured him. We feared the presence of Negroes


\textsuperscript{56} Walter F. White, “Chicago and its Eight Reasons,” Crisis, (October 1919), 296.

\textsuperscript{57} “Whites Buy Davis House,” Chicago Daily News, 3 May 1915.

\textsuperscript{58} “Race War Fades—Flares Up Again” Chicago Tribune, 4 May 1915.
As homeowners and their associations underwrote the entrenchment of de facto segregation restricting the Black worker’s place in the city, George Jackson, a wealthy Black real estate agent lent assurances, “[w]e do not want to live in the same block as whites if we can help it because it is not conductive to our happiness.” Perhaps, he quipped, white and Black homeowners can just swap neighborhoods entirely.  

Restricted housing troubled Black leaders trying to reverse the Black worker’s shrinking geography. In early June, 1919, Walter White, who frequently “passed” as white, attended a private meeting of the Kenwood-Hyde Park Property Owners Association that entertained a range of sabotage campaigns developed to “keep Negroes in their part of town.” White noted plans to purchase the mortgages on African America houses and then eject residents when their mortgages went past due. Another proposal linking social rights and economic opportunity involved plans to have Black neighbors fired from their jobs. By the end of the 1910s, the threat of restrictive racial covenants and neighborhood associations paled in comparison to bombing campaigns—initiated by more fanatical white supremacists—targeting “colored homes and houses occupied by Negroes outside the Black Belt.”

Vice, and its proximity to the “Black Belt,” constituted an important third leg in the stool of Black dependency. “Hemmed in tightly from the start,” relegated to “conspicuously dilapidated” housing, and subject to “extortionate rents,” Black housing was also “intimately

59 “Negro to Gain white Apology,” Chicago Tribune, 5 May 1915.
60 “Negroes Offer Housing Swap With Whites.” Chicago Tribune, 10 April 1917.
connected” with the “social evil.”

“Invariably the large vice districts have been created in or near the settlement of colored people,” the Vice Commission of Chicago announced in 1911.

In the past history of the city, every time a new vice district was created downtown or on the South Side, the colored families were in the district moving just ahead of the prostitutes. The situation along State Street from Sixteen Street south is an illustration. So whenever prostitutes, cadets and thugs were located among white people, and had to be moved for commercial or other reasons, they were driven to undesirable parts of the city, the so-called colored residential sections.

Resembling the African Americans’ consignment to the smoking car of Jim Crow trains, their relegation to vice districts highlighted their residential segregation among the least desirable elements of the city. The significance was twofold.

First, it was spatial and reflected forced settlement patterns. Before and after the Great Migrations, new settlers and their families were “often forced into association with the vicious elements of the city.” A stenographer, who lived in a district intersecting vice and Black housing in the 1920s recalled “the white people were all prostitutes… but it wasn’t so among the colored people. They were decent people who attended Quinn Chapel.” For instance, she recalled a neighbor, Sophie, who

[Had] a house full of white girls and you could see the men coming in and going out all day and night… at any time during the night people would knock at our gate thinking it was the place. There was a number of such houses in the neighborhood. We were never permitted to sit out back … We wouldn’t speak to them and they didn’t speak to us.

62 Thomas Lee Philpott, The Slums and The Ghetto: Immigrants, Blacks and Reformers in Chicago, 1880-1930 (Belmont, Calif: Wadsworth, 1991), 144-145. According to Breckinridge, fair housing, employment opportunity and education were the ills of Black life in Chicago. She calculates that rents in Chicago’s crowded immigrant quarter in the early twentieth century ranged from $8.00 to $8.50, and in vice-abutting Black belt neighborhoods, $12.00 to $12.50. Sophonisba Breckinridge, “The Color Line in the Housing,” Survey (February 1, 1913): 575-576.; Louise de Koven Bowen, The Colored People of Chicago, np.

63 Chicago Vice Commission, The Social Evil in Chicago, 38.

64 E. Franklin Frazier, The Negro Family in Chicago (Chicago: University of Chicago Press, 1932), 100-101. Louise de Koven Bowen explained a similar dynamic in the years before the bulk of the great migration, when Black households were required to board strangers. See Louise de Koven Bowen, The Colored People of Chicago: An Investigation Made for the Juvenile Protective Association (Chicago: 1913), np.
The migration of southerners altered the city’s landscape, and according to Blacks leaders helped to firm up its color line, as vice and race were identified as related urban problems.65

Second, as the relationship between Black women and vice strengthened, the status of Black women was transformed from individuals relegated to the smoking car to smokers in that car. As their work became associated in the public mind with vice, Black women became the subjects of reform.66 The dramatic increase in the prosecution of Black women for sex work in the Morals Court evidenced this transition. Negligible in 1910, by 1930, Black women composed seventy percent of the caseload at the Morals Court.67 In his assessment of this growth in the early 1930s, sociologist Walter Reckless cited a number of leading factors, including “restricted occupational outlets” along with “disorganized neighborhood conditions in which most Negroes must live” and “greater liability of police arrest.” According to Reckless, the issue was not “Negro sex psychology” or supposed “proneness to criminality.”68 Rather, he defined Black workers as outliers of the free labor order, and noted that unlike white women they did not have access to the tools of rehabilitation and redemption.

In roughly the same time period that the waged employment of white girls and women received fresh justification, Black women emerged as a model of urban vice. When Booker T. Washington addressed vice in Chicago’s Black Belt in 1912, he identified it as the “white man’s


vice, thrust there by authorities.” But something else “ran deeper,” according to Washington, namely, “idleness, irregular employment and even regular employment that is underpaid and exhausting.” Work was the organizing principal of Black dependency in Chicago. Vice, dissolution and profligacy were offshoots of their diminished social rights, which saw them encased—increasingly—in the separate train car of the Southside Black Belt. These challenges spurred the creation of the Chicago Urban League in 1916, and they would help to define the organization’s commitment to make Black men independent under the free labor order.

The Chicago Urban League

The Chicago League’s predecessor formed in New York City in 1910 when Ruth Standish Baldwin called together representatives of “many social welfare organizations” to her apartment in an effort to “prevent duplication” among those addressing the “city’s problem as it affected negroes.” In contemporary parlance, the National League on Urban Conditions Among Negroes aspired to create efficient responses to the multiple “evils” shaping Black life in the city, from “bad housing” to “loose morals” and to provide “instant relief” in the Courts and industry.

Although white urban reformers initiated it, increasingly African Americans led it. Efforts to construct a core mission, however, were complicated by a couple of factors. First, the organization aspired to bridge and consolidate the efforts of organizations already in existence; second, prior to 1914, seven of its ten offices were located in southern centers, meaning it had a to address two unique systems of racial caste. When the Chicago League on Urban Conditions

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Among Negroes formed in late 1916—and shortly thereafter abbreviated to the Chicago Urban League—the movement of Blacks north quickly defined its mandate, and the organization turned to the assimilation of southern Black migrants through their steady waged employment in the city’s industries.

Preoccupied with the work, wages, health and housing of these new urban citizens “without a hyphen,” the Chicago League spoke to a couple different audiences. In addressing employers, it drew attention to the “hitherto neglected natural resource.” In addressing new migrants and “old settlers” the Chicago League emphasized “cleanliness, sobriety, thrift, efficiency, and respectable restrained behavior in public places.” The road to independence and self-sufficiency that it imagined was paved with steady industrial labor.

The League initiated this process, in many cases, “upon their entrance into the city” at Railroad and other transportation hubs, where it confronted new arrivals with the challenge of industrial assimilation. Many southern migrants arrived from communities with “employment structures radically different” from what they would find in Chicago. In addition, concerns that Blacks lacked skills immediately “transferable to Chicago’s urban industrial economy” further defined the efforts and initiatives of the Urban League.


The Chicago League announced itself to Chicagoans through widely circulated cards, suggesting to residents that the League be allowed to “handle difficulties” when they flared up “among the new people,” and instructing, through both the cards and public meetings, the new arrivals to the “necessity of being orderly citizens, efficient workers and good housekeepers.”

The cards also found their way to the Municipal Court. Judge Daniel P. Trude remembered, “[i]t was frequently true that the boys would jump freights from down south and come up here and be picked up and brought into Court and be left in jail.” “While I was in the Boy’s Court,” he recalled, “I made it a practice to give every one of them a card to the Urban League so that they would know where to go and get advice on any difficulty.”

In industrial and non-industrial pursuits, however, the League made the dignity and equal status of African-Americans paramount. Robert Park’s appointment as President of the new Chicago League lent legitimacy. But the appointment—like his work—presumed that Black workers would assimilate to white society on white terms. In his own work, Park outlined an obligation on behalf of government to treat African Americans fairly by supporting the interests and aspirations of “secondary” groups. Under Park, the League operationalized the idea that Blacks constituted a “secondary,” and thereby dependent, group. Moreover, as a sociologist, Park held out faith that urban problems studied could be resolved. It is not clear however, how Park intended to manage white obstacles to Black opportunity.


77 Park may not have been optimistic about the future of American race relations, Arvarh Strickland points out, but he was a recognized “authority on the negro problem,” and committed to an ethic of equality and opportunity. See Strickland, *The History of the Chicago Urban League*, 40. For an example of Park’s racial ethic, see Robert E. Park, “Racial Assimilation in Secondary Groups With Particular Reference to the Negro,” *The American Journal of
Its measure of success was tied to this assimilationist project; the Chicago League depended heavily on a small coterie of white businesses for its operating money. This dependence on business also left the league in a difficult position, and from its inception it walked a fine line between assisting “employers in their dealings with colored laborers, [while] at the same time widen[ing] the industrial opportunities for the colored man and women.”78 As a result, the League found itself “serving at least two masters”—employers and workers—while trying to convince employers “reluctant to experiment with these workers,” to hire southern migrants, while at the same time staying attuned to “the danger they would be exploited.”79

Industrial employment was central to the League’s mission. “The problem of labor is fundamental,” Park explained, “most other problems, whether of national morale or social welfare, are intimately bound up with it.”80 However, the League could not do everything. Other groups in the city would take up the strategy, dating to the formation of the League, of using Courts to secure Blacks economic and social status and opportunity.

**Legal Helps**

Preoccupied with industrial employment, the Chicago Urban League typically did not address the legal apparatuses that most directly shaped the lives of Black workers, namely the

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79 James Grossman notes that in its years the “League had only as much influence over working condition as employers would grant… more importantly, its contributions relied heavily on stockyards firms, Julius Rosenwald of Sears, Roebuck, a few steel companies and International Harvester.” Basically, corporate contributions increased as it demonstrated it ‘usefulness.’” See James R. Grossman, *Land of Hope: Chicago, Black Southerners and the Great Migration* (Chicago: University of Chicago Press, 1989), 203. Also, although Black Americans composed almost 75 percent its members and contributors, their donations amounted to only 10 percent of monies raised in its first year. Strickland, *The History of the Chicago Urban League*, 33-34, 47-8.

police and the branches of the Municipal Court. The *Defender* helped to fill this gap in its regular “Legal Helps” advice column, edited by Richard Westbrook, a local attorney. While the column addressed a range of issues stemming from insurance, investment and real estate, when it came to issues of rights and status, Westerbrook took a noticeably different tone, substituting legal “nuts and bolts” for aspirations and abstract principles of equality. Westbrook’s columns actively rejected second-class Black citizenship.

In response to complaints in late 1914 about discourteous treatment by police, Westbrook instructed, “immediately take the name and number of such officer and promptly report his action to the chief of police at the City Hall.” He continued, “[t]he time in Chicago has arrived for the citizens to rise up and put [the officer] in his proper place.” When a few months earlier another Black Chicagoan asked whether a stationmaster could legally exclude African Americans from the Polk Street Train station between the arrival and departure of trains, Westbrook responded that it was a criminal offence, and explained plainly that “remedies offered to the race by statute should be promptly and vigorously invoked against any such discrimination.” The tone of Westbrook’s advice marks a critical distinction between the independent citizen, who announces his rights, and to whom the police respond and the dependent that the police protect. Westbrook advised his readers to be affirmative and proactive independent citizens. By instructing Black Chicagoans to use law as a tool to secure equal status, he was also ahead of his time.

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83 Mark Tushnet has identified this type of thinking with the legal strategies of the National Association for the Advancement of Colored People beginning in the late 1920s. See Mark Tushnet, *The NAACP’s Legal Strategy against Segregated Education, 1925-1950* (Chapel Hill: University of North Carolina Press, 2005 [Orig. 1987]).
The issues raised by Westbrook’s readers confirmed the beliefs of other investigators of race in the city. As Louise deKoven Bowen explained in *The Colored People of Chicago* (1913), the city’s Black population was subject to frequent arrest on “excuses too flimsy to hold a white man” and convicted on “evidence upon which a white man would be discharged.”\(^{84}\) Bowen tells the story of nineteen-year-old George W., born and educated in Chicago. Employed the previous three years as a porter, he was arrested and charged with rape, he was “not allowed to sleep, beaten, cuffed and kicked” and despite protestation of innocence, advised by his attorney to plead guilty. Despite the fact the district attorney’s case was so poor that its very weakness made it into the judge’s instruction to the jury, George was found guilty and sentenced to fourteen years incarceration. In another case, a Black Chicagoan charged with murder was tried in sixteen minutes, “from the time the negro was brought into the court to the time he left it.”\(^{85}\)

While it is impossible to know why Blacks encountered impoverished legal standards, it is likely that the denigration of their race as a “problem” overrode the ability of some municipal authorities to see them as individuals. “Negroes look alike,” one judge told civic authorities. It is “more difficult off-hand to place them than it is to identify a white criminal.”\(^{86}\) The short shrift dealt Chicago’s Blacks at law undermined the legitimacy of the legal process, and its potential as a source of criminal and civil redress and resolution. For this reason, the branches of the Municipal Courts received special criticism in Westbrook’s column.

Touting community membership and a right to equitable treatment, Westbrook responded to a complaint about a judge’s poor treatment of a Black attorney, advising, “without your votes

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\(^{84}\) Louise de Koven Bowen, *The Colored People of Chicago* (Chicago: Juvenile Protection Association, 1913), np.

\(^{85}\) Louise de Koven Bowen, *The Colored People of Chicago* (Chicago: Juvenile Protection Association, 1913), np.

they will not succeed in being re-elected.” In another case, a judge’s interrogation of a suspect’s marital status, sobriety and the ethnicity of her spouse—over a misdemeanor charge—confirmed Westerbrook’s suspicion that Black’s were being treated differently at Court. This sentiment was reiterated in an investigation of the Morals Court in the summer of 1915, in which the Defender announced that judges “appear to entertain prejudice against colored persons in general,” and to disproportionately fine Black women, signaling their principal culpability in interracial mixing, and other sobriquets for vice.

Although the daily continued to complain that the Court’s “nefarious public officials” seem to “think colored persons have no rights whatsoever,” Westbrook’s efforts generated awareness—if little measurable change—as they framed discussion about status around rights and law. His appeals to independence held out hope that Black Americans might become full members of their community by satisfying the terms of the free labor order. For the meantime, however, work would remain a source of inequality that Courts were unable to fix, and which crowded them into “undesirable and underpaid occupations.” When Municipal Court Judge Joseph Burke questioned publicly—and rhetorically—in the late 1920s why “not more of the other races are brought into my court” it was in response to social and economic forces beyond the reach of the Court.

87 “Defender Legal Helps,” The Chicago Defender, 24 April 1915, 8.
90 Bowen singles out the dearth of economic opportunity available Black men as a single leading factor in high number of criminality. See Bowen, The Colored People of Chicago, np.; “Citizens Meet With Judge to Discuss Moral Issues,” The Chicago Defender, 1 December 1928, 4.
Black women shared the legal organ and the gendered expectations of their white contemporaries. Designed to address instability in working class families, the Domestic Relations Court announced white women’s dependency and domestic duty through its trial of various abandonment and failure to support cases. However, the Domestic Relations branch did not meet Black women in the same way, or on the same terms. In Chicago, a significant proportion of Black women were not only steadily employed, but breadwinners. In 1900, Black women in Chicago constituted over forty two percent of Black breadwinners, statistically “more than double the proportion of white women employed.”

The employment of African American women remained high into the twentieth century, and they were typically concentrated in domestic service and laundry, until the First World War when labor shortages created new opportunity in hundreds of previously closed firms. Ventures outside laundry and domestic service were typically short lived, however. A Department of Labor official explained in 1919, for example, that “as soon as the situation clears itself no more colored help will be employed.” In short, the objective of the Court of Domestic Relations—to both stabilize and project an image of families in which men earn and women nurture—conflicted with the economic necessities and condition of Black life in the city, which eschewed contrived domestic arrangements and required that both parents take work when work presented itself.

Reformers also had a difficult time recognizing these demands. When Mrs. V. M. B. wrote the Defender complaining her husband refuses to “support me or assist in the maintenance of our

91 Willrich, City of Courts, 121, 133.
92 DeKoven Bowen, The Colored People of Chicago, np.
93 Grossman, Land of Hope, 184-185.
two children,” and asking “is there anything I can do to compel him to contribute to the support of the children,” Westbrook turned her attention to the Court of Domestic Relations where “your husband may be fined and imprisoned, or be compelled to assist you in the support of your children.” Similar advice was extended a few months later to another woman in similar circumstances. At the Court of Domestic Relations, Westbrook responded, “he will be compelled to care for his family.” It was not the last time that Westerbrook would find his optimism in law and its ability to read and modify social context premature or misplaced.

George Mason’s trial is illustrative. Employed as an unskilled laborer, George married Ida in 1919, but they separated in March 1923 when George was fifty, Ida forty-four and their baby, Josephine, six months. By 1926, the charges Ida had brought in the Court of Domestic Relations were dismissed for want of prosecution; most likely, Ida stopped pursuing the case. It is not clear whether George, who is listed as earning a decent biweekly wage of forty-two dollars in 1923, ever provided for his wife and child.

Also in 1926, Ike Holiday faced charges in the same court for non-support of his daughter, Grace Holiday. His case was similarly dismissed for want of prosecution. Dissonance between the idealized family arrangement projected by the Court of Domestic Relations and the realities in many working-class African American families underscored the limits of law, even at its least racially volatile. As with tramps and sex workers, the free labor order helped shape the legal

94 “Legal Helps,” The Chicago Defender, 16 May 1914, 8.
95 “Defender Legal Helps,” The Chicago Defender, 18 July 1914, 8.
97 People v. Ike Holiday, Case # 413039, Municipal Court of Chicago Criminal Records, Chicago Municipal Court Archives, Chicago.
response to Black workers, to the extent that it identified them as outliers, not only in the world of industrial employment, but also in municipal law. Together, economic and legal industrial restrictions constituted Black life in the city and threatened, in conjunction with proscribed social rights, to reduce migrants and “old settlers” to the status of vagrants. In order to embody the ideal outlined by the Court and the free labor order Black workers were going to have to strike out at workplace exclusion.

A “Scab Race”

E. Raglan arrived in Chicago from Kansas City in July 1904. Walking along Forty Third Street on his way from the train station, Raglan reportedly heard a man yell, “There goes a strikebreaker.” Within minutes, hundreds of white strikers were in pursuit. He ran down the street, through a yard and took refuge up a tree, where stockyard police rescued him from a crowd of allegedly 2,000. During the ordeal, Raglan announced repeatedly that he was not a strikebreaker, but his skin color and proximity to the stockyard strikes of 1904 announced to many that he was. From the perspective of many African Americans, strikebreaking was first and foremost access to a job, and often one not typically available. More importantly, strikebreaking represented a direct and calculated response to the diminished status of Black industrial workers and asserted an independent status in the free labor order. Strikebreaking intersected economic opportunity and exploitation, southern labor traditions, diminished social rights and racism that kept most Black workers out of a job. Unfortunately, it also tended to replicate them.

99 “Girl Mobbed by 1,000,” Chicago Daily Tribune, 23 July 1904, 1.
Black strikebreakers first appeared in Chicago’s meatpacking industry in 1894, when slaughterhouse workers struck in sympathy with Eugene Debs’ America Railroad Union. Over the next decades, industrial employers turned to southern Black strikebreakers, but with mixed success. At the Latrobe Steel Plant strike in 1901, imported Birmingham steel workers traveled to Chicago, but refused employment once they realized they were taking the jobs of others, and asked to be returned. And, the following year the University of Chicago imported eighty Black strikebreakers from the Tuskegee Institute to break a strike on a campus construction project, only to dismiss them after remaining union member refused to work with them. Stockyard and Teamster strikes in 1904 and 1905, however, ushered in a new phase in Black strikebreaking in the city, the one that saw Reglan treed by angry strikers and their supporters.

The Amalgamated Meat Cutters and Butcher Workmen (AMCBW) began organizing Chicago’s stockyard workers around 1902. Stalled negotiations and a wage cut introduced by packers in 1904 drove the union, its paltry resources and heterogeneous body of workers, to strike. As the strike failed, Black strikebreakers became the principal scapegoat. This sentiment expressed itself in violent episodes away from strike sites. William Hoyle, a Black porter in a barbershop, was “dragged from his streetcar, beaten” and “left for dead” by white union sympathizers after he failed to present a union card. Similar episodes of violence in July 1904 saw a mob of 500 attack a Black laborer and his teenage son and white strikers stab both

100 Tuttle, Race Riot, 112.
101 Tuttle, Race Riot, 113.
102 Tuttle, Race Riot, 114-117.
eyes out of a Black strikebreaker. But the violence was not entirely one directional, as evidenced by the beating of white union men, “wearing union buttons” after they boarded a bus of “Negro strike breakers.”

Because of the violence outside the packer’s property, strikebreakers typically remained inside the compound, living in what contemporaries described alternatively as a “garrison-like” and “less than deplorable” existence, where “vice and licentiousness flourished.” While the strikes of 1904-1905 produced few results for the workers, they forged an important link, William Tuttle points out, in the minds of many white stockyard workers between the word “Negro” and the word “scab.”

The emerging popular image of the Black as strikebreaker materialized despite the fact that large numbers of Italian, and multiethnic troops marshaled by padrones, or labor agents, were active in the 1904 stockyard strikebreaks. When the teamsters struck in 1905 in support of striking Garment Workers, employers again turned to strikebreakers. The violence proved even more costly and extensive, resulting in 20 deaths, 400 severe injuries and lasting over three months from its beginning in April 1905.

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104 Tuttle, Race Riot, 119.
105 “Negroes on a Street Car Attack Members of Union,” Chicago Tribune 4 September 1904, 3.
107 Tuttle, Race Riot, 119.
109 Spears, Black Chicago, 39.
110 Tuttle, Race Riot, 120.
The ripples let out by strikebreaking divided the Black community. Local Black media, like the *Broad Ax*, complained that because strikebreakers “represented the lowest and toughest elements of the race,” they might make it “much more difficult for the respectable colored people in this community to get along.” The editorial argued that strikebreakers undermined the position of the Black community as a whole, while serving the interests of “such Negro-hating concerns as Marshall Fields and Company.”

The *Tribune* sided with white workers and called the decision to use strikebreakers “a terrible injustice and wrong to the negroes already employed as teamsters in the city.” The Ashland Avenue Business Men’s Association also rejected the claims of strikebreakers and identified them as “a menace to the city of Chicago” as “future paupers.”

However, others saw in strikebreaking the seeds of a larger struggle to secure equality and citizenship. When S. Laing Williams, a Chicago attorney, addressed a New York meeting of the National Negro Business League, he argued that strikes have “demonstrated that the Negro who is called to do difficult work under difficult conditions is very much a man.” “It should be the determination of this League,” he continued “to see to it that the men who must toil with their hands shall not be allowed to drift and become the victims of organized labor’s contempt or the easy tool of selfish and soulless capital.” Describing workers as suspended between the penchants of capital and organized labor, Laing identified Black inequality as the principal


113 Quoted in Spears, *Black Chicago*, 37.

impediment to their steady labor. When Black strikebreaking reappeared with the Great
Migration and First World War, it offered new testimony to an old challenge.

As the wartime federal government signed agreements with Chicago packinghouses for a
“thousand carloads of meat daily,” the unions felt they had assurance the federal government
would mediate any strike and went about securing better working conditions. The Stockyard
Labor Council (SLC) formed in summer 1917 as a cooperative of stockyard unions and by the
end of the year forced employers to bargain under the auspices of the President’s Mediation
Commission. Packers and workers ultimately agreed on Judge Samuel Alschuler as arbitrator,
and in spring 1918 his arbitration granted employees double digit wage increases and the eight-
hour day. Black and white workers would remain fervently divided, however.

In large part, Black migrants were openly wary of striking, and some did not distinguish
unions from the racism that kept them out of work. “Unions ain’t no good for a colored man”
announced one Black migrant in 1916, while another declared, “I’ve seen way too much of what
they don’t do for [Black men, and] can’t understand why they strike and keep men out of
work.” Scholars have chalked this mistrust up to a “rural psychology” and to southern
agricultural practices, neither of which had a tradition in organizing.

But Black leaders, like Howard’s Kelly Miller and Tuskegee’s Booker Washington
bolstered this suspicion and inexperience when they identified unions as a threat to Black

115 Spears, Black Chicago, 159.
116 Spears, Black Chicago, 160.
117 Grossman, Land of Hope, 211.
119 Tuttle, Race Riot, 147-150.
independence. The Chicago Defender expressed a similar sentiment in a 1915 editorial, “as things stand labor unions are his [the Black worker’s] worst enemies for they deny him an opportunity to earn an honest living.” And sympathetic organizers struggled and often failed to bridge racial divisions in organized labor. William Foster, an ex-Wobbly, attempted to organize Black slaughterhouse workers during the First World War. He recalled before the Commission formed to investigate Chicago’s 1919 race riot, “the more we tried to help the colored worker the more intense the opposition was. There was a force working against us, he explained, and we could not help but feel it. Race prejudice has everything to do with it,” Foster added, “it lies at the bottom.” Despite ongoing setbacks, American entry into the Great War appeared to present an opportunity to overcome discrimination.

The “Great War”

American entry into the First World War seemed also to provide Chicago’s growing African America population an opportunity to assert its independence. President Wilson’s casting of the war in terms of freedom and democracy resonated in the Black media. “If we do not fight at home, with the great weapon of the secret ballot, for what they are fighting for abroad with guns and gas and liquid fire,” the Defender announced in spring 1918, then “those of us left behind will be a disgrace to our name.” Unlike strikebreaking, the war also transcended division in the Black community. Black leaders saw the possibilities. Among those notable,
*Crisis* editor WEB DuBois invited the nation’s African Americans to “close ranks” and “forget our special grievances.”

Because the war appeared in tandem with the Great Migration, it was often proved difficult for Black leadership to untangle the two. Defining the war as “bloody, tragic and deplorable,” *Defender* editor Robert Abbott also recognized it presented “opportunity,” calling on the “Southern Black man to leave his own home,” and take up positions in “mills and factories that have been closed to us.” Together, the war and migration seemed to present an opportunity to secure a status as workers in the free labor order. White leaders also took the opportunity to make the point that military service was anathema to dependency. “There is no color in patriotism,” Col. Franklin A. Denison, leader of the “Fighting Eighth,” Illinois’ celebrated all-Black battalion, announced at a rally in Grant Park before the Eighth left for Europe. “Patriotism is as deeply rooted under Black skin as under any other.” On the way to the front in France, the Eighth tore a raucous strip across the south in open defiance of Jim Crow. Upon the battalion’s return from France, where they were *fêté* with medals from both the American and French governments, Chicago Mayor “Big Bill” Thompson declared at a gathering to celebrate the returning soldiers, “I bespeak for you that justice and equality of citizenship shall [be] a

124 “Close Ranks,” *Crisis*, XV (July 1918), 111.

125 Abbott Quoted on St. Claire Drake, *Black Metropolis*, 60.

126 “Chicago,” *Crisis*, Vo. 21, No. 5 (March 21), 214. Blacks not only served in Europe, but “helped to prepare the meat that kept the life and fight in the boys at the front in Europe.”

127 “Judge Carter Bids Good-By to 8th Infantry,” *Chicago Tribune*, 1 September 1917, 5.

living truth.”¹²⁹ Thompson’s enthusiasm bolstered the arguments of African America leaders like WEB DuBois, that the war portended a new era in race relations.¹³⁰

Hopes spiked in Chicago’s Black Belt, where proud merchants posted pictures of servicemen, surrounded by helmets, rifles and canteens sent back from the front.¹³¹ The benefits most hoped to see develop from the war service, commendations and community support were economic. Asserting in 1918 that riots in the north have primarily “been the result of economic conditions,” the Defender demanded that after the war, the returning Black soldier receive the opportunity to “follow gainful occupations which he was denied a couple years ago,” to achieve the promise of independence the war initially held out.¹³² By casting the war effort in terms of economic opportunity and expectations of independence, Black leadership rallied around the principal tenets of the free labor order; social rights and economic opportunity represented as the rewards of sacrifice. Expectations after the war would be high.

They were quickly dashed. A race riot exploded in Chicago the summer after ceasefire. It developed innocuously. When several Black men and women arrived at the “white” Twenty-ninth Street beach on July 27, they were greeted with jeers and projectiles, and subsequently left. When they returned with greater numbers, white sunbathers fled temporarily to strengthen their flock. Violence ensued. A couple blocks north, and oblivious to the violence erupting at the Twenty-seventh Street beach, four African American boys kicked their homemade raft through the waters of Lake Michigan. John Harris, one of the boys on the raft, later recalled ducking the

¹³⁰ Grossman, Land of Hope, 179.
¹³¹ Tuttle, Race Riot, 218.
¹³² The Negro and the War,” The Chicago Defender, 23 March 1918, 13.
rocks a white threw from 75 feet, as the raft drifted toward the 29th Street beach. “As long as we could see him,” Harris explained, “he never could hit us, because after all a guy throwing a rock that far is not a likely shot. And, you could see the brick coming.”

Eugene William, a second boy, probably did not see the rock that struck his forehead and drowned him in fifteen feet of water. Divers recovered Eugene’s body thirty minutes later. When the remaining boys identified the rock thrower to Officer Callahan, stationed at the “white” beach, he refused to make an arrest, and then stopped a Black officer, brought from the “Black” beach on 25th street, from making the arrest. Rumors and panic immediately broke out over the cause and tragic death of Eugene William. Violence worsened as it spread into the city and the South Side. When it was finished, around August 2, official statistics tallied thirty-eight dead, twenty-three Black and fifteen white, and over 500 injured, 342 Black and 178 white. Racial conflict over a social right to use public space exposed antipathies that led to mayhem.

Several other factors fueled the events of late July 1919. A war that promised—or seemed to promise—self-determination, independence, equality and opportunity failed on all accounts. Chicago had grown more, not less, segregated as the war years changed Chicago’s racial make-up and infused the south side with a new population that accelerated economic competition. As the economic incentive to migration abated and competition intensified, the constitutional dimension of migration deepened among Black workers into “race consciousness,” a patent

\[133\] William Tuttle uses oral interviews and local media to reconstruct the hours and minutes preceding the race riot. See Tuttle, Race Riot, 3-10.

\[134\] City of Chicago, Negro in Chicago, xv, 1.


\[136\] Walter White, Chicago and its Eights Reasons,” Crisis vol. 18, No. 6 (October 1919), 293.
rejection of racial distinctions and categorizations premised on Black inferiority. Assertions of social equality and civic status exacerbated white hostility already on the rise over the previous few years.

In the years following the riot, schools, housing, parks and beaches hosted episodes of violence.¹³⁷ The bombing of Black properties by white supremacists, sporadic in the two years preceding the riot, proceeded at a rate of “two per month” in the spring of 1919; “blockbusters remained prime targets.”¹³⁸ But, punishment was lax. Of the twenty-seven definite bombings, preliminary investigation by the race commission identified only two arrests.¹³⁹ In the context of these escalating attacks, the Defender stood firm on the right of the city’s Blacks to use the beaches, reminding its readers they belong to all the citizens of Chicago.¹⁴⁰

Schools were also sites of racial conflict before the riot. Alfred Thomas, a Black student, was accosted leaving school in early June 1919 by a group of white students demanding Thomas’ “belongings.” Thomas and his friends “repelled the attack” and gave chase to the intersection of 67th and Vernon Street, where a crowd attending a “ball game” joined in with rocks and bricks, launching a “race riot” involving one hundred people. The violence began, the

¹³⁷ For racial violence at schools see “Judge Dismisses Case After Street Fight,” The Chicago Defender 7 July 1917, 10; “Race Trouble Again at Wentworth and 57th,” Chicago Defender, 6 October 1917, 6; For racial violence at parks, when a race riot emerged after a baseball game, see Game Ends in Near Race Riot Chicago Defender 15 June 1918, 12. For housing, and in particular Black families moving into new neighborhoods, see “Race Riot Scare Keeps Cops on Jump,” Chicago Defender, 31 August 1918, 10.

¹³⁸ Philpott, 170, 180.

¹³⁹ “Memorandum on Work of Investigations on Public Opinion,” 12 March 1920, Box 6, Folder 4, Julius Rosenwald Papers, Special Collection, Joseph Regenstein Library, University of Chicago, Chicago; “Chicago” Crisis, Vol. 21, No. 5 (March 1921) 213.

¹⁴⁰ Defender quoted in Tuttle, Race Riot, 235.
Defender was quick to point out, when the white students violated the rights of a Black student, and attempted to “take away lawful property.”

Sites of employment remained critical to Black efforts to secure place in the city, still infused with hostility and violence. In June 1919, one month before the riot, mobs of whites took to the streets of the south side to “kill all the Blacks.” The pursuit of worker status in the free labor order came at a brutal price for two Black men. One was 47-year-old Joseph Robinson, a steadily employed, married, father of six who was shot in the stomach. Another man, 27-year old veteran Charles Mitchell was beaten and “severely cut.” A Defender editor, presumably discouraged by the pitch and tenacity of racial violence, ran an accompanying headline, “No Racial Violence on the Fourth of July, What do You Know About That.”

Provisional employment struck at the ability of Black Chicagoans to overcome their diminished status. Black leadership did little to mitigate the consequences of a contracting economy, ignoring mounting racial tension. The Chicago Urban League responded by supplying meatpacking and steel industries intent on abating wartime union growth with Black workers, who might also serve as strikebreakers. The League limited its proactive measures to circulating cautionary notices throughout the south when northern business grew “slack.” But for many African Americans, a violent north was better than a violent south. Responding to news that work in Chicago was scarce, one migrant responded, “I know there is no work in

141 “Boys Fight on South Side,” Chicago Defender, 7 June 1919, 15.
143 Strickland, History of the Chicago Urban League, 57-58.
Mississippi, and I had better be out of work in Chicago than out of work in Mississippi.”

The sentiment persisted after the race riot. According to a Black woman who spent twenty years teaching in Mississippi, the north still represented a “part of the country where people at least made a pretense at being civilized.” In the minds of some migrants, the constitutional and economic promise of the north survived the riot intact.

The commission investigating the riot took the interests of the city, and not its Black migrants, to heart when it searched, in the words of Governor Lowden, for “a way out.”

Appointed by the Governor and directed by Graham Taylor, the bi-racial Commission was attentive to the role wage work played in the riot. In February and March of 1920, it issued questionnaires to some of the city’s largest concerns employing Black workers. As a result Illinois Steel, packers Swift, Armour and Morris and mail-order house Montgomery Ward were given the opportunity to explain the duration, extent and reason for employing Black workers, along with the adaptability, length of service, skill and output of those workers. In addition to the relative quality of the workers, the Commission attempted to gauge race relation in industry:

“What are the merits of your Negro workmen?” “What are their failings?”

These appealingly broad and searching investigations invited the banal. B.A. Patterson of Montgomery Ward to single out the “competitive spirit” of the Black women who worked in his office, explaining that it made up for their lack of business training. Less irrelevant to the

145 Quoted in Strickland, History of the Chicago Urban League, 72.


147 “Minutes of the Chicago Race Commission,” 11. Julius Rosenwald Papers, Box 6, Folder 4, Special Collections, Regenstein Library, University of Chicago, Chicago.

148 “Suggested Question to Solicit Opinions From Persons Called Into Industrial Conference,” Box 6, Folder 5 Joseph Rosenwald Papers. Special Collections, Regenstein Library, University of Chicago, Chicago.
Commission, was Patterson’s assertion that a “square deal policy” would improve the production of his workers. 149 This square deal remained an important part of the Commission’s final report. Because the commission drew its understanding of Black waged employment from employers and employed workers, who may have been concerned about losing their jobs, it is not surprising that it found in the spring and summer of 1920 “practically no complaints of discrimination in wages on the same task.” 150 The final report enumerated familiar signs of discrimination: exclusion from overtime, frequent changes of task with limited assistance, racist foremen and restricted promotion opportunities. 151 But at the same time, the final report also highlighted the novelty of Black industrial employment, and in particular the employment of Black women. It was the sense of novelty, coupled with testaments to racial progress that held out equality as an eventual condition, but otherwise neutered the study, or at least its ability to roundly interrogate the real conditions of Black industrial life. 152 The city had little to gain by owing up to a race problem.

Select anecdotes shared with the commission, like the one provided by C. W., a Black industrial worker from the south, highlighted the Commission’s commitment to gradualism: progress followed by equality. “I got into piecework and my wages have steadily gone up,” C. W. explained to the Commission.

149 Chicago Commission on Race Relations, Montgomery Ward,” Box 6, Folder 4, Joseph Rosenwald Papers, Special Collections, Regenstein Library, University of Chicago, Chicago.

150 Negro in Chicago, 365. Similarly, the final report announced, “Despite occasional statements that the Negro is slow or shiftless, the volume of evidence before the commission shows that Negroes are satisfactory employees and compare favorably with other racial groups.” See ibid, 378.

151 Chicago Commission on Race Relations, Negro in Chicago, 365-366, 390.

152 According to the commission, wartime labor shortages “forced employers to experiment with Negro women workers and to learn with surprise that they were as teachable as white women and became as efficient workers after receiving the necessary training.” See Chicago Commission on Race Relations, Negro in Chicago, 372, 385.
I am expert now and make as much as any man in the place. I can quit anytime I want to, but the longer I work the more money it is for me. So, I usually work eight or nine hours a day. I am planning to educate my girl with the best of them, buy a home before I’m too old and make life comfortable for my family. There is more of a chance here to learn a trade than in the south. I live better, can save more, and I feel like more of a man.\textsuperscript{153}

While the Commission boasted, “no unfriendly demonstrations occurred between workers in any of the establishments covered by the investigation,” Blacks workers remained, after its publication, dependents and outliers of the free labor order.\textsuperscript{154}

William H. Dozier, a Black stockyard worker, was not available to contest the Commission’s findings. Standing outside the stockyards as the riot unfolded, and possibly waiting to begin his workday, he was struck with a hammer at 7:15 am on Thursday, July 31, 1919. Dozier ran down Exchange Avenue toward the sheep pens at Morgan Street. When the pursuing white mob caught him, he was held and beaten to death with a street broom, shovel and rocks. Few Black workers made an effort to return to work the following Monday.\textsuperscript{155} Their absence has led William Tuttle to argue that the end to the riot was contingent on the safe return of Black workers to their jobs.

They returned to work under police guard. Worried about renewed violence, packers spelled out the terms of the free labor order on large postings pleading with Black workers “Keep cool and use your heads… the riot is over. LET’S FORGET IT. We need food and work for our families and so do you. Steady and cool is the watchword.” But, in a number of cases, tempers had not cooled. When 1,500 policemen, a military regiment, 350 special deputies and 50 regular deputies escorted 12,000 Black workers, 9,000 of which were non-union, back to the stock yards

\textsuperscript{153} Chicago Commission on Race Relations, \textit{Negro in Chicago}, 385.

\textsuperscript{154} Chicago Commission on Race Relations, \textit{Negro in Chicago}, 385.

\textsuperscript{155} Chicago Commission on Race Relations, \textit{Negro in Chicago}, 400.
on August 7, “under cover of machine guns,” 10,000 white unionists took the only step available.
They walked out.  

By characterizing the riot as the work of a “gang of hoodlums” on its first page, the Commission moved the blame to the fringes of Chicago.  
At the stockyards, an Irish athletic club, the Colts, figured prominently in Defender’s coverage in early summer 1919. This sentiment that reasonable people do not riot circulated through political offices, the Defender and in the Coroner’s investigation into the riot, which announced that the rioters were “young, idle, vicious,” and in many instances “degenerate and criminal.” “Hoodlums” sheltered a developing system of racial discrimination that marked sites of industrial employment. Ultimately, the Commission’s final report betrayed a vested interest in sustaining Black economic opportunity in Chicago without recognizing the largest impediment to that opportunity: the diminished social rights that excluded Black workers from steady employment and branded them outliers of the free labor order. The experiment in Black labor, it announced, was successful for industry, as Black workers proved as good, or efficient, as white workers. Sidestepping issues of status, rights and community membership, the Commission’s report replicated the constitutional failure of the Great Migration. This sentiment was echoed by

156 Tuttle, Race Riot, 60-63.
159 “The great majority of each [race],” Governor Lowden imparted upon introducing the Commission, “realizes the necessity of living upon terms of cordial good will and respect, for each other.” See the Chicago Commission on Race Relations, The Negro in Chicago, xvi; The Defender argued in late August 1919 “that no self respecting citizen had anything to do” with the riot. See Chicago Defender, August 19, 1919, 20. Dolbee. Dill Dolbee has argued persuasively that the casting of rioters as hoodlums helped preserve existing system of racial segregation and discrimination. Report of Coroners Jury also quoted in Dolbee. See Bill Dolbee, “The Work of Neighbors Not Hoodlums: The 1919 White Assault on Black Chicago,” (Loyola University Terms Paper, Spring 1999), 3, 5. MCCCA.
Augustus Hill, who remarked in early 1923 after reading the final report that with “decent housing” and a “decent living” the “Negro citizens have proven a valuable asset to the city’s population.” Unfortunately, he added, in neither “of those fields have the Negroes as a whole been given anything like a decent chance.”

**Conclusion**

“Unless the city realizes more fully than it does at present the great injustice which discrimination against any class of citizens entails,” Louise deKoven Bowen announced in her study of Black Chicago before the migration, “we shall suffer for our indifference by an ever increasing number of idle and criminal youth, which must eventually vitiate the white and Black citizenship of Chicagoans.” Asserting that discrimination fosters dependency in both races, Bowen linked the fate of Chicago’s Black population to the fate of the city, identifying prejudice as a potent and ongoing threat. As the race riot temporarily shut down industry a half-dozen years after Bowen made her point, it belied the promise of rights, community membership and equal status in the industrial north, while it denigrated the Black workers as dependent outliers of the free labor order. The struggle among Black workers for status and opportunity would carry over largely unchanged into the 1920s, as new strategies emerged to confront an old challenge. The objective remained the same. “We do not want equal opportunity,” Dr. George Hall, Chief Surgeon at Chicago’s Provident Hospital, explained to the Brooklyn Urban League in early 1920. “We want the same opportunity; we do not want equal accommodation, we want the same accommodation; we do not want equal rights, we want the same rights as every American.

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citizen.” The “square deal for the ‘colored Americans,’” Hall insisted, began with “the white employer.”

162 “Urban League Hears Dr. Hall’s Address,” Chicago Defender, 31 January 1920, 4.
CHAPTER 8: INTERLUDE II
ONE HUNDRED YEARS OF PROGRESS

In 1933, Chicago held a fair that celebrated “A Century of Progress.” This fair marked the city’s founding a century earlier, announced past accomplishments and future promise and connected both to the national and international community. The intent was unmistakable: Chicago was a center of national and international consequence. Visitors were invited to stand witness, and by the Exhibition’s closing in autumn 1934, over thirty-five million did.¹ To trace the century “in which man has made his greatest progress,” the event would boast exhibits in art, agriculture and housing, along with numerous testaments to “basic science” outlining “fundamental discoveries” that formed the “basis of human progress.” On the Exhibition grounds, an “exact replica” of Fort Dearborn “destroyed by the Indians in 1812,” contrasted innovation in economics, industry, architecture, urban reform, criminology, education and “care for dependents,” in order to mark progress.²

However, as the *laissez-faire* economics that underwrote the rise of Chicago laid waste to livelihoods in the early 1930s and left the nation teetering on the brink of ruin; the brazen and self-congratulatory exposition resembled “a sort of defiant gesture in the teeth of economic disaster.” The people of Chicago, St. Clair Drake explained, “half believed that enticing enough visitors would restore prosperity.”³ Reading progress as industrial and economic development and allocating prominence of place to corporate exhibitors represented another defiant gesture in the face of marginal workers, among the most vulnerable to the consequences of collapse. But

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Chicago was about to become a new Deal town and the free labor order, long the engine of economic, social and legal organization, status and obligation, would be severely contested.4

As Sergeants Arthur Wachola and William Hosna glanced over the multitudes at the 23rd Street gates to the fair toward the end of its first year in 1933, they happened upon a “familiar face in the crowd.” It was Edward Murphy, a 52 years old pickpocket, whose “record began in 1902 and include[d] at least one arrest a year ever since.” As the Sergeants arrested Murphy, he protested “he had just arrived in Chicago for the first time in fourteen years to visit the fair.” Murphy, standing in the crowd at the gates of the fair, was charged with vagrancy.”5 Murphy’s crime was familiarity and reputation. Edward Lohman, a pottery teacher at Oklahoma Agricultural and Mechanic, was also arrested during his visit to the Exposition. His crime, it appears, was anonymity.

Detectives Frank McCune and Earl Flannery picked up Lohman off Dearborn Street while he watched a doughnut maker operate in a storefront display. Held in custody for twenty hours, “locked up with bums and criminals in various police cells,” he was only released when while being fingerprinted he was able to provide identification and the arresting officers “realized they had made a mistake.” The chief detective initiated an investigation of the arrest.6 Lohman’s detention betrayed a zealous surveillance heightened—in all likelihood—by the conditions of economic collapse. As apparent outliers of the free labor order, neither man had a right to the Exposition grounds or even city streets. But, in an era of Hoovervilles and breadlines,

4 Drake and Cayton, Black Metropolis, 27.
5 “Detectives See Familiar Face at Gate to Fair,” Chicago Tribune, 15 October 1933, 23.
6 “Lock Up Visitor For 20 Hours In Police Cell,” Chicago Tribune, 1 July 1933, 9.
the ranks of the marginal were swelling and it was becoming increasingly difficult to distinguish breadwinners from vagrants.

When civic authorities fussed over safety at the fair, their discussions were not limited to pickpockets and pottery teachers. Pledging to “keep the city clean,” Dr. Rachelle Yarros, secretary of the Illinois Social Hygiene League, outlined modest ambitions. “We do not intend to start a crusade nor to make wholesale arrests of known prostitutes or their aids. Our purpose is to keep vice from becoming flagrant during the exposition.” When Social Hygiene types gathered during the Exposition at the Palmer House to discuss “conditions favoring vice” on and around the Expositions grounds, they resolved to form an inquiry into “the traffic of women” that would make it easier to remove any hint of sex work from fair grounds. While Social Hygiene agents like Yarros contended that sex workers jeopardized the morals of children, their presence had other profound implications.

They exposed the failure of civic and legal authorities to end vice and subordinate working women to the free labor order twenty years after the Chicago Vice Commission demanded both. When Chicago Daily journalist Kathleen M’laughlin recalled the efforts of Bertha Palmers and the Lady Board of Managers at the Columbian Exposition forty years earlier it was to reject efforts to enshrine the wealthy and powerful and diminish the struggles of the independent and employed. To be sure, the reduced status of sex workers remained intact. The free labor order, which underwrote their marginality, was coming undone under the pressures of

7 “Pledge Safety for Youth at World's Fair” Chicago Tribune, 12 May 1933,19.
economic collapse. Black Chicagoans also remained outliers of the Exposition’s mission—progress—and more often than not, of its grounds as well.

This was particularly striking because the fair was housed adjacent to the Black Belt, along the shores of lake Michigan. When it was initially announced, excitement in the Black community was widespread. President Hoover solicited international participation in the exposition, the Defender jumped at the opportunity to print his intention that it was meant for all “races, creeds and colors,” and would be free from “ignorant prejudices based on a man’s skin.”

At least it started well.

In the organizing phase, the elite of Black Chicago, including Defender editor and publisher Robert Abbott and Jesse Binga, whose real estate holdings and guardianship of the Binga State Bank catapulted them to the ranks of the financial elite, had a voice in the Exposition’s plans. But when Binga’s bank failed and economic depression entrenched, Black leadership was marginalized. On the Exposition site, a replica of the cabin belonging to Jean Baptists de Sable, reportedly one of Chicago’s first residents and a man of African heritage, complemented a staged Fort Dearborn, and in August 1934, a cast of 5,000 dancers traced Black life from antiquity to the jazz age through dance. In this way, Black Americans were associated with the city as they were disassociated from its progress.

The majority of Black Chicagoans who looked to the fair were met with disappointment. Facing unemployment rates double those visited on the white community in 1931, and

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11 Barbara Holt, An American Dilemma on Display: Black Participation at the Chicago Century of Progress Exhibition, 1933-1934 (s.l.: s.n., 198-), 4.
12 Barbara Holt, An American Dilemma on Display: Black Participation at the Chicago Century of Progress Exhibition, 1933-1934 (s.l.: s.n., 198-), 5-6.
composing thirty-four per cent of relief roles in 1934, with an unemployment rate around twenty percent, what Black Chicagoans needed were jobs, not the opportunity to perform cultural and racial progress for paying audiences. At an Exposition celebrating progress, they remained an outlying and undesirable class in the city. For all its public boosterism, the fair was a private enterprise, and its treatment of Black Americans as a separate and undesirable class appeared to constitute one of its operating principles. Efforts to secure jobs for Black Americans predated the fair, and were either blocked or met by duplicitous promises from organizers. Of the over 5,200 men and women employed by the fair, Blacks secured between eighty-five and ninety positions, typically as janitors, restroom attendants, maids in model homes or props in the Aunt Jemima exhibit. Labor remained an organizing principal that kept Black workers marginalized, and witnessed their restricted social and civic status that undermined their place in an Exhibition devoted to progress.

“The fair is a white man’s proposition,” Dewey Jones explained at the end of the Exposition’s first year, “and the white man ran it to suit himself.” Jones covered the fair for the


14 Successes in combating discrimination were few. The Defender reported on the closing of the Exposition that things got better, not worse, in the realm of petty discrimination in the Exposition’s second year, and referenced successful complaints against an Orange Crush concession that served whites with glass cups and Blacks with paper cups. Dewey R Jones, “Race Aided In Making Fair History” The Chicago Defender, November 10, 1934, 11; Dewey R Jones, “A Day At The Fair,” The Chicago Defender, 25 August, 1934, 5.


Chicago Defender, and his frustration rested with an Exhibition that subordinated outliers of the free labor order. Dewey sensed, perhaps better than most, that progress had its limits and marked some people more than others. Ultimately, the spirit of the free labor order reigned at the Century Expositions: hoboes, sex workers and migrating Black Chicagoans remained outliers of industrial life, and of the city’s development, its past and—in the mind of organizers—it’s future. However, despite the Exposition’s tenacious appeal to the patterns and the organization of the free labor order, economic collapse brought dramatic changes in its wake, as new delegations of middle and working class Americans were directed into the industrial margins. New social and legal thinking about poverty, marginalization and diminished status emerged. As the final section of this study demonstrates, the trials and experiences of Progressive Era outliers continued into the 1930s, where they would play a critical role in the nation’s response to economic collapse. The marginal workers it was designed, in part, to control would dramatically amend the free labor order.
CHAPTER 9
THE DECLINE OF THE FREE LABOR ORDER

In November 1930, “a colony of homeless men” congregated at the foot of Randolph Street near Grant Park, in the “shadow of Michigan Avenue,” where they erected temporary shelters. The nation had entered a period of steep economic decline, and homelessness and unemployment spiked. Like hundreds around the nation, the settlement was named “Hooverville” in mock tribute to the president. On Randolph Street, Mike Donovan, a disabled former brakeman and miner “ruled by common assent” as “Mayor,” and like others, Donovan built his shelter with discarded brick, wood and sheet iron, along “faintly defined” passageways, named to mark the changing times: “Prosperity Road,” “Easy Street” and “Hard Times Avenue.”

As the residents of Chicago’s Hooverville stared down a long and frigid winter, passing motorists donated building scraps, blankets, cigarettes and sandwiches. For those who missed this relief, food was procured from local hotels and through efforts to “beat the garbage man to anything that’s edible.” As economic collapse entrenched and unemployment spiked, Hoovervilles pocked the city’s industrial landscape.

Hunger marches in Chicago, Springfield, and Washington, DC, also announced that the industrial margins were expanding. Federal authorities responded as they had to the tramps and hoboes of decades past. A Secret Service investigation branded marches dangerous and without merit—a “gigantic communist joyride.” But, in the early 1930s, when distinctions between the steady workers and idler were eroding, rhetoric of dissolution had a diminishing effect. In Chicago, when hunger march organizer Karl Lochner demanded protection from eviction “for

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non-payment,” free gas and electricity and relief from the cuts in grocery orders it was because dependency had become a condition of urban life. ³ Similar marches would demand from the state a fifteen-dollar weekly dole and “the opening of all vacant buildings and apartments for shelters for the jobless.”⁴ Economic collapse intersected wage work, status and rights in new ways and undercut the ability of vagrancy prosecutions to draw the distinctions that identified outliers.⁵

But vagrancy had also undergone its own modification in the 1920s, as prohibition created new criminal space for bootleggers and Speakeasies and authorities sought out ways to interrupt the trade in vice. Meanwhile, the hobo’s labor cycles of casual employment were replicated in the larger economy of steady workers and workingwomen—exercising new political rights that left jurists fumbling over the meaning of sexual equality—continued to earn subordinate wages. Like Black Chicagoans, their economic relationships would continue to define their status. In the late 1920s, Black workers diversified their strategies to secure their status in the free labor order

³ “Jobless To Ask For Permit To Parade Downtown Monday,” Chicago Tribune, 26 October 1932, 14.


⁵ This chapter intersects scholarship on wage work and rights in the 1920s and 1930s. Works by Lizbeth Cohen, George Sanchez, Karen Fergusson and Simon Bryant examine ways that workers came to identify more closely with the federal government, and in this sense “became” American, shedding racial and ethnic identifiers in the process, and changing the relationship between rights, status and work. Lizbeth Cohen’s, whose book Making a New Deal, speaks most directly to this project, describes wage work in Chicago as unstable and often casual, characterized by flat wages and insecure benefits. While Cohen’s work highlights the impotence of Chicago’s wageworkers in the 1920s, it is not a project that addresses rights, constitutionalism, or the experiences of marginal worker. Rights-oriented, legal scholarship typically examines the ways that rights were gained and lost, and in some cases have parsed individual rights into models to explain their different elements. Borrowing from T.M. Marshall, Jack Balkin examines social, political and civil and the ways they were understood by jurist. Meanwhile, Kenneth Mack examines different methods of securing rights—volunteerism (racial uplift/self help), Neo-institutionalism (institutional recognition), and legal liberalism (recognition of rights by the courts). My analysis borrows from and builds on these approaches, outlined by Mack and Balkin, and by intersecting rights and wage work extends them to hoboes and sex workers. See Lizabeth Cohen, Making A New Deal, Industrial Workers In Chicago, 1919-1939 (New York: Cambridge University Press, 1990); Kenneth W. Mack, “Rethinking Civil Rights Lawyeri

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through company and worker’s organizations, and through politics. For many Black Americans, work remained a critical piece in a larger struggle for social equality.

If the 1920s was an era when the free labor order began to grow inert—when its tenets acted out on the lives of marginal Americans but its compulsion had lost some of the dynamism of previous decades—the trials of the Scottsboro boys, which jerked a national medley of sexual, racial and class convictions to life, illustrated in the early 1930s a disconnect between the gendered and racial tenets of the free labor order and the lives and experiences of those it classified. The southern legal saga made a mockery of gendered female dependency at the precise moment that national economic collapse was humiliating independent and providing men. By the mid-1930s, New Deal initiatives, a federal Fair Employment Practices Commission, and a constitutional crisis developed over the ability of the federal government to assist workers. Meanwhile, a nascent legal liberalism, manifestly a faith in the ability of Courts—and in particular the Supreme Court—to advance wide scale reform ushered in new ideas about social rights and community status in America and unchained working and unemployed Americans from the machinations of the free labor order, while modifying its authority as the dominant social, legal and economic organizing scheme in industrial America.

Criticisms of the free labor order, developed decades earlier by the marginal free labor outliers of Progressive Era Chicago—that worksites replicated social exclusions, that employers held too much power in the employment relationship, that “helper” wages extended dependencies in potentially dangerous ways—percolated to the surface in the 1930s. The critical distinctions that marginal workers created—between the blatantly dissolute and the unfortunate or afflicted, and which Courts only intermittently, or partially, acknowledged in the Progressive Era emerged in the 1930s as integral to schemes of national rehabilitation.
Hoboes By Another Name

In the 1920s, vagrancy was fragmented into assorted social, legal and economic branches, which would come together by decade’s end. A truncated hobo critique of modern America persisted, however. When John J. Sonsteby replaced Harry Olson as Chief Justice of the Municipal Court in 1930, he turned the Court’s attention to the task of applying vagrancy statutes to gangsters. The city’s dailies cheered the decision, explaining that the bootlegger “like the old fashioned vagabond, is a parasite, contributing nothing to orderly society, but exploiting it.” The vagrancy extension hinged on what became known as the “reputation clause,” which granted police authority to arrest an individual based on what was suspected but not actually known about him. Initially, the law was a success, and by early 1931 it was used to secure thirty-seven convictions out a total of 105 charged under the new construction. Also, like older applications, this new construction was publicly scrutinized either because it amounted to a minor assault on a major problem, as Municipal Judge McCarthy felt in 1931—blasting “we must expedite justice by clearing away the chicken feed and getting to the serious business”—or because it was just bad law. “You cannot fight lawlessness with lawlessness,” Municipal Court Judge Fisher explained in 1930; the “temporary relief” it provides will “rise up and plague us, and far from serving the community,” it will hurt us in the end.

Outside the Court, the implications of using the law to broadly target the idle and dissolute amid widespread unemployment also drew criticism. The law was branded “about as [much]

6 “Gangsters And The Vagrancy Law,” Chicago Tribune, 10 September 1930, 14.
7 “37th Conviction Is Obtained In Vagrancy Drive,” Chicago Tribune, 23 April 1931, 12.
nonsense as the Eighteenth Amendment,” and even those who did not find prohibition to be a ridiculous policy worried about it being broadened to reach unemployed men willing to work. Punishing the idle and unlucky, one daily editorialized, would be “like trying to get milk from a dry cow.”

In a period of high unemployment, vagrancy struck many as a callous use of law. The Illinois Supreme Court agreed with this social and legal critique and by 1934 it overturned that section of the law that made criminal reputation a criminal offence, finding it in violation of state and federal due process protections.

Amid economic collapse, social and economic forces had conspired to limit the reach of vagrancy law.

New trends in vagrancy really began during the First World War, when vagrancy prosecutions declined from 368 in the first five months of 1918 to 173 during the same months the following year, 1919. In the 1920s, Municipal Court records tell us they were erratic. In 1922, the Court processed only 220 cases, but five years later, over 1,300 vagrancy cases passed before its judges.

Part of this variety in vagrancy prosecutions derived from problems with the application of vagrancy law, as “judges differed widely in their construction of the vagrancy law,” and attorneys were quick to take advantage by seeking out Municipal Court judges who thought it “far too vague.”

Vagrancy was also destabilized by the casualization of labor in the 1920s. Through frequent and often cyclical lay offs, it became almost impossible to become an

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11 “Supreme Court Kills Chicago Vagrancy Law,” Chicago Tribune, 22 April 1934, 11.

12 Nineteenth, Twentieth, Twenty First And Twenty Second Annual Reports Of The Municipal Court Of Chicago: For The Years December 1, 1924 To December 2, 1928, Inclusive (Chicago: The Fred J. Ringley Company). Discussion of vagrancy in the city’s dailies in the 1920 appears to have fallen off significantly. This may have been because vagrancy law was doing a number of different things and not just targeting hoboes and itinerants.

ideal worker, as proscribed by the free labor order. As new economic and legal patterns altered the margin’s relationship to the free labor order, the critiques developed by the hobo poet Henry Knibbs and hobo philosopher Roger Payne—that industry was unnatural and enslaved workers—acquired some currency in the leisure culture of the 1920s.

College students Arthur Smith and Robert Crawford traveled like tramps from Hoquaim, on coastal Washington State, to Chicago to compete for a fraternity prize of $100; they boasted that they had made the journey in just over a week and survived on $1.80 each. Several years later, when journalist Samuel Blythe “confessed” in the Saturday Evening Post in summer 1925 to his addiction to overwork, he echoed hobo advice manuals from the 1910s and called for a greater commitment to leisure activities. That same year, journalist F. C. Kelly announced that Americans needed better ways to waste time, and celebrated the “idler, who is capable of wasting days and weeks,” while convincing others “that he is usefully engaged.” “Cease to be ashamed of various pursuits,” Kelley announced, “merely because they are futile.” In the 1920s, mobility and idleness emerged as characteristics of “civilized leisure” and entertainment. Charlie Chaplin waxed nostalgic in his turn as a happy tramp in movies and Norman Rockwell


15 “A $100 Hobo,” Chicago Tribune, 22 July 1921, 8.


recalled a simpler era in his painting “The Tramps,” which graced the cover of the Saturday Evening Post in 1924.¹⁹

Meanwhile, social scientists reoriented their analysis of the hobo, from a dangerous to a passing urban menace. Recalling the frontier thesis Frederick Jackson Turner delivered at the Columbian Exposition, sociologist Robert Park identified the hobo as a “belated frontiersman,” living in a “time and in a place when the frontier is passing or no longer exists.”²⁰ For Nels Anderson, a prominent student in Park’s Sociology Department at the University of Chicago, the hobo constituted a separate and distinct frontier that “moved westward two decades or so behind the first,” composed of men willing to “go anywhere to take a job.”²¹ Blythe, Kelley, Chaplin, Rockwell, Park and Anderson would agree, there was no place for the hobo in modern, industrial and mechanized America.

But if the hobo icon was co-opted and the hobo himself history, the idle and dissolute were not. Harvey Zorbaugh, another sociologist trained at the university of Chicago, found him alive and poor. Zorbaugh was convinced the hobo was still meaningful: his “shabiness” stood out against the “march of the city,” his “careless dress,” contrasted the “smart shops of North Michigan,” his disorganization threatened order and his slum haunted the appointed mansions of the Gold Coast. If a frontier had passed, as Park and Anderson suggested, Zorbaugh announced that it neglected an estimated “300,000-500,000 migratory men [who] pass through the city

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²¹ Nels Anderson, On Hoboes and Homelessness (Chicago: University of Chicago Press, 1999 [Orig. 1923]), 29. This analysis is from the introduction for the 1961 Phoenix Edition, which is included in reissue.
every year,” and encroached on its greatness.\textsuperscript{22} In addition to the slums on North Clark Street, hoboes peopled West Madison’s Hobohemia, Grant Park, and myriad “jungles” and camps in and around the city through the 1920s.

Hobo leaders, like Ben Reitman, continued the work of the Hobo College cajoling the idle and dissolute. “A man can’t look the world in the face if he’s a moocher,” Reitman advised. “Be decent and respectable.”\textsuperscript{23} When George David visited Chicago’s flophouses and interviewed hoboes for Professor Burgess in August 1922 he classified the men he encountered as Ben Reitman had, according to their tendency to steady work. “Hutchison,” a typical hobo-workman, lived in The Eureka—an old “Hotel” sheltering nearly 400 men a night at 737-7 South State Street—in order to save money to cover his wife’s medical bills. “His type could be found in most of the hotels,” David explained. Meanwhile, “Henry Jeckle” was a tramp and did “not mean any harm to anyone,” but “he also did not work.” “Chicago Jack,” a bum, exemplified the third class. He always “had money” and felt “there was not any use of working.” Despite their different relationship to wage work, the men shared accommodations that ranged from floors, cots, or most luxuriously four and a half by seven and half-foot rooms.\textsuperscript{24} David’s investigation made it clear that the more severe elements of hobo life remained intact through the 1920s. And where hoboes persisted, their critique of industrial work and slavery thrived.

Casting hoboes as casualties of industry, editorials in the “Hobo” News complained that warehousing hoboes exposed them to disease and demanded “the preservation of the health of

\textsuperscript{22} Harvey W. Zorbaugh, \textit{The Gold Coast And The Slum: A Sociological Study Of Chicago’s Near North Side} (Chicago: University Of Chicago Press, 1925), 105-109.

\textsuperscript{23} “Hobo At School Learns How He Looks To World,” \textit{Chicago Tribune}, 18 January 1921, 17.

\textsuperscript{24} George F. David, “A Dozen Hobo Hotels In The Loop, Documents 151,” Box 127, Folder 5, Ernest Burgess Papers. Special Collections, Joseph Regenstein Library, University of Chicago, Chicago.
the community, as well as of the workers who are forced to abide there.” These types of editorials were also designed to counter charges that hoboes are sick because “[t]hey neglect their colds, [and] live in badly ventilated spaces,” as Dr. W. A. Evans declared in the Tribune. Echoing Francis Wayland and the social Darwinists of an earlier era, Evans drew a familiar distinction: the idle and dissolute were not in need of protection, society was in need of protection from them.

Also in the 1920s, hoboes lost their hold on seasonal employment that traditionally carried many through, as large numbers of Mexicans and Filipino immigrants took agricultural jobs and drove down prices. As a result of depleted and subsistence-level wages many hoboes opted to idle in the cities, especially during winter months. “I do not for a moment question the sincerity of those folks who imagine there is a job at all times for all the jobless,” Gustav Schaefer explained in the “Hobo” News in early 1922, but conditions had clearly changed. In the News hoboes editorialized that they feared repercussion if they challenged, “the position of the powers that be.” And, at worksites the itinerant encountered wages “barely sufficient to pay one’s way while the job lasts” and confronted duplicitous employment bureaus that thrived off “the idea of a worker having to pay for the right to work.” The 1920s would mark a critical change in the hobo’s patterns of survival.

Hoboes lost their stake in the agricultural cycles for other reasons as well. The mechanization of industry and agriculture reduced the need for human labor, while the growth of rural towns and villages provided farmers with a “great reservoir of farm labor” on hand. As a result, “the farmer in rush seasons has to rely less and less on roaming transients.”\textsuperscript{31} This development strengthened the hand of employers and according to the “\textit{Hobo} News, made under-employment a “normal condition of business.”\textsuperscript{32} At the same time, the popularization of the automobile both shifted and sped up the mobility patterns of individual itinerants who increasingly traveled with their families to worksites by car.\textsuperscript{33} In the late 1920s, Evelyn Heacock Wilson, a University of Chicago graduate student, intersected mobility and the casualization of labor to describe a new trend: the itinerant family, or the “tramp family.” What Wilson lamented as “disorganization” was an increasingly common response to the pressures marginal workers encountered in the 1920s.\textsuperscript{34}

If the economic stress encountered by hoboes in the late 1920s did not anticipate economic collapse, the hoboes nonetheless bore the consequences of collapse acutely. With full-scale Depression in the early 1930s, the idle and dissolute also became more visible, in part because there were more of them. Authorities responded in familiar ways. In early 1930, Chicago Deputy Police Commissioner Stege responded to “an increase in the number of petty robberies within the last week” with a campaign “to drive ‘floaters’ out of the city.” Roughly 100 men were randomly picked up from lodging houses and poolrooms on South State Street and West Madison Street.

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\textsuperscript{32} “\textit{Hobo} News, February 1923, 5; Lizabeth Cohen, \textit{Making A New Deal}, 102.
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“Those who cannot account for their presence in the city will be ordered to leave,” Stege declared.35 A couple months later, at the end of March 1930, Chicago drivers were cautioned to beware of “tramps, vagrants, hold up men, indigent unemployed, moochers” and “spongers” while on the road. As with the hoboes of the past, authorities complained, “[w]e can’t arrest a man merely because he is walking along the side of the road.” Recognizing that it was impossible to distinguish those “who have criminal intentions” from those “who are law abiding citizens exercising their privilege to walk on a public right of way,” the Tribune shifted discourse to warn drivers, “[r]iding with them involves a risk of infection.”36

And as the economic crisis deepened and spread, the Good Fellows Fund, a private charity operating in Chicago, redeployed older distinctions between worthy and unworthy recipients. The Fund explained, “perennial beggars and professional moochers have become active in Chicago and tramps and hobos have drifted into the city trying to impose themselves upon a community,” and would not be provided for. The “worthiness” of recipients, the Good Fellows assured donors, is “carefully investigated.”37

The leisure tramp of the 1920s obscured the more severe elements of hobo life and the economic challenges marginal workers encountered during the decade. Meanwhile, in cities, full-time workers were fighting off claims to their jobs from women, children, prison laborers, or demands they work fewer hours. Increasingly under attack in the 1920s from the casualization of steady work, the decline in labor union memberships, greater company control and high turnover, breadwinners had turned families into hoboes and narrowed the gap between the steady

and independent provider and idle and dissolute dependent. This development extended the Progressive Era hobo critique that liberty of contract theory calcified the diminished status of marginal workers, that individual labor and its conditions were like slavery and that law—namely vagrancy law—was an oppressive tool that served the interests of employers and industrialists. These accusations anticipated the challenges of relief in the early years of the Great Depression. For their part, Black workers were more creative, if not more successful, in their efforts to become ideal workers in the free labor order.

Race and Work: “Their Quarantine Intensifies their Difference”

Plagued by job insecurity and chronic unemployment, Chicago’s Black workers devised new methods to secure a place in industry in the 1920s and 1930s. Reduced wages, a job ceiling that concentrated Black workers in replaceable, unskilled employment, and widespread discrimination marked the grim realties of Black industrial life in the 1920s. One reason for this, St. Claire Drake explained, is the idea that Black dependency had become self-replicating and self-reinforcing:

Negroes are deemed unfit for citizenship or full equality; they must be kept in their place; though being kept in their place they cannot show whether they are fit for citizenship and equality…. Their quarantine intensifies their difference and curtails their chances for improvement. Negroes become the victims of circular reinforcement.”

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38 The classic argument made by Lizbeth Cohen is that workers grew more dependent on employers in the 1920s as employers schemed to remake work around the interests of business and the “market.” Company unions and expansive welfare capitalist initiatives were emblematic of these efforts. While Cohen argues that these initiatives convinced workers that employers held a responsibility for them, the same initiatives also helped to make all workers dependent in a similar way, narrowing the gap that previously existed, or was understood to previously exist, between the outliers and principles of the free labor order. See Cohen, Making a New Deal, 170-210, Depastino, Citizen Hobo, 175-185, Higbie, Indispensable Outcasts, 207-209.

39 Drake, Black Metropolis, 268.


41 Drake, Black Metropolis, 268.
To break this cycle, Black workers reached out to labor unions and company unions, the Communist Party and eventually the federal government and deployed a range of strategies devised to secure place, along with social and civil rights.\footnote{In his work on black citizenship, Kenneth Mack highlights the insecurity of Black rights in the 1920s. Mack identifies three principal approaches to rights used by Black leaders in the 1920s: volunteerism, neo-institutionalism and legal liberalism. They might be understood as self-help, institutional support and appeals to law. See Kenneth W. Mack, “Rethinking Civil Rights Lawyering And Politics In The Era Before Brown,” \textit{Yale Law Journal} 115 (2005): 282-283} In the first half of the 1920s, however, strikebreaking remained the principal strategy of Black self-help and industrial assimilation.

Although its effectiveness was increasingly circumspect, strikebreaking continued to epitomize Black economic precariousness and the response to that precariousness in the early 1920s. As a principled form of self-help, strikebreaking threatened and angered full time white workers in ways that tramps did not. At the same time, white workers had generally set the terms of exclusive workspace and most Black industrial workers recognized that they had little to gain from not crossing a picket line. The strike waves of 1919, 1920 and 1921 created new short-term opportunities in packing and steel that many Black workers took; jobs were more important than any potential benefit from union membership and, knowing this, the Chicago Urban League enthusiastically placed workers during strikes.\footnote{Rick Halpern, \textit{Down On The Killing Floor: Black And White Workers in Chicago’s Packinghouses} (Urbana: University Of Illinois Press, 1997), 71-79.} Their efforts reaffirmed the workplace as a site where statuses were created and contested.

According to William Evans, Industrial Secretary to the Chicago Urban League, in the early 1920s steady industrial labor made outliers into citizens and the strike break “furnished the medium through which his advancement is accomplished.” Evans’ strategy would bring about workplace equality by making white workers equally insecure and he reasoned “[w]hite
unionists, must sooner or later realize that their own security consists in the acceptance on equal
terms of the colored workman.” In the first half of the 1920s, Black leaders targeted
exclusionary white unions.

During a street and elevated car strike in 1922, the Defender advocated strikebreaking to secure “the privileges accorded American citizens to earn a livelihood.” In the Defender’s construction, steady work was about citizenship and unionism stood “in its own light when it denie[d] economical rights to any man, it matters not what his color or his nationality.” The Chicago Urban League consented to this construction and celebrated when “Negro women operators were employed in the striker’s places,” during the Garment Workers strike in the spring of 1924. Black leaders clung tenaciously at mid decade to a sense of equality and fair play—“[If] the unions deny them the opportunity when they are in power, it is but natural that they accept, when the union men are ousted, the positions vacated by them”—that was absent in every other facet of Black life. In this regard, strikebreaking also remained largely aspirational.

Black workers were typically the last hired and the first fired, a policy exemplified in some stockyards by the branding of time cards with black stars “so the foremen could easily see and quickly identify them when the call came to reduce the size of the gang.” Even sites of strikebreaking were infused with workplace discrimination. Promised an “ideal situation and the

same accommodations as whites,” a group of young Black men who crossed the strike barricade at the Pennsylvania Rail Road were assembled into separate rooms, “as if they were diseased.”

In other cases, strikebreaking was marked by extreme racial violence.

In Oklahoma City in early 1922, James Brooks, a Black worker “employed at a local packing plant since the calling of the strike of packing house workers,” was kidnapped from his home and found hanged “three miles south of town.” Six months later in Herrin, Illinois, twenty strikebreakers, most of them Black and from Chicago, were killed in violence escalating from a miner’s strike. Acknowledging the violence associated with strikebreaking, the Defender editorialized, “to call us scabs and strikebreakers and tools because we work when work is offered us, the same work that should be ours under union protection, but which is denied us on account of our color, is unjust and unfair, and presumably the source of labor violence.”

Orchestrations of Black dependency, the Defender reasoned, were about more than the strike break.

Strikebreaking touched almost every facet of Black industrial life, from economic instability, discrimination at job sites, union intransigence and employer deception to myopic Black leadership. As a pathway to economic opportunity, strikebreaking had its limits: jobs gained in the strike were often lost in its resolution. The Chicago League announced toward the end of 1920, that a year that began with “unprecedented demand” for unskilled and semi-skilled workers ended with “widespread unemployment affecting practically every industrial area.” The 2,000 Black women hired as clerks and typists in mail order houses provided a case in point:

50 “Feed Strikebreakers At The ‘Hog Trough’ In RR Shop,” Chicago Defender, 5 August 1922, 1.
51 “Colored Strikebreaker Hanged In Oklahoma,” Chicago Tribune, 18 January 1922, 1.
52 “Greater Than The Law,” Chicago Defender, 2 September 1922, 12.
“before the close of the year all these had been released.” Betraying its faith in the gradual but
certain progress of Black workers, it acknowledged “suitable progress had not been made after
“long enough knowledge of the work,” and blamed, astonishingly, the labor actions that created
positions for strikebreakers in the first place for “preventing mutual understanding.”

It was strikebreaking’s failure to account for social context and the myriad factors shaping
Black industrial employment that led to its failure as a strategy, and let it to exacerbate what it
intended to thwart. By the mid 1920’s, the Chicago Urban League acknowledged the failure of
strikebreaking. The majority of Black women worked in laundry and domestic service, and
outside packing, steel and iron Black men found employment “practically closed.” Even more
depressing, the Chicago League found “jobs are open to Negroes on a larger scale where the
health of the worker is impaired.” Frustrated in its job placement efforts, the League fell back
on gradual racial “progress” and prompted Black Chicagoans to look like workers despite their
limited claims to jobsites. For its part, the League reinstated the Department of Civic Betterment,
which taught “the habits of thrift, cleanliness, health and general good behavior,” and promoted
“cleaner streets, well kept houses, more attention to personal hygiene and stricter conformity to
other civic requirements.” The strategy was premised, however, on the conduct and civic


practices of Blacks, neither of which appeared to be the source of their diminished status. The second strategy related to women’s employment.

It counseled patience. “They realize that they are pioneers,” Helen Sayre wrote for *Opportunity* in 1924, “and that to them is entrusted the future possibilities for greater opportunity for Negro girls in industry if they make good.” “Give her time,” Sayre condescended, “[g]uide her.” Sayre’s analysis, however, obscures the role of breadwinning women who were as removed from industrial opportunity as they were from the domestic ascriptions of the free labor order, and were often the principal earners in Black families. While these women drew the ire of the Domestic Relations Court and reforming agencies, their struggles resembled those of white workingwomen who embraced casual sex work, but whose plight was not treated as similarly constitutive of patterns of social organization, while it highlighted the myriad changes encountering Black families in the industrial city. The demise of strikebreaking as the principal strategy in securing place in the industrial workforce created a vacuum that would be filled in the second half of the 1920s by new institutional and political strategies.

The decline of the labor movement in the 1920s, marked by the loss of a million memberships, left employer’s authority in the workplace relatively uncontested and ushered in

59 Black sex workers occupied the basement of the labor hierarchy. Municipal Court officials and police captains housed in the Black Belt understood their reform in the terms of municipal and state senate vice commissioners in the 1910s, but filed to account for the capacious racism or the economic challenges encountering Black Chicagoans. St Clair Drake recorded one exchange in which a municipal authority reasoned, “If they could just get a good job scrubbing floors you wouldn’t see them trying to be whores very long.” Black sex workers responded just as casual sex workers had years earlier: “When I see the word maid—why, girl, let me tell you, it just runs through me. I think I’d sooner starve.” Her associate added, “I had been in some kind of office since I was fourteen years old. Why would I start scrubbing floors at this late date in my life.” Drake, *Black Metropolis*, 598-598. Italics in original. Drake and Cayton do not attribute quotations to individual names and dates, but they appear to originate from the 1920s.
one of the great eras of welfare capitalism, a term denoting the benefits employers used to secure the loyalty of employees. While corporate welfare programs varied at different workplaces, at Chicago’s slaughterhouses, which typically employed a large number of Black workers, they involved some form of employee representation in the daily operation of the business, bonuses to incentivize greater employee productivity and a range of employee benefits, from health insurance and vacation pay to company picnics. Unlike strikebreaking, company unions also provided Black workers with a voice in business operations and outlined grievance procedures. However, because companies ran them, these unions were also sites of engagement rather than workplace reform. But, as sites of engagement that included the voices of Black workers, they modeled racial inclusion and made benefits, like pensions, vacation pay and health care standard among employee expectations. In addition, by fostering workers’ associations, companies appeared to undermine an important classical liberal tenet—that work be contracted between individuals, and not employers and groups of individuals with similar economic interests.

A second strand of institutional self-help involved Black labor unions. When the Brotherhood of Sleeping Car Porters (BSCP) formed in 1925, the Pullman Company was the largest single employer of Black workers in the United States. Initially, resistance to unionization at Pullman was widespread; porters supporting the union were easily fired and organizers were denounced from the pulpit and in the pages of the Black press for criticizing a business that

61 Halpern, Down On The Killing Floor, 87.
62 Halpern, Down On The Killing Floor, 94; Cohen, Making a New Deal, 314-319.
employed so many Black workers. Union leader A. Phillip Randolph responded to this criticism not by targeting Pullman, but with a discourse of Black economic opportunity and independence that would make Black workers out of outliers. Randolph’s appeal to “manhood rights” and economic opportunity was about more than the failure of strikebreakers; it reflected popular assertion of a “New Negro,” novel for his or her refusal to be diminished by social and economic forces.

According to Alain Locke this consciousness erupted at “awakened centers,” typically northern cities like Chicago, where Black workers were beginning to lay “aside the status of a beneficiary and ward for that of a collaborator and participant in American civilization.” This awareness, or consciousness, was transformational according to Locke and produced “a new vision of opportunity, of social and economic freedom, of a spirit to seize.” While Locke located this vision amid an “extortiionate and heavy toil, [and] a chance for the improvement of conditions,” testaments of renewal had little immediate impact on marginal Black workers. Though, in part, Randolph’s independent and “manly” workers reflected this new racial identity.

“Not in recent years,” National Urban League Director T. Arnold Hill announced at the end of 1927, “has there been exerted so much effort to find jobs for our people with so little success.” Despite these setbacks, the patterns and the obligations of the free labor order continued to shape strategies of securing status and place through wage work. “We must force

65 While The “New Negro” emerged from the cultural nexuses of the Harlem renaissance, the positive racial affirmations it sounded struck well beyond the artistic and intellectual machinations of New York City. Alain Locke, The New Negro, (1925)
this important issue,” the Defender explained, “if we ever expect to reach the economic independence to which we have been aspiring.” However, at decade’s end, testaments to Black industrial accomplishments—“the place which the Negro has secured in the industrial life of Chicago is indicative of the Negro’s future in industry”—also appeared depressing and would herald a grim future for Black workers and families after economic collapse. 

The Black workers industrial stasis in the 1920s saw them enter the Great Depression as unprepared and unstable as the migrant generation. According to Abram Harris, they were “undisciplined in collective bargaining, ignorant of trade union traditions, distrustful of white workers especially when organized and led by opportunistic leaders nurtured by philanthropy.” Strikebreaking was transformed from a strategy to a scapegoat. In this new construction, Black workers “accepted struck jobs with impunity, but accepted the employers terms as to wages and working conditions, chief of which was not membership in trade unions, as a long denied opportunity for the mitigation of economic thralldom.” Casting two decades of Black industrial experience as an exercise in economic bondage, Harris returned to the free labor order and the Black worker’s potential to become ideal workers in that order, but through different means.

At the same time, the early 1930s saw the industrial margins swelled by economic collapse that would generate new political strategies among Black workers in their pursuit of citizenship and status—and place—in the city. The political strategies destabilized older discourses of the

67 “Constitutional Rights Fail To Aid Workers,” Chicago Defender, 20 October 1928.
71 Will Herberg, “Shall the Negro Worker Turn to Labor of Capital” Crisis (July 1931): 227-228.
free labor order in favor of discussions of rights, status and membership that was often “imprecise [and] riddled with multiple and unresolved meanings.”

**Working Women**

Between 1920 and 1930, the number of American women engaged in waged employment increased by more than twenty-five percent. However, their wages, as a fraction of the wages of full time male workers declined through the decade, averaging fifty-seven percent by 1930. Like tramps, women’s greater industrial enrollment translated into reduced economic independence, as full time male workers were able to keep challengers to their full time employment underemployed and underpaid. Meanwhile, women’s economic rights and citizenship status—which were less directly tied to dependency on breadwinners and breadwinning—were hotly contested in the 1920s, and shaped by a debate similar to the one the Supreme Court confronted in *Adkins v. Children’s Hospital*: protective legislation, which was the cornerstone of Progressive Era reform, or equal rights, which rejected protections and demanded full equality. Equal rights advocates typically considered protective measures a preemptive strike against women’s capacity to compete equally and openly with men. Meanwhile, advocates of protections argued that because everyone was subordinate to industry, measures should be taken to curb the extremes of industrial employment. In both case, work prefigured women’s status and served as a vehicle in which changes to that status were negotiated.

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73 Alice Kessler-Harris, *Out Of Work*, 228.


75 Alice Kessler-Harris examines this debate through the passage of the Maternity and Infancy Act (Sheppard Towner Act) (1921) on the heels of the ratification of the Nineteenth Amendment. The Act announced a federal interest in the welfare of the pregnant and the recently born through federally funded clinics providing maternity and baby-related service. However, debate of the act was rife with disagreement over the meaning of motherhood and
In the 1910s, women’s wage and sex work was mutually constitutive. This was not the case by the 1920s, when women’s wage and sex work were examined along distinct trajectories. One involved workingwomen who earned “helper” wages and would one day become mothers and wives. The second involved sex workers, dissolute and beyond the pale of reform. While sexual exchange outside the home marked their urban deviance as well as the failure of Progressive Era judicial patriarchy, both trajectories shared a common experience in the destabilization of women’s status by the Nineteenth Amendment, which led legal and municipal authorities to devise new models for women’s status.

When Nellie Meckling divorced her husband to move in with her father, a wealthy hotelier who controlled the Great Northern Hotel in Chicago, Judge David of the Cook County Superior Court took the opportunity to pronounce on the nature and implication of women’s rights. Judge David blithely announced in Court, “when women claim the rights of men, to vote, to smoke and to enter business, they should also be required to take upon themselves a responsibility commensurate with man’s.” In this case, David’s commensurate responsibility was alimony. Upon hearing this, the man being divorced—Mr. Meckling—“smiled and shook his head,” responding, “I have no desire for alimony.” The judge then repeated his offer, “I cannot force it upon you, but if you wish it I will grant you a proper sum of alimony.” Mr. Meckling again declined. As David saw it, political equality gained by the vote constituted “[w]omen’s entry into an era of social and economic independence.”76 It did not follow, as Mr. Meekling seemed to suggest, that men were now entering an era of economic dependency.

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the relationship between motherhood and wage work. It was debate that led Julia Lathrop, head of the women’s bureau, to announce in frustration, “the interests of women as wage earners are not the interests of children.” Quoted in Alice Kessler Harris, In Pursuit Of Iniquity: Women And The Quest For Economic Citizenship In Twentieth Century America (New York: Oxford University Press, 2001) 38.

In autumn of the same year, 1924, Senator Robert LaFollette addressed a large crowd in Chicago where he publicly lamented the valorization of property rights at the expense of the “sanctity of human rights.” A presidential hopeful on a third party ticket, the senator was reacting to a recent Supreme Court decision overthrowing protective legislation for workingwomen in Washington, DC. The case, Adkins v. Children’s Hospital, involved a Fifth Amendment test of a 1918 District of Columbia Minimum Wage Act stipulating that the wages of dependents be sufficient to keep women in “good health and protect their morals.” As provided by the Act, a board set a living minimum wage, with which business was required to comply. The Children’s Hospital sued the board, arguing that by setting wages it forced the hospital to pay women more than it wanted and therefore interfered with worker’s substantive liberty of contract, the principle established in Lochner. Federal law and a Fifth Amendment test, rather than a Fourteenth Amendment test, which involved state laws in Lochner and Muller, distinguishes the case legally. But, its social and economic contexts—and rights—were nearly identical.

The Court agreed with the hospital and it did so because, like Judge David, it felt that the Nineteenth Amendment had brought differences between the sexes “to the vanishing point.” The decision heralded women’s right to below-sustenance wages in a language of “emancipation from the old doctrine that she must be given special protection.” The “old doctrine” was established roughly fifteen years earlier in Muller v. Oregon and held that women’s domestic duty and dependent status entitled them to industrial safeguards. In Adkins, Justice Sutherland wrote a majority opinion in which he would make at least two big statements: he announced that


78 Adkins v. Children’s Hospital, 261 U. S. 525 (1923).
protective legislations affecting professional and wage working women violated their liberty of contract and were therefore unconstitutional, and he declared that wage work and sex work were distinct and unrelated. Read another way, he asserted that women’s political equality translated into full civic and social equality. Cast as illegitimate employment, sex work and the exchange of sexual service outside the home served as new conditions on which women’s new equal status might be vacated.

One effect of this new model was to entrench women in the free labor order, to locate their earnings capacity below men’s and their sexuality exclusively inside the home—as a constitutive element of the home. Another effect was to launch a debate over the meaning of equality. Alice Paul, head of the National Women’s Party, proposed to legislate women’s equality with an Equal Rights Amendment, which she submitted to congress in February 1923. But, she had her opponents among the advocates of protective legislation.

Chicagoan Catherine McCulloch, for instance, rejected blanket equality because “[i]s it not best to have all laws treat men and women alike.” Revealing her Progressive Era stripes, she embraced hour’s laws and mother’s pension schemes and welcomed legislations restricting women’s work in mines and in the military. According to McCulloch, “Blanket equality bills” flatten important gender differences, and “cover more than is wanted in some cases and less than is desirable in others.”

Valeska Bari, writing for Nation magazine in the late 1920s, agreed in principle with McCulloch: “To remove special legislation which has been enacted because of the biological functions of women, would not change the physical handicap of those functions or its importance to society but would only grant the doubtful benefit of an eighteenth century liberty

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79 Catharine Waugh McCulloch “Voice Of The People,” Chicago Tribune, 8 March 1923, 8.
According to Paul’s critics, liberty of contract was the dubious reward of a protracted and ill-advised struggle.

Efforts to reconcile these views involved rethinking women’s work and domestic life. Journalist Eunice Fuller Barnard identified “an increased tolerance of mother’s right to an occupation” in the late 1920s. Noting that women had demonstrated at Vassar and Smith Colleges their ability compete with men, and at the same time keep her “health, her looks and her much discussed femininity,” Barnard called on women to reorganize the house, “For women of intelligence cannot of a class be freed from it, or genuinely immersed in it until they reorganize it.”

Locating women’s principal duty in the home, even advocates of women’s education and professional employment in the 1920s treated it as secondary to the real work of mothers and wives.

Popular discussions of women’s work validated these priorities. Syndicated columnist Dorothy Blake advised women reading the Tribune, “Ambition Often Ruins Happiness.” Explaining that the employed are frequently “lonely” and “isolated,” she guided her readers with dubious headlines like “HOW TO BE HAPPY THOUGH MARRIED.” Conflating marriage and employment markets, popular advice instructed women looking for work to pay particular attention to stipulations requesting applicants be “of good appearance” and “attractive young women.” A “girl must be reasonably slender, graceful and well groomed,” and, “There must be that engaging sparkle of hair, complexion, hands, teeth, that just speak out efficiency in personal

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management.” Of course, the presumption was that these women were not just searching for jobs. Mrs. L. H. Walker of the Illinois Free Employment Office explained that young women prefer to work downtown because “the Loop is the best marriage mart. The contacts formed in business are now the greatest source of matrimonial alliance.”

But, not all women identified their citizenship at the hearth or in debates over protective legislation. They found it on the streets, where they regularly made quick economic decisions and operated apart from protective safeguards and advice manuals—and traded in sex outside the home. They were the sex workers and outliers of the free labor order and they continued to help define women’s role in that order. The Court in Adkins addressed these women as well. Aside from bringing Justices Holmes and Taft together to scoff at the sweeping egalitarianism the majority envisioned in the Nineteenth Amendment, the decision in Adkins also rejected the correlation between wages and morality, foundational in the creation and development of Chicago’s Morals Court. “The relation between earnings and morals,” Justice Sutherland declared, “is not capable of standardization. It cannot be shown that well paid women safeguard their morals more carefully than those who are poorly paid.”

The crux of Justice Sutherland’s decision was not recognition that the well heeled can also “fall,” but that the “fallen” had lost any claim to citizenship and that their redemption was not the responsibility of either the state or the labor market.

Municipal and senate vice commission investigations in the 1910s criminalized sex work and provided for a Morals Court to rehabilitate the “fallen” to industrial production and

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85 Adkins v. Children’s Hospital, 261 U. S. 525 (1923).
potentially to virtue as mothers and wives. By the 1920s, the state interest in uplifting the “dissipated” began to fade and was replaced with an expectation that real women always worked on their feet and kept homes. Sex workers, this logic implied, did neither. The city’s dailies took the lead in defining this new normative distinction. “Vice Barometer Shows Big Drop in Last Decade,” reporter John Kelley announced in the early 1920s one of a series of articles produced for the *Tribune*, congratulating the city on its “progress” from a sordid moral past, when judges were lenient and targeted prostitutes with “small fine[s].” Meanwhile, sex workers became subject to invasive new tests, under which they could be detained if found to be “contagious” and then on release “warned to leave the city or walk the straight and narrow path” within it.86 Meanwhile, the home and the concept of the ideal mother and wife as apportioned by the free labor order continued to define the outlying sex worker. Sex work remained distinct from wage work, but the status of the sex worker continued to bear directly on the status of all women and their relationships to the free labor order.

Capturing lose threads of distain for sex workers, sociologist Water Reckless rejected the law’s paternal commitment to protection and control that marked the efforts of Progressive judges and argued the “delinquent” and “disordered” are better met with the full enforcement arm of the state.87 Claiming that “only a few have ever been reached and saved by welfare agencies,” Reckless echoed Justice Sutherland by reading the Nineteenth Amendment against efforts to help destitute women and argued it was up to them, and not the state, “to assist themselves in getting out of their profession.”88 Their perseverance had cost them the sympathy

and aid of the state and left these prodigal daughters with one option: “marriage with men willing
to overlook the past”.

Reckless also criticized the Morals Court’s methods. Assigning part of its failure to the
“poor human material which must be refashioned,” Reckless criticized its progressive
enforcement of prostitution ordinances, which extended the folk justice of the Police Court
system into the 1920s and typically saw a discharged or suspended sentence on a first charge,
probation on a second, a fine on a third and a possible sentence on the fourth. In punishing these
women, the Court “has not been as effective as it could be,” he declared. But by the late 1920s,
patterns of judicial patriarchy and the restoration of sex workers to domestic duty or industrial
“helper” status were also being altered by new models of female dissolution marked by the
preponderance of African American sex workers and the underworld that prohibition made. The
virtue of these women was treated as entirely remote to the free labor order. Headlines
announcing “Volstead Law Increases Vice,” common by the late 1920s, helped mark the
transition in the construction of the sex worker, from subject of reform to subject of
punishment.

The Morals Court adopted the view that women’s independence as generated by the
Nineteenth Amendment ended one era of reform and introduced a new era of punishment. Kate

89 Walter Reckless, Vice In Chicago, 68.

90 Walter Reckless, Vice In Chicago, 64. In 1929, of the 7,695 “women cases” in the Morals Court, Reckless noted
that the vast majority (76.2 percent) were discharged, while smaller numbers were fined (10.9 percent), give
probation (8.1) or sentenced to the house of correction (4.1). See Walter Reckless, Vice In Chicago, 245.

91 Walter Reckless, Vice In Chicago, 270.


93 “Volstead Law Increases Vice, Board Contends,” Chicago Tribune, 15 July 1927, 1; “Survey Reveals 70 Per Cent
Drop In Prostitution,” Chicago Tribune, 3 January 1933, 12.
Adams, the namesake of the 1915 law that provided jail time for women convicted of prostitution, acknowledged the Morals Court had not “realized its full possibility.” Women brought to the Court, “want of humane care” had transformed into “repeaters, hardened in their hopeless lives.” And, these repeaters, Adams added, were expensive. She used the case of “M. H.,” who was a “young, attractive and well dressed” woman arrested 113 times between 1924 and 1928. She was “one of the ‘flappers’ who has appeared in the Morals Court as elsewhere.” By Adams’ estimation, “M.H.” alone had cost the city $3,950 in Court and policing costs over those five years. The “problem” of prohibited vice, Adams continued, was not only economic, but also social, resulting in the “hardening” of the women.94

However, the hardening Adams described had taken place on both sides of the sex work debate, as authorities entrenched their opposition to sex workers. It was a development that gave credence to the activities of moral vigilantes like the Committee of Fifteen. The Committee records, which outline surveillance and repression techniques also described ways that sex workers continued to resist reform and repression, to live as independent economic operators, adjusting their practices in response to new laws and persisting in their trade despite those laws. Their persistence was also an indictment of a system that failed to amend “helper” wage structures, and which clung tenaciously to the domestic ascriptions of the free labor order in creating categories of womanhood.

Chicago’s Committee of Fifteen remained in the 1920s, as it had been in the 1910s, a myopic, privately-funded moral purity initiative, doggedly investigating sex work as a phenomenon entirely distinct and separate from the lives and experiences of working women.

94 Nineteenth, Twentieth, Twenty First And Twenty Second Annual Reports Of The Municipal Court Of Chicago: For The Years December 1, 1924 To December 2, 1928 (Chicago: The Fred J. Ringley Company), 112-114.
The Committee typically made its investigations by foot, targeting different parts of the city and assembling materials it could furnish police for raids. Their records reveal a dynamic world of public sexual exchange.

Sex work was conducted at an assortment of sites across the city: houses, apartments and hotels were among the most frequent cited. Networks were informal and commonly relied on bellboys and taxi drivers to direct sex-industry clients. At restaurants, sex work was mixed with leisure. Investigators recalled taking a meal downtown, at 416 South Wabash, and while dining, noticing “six unescorted women.” After they joined two women, Edith and May, they duly noted they were solicited. In this case, investigators shared their moral indignation, noting in their faithfully sparse account the “intermingling of the sexes, vulgar dancing and several intoxicated parties.” Investigators also report solicitations from windows as they walked down the street, and in other cases on the street. For example, Leslie Austin solicited investigators openly on the street in mid April 1922, and invited undercover investigators to take her to the Atlantic Hotel. She explained, “she was not charity and made her living by sexual intercourse with men.”

As the encounter with Edith and May suggest, it is likely that sex workers held other waged jobs. At the Cairo Hotel in early March 1926, investigators were greeted by a man who explained, “[t]he girls were not there during the daytime, but if we returned at night he would have some good lookers for us.” The same month, while investigating a house on South Wabash

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95 Chicago Committee Of Fifteen. Records, 23 April 1924, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago.

96 Chicago Committee Of Fifteen. Records, 22 April 1922, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago.

97 Chicago Committee Of Fifteen. Records, 21 April 1924, 22 April 1924, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago.

98 Chicago Committee Of Fifteen. Records, 5 April 1922, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago.
that investigators were told “in the evening she had two good ones.”\textsuperscript{99} The sex workers and panderers investigators encountered demonstrated an ability to negotiate prices and make economic decisions independently. Dot, who offered massages and sexual services at 112 East Oak Street for ten dollars, offered to reduce her price when the investigator complained, “it was higher than usual and [I asked] couldn’t she just leave out the massage and charge $5 for the other. She laughed again and said alright.”\textsuperscript{100} In other cases, sex workers competed for customers. When an investigator entered 4600 Calumet Street in March 1926 and asked for Suzie, he was told, “Suzie herself was working, but she herself would jazz me for $3.”\textsuperscript{101}

The investigators occupied a peculiar position as outliers themselves of a community they condemned. By their own reports, committee investigators did not follow through on any offers. And it is likely, particularly when they frequented the same houses in relatively short periods, or because it was uncommon for men to enter a house, ask a price and name and then leave, that they came to be recognized by their methods if not their faces. When Mrs. Falvin referred to the Committee of Fifteen as a “dirty bunch of grafters” she probably knew who she was

\textsuperscript{99} Chicago Committee Of Fifteen. Records, 1 March 1926, 2 March 1926, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago., UCSC.,

\textsuperscript{100} Chicago Committee Of Fifteen. Records, 1 March 1926, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago...

\textsuperscript{101} Chicago Committee Of Fifteen. Records, 2 March 1926, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago. The racial hierarchy of wage work was replicated in sex work. Black sex workers typically earned half what whites earned and were generally shut out of high-end houses that served bootlegged alcohol. In these houses rates increased dramatically, and ranged between ten and fifteen dollars—nearly triple the standard rate—plus one dollar per drink. Based on the records, white women charged five dollars and Black women charged two dollars. Some white women, like Mildred and Katherine working in a house on Indiana Avenue and charging three dollars in April 1922, did not charge much more than Black women. As a rule through, Black women charged lower rates for their services. Chicago Committee Of Fifteen. Records, 15-21 April 1922, 29 April 1924, 2 March 1926, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago.
When Mary, working at 803 Sunnyside Avenue, set her price at seventy-five dollars, she probably was not expecting the recipient of the offer to take her up on it. And, when an investigator downed four beers at a saloon at 115th and 64th streets, and complained, “I was absolutely unconscious. I believe the beer had ether in it,” he was probably right. The Committee aspired not to help but to punish sex workers and their providers, who without any legal redress, likely resorted to denunciations, exorbitant rates and tainted alcohol, when possible.

The Committee of Fifteen organized to gather evidence against employment it deemed illegitimate and “immoral,” has left a record of sex work as dynamic, active and public. Customers kept women, houses and keepers busy; women set their hours, prices were negotiated, money changed hands, clients were solicited, and every once in a while, an odd fellow, possibly associated with the Committee of Fifteen or local police, visited and someone was arrested, business stopped, and then within a couple of days started again, possibly at a new location. It was this world that Sophie Hassil, who kept a “house of ill-fame,” inhabited.

Judge Ehler found Hassil guilty in the Municipal Court on Christmas Eve day, 1928, of “receiving part earnings of female person from the practice of prostitution,” otherwise known as pandering, was fined $300 dollars and sentenced her to six month in the house of correction. The Court had determined that Helen Karczewksa, one of the women who worked for Hassil, had paid Hassil twenty-five dollars from her profits. Major local newspapers make no mention of

102 Chicago Committee Of Fifteen. Records, 2 March 1926, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago.

103 Chicago Committee Of Fifteen. Records, 3 March 1926, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago.

104 Chicago Committee Of Fifteen. Records, 14 April 1924, Special Collections Research Center, University of Chicago, Joseph Regenstein Library, Chicago.
Karczewska and whether she was induced to make a claim, or did so of her own accord. But, in 1928 Hassil was one of eighty-four people charged with pandering in Chicago’s Municipal Court. She appealed her conviction to the Illinois Supreme Court on a technicality, arguing that the language of the 1909 Pandering Law did not grant the Municipal Court authority to convict her. Rejecting “strict technicalities” the Illinois’ Supreme Court found Hassil “sufficiently appraised” of the law and sustained her conviction of an offence “of which she does not even contend that she was innocent.”

However, in its decision, the Court made another important statement. It announced that sex workers had no personal or constitutional rights to the “earnings of prostitution,” and that sex workers could not attack the law as a deprivation of the right to earn. In short, the substantive property interest in one’s labor, which the Supreme Court recognized in *Lochner* and *Adkins*, did not reach employment classed illegitimate, like sex work. In announcing that sex workers had zero economic rights, the Court came closest to the gist of Hassil’s claim. In its decision, the Illinois Supreme Court exempted sex workers from the full citizenship announced by Judge David and Justice Sutherland, making it clear by the end of the 1920s that good women were wives, sex workers were criminals and that women’s status, community membership and social rights remained tied to their dependency, to the hearth and to being good women.

In essence, women’s new, full status was also revocable. The ruling also suggests that the separate trajectories intersected to define women’s citizenship as secondary and to curb the independence of women like Sophie Hassil. As workers, women complicated the free labor order and as independent workers and as women who entered into sexual exchange outside the home,

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105 *Nineteenth, Twentieth, Twenty First And Twenty Second Annual Reports Of The Municipal Court Of Chicago: For The Years December 1, 1924 To December 2, 1928, Inclusive* (Chicago: The Fred J. Ringley Company).

they jeopardized it. The challenge leveled by the Progressive Era casual sex workers—that the
dearth of industrial protections, particularly in wages, and the tailoring of women’s citizenship to
the home—reemerged in the 1930s when women’s work was associated with national recovery,
and concerns about women’s morality, if not their wages, would help mark an end of the reign of
a troubled fundamental right, the liberty of contract.

**Economic Collapse and the Shifting Status of Outliers**

In the decade before economic collapse, the patterns of the free labor order were
beginning to disintegrate; economic collapse hurried this process. When nine Black youth
hopped a freight train in Northern Alabama in March 1931, a scuffle ensued with a handful of
white hoboes—also stealing a ride—over the right to occupy the railroad car. The white hoboes
were outnumbered and ejected from the car; they complained to a stationmaster. When the train
stopped at the depot in Paint Rock, Alabama, the nine Black youth, along with two young white
women—dressed in overalls to pass as hoboes—were taken into custody in Scottsboro. A
dispute, begun over conflicting claims to a railroad car, and fuelled by the search for steady
work, erupted into a protracted legal spectacle over whether the two white girls were raped by
nine Black youth. The shifting claims and rights of the participants—each an outlier of the free
labor order—powerfully shaped the terms and meaning of an encounter that reverberated
throughout the nation.

The two women at the center of the trial were Victoria Price and Ruby Bates. Bates
would later recant her accusation. These women lived, drank and played among the Black
population in their hometown, Huntsville, Alabama. They took work in local mills when

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industrial jobs were available, and sold their bodies to white and Black clients when it was not.\textsuperscript{109} They were not only sex workers; in March 1931 they were passing as hoboes and joining hoards of Americans cast out by industry to live idle, dissolute and itinerant.\textsuperscript{110} Although they lived and acted as independent women, their trial and the claims that fuelled it would turn on their subordination and their dependent statuses and expose the increasingly tortured logic of the free labor order, as its statuses and patterns were twisted by economic collapse.

In the trial of the nine Black youth in Alabama, the virtue of these women—who operated independently, lived in hobo jungles, dressed as men, traveled in search of work, sold and exchanged their sexual service—was critical.\textsuperscript{111} As southern white women and free labor dependents, they were granted status. So, they testified as model southern white women, however blemished by the demands of a marginal existence. The young Black youth, who were tried, convicted and acquitted several times in the 1930s, were presented in Court as cunning sexual predators. The Court heard that the Black youth were either going to kill the girls, or take the girls up north; it was a predicament that confronted the Alabama Court with Black youth capable of “thinking for themselves, acting on their own.” This, James Goodman explains, was “the last thing [the people of Alabama] wanted to see.”\textsuperscript{112} The Scottsboro trial painted a world of legal marginality and extreme poverty, where racial and sexual divisions announced the dependence and independence of participants, and where individual rights were tied to statuses

\textsuperscript{109} James Goodman, \textit{Stories of Scottsboro}, 26, 42.

\textsuperscript{110} The proximity of tramping and prostitution made sense to contemporaries. Dr. Evans noted in summer 1923 that white women are not hoboes, but prostitutes are. “The dress of women and their economic possibilities do not make ordinary hobo behavior practicable for them,” Evans explained. “Basically, the prostitute who moves around from city to city is a female hobo.” See W A Evans, “How To Keep Well,” \textit{Chicago Tribune}, 4 August 1923, 4.

\textsuperscript{111} James Goodman, \textit{Stories of Scottsboro}, 193.

\textsuperscript{112} James Goodman, \textit{Stories of Scottsboro}, 23.
that readily did not appear to correlate with their lives and experiences. In his way, the Scottsboro trials intersected southern racial order with the hierarchies of the free labor order.

As the Scottsboro trial focused national attention on the idle and dissolute in the early years of the Depression, it illustrated fractures in the free labor order, most strikingly between proscribed and occupied statuses. Even before economic collapse, distinctions between outliers and free labor adherents were growing confused: both tramps and wage workers struggled to find steady employment, Black workers tested new strategies designed to secure a place in the city and its industry and women’s industrial dependency was complicated by their new political identity. Depression would force a further unraveling of the free labor order and the structures designed to keep it in place.

In the late 1920s, Florence Kelley, an intimate of Hull House and the engineer of the 1890 Illinois labor law tested in Ritchie, turned against some of the Progressive Era reform initiatives she spearheaded and the patterns and organizations they upheld. “Our bourgeois philanthropy,” she wrote in Survey magazine in 1927, “is really only the effort to give back to the workers a little bit of that which our whole social system, sympathetically, robs them of, and so to prop up that system yet a little longer.”113 The systemic inequities maintained by the free labor order, she argued, were in need of wholesale revision.

The emergence of Hoovervilles in cities across America only a few years later, like the one run by Mike Donovan at the foot of Randolph Street, confirmed Kelly’s analysis. Intrigued by these new, impoverished urban communities, Tribune journalist Virginia Gardener set out to investigate Hoovervilles in the early 1930s and detailed ways the economically dislocated

created homes. At one camp located at the intersection of Polk and Canal Street, a few blocks from the Loop, she described “Frank’s” extensive gardens, replete with “Zinnias, Shasta daisies and sunflowers, along with beans, carrots, corn, tomatoes, turnips and a bird bath.”\textsuperscript{114} The following year she described 100 men building shelters, sewing, cleaning and maintaining homes and cooking at Harrison and Des Plaines streets “as proud of themselves, these jobless men who have so much time on their hands and so little money in their pockets.”\textsuperscript{115} In these accounts and others, the hobo, the unemployed and homeless are not urban pathogens or outliers of an economic system, but rather a growing testament to its dysfunction. When Collector of Customs Anthony Czarnecki demolished the community that housed “Frank’s” gardens in late 1930, he drew on older distinctions, explaining that the “bands of hoboes [were] distinct from the bands of unemployed men walking the street.”\textsuperscript{116} But, as the industrial margins swelled, these patterns and distinction were made less tenable, and categories of unemployed, idle and dissolute—that were so important to the Gilded Age and Progressive Era Reformer were complicated by forced unemployment. As the dependency of huge swaths of American manhood became a national concern, outliers of the free labor order—hoboes, Black Chicagoans, workingwomen—responded with a Progressive Era activism modified by the experiences and struggles of the industrial outlier in the 1920s.

Black workers responded to “their subordinate position in the economic system,” in several ways.\textsuperscript{117} In Chicago in the early 1930s, “[s]pend Your Money Where You Can Work” campaign

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\item Virginia Gardner, “Hobo Village Turns Men To Domestic Arts,” Chicago Tribune, 20 August 1931, 8.
\item Drake, \textit{Black Metropolis}, 293.
\end{enumerate}
\end{footnotesize}
flourished in Chicago’s South Side. By targeting white businesses that refused to hire Black employees, these campaigns tied consumption to economic opportunity. Receptive to the pressure exerted on business, the National Urban League advised, “[b]efore any great improvement can come in the occupational status of Negroes there must first come a change in [business’] attitude towards work.” 118 But in the perilous economic landscape of the early 1930s, the struggle for opportunity also involved affirmative measures to keep—and not lose—what they had. When the Municipal Court ordered the eviction of seventy-two year old Diana Gross in summer 1931, a mob, “like Coxey’s army,” gathered at 5016 South Dearborn Street and moved back inside the furniture and personal belongings police and bailiff had carried out. When a riot ensued, and three African Americans were killed, business and civic leaders were quick to assert the violence was the “result of red agitation among unemployed men and women,” without reflecting on the appeal of the “reds.” 119

Whether or not they played a role in the violence on South Dearborn, “reds” had claimed a presence on the South Side among the dispossessed and those forced into idleness. Walter White opposed the Communist Party—and struggled publicly with the Party for control of the defense of the Scottsboro boys—but he understood their appeal, explaining “unemployment and suffering are most acute among Negroes,” who faced poverty and unemployment at a rate four times higher than whites. White saw that many Black Americans shared the Party’s criticism of American institutions and argued that this radical strand would only be satisfied by “a drastic revision of the almost chronic American indifference to the Negro’s plight.” As White saw it, the

solutions to Communism and Black poverty were the same: “Give them jobs.”\footnote{White, Walter, “The Negro And The Communists,” *Harper's Monthly Magazine*, 164, 979 (December, 1931), 62.} But it as not only about giving jobs, it was also about taking them.\footnote{The National Urban League met in late 1933 to establish boards and bureaucracies to “acquaint the Negro with the laws respecting the [National Recovery Administration’s] codes, relief, reemployment,” and to help Blacks “obtain the benefits of the various acts.” See “Negroes To Be Taught Rights Under New Deal” *Chicago Tribune*, 7 October 1933, 3.} The New Deal, designed to secure jobs for Americans, would do little to immediately modify the racism and sexism that defined work and the free labor order, but it would fuel new legal, economic and social strategies to take opportunity long withheld by the patterns of the free labor order.

Workingwomen also struggled to secure work, and did not vacate the labor force in droves, as might have been expected or encouraged by the free labor order. There were at least a couple reasons for this. According to census takers in 1930, women represented one quarter of the steady industrial and clerical work force, and with housekeepers factored in, women worked steadily in numbers comparable to those of men.\footnote{“One of Every 4 U. S. Women Between 16 and 64 Work,” *Chicago Tribune*, 1 September 1930, 2.} In addition, women’s work had become by the 1930s “necessary” work in the “modern industrial system,” supplementing the incomes of husbands or fathers. Women were still paid a “helper” wage, which became critical to family economies in new ways; “helper” wages became principal wages when men failed to earn. By the early 1930s, women earning a dependent wage had become a fixture of industrial, urban life.\footnote{Doris Blake, “Women Work from Necessity, Says Labor Bureau Head,” *Chicago Tribune*, 18 June 1930, 27.} Their status as workers, however, remained contested. A push for a minimum wage for women developed in state legislative houses in the early 1930s, casting older debates that pit

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121 The National Urban League met in late 1933 to establish boards and bureaucracies to “acquaint the Negro with the laws respecting the [National Recovery Administration’s] codes, relief, reemployment,” and to help Blacks “obtain the benefits of the various acts.” See “Negroes To Be Taught Rights Under New Deal” *Chicago Tribune*, 7 October 1933, 3.

122 “One of Every 4 U. S. Women Between 16 and 64 Work,” *Chicago Tribune*, 1 September 1930, 2.

\end{footnote}
equality against protective legislation amid the efforts of industry to drive down wages by employing women.  

As dependent, “helper” earners, women could be—and were—paid less. As depression entrenched, their wages were most vulnerable to decline. In spring, 1933 Agnes Nester, president of the Women’s Trade Union, and Hazel Kyrk, an economist at University of Chicago, co-chaired a commission investigating slashes in women’s pay and vowed remedial legislation.  

It was a problem that legislators in Chicago and around the nation were already addressing. A women’s hours bill and a general minimum wage bill were introduced into the Illinois legislature in spring 1931.  

A couple months later the National Women’s Party, an organization devoted to women’s equality, publicly rejected any labor legislation designed to assists women, as “handicapping women’s economic advancement.” Mirroring debates in Adkins and Muller, the two sides debated women’s status as a condition of their relationship to wage work.  

When Franklin Roosevelt took office, the new first lady, Eleanor Roosevelt, and the labor secretary, Francis Perkins, called for hours and wage protections for all American workers. In this new effort to define women’s relationship to the economy, older concerns about the moral pedigree of working women was accompanied by a newly defined national economic interest in their consumption, and the role of that consumption in economic recovery.  

While the National Women’s Party expressed “shock” at these types of initiatives and at President Roosevelt’s effort

to engineer a national minimum wage, the new emphasis on consumption shifted older patterns that defined women by their relationship to wage work and breadwinners and introduced new patterns in which their status was defined by their consumption, the same thing Progressive Era reformers had defined as a catalyst to “ruin.”

When Illinois Governor Henry Horner took the president’s lead and demanded sweeping hours and wages bills for working women, he did so in a similar language of consumption and recovery. Viewing women through patterns of consumptions—as equal rather than secondary citizens as proscribed by the free labor order—Horner modified their dependency arguing “[w]omen and minors of the state must be able to sustain themselves by their own efforts.” While still wives and mothers, working women had flushed out a status of earner, seemingly compatible with domestic duty that was not a condition of moral reform, but of survival amid new industrial challenges. Like Black Americans, consumption contained new strategies of independence that would help to further undermine the free labor order, destabilized by economic collapse and by the persistence of outliers to control and define their relationship to the economy.

**Courts and the Decline of the Free Labor Order**

The decline and fall of free labor order is as much a national story as it is a story about the struggles of marginal workers in Chicago. Older distinctions between worthy and unworthy aid recipients lost their relevance in the upsurge of New Deal initiatives, as economic collapse helped to flatten other distinctions, like those between dependent and independent statuses. Contemporaries found the expanding breadlines and poverty in cities around the country unsettling. Noting the number of unemployed manual workers queuing at soup kitchens and

129 “Roosevelt Minimum Wage Plan Fought By Woman's Party,” *Chicago Tribune*, 16 April 1933, 5.

checking into municipal lodges in New York, Matthew Josephson worried the economic collapse was creating “The Other Nation,” in which everybody was a “bum.”[131] For activist and journalist Mary Heaton Vorse, the situation was dire. She feared the Depression was creating a “school for bums,” turning American men into chronic dependents. It was a “thing to sap moral and physical strength [and] a situation which in a few weeks would make most employable men unemployable.”[132] Vorse might also have added that mass dependency also neutralized the hierarchies and patterns of the free labor order. Meanwhile, when he visited a Hooverville in 1933, journalist Boris Israel noted that the compulsion to steady labor persisted; even as the Depression reached it nadir, “[h]alf of them are ashamed to be like they are and they just want to be left alone until there’s jobs again.”[133] No longer simply a cautionary tale of economic menace, economic marginality now spoke for a growing number of Americans, whose experience illustrated how economic forces made workers into vagrants and spurred the federal government to a new and more active role in the economic lives of American workers that was constitutive of independence and citizenship. In contrast to the classical liberal model of employment relations, where government interference marked the worker as dependent, the thinking behind the New Deal was that a *laissez-faire* approach to economics had made workers dependent and that government programs and projects could now restore them to independence.

Conflict between proponents and opponents of the free labor order—and its dependencies and hierarchies—erupted in 1937 in a constitutional crisis, in which President Roosevelt threatened to pack an intransigent and conservative Court with jurists sympathetic to his

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programs, which promised to significantly modify economic relationships in America. The crisis was only averted when Justice Owen Roberts switched his voting and began to support New Deal programs. While the “crisis,” or “showdown” of 1937 witnessed the submission of the Supreme Court to expanded federal and executive authority, it also brought an end to the dominance of liberty of contract and its classical liberal underpinnings. At the same time, it introduced new possibilities around using law and the Supreme Court as an agent of social and economic reform, particularly as it related to workers, women, Blacks, and a range of other “discreet and insular” minorities.134

Notably, it was in a case acknowledging the authority of state government to create and enforce a minimum wage that Justice Roberts switched his vote and ended the constitutional stalemate between the executive and judicial branches. Justice Hughes wrote for the Court in *West Coast Hotel Co. v. Parrish* that “the violation alleged by those attacking minimum wage regulation for women is a deprivation of freedom of contract.” But, he asked with a question that knocked the legs out from under *Lochner* and its presumption of a substantive liberty of contract right, “[w]hat is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law.” And, as though to alleviate any doubt about the context of the Court’s new decision, Hughes added “[w]e may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression.” The Depression, Hughes reasoned, had exposed “[t]he exploitation of a class of workers who are in an unequal position,” and threatened to make them a burden on their communities. In this way, the Court reasoned that the Depression threatened the independence of

all workers, not just women, and interfered with the basic necessities of families. As Hughes explained, “The bare cost of living must be met.”\textsuperscript{135} The new legal distinction was important: the economic decisions made by industry, and not necessarily those made by workers on the industrial margins, made workers dependent. Law would have a role to play in creating a post-free labor order society.

Several weeks later Chief Justice Hughes announced the constitutionality of the National Labor Relations Act and declared collective organization a “fundamental right,” and announced the constitutional authority of government to intervene and mediate labor relations through a newly created National Labor Relations Board. In his explanation, Hughes turned again to inequality in the employment relationship as a potential source of widespread dependency, reasoning that the “single employee was helpless in dealing with an employer.” For example, he added, “if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment.”\textsuperscript{136} Recognition that worksites and classical liberal work relations generated inequality was affirmed in 1941 when President Roosevelt, under pressure from A. Phillip Randolph and Walter White, agreed to a Fair Practices Employment Commission (FEPC) to purge racial discrimination in war jobs.\textsuperscript{137} While the achievement of an FEPC was symbolic and marked by modest and limited success, its creation reflected concerns developed in the 1930s about different and unequal statuses, generated over decades by workers on the industrial margins.

\textsuperscript{135} \textit{West Coast Hotel Co. V. Parrish}, 300 U.S. 379 (1937).

\textsuperscript{136} \textit{NLRB V. Jones & Laughlin Steel Corp.}, 301 U.S. 1 (1937)

The dislocation wrought by the Great Depression was also constitutive of new thinking about rights. In his famous footnote in *Carolene Products*, also in 1937, Justice Stone expressed concern that “prejudice against discrete and insular minorities may… seriously curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.”\(^{138}\) Announcing a new strict standard of review in cases testing minority statuses, the Court positioned itself to eradicate the inequalities fundamental to the free labor order.

At the same time, in identifying a right not to be subjected to discrimination, the Court left the nature of that right—its social, civil and political character—open. Developed against a backdrop of economic collapse, the character of that right would be defined by the ensuing decade’s civil litigation and would assume a civil rather than economic character.\(^{139}\) The distinctions between men and women, whites and Blacks, and drawn by the free labor order were modified and replaced in the late 1930s by a new interest in flattening inequalities and generating opportunity for the larger federal community, and in protecting workers from a market whose moods were no longer as critical to the social, legal and economic organization of its workers.

**Conclusion**

The free labor order was diminished by economic collapse in the 1930s. Vigorous distinctions between worthy and unworthy aid recipients appeared fatuous in cities where armies of unemployed men were vagrants. But statuses were already shifting by the late 1920s, as casually employed men, independent women and assertive Black migrants were contesting the patterns of social, legal and economic organization of the free labor order and feeling the effects

\(^{138}\) *United States V. Carolene Products Co.*, 304 U.S. 144 (1938)

of its erosion. The constitutional crisis of 1937 marked a turning away from the terms of the free labor order: New Deal initiatives were finally approved and *Lochner’s* liberty of contract lost footing, replaced with a new interest in flattening difference and unifying status. New thinking about work was critical to this transition. But, it did not come out of nowhere. Rather, it evolved and developed in the 1930s from the Progressive Era struggles and resistance of marginal workers to the patterns and obligations of the free labor order.
CHAPTER 10
CONCLUSION

In December 1934 Carl Kolins was living in a shelter in Chicago and looking for work. Trained as a steam shovel operator, his last steady job was in 1930. On a blustering and wintry day in the depths of the Great Depression Kolins scanned the Tribune’s want adds, grumbling about the dearth of opportunity; they were all commissioned sales jobs, but nobody was buying anything because of the economic depression, and employers knew it. Echoing a common tramp refrain from decades earlier, he added that the few jobs that did exist were unsteady and physically punishing and threatened to transform steady workers into vagrants. The current system, he explained, “burned out” employees after only a few years and then quickly replaced them: “they throw you away like a dirty rag.” And, in Kolins’ estimation, “things were only getting worse.” Industrial and corporate interests, Kolins explained, conspired to discount the benefits of “communist or liberal government,” in order to diminish the status of workers and “to keep us on the bum.”¹ The new economic order Kolins envisioned promised to transform economic relationships and their social and legal patterns around the dignity of the worker and the right to a decent standard of living. The limits of this transformation—namely its failure to articulate, enact and enforce an economic right for all workers—have led some scholars to describe a “lost promise” in the 1930s.² The legacy of the outliers of the free labor order, captured by a moment of economic equality and possibility, rests in a new order that was never fully realized, but also never fully abandoned. It would become, much like those that developed it, marginal but proximate to American life.

¹ “Carl Kolins Case Study,” Box 135, Folder 2, Ernest Burgess Papers, Special Collections, Joseph Regenstein Library, University of Chicago, Chicago.

In the late 1930s, American labor law was transformed by the right to bargain collectively and by new worker’s safeguards in the form of wage floors and hours’ ceilings. This development, Christopher Tomlins has argued, homogenized the labor movement around tenets of collective bargaining, while it held in check some of the more radical possibilities contained in labor’s critique of industry in the 1930s.\(^3\) In this regard, the potential encased in the struggles and critiques of the free labor order’s outliers were curbed by an institution arrangement, which also reflects a critical tenet of twentieth century politics: equality, fairness and justice are best secured by labor unions and the federal government and federal Courts, and not by a mass uprising.\(^4\) The institutional arrangement contained both strands of social, legal and economic reform, along with strands of tradition that recalled the patterns and tenets of the free labor order.

When the Council of Social Agencies of Chicago’s Committee of Transients met in early 1933, it expressed shock over the plight of “unattached” women and children and the “transient family,” both of which signaled the failure of male breadwinning and the dislocation of the family. The problem, as the Committee saw it, was overwhelming and could only be fixed by a federal commitment to “permanent re-establishment” of itinerant families and surveillance through record keeping schemes, both of which defined the itinerant as a deviant and an outlier.\(^5\) Recalling the distinctions of the free labor order, Chicago’s down and out in the early 1930s, like


Carl Kolins and J. P. Smith, described relief agencies as a “racket” and “graft,” and charged that the failure of aid institutions to provide for a sustained relief bordered on the criminal.⁶

The strands of reform were also institutional. When Supreme Court Justice Cordozo rejected the double jeopardy appeal of a convicted murderer in 1937, he described an “ordered liberty” that made some rights were more important than others.⁷ As the Supreme Court engineered a hierarchy of rights in the late 1930s, however, it did so in a way that subjected laws targeting “discrete and insular minorities” to a strict standard of review.⁸ As a result, law disparaging minority statuses rather than the economically disenfranchised became constitutionally suspicious. This impetus by the Court targeted the effects of the free labor order—sexual and racial second-class citizenship—rather than its cause and processes—social exclusion, reduced pay and geographical segregation. The Court’s inability to launch a preemptive strike at the causes and processes of second class citizenship mark a limit of the common law of the era, while spotlighting new possibilities to orchestrate an equitable society through statute, like the National Labor Relation’s Act nationally, or locally through the City of Chicago’s Fair Employment Practices Commission, “largely a statement of policy” that nonetheless identified racism and sexism as threats to a collective industrial prosperity.⁹

But, despite new statutory tools, the legacy of the outliers of the free labor order is really located in new struggles. The battle for social and economic rights and opportunity in the first

⁶ “Carl Kolins Case Study” and “Smith, J.P., Case Study,” Box 135, Folder 2, Ernest Burgess Papers, Special Collections, Joseph Regenstein Library, University of Chicago, Chicago.


three decades of the twentieth century less forecasted a future than it defined new possibilities and new pursuits of legal and social and economic status. Nearing the end of his long tenure, President Roosevelt appealed to Americans to institute the gains of the New Deal into the constitutional landscape of the postwar world. Roosevelt’s “Economic Bill of Rights” proposed to secure for every American by right—a decent job, living and home—the things that the Free Labor Order withheld as conditional of citizenship. Roosevelt’s vision for a postwar America went unrealized, but was deeply indebted to the endurances and struggle of marginal men and women who battled the patterns and conditions of wage work and urban life to secure an alternative vision, which however fleeting, fuelled struggles that promised to remake America in the future.

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