

A Postal Card to Chicago:
The Role of Law, the National Army, and the Roots of Progressive
Labor Policy in the Pullman Strike

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ABSTRACT

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A thesis presented to the History Department

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The historical record generally neglects that the United States federal government had agency during the labor movements of the late 19th and early 20th century. Classifying the Pullman Strike as a Gilded Age backlash, where the government acted in lock-step with anti-labor court rulings, disregards the broader implications of the federal military intervening to ensure the flow of interstate commerce. This study not only examines the legal framework which shaped the executive and legislative branches' actions during the Pullman Strike, but examines the strike as a bridge between Gilded Age and Progressive Era ideologies. An in-depth analysis of President Grover Cleveland's justifications for surmounting the Posse Comitatus Act of 1878, suggests that the federal government reserved the right to police strikes which caused blockages to

national commerce and industry. Congressional debates regarding the executive's decision to quell the strike with federal soldiers not only reaffirm the legality of the president's actions, but add nuance to our understanding of the Pullman Strike; nascent voices of Progressive Era thought expressed a desire to create a bureaucratic administration for regulating the differences between labor and capital after the conclusion of the strike. This project links those who espoused arbitration during the Pullman strike with sentiments found in pro-arbitration pamphlets from the 1870's, and the 1911 Square Deal editorial of President Theodore Roosevelt. It shows a direct connection between progressive thought during the Pullman Strike, and the development of a permanent federal arbitration apparatus. This study liberates the federal government from being simply a legal obstacle, automatically opposing labor at every turn. Instead, it shows that the Pullman Strike was the first step toward developing a national, federally-implemented labor policy. Pullman secured the government's place not only as the guarantor of unencumbered interstate commerce, but promoted a national, modern bureaucracy to control labor-capital relations.

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Introduction

The Pullman Strike was the second time in American history that labor unions brought national railroad transportation to a halt. The 1894 strike began as an isolated incident, a wage-related strike instigated by workers who built railroad sleeper cars, but escalated into a crisis which ultimately crippled the country's rail system. The fledgling but numerically strong American Railway Union intervened on behalf of the Pullman Strikers, and created a national sympathy strike which prompted the federal government to respond. President Grover Cleveland ordered army regulars to police the strike, and to restore order to the railroad system. By the time the dust settled, the American Railway Union lay shattered, its leadership arrested and the strike utterly defeated by a show of military force.¹

The events of Pullman unfolded much like the earlier 1877 railroad strike, which also involved federal use of military force to quell a nationally organized strike. However, the strike differed greatly from its predecessor, as it tested the legal limits of federal power. The national government had never experienced restraints upon its actions in state policing, until shortly after the 1877 railroad strikes, when the Posse Comitatus Act of 1878 made it illegal for the national military to enforce local police regulations as an extension of state power. This regulation illustrated the tension over federalism which

¹ Stanley Buder, *Pullman: An Experiment in Industrial Order and Community Planning 1880-1930* (New York: Oxford University Press, 1967), 161, 179, 184.

permeated the Gilded Age. The desire for federal action against country-wide labor unrest was tempered by a reluctance to allow the government unrestricted power over the constituent states.²

In the years following Reconstruction, the federal government asserted itself as a regulatory body. The court system played an important role in safeguarding common law principles of the free market. Jurist's unyielding formalism was a hindrance to the labor movement's actions in the political sphere, and their push to create direct action. Literature often portrays the court as the antithesis to progress, from both striking down protective legislation to workers, to direct intervention against strikes by ordering injunctions against strike action. But few inquiries examine the remainder of the federal government as an actor in the labor movement, and even fewer scrutinize the evolution of its decisions to form a national labor policy. Historians, such as William Forbath in his book *Law and the Shaping of the American Labor Movement*, suggest that the overwhelming influence of the courts led to "constraints on action forged by the legal order." The nation utilized law as a countermeasure to the labor movement. Viewed this way, the remaining branches of government acted in lock-step behind the courts. The question authors ignore is how did the executive and legislative response to national industrial strife create and affect a unified, national labor policy? What precedent was set by these forays into national labor relations, and what did it mean for traditional notions of federalism?³

The national government is often portrayed in labor histories as an antagonist, a single entity whose job was to stop the labor movement's growth into a viable movement.

² Philip S. Foner, *The Great Labor Uprising of 1877* (New York: Monad Press, 1977), 42.

³ William E. Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1989), xi.

There is little examination of neither the government's agency, nor its evolving labor policy. Historians' assessments provided some de facto truths about the federal government and its role in the strike. Pullman is often defined by its generous use of military and legal force. But most authors do not seriously examine the government's right to intervene in these national affairs. For example, Stanley Buder, in his book *Pullman: An Experiment in Industrial Order and Community Planning, 1880-1930*, suggests that Cleveland's decision to send in the troops was debated but ultimately considered the correct use of presidential prerogative.⁴

Across many works, there is little to no mention of restrictions on the federal government's actions. The Posse Comitatus Act, a major legal prohibition on the central government, is rarely mentioned in accounts of the strike. Some authors argued that the law was a monolith that the federal government supported unwaveringly. This assessment meant that the Pullman strike is often portrayed as a Gilded Age labor movement. William Forbath suggests that law acted as an unyielding obstacle for the organized labor, and court decisions shaped the ideology behind labor movements' actions. This approach still showed no impetus or reason for the federal government to change, and it assumes a kind of bright line distinction between Progressive and Gilded Age thought. Historians have argued that post-Reconstruction America was filled with attempts to expand the federal power, so it makes very little sense for the law to remain static on labor relations. More often, historians frame questions of federal action against strikes as one of federalism, not law. This is often portrayed in the battle between President Grover Cleveland, and Governor John Altgeld, or as Buder put it, "Cleveland's unilateralness" versus "a 'demagogic governor.'" Authors similarly did not examine the federal

⁴ Buder, *Pullman*, 184.

government as its own entity; it is always portrayed as a foil or compliment to the labor movement. It is hard to believe that the federal government's conceptions of law could not change or evolve during a critical period of change in American history.⁵

The methods historians use in their examination of the Pullman strike also provides drawbacks to understanding the government's agency. Some authors treat strikes as separate, periodic events, examining the immediate causes leading up to a major strike, the event, and its resolution. They are often forced to quickly summarize or ignore the moment's broad effects on the national government. For example, David Ray Papke, in his book *The Pullman Case: The Clash of Labor and Capital in Industrial America*, suggests the widespread use of injunctions to terminate strikes was due to precedent enforced during the Pullman Strike. However, he merely assumes that injunctions made up the primary federal anti-labor policy in the decades after the strike. Further he suggests that their effectiveness and constitutionality went unchallenged up through the Norris-La Guardia Act of 1932. Histories such as these often show the government as an antagonist, operating against labor unions based on the positive law already in place, not critically questioning the content of the law they applied. These works gave only a cursory understanding of evolving national trends.⁶

The alternative was to view labor unrest as an evolution; any one strike was a part of a broad movement. This approach allowed historians to study a broad timeframe, but rarely showed the federal government's as an independent actor during labor disturbances. For example, when William Forbath suggested that the labor movement attempted to establish legitimacy before the law, he automatically suggested that the

⁵ Forbath, *Law and the Shaping of the American Labor Movement*, 7; Buder, *Pullman*, 184.

⁶ David Ray Papke, *The Pullman Case: The Clash of Labor and Capital in Industrial America* (Lawrence Kansas: University Press of Kansas, 1999), 98.

courts stood in unyielding opposition to the labor movement, as an arm of the federal government. Examinations like this are useful, but often fail to do justice to entities which are in opposition to the study's focus. The federal government's motives and decisions are often lost behind arguments about the story of the labor movement.⁷

The focus on the federal government surmounting states' rights only hinted at the federalism struggle. Authors took for granted that Grover Cleveland defended his actions as necessary and proper, without further questioning the legality of military intervention. Most research suggested it was a foregone conclusion that the executive involved itself in the affairs of labor unions. Authors often address question of federal supremacy through the famous court case of *In Re Debs v. United States*, the famous court decision regarding the federal government's right to issue injunctions against national constraint of trade. By the time most historians mention this case, the use of federal military force was already decided. It was as if the outcome of *In Re Debs* is a footnote to the discussion and all other aspects of the intervention were inevitably legal. That is not to say that such assessments are necessarily wrong; the federal government's actions were generally accepted as legal when the strike concluded. But to assume federal supremacy, particularly when portraying the government as an inherent antagonist to labor unions, made the executive appear unwaveringly locked in traditional Gilded Age ideologies.⁸

I intend to examine these questions with an in-depth look into the federal government's response to the Pullman strike in 1894. This event will act as an anchor point in my research project, for both earlier precedent, and early progressive-era labor unrest. The scope of this examination will focus mainly on executive and legislative

⁷ Forbath, *Law and the Shaping of the American Labor Movement*, 128.

⁸ *Ibid.*, 184.

response, particularly the use of United States Army regulars to police strikes, and enforce national law. The Army functioned both as the visible presence of the federal government, and the main antagonist of labor advocates. By analyzing the legal reasoning surrounding the application of military force, I will show that the federal government reserved a right to intervene in labor law, despite the Posse Comitatus Act of 1878, which barred the use of federal troops from assisting state police action. The strike served as an affirmation that that the states would not regulate national labor disputes and could not effectively end blockages to interstate commerce. These were constitutionally protected powers, backed up by statute law.

The use of military violence to end the Pullman strike was not an attempt to turn back the clock, nor was it odious to early Progressive Era doctrine. The resolution and subsequent debate, while promoting Gilded Age free-labor ideology, fostered many progressive ideals. Dissenters, primarily Democrats, clamored for the preservation of states' rights. But early Progressives highlighted a need for a new bureaucratic initiative to solve future strikes. Progressive views gave the national government a new tool to deal with labor unrest. The Pullman Strike not only reinforced the notion that federal force would guarantee interstate commerce, but ultimately made labor relations the central state's business. A single, national labor policy evolved rapidly after Pullman, and transitioned from an overwhelming show of force designed to destroy labor as if it were an insurrection, to federal advocacy for conciliation and arbitration. The solution to labor unrest followed the broader trend of progressivism; a movement from litigation through the court system, to a focus on government-run administration. Members of both the executive and legislative branches advocated a bureaucratic apparatus over court

intervention. The Pullman case marked the first time the idea of bureaucracy was introduced as a nation-wide response to labor relations, and simultaneously cemented the government's right to intervene during times of national labor unrest. This would lay the groundwork for a single, national labor policy centered on arbitration and collective bargaining in the 1930's.

The project relies on many different sets of documents in order to explain the evolution of intellectual and legal thought over time. Primarily, this paper uses the presidential papers of both Grover Cleveland and Rutherford Hayes. The personal correspondence of both presidents contained mostly incoming and outgoing letters from a broad spectrum of American society. Not only did it shed light on the president's conception of his authority, but these papers also contained letters from legal minds, labor unions, businessmen and ordinary citizens. Similarly, the Department of Justice strike files offer a litany of popular and legal opinions. Congressional records offered a different angle, particularly an inside view of law-making processes, and resolutions passed. Debates on the floor offered not just an understanding of the law, but the scholarly theories behind them. In addition, the rulings of justices, particularly the opinion in *In Re Debs v. United States*, gave additional legal information on the application of federal force during labor unrest. Finally, arbitration pamphlets and studies on the merit of arbitration connect many of the opinions espoused in the congressional records to the state practice of conciliation, which ultimately evolved into a federal program.

Contrary to the portrayals of many historians, this project intends to restore the government's position as an entity which acted with intent and agency during the strike.

Given the restrictions placed upon the executive by the Posse Comitatus Act, the federal government had to rely on new justifications for intervention. The government defended Grover Cleveland's use of federal troops by utilizing new interpretations of Civil War and Reconstruction statutes to strengthen constitutional claims. It further relied on precedent set down by state militias to justify intervention into local police action. Utilizing this borrowing and grafting approach, Pullman was the first strike of its kind where the idea of oversight through bureaucratic regulation was proposed. The government's actions opened up further debate over the role of the national government in the regulation of labor unrest. Instead of leading to an increase in military intervention, the heightened federal involvement allowed Progressive era ideologies to develop, facilitating a shift from litigation to bureaucratic management before strikes began. The concept of arbitration through a board of oversight was similarly borrowed from state anti-strike actions.

Unionism, 1877 Railroad Strike, and Precedent for Intervention

Historians viewed the growth of labor organizations as a reaction to industrialization of the early Nineteenth Century. Modern organizations of journeymen roughly dated to the early eighteenth century in Britain. American unionization took far longer to develop. Christopher Tomlins, in his authoritative book *Law, Labor and Ideology in the Early American Republic*, showed that six states throughout the mid nineteenth century outlawed labor combinations as criminal conspiracy. The author drew attention to a spate of conspiracy prosecution in the mid 1830's, a period marked by a sudden growth of the labor movement. These first conspiracy cases gradually changed the way labor movements were viewed. Tomlins suggested they were "an evolution from the protection of the public to the protection of private interests," in that journeymen organizations were no longer an insurrection against the public good, but "an intrusion upon the employment relationship" and a "disruption of private business."⁹

A New York state court case, *People v. Fisher*, set the original precedent for conspiracy jurisdiction, in 1829. The *Fisher* case suggested that labor organizations damaged the public economy by restricting trade, not by causing private injury. This view of the labor movement, espoused by Chief Justice John Savage, not only made the use of organization a criminal conspiracy, but painted labor as something inimical to the

⁹ Christopher L. Tomlins, *Law, Labor and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993), 128; Tomlins, *Law, Labor and Ideology*, 129, 130.

public. This definition coincides with our understanding of the early labor movement, which began with “agitation for the ten-hour day” in the 1820’s. This was the first moment of solidarity amongst laborers in the new American system of free market liberalism. The corporate model was traditionally a public entity, their state-mandated charters designed to promote the people’s welfare by building bridges and canals. Obstructing an individual corporation or business venture would not only threaten the development of trade, but also injure the public, vis-à-vis the state which backed the project.¹⁰

The illegality of labor unions would change slowly throughout the mid Nineteenth Century, as the legal understanding behind conspiracy and labor relationships changed. The case *Commonwealth v. Hunt* was the culmination of different state cases through the 1830’s, where it decriminalized organization by emphasizing whether or not the goal of the activity caused damaged the self-interest of other actors. *Hunt* was decided in 1842 by the Massachusetts Supreme Judicial Court, setting the precedent that simply because an action was beneficial yet potentially harmful, there was no reason for the court to stop the behavior. Further, it suggested that the legality of such an act would be judged by the intent behind it, essentially changing the target of strikes from the public to employers. This ruling allowed unions to act as voluntarist entities; striking was a form of direct action used against employers. Without influencing the political sphere, organized labor could demand and influence changes in their working environment by directly interfering with an employer’s business. This would become crucial, as labor unions saw protective

¹⁰ Tomlins, *Law, Labor and Ideology*, 151, 153.

legislation invalidated by the federal court system in the 1880's. Voluntarism would be the most feasible method to create change on the eve of the Pullman Strike.¹¹

But what came out of this evolving view of labor unions was not necessarily the right to unionize and strike. Conspiracy law protected laborers' actions against employers only when they used coercion of a private nature, such as strikes or boycotts that targeted specific employers. Judicial protections only covered local strikes against local employers. Nation-wide, industry-stopping strikes were neither local nor explicitly protected under the ruling in *Commonwealth v. Hunt*. The nature of strikes in the aftermath of reconstruction grew to proportions unanticipated in the pre-war years. The pace of industrial expansion created an opportunity for unionized labor to grow as businesses became organized on a country-wide scale. These burgeoning enterprises met swift changes in the legal system, as regulations quickly sought ways to deal with the growing intensity of strikes. The Great Railroad Strike of 1877 was the first time multiple unions combined and simultaneously boycotted across the country and engaged in national sympathy strikes, an act which led to the first executive intervention in labor history.¹²

The national character of the 1877 strike set it apart from other strikes of its decade. Laborers struck against a series of railroad lines in 1873 and 1874 which led to disruptions in more than eighteen railroad lines. But the later strike, perpetrated by the amorphous and secret Trainman's Union, was ultimately far more violent. Philip S. Foner, in his book *The Great Labor Uprising of 1877*, characterized the 1870's as a tumultuous decade, marked by a rapid, and sudden decrease in railroad industry income,

¹¹ Tomlins, *Law, Labor and Ideology*, 180, 216; Forbath, *Law and the Shaping of the American Labor Movement*, 39.

¹² Philip S. Foner, *The Great Labor Uprising of 1877* (New York: Monad Press, 1977), 30.

and a continued payment of dividends throughout the downturn. The strike's touch point was caused by unfair collusion between many major railroad lines, with a roughly 10% drop in wages announced almost simultaneously across numerous railroad lines. Fighting against obvious collusion amongst many different railroad companies, the Trainman's Union pulled off the first synchronized walk-out, creating a full shutdown of America's transportation industry.¹³

The federal legal response to labor insurrection developed during this strike; there was no need for the government to intervene labor unrest when strikes were primarily local affairs. There were no plans for quelling national strikes. The urgency of federal intervention in 1877 was due to a variety of factors. The national character of the strike frightened federal authorities, who already held deep sentiments towards perceived lawlessness during strikes. More important was the fear of revolution during the fragile Reconstruction period after the Civil War, the rebellion which nearly ripped the nation apart. The memory of the war remained fresh for many Americans. A nation-wide disruption, which some laborers called an outright revolution, served as justification for calling the movement an insurrection. The courts operated as a bastion of Republican, free-labor ideology. Their decisions carefully guarded the sanctity of contract law, a nebulous idea which assumed that workers and employers operated as individuals and held equal bargaining power over a worker's wage rates. In theory this concept worked. But even by 1877, employers' concentration of wealth and industrial capital meant workers had little bargaining power. They worked for the given terms, or someone else would accept them. Nearly 98% of federal justices were of high socioeconomic strata, and purposefully espoused their capitalist interests in rulings of the day. Federal justices

¹³ Foner, *The Great Labor Uprising*, 20, 21, 9, 28, 29

had personal, political reasons to re-enforce common law rulings in favor of capital. It was no wonder the national courts acted as the front line against national strikes.¹⁴

The word “insurrection” conjured nefarious images for the American people. Connoting a violent change in the political structure, it meant secession from not only the Union, but from the ideologies of American liberalism and laissez faire economics. In a letter to Governor Henry Matthews in 1877, President Rutherford Hayes asserted the primacy of national power in times of national emergency; the executive must “protect every state... against domestic violence.” The strike was not a local matter, nor was it simply against a private industry. Instead, the Trainman’s Union shut down the national transportation system, bringing all of American industry to a halt. This strike was ultimately different from previous ones, because it did not affect one single employer. Instead, it targeted several employers who owned a majority of the market share; the railroad industry was crippled by the strike because a few companies owned the majority of the business. Free trade ideology was already beginning to erode, as competition turned into consolidation. By calling the national strike an insurrection, President Hayes distanced the national strike from previous, localized strikes. Labor unions weren’t fighting a single, private corporate entity, but the public good. This tactic provided a strong justification for the federal court system to intervene in labor unrest.¹⁵

By defining a strike as an insurrection, the executive was entitled to act against the strike as a threat to the Union. The federal court system offered further legal justification by developing a new strategy for breaking strikes: the standing injunction. The tactic originated from Justice Thomas Drummond, of the United States Court of

¹⁴ Foner, *The Great Labor Uprising*, 9; Forbath, *Law and the Shaping of the American Labor Movement*, 33.

¹⁵ R. B. Hayes to Governor Mathews, July 18, 1877. R. B. Hayes Papers, Library of the Rutherford B. Hayes Presidential Center (microfilm edition, roll 175).

Appeals. He served in the Seventh Circuit, with jurisdiction over the cradle of the 1877 railroad strike. Drummond exploited the fact that many rail lines were in federal receivership or bankruptcy. This meant that they were under direct custody of the federal government. This allowed him to make rulings based upon “technical ground” because the strikers hindered “the receiver’s orders to operate the railroads involved.” The courts demanded these railroads continue to operate, and any interference caused by strikers violated a federal order. This functioned as a standing injunction, which made striking against the private company an offense against the national government. By interfering with a rail line, labor unions impeded the movement of goods across state lines; in this case they hindered the mode of transportation. Because the government had the legal rights to regulate obstructions to interstate commerce, and enjoin obstructions to railroads in federal receivership, Drummond’s orders made it illegal to strike against national railroads.¹⁶

Drummond also created precedent for strikebreaking by ordering that any strike which hindered mail cars violated the federal right to ensure interstate commerce flowed unmolested, specifically mail transit. This precedent would become notorious as it gave railroad companies a weapon to fight back against strikers. Railroad corporations were never at fault, even if they chose to not run mail cars on purpose, or attached mail cars to every line; strikers took the blame solely because the mail didn’t move. Standing injunctions would resurface during the Pullman strike as the main justification for military intervention. The use of these tactics in 1877 solidified them as legitimate strategies by 1894.¹⁷

¹⁶ Foner, *The Great Labor Uprising*, 195.

¹⁷ *Ibid.*, 196.

President Hayes championed the use of military force as a method to both serve court injunctions and break national strikes. This controversial use of strength marked the first national strike-breaking policy. The decision to send federal troops into to open up the multitude of striking rail lines originated in the president's loyalty towards the railroad companies.¹⁸ The majority of the president's cabinet members made their living in the railroad industry. This was a motivating factor for Hayes' precedent setting decision, but not the only reason. A court injunction held no weight behind it; if the government did not follow through on an imposed a court order, it was nothing more than a waste of paper. In many railroad towns, injunctions often met strong resistance. "Midwestern mayors and governors often sympathized with strikers;" federal courts could not count on local authorities to carry out their orders in a timely fashion. Federal justices sometimes took matters into their own hands, either allowing U.S. Marshals to deputize citizens, or directly asking for military intervention.¹⁹

President Rutherford Hayes ultimately had to decide if he should send in the troops. Historians suggest that the decision was a foregone conclusion for Hayes. Phillip Foner, for example, mentioned that President Hayes reacted favorably to strikebreaking requests. Furthermore, he made the decision to send in soldiers despite understanding that West Virginia governor Henry M. Matthews' state militia could contain the strike in ten days' time. Restraint was sacrificed for speed; the longer the strike continued, the more likely it was to be violent. The decision to send in federal soldiers was not just an

¹⁸ Due to the interstate nature of railroads, soldiers often passed through multiple states to disperse strikers along a single rail line. Foner identifies the key railroads involved: The Baltimore and Oriental Rail, The Pennsylvania Railroad, The Philadelphia Railroad, The Reading Railroad, and The Vandalia Railroad. Major disturbances requiring federal intervention also took place in Chicago, Missouri, Ohio and a few other cities. Foner, *The Great Labor Uprising*, 53, 76, 100, 237, 239

¹⁹ Foner, *The Great Labor Uprising*, 40; Forbath, *Law and the Shaping of the American Labor Movement*, 67.

expedient end to the strike. Federal troops actively engaged the strikers while protecting railroad property. This show of force suggested that this occasion was far more momentous, as it was the first time the federal government actively intervened in the relationship between labor and management. President Hayes calculated his decision, and unleashed the regular army on the strike with far less restraint than an impartial arbiter would have shown.²⁰

President Hayes defended his authority to act on the railroad strike with three basic principals. First, as president he held constitutional right to “protect every state” in the Union against domestic violence. In this proclamation, the President cited Article IV, Section 4 of the Constitution almost word for word. Second, Hayes emboldened his position in the proclamation by vaguely invoking federal law, which required he call for insurgents to disperse peacefully. Inevitably, a single proclamation would not end the strike. In this case, Foner observed, the law “empowered him to respond to state requests for assistance in suppressing ‘domestic violence.’ ” Finally, the Hayes Administration backed the argument laid down by the federal courts; receivership meant any strikers who violated a federal injunction could be held in contempt of court. These premises marshaled a variety of different legal justifications during the 1877 railroad strike, and brought legitimizing power to federal actions.²¹

The Great Strike of 1877 moved across the country with overwhelming speed, and encompassed a variety of unrelated businesses which struck in sympathy with the railroad workers. But the decision to send federal troops against the strikers was equally

²⁰ Foner, *The Great Labor Uprising*, 41, 42; Jerry Marvin Cooper, “The Army and Civil Disorder: Federal Military Intervention in American Labor Disputes, 1877-1900” (PhD diss., University of Wisconsin, 1971), 74.

²¹ R. B. Hayes Scrapbooks, vol. 97, p. 4. R. B. Hayes Papers, Library of the Rutherford B. Hayes Presidential Center (microfilm edition, roll 175, item 1530); Foner, *The Great Labor Uprising*, 40, 195

as unprecedented as the scope of the strike. But the decision to send in national soldiers was a blessing for many Americans, as town after town faced sober reminders of the first national railroad strike. Foner explained that “over one hundred lives were lost” in the strike’s proceedings, “many of them innocent bystanders.” For those who survived, the strike’s failure was tantamount to economic death; local strike leaders were blacklisted, and hundreds were fired for their participation. American citizens did not share a unified view of the strike’s effects, but generally it decreased American trust for trade unions, with many citizens linking the movement to Communism. Very few strikers stood trial before a federal court during the strike’s proceedings. Of the fifteen strike instigators brought before Judge Thomas Drummond, all “were presumed guilty of contempt,” which resulted in thirteen serving jail sentences of one to six months in jail. As with the backlash of those fired from their jobs, the majority of litigation came after the strike’s conclusion, with a multitude of federal criminal charges ranging from the obstruction of rail lines, to interfering with the mail system, to forming unlawful combinations with the intent of obstructing interstate commerce.²²

This precedent, as a forerunner to the Pullman Strike, set down many approaches for the federal government to use during the Pullman strike. But one event changed the rules of engagement for federal military intervention. Congress enacted the Posse Comitatus Act of 1878, prohibiting the president to use the armed forces from being used to execute the laws within any state, unless approved by Congress. President Hayes commented directly on the act, which was presented as part of the Army Bill of 1879. Vetoing the entire bill, he marveled that the act passed with overwhelming support, unanimous support in the Senate, and two thirds of the house. The purpose of the act was

²² Foner, *The Great Labor Uprising*,, 189, 204, 211, 195, 206.

to return the Posse Comitatus to its original function, by making federal support for elections and local disturbances illegal. These events, theoretically, “ 'should be suppressed by the peace officers of the State,' ” who would gather citizens to assist in the police function.²³

The president argued against the act’s implementation for many reasons, despite having removed the last United States troops from Southern statehouses in 1877. He characterized it as redundant, since “no case of such interference” during state elections “has... occurred” in the past. Hayes also showed deep concern with the act’s ability to infringe on the power of the “Civil Authorities... to keep the peace at the congressional elections.” It would be much harder for the federal government to enforce the recent constitutional rights granted by the Fifteenth Amendment. His argument drew a correlation between the Executive’s duty to ensure proper Congressional elections, and his ability to suppress civil disturbances at any time. As such, Hayes felt that the National Government would be “powerless to enforce its own statutes.” The act would be “discrimination in favor of the State and against the national authority,” as it erased the legal right for the federal government to intervene in domestic violence. Citing the Revised Statutes of the United States, Section 2024, which allowed US Marshalls to “summon a posse comitatus whenever any of their duties are forcedly resisted,” the act destroyed the federal right to support its own branch of enforcement.²⁴

Hayes suggested the Act would undermine the “equal independence of the several branches of the government,” by restricting the rights of the executive and the judiciary to react to national threats. The House of Representatives' debate over the bill in 1878

²³ Stephen Young, ed. *The Posse Comitatus Act of 1878: A Documentary History* (Buffalo New York: William S. Hein & Co., Inc., 2003), Document 2, P. 152; *Ibid.*, Document 12, P.3.

²⁴ *Ibid.*, Document 12, P. 4, 5.

examined the Hayes administration's conduct during the 1877 railroad strikes, and its use of federal soldiers during the strike. Representative William Kimmel, a Democrat from Maryland, gave credence to the history of the standing army, and the dangers of its use during the 1877 strike. He used this argument to suggest that the militia should be the primary executors of local law during insurrection. The executive's action was "despotic government," a smear campaign to paint the militia as insufficient. He contended the standing army was not accountable to the people, and its use would lead to a stronger centralized government by usurping the sovereign police powers of the states.²⁵

The debate continued in the House on May 27th. While mostly debating the army's use during elections, opponents raised concerns over the possible consequences of the bill. Representative Mills Gardner, a Republican from Ohio, showed concern over the Executive's ability to act against insurrection or uprising without the express consent of the legislature. His suggestion, that the act would undermine the authority of the Commander in Chief, posed real consequences in the wake of the 1877 railroad strike. Despite being a minority view in the House, it shows some remained nervous about the President's ability to act in time of national insurrection. In the end, fears over Reconstruction and the over-reach of federal authority carried the bill. Despite the veto, the act passed with overwhelming support from both houses, bringing the Posse Comitatus Act into law.²⁶

Fears over labor relations took a back seat to growing discontent with Reconstruction. The law "severely limited the use of the army" for objectives other than

²⁵ Stephen Young, ed. *The Posse Comitatus Act of 1878: A Documentary History* (Buffalo New York: William S. Hein & Co., Inc., 2003), Document 12, P. 9; Cong. Rec. 45th Congress, 2d sess., May 20, 1878, 3583, 3584, 3586.

²⁶ Cong. Rec. 45th Congress, 2d sess., May 27, 1878, 3850.

enforcing United States laws. The best example of this was the conduct of General John M. Schoefield during his time in command. Stationed in Chicago in 1883, and head of the Military Division of Missouri, he exercised caution during the Coxe Movement of April 1894, a regional labor strike which took place shortly before the Pullman strike. Jacob Coxe created a small army of “charlatans, comics, utopian reformers and genuine workingmen,” which came to symbolize a general movement involving proletarian armies with desires to march on Washington. These groups felt the government could be coerced to fix on the depression caused by the Panic of 1893, with the threat of military force. Their preferred method of transport, stealing trains in order to move eastward, alarmed many observers; the potential for large armies to move quickly across the country caused many to label them “industrial armies.”²⁷

Schoefield kept nearly direct control over his soldiers, by arranging the chain of command in his favor; he supervised the actions of individual department commanders, who had to report back frequently to the General. This organization style not only increased his army’s efficiency, but allowed for “adherence to the Posse Comitatus act... in the field.” He specifically outlined the authority of the Army; “they could not take orders from civilians, nor could they make arrests.” To combat these shortcomings, the army simply required a marshal or deputy in its presence. With careful use of the command structure, and the simple attachment of a U. S. Marshal to the army, the general ensured there would be no danger of violating the Posse Comitatus Act.²⁸

Schoefield used his army against both the Coxe Movement, and the Pullman Strike much as President Rutherford Hayes used his men in 1877. The duty of his soldiers

²⁷ Cooper, *The Army and Civil Disorder*, 136, 137, 148, 165, 170, 165, 170.

²⁸ *Ibid.*, 176, 175, 176, 177

was “to overcome and suppress lawless resistance.” His application of the army differed from the former president’s when he used the military as a tool to help the civil authorities achieve their ends, while not doing their jobs for them. This issue was important during the Coxey Movement, as General Schoefield’s forces, came under pressure from justice officials to stop the insurrection of industrial armies moving eastward. Army regulars were used with increasingly reckless abandon, because of the Justice Department’s fears, and their insistence on a shock and awe approach to solving the Coxey Movement. Soldiers along the Northern Pacific rail line were given the particularly gruesome order to warn stolen trains to stop only once. If they refused, soldiers were to pull a switch, leaving the entire train to plummet over a bluff and into a river. This showed the fear with which army superiors gave their orders. The lines of authority blurred as low numbers of U.S. Marshals hamstrung federal actions. At one point, army regulars were used to maintain a prison camp to house surrendered industrial soldiers awaiting trial. For those managing the disturbances, there was an obvious breakdown in of law and order, as well as control, due to the pressure for results. The lessons of the movement would serve the federal government well during the Pullman strike of the same year.²⁹

This long line of precedents culminated in the federal government’s conduct towards labor unions. Despite decriminalization of strikes in private disputes, the 1877 railroad strike classified nation-wide labor action as offensive to the flow of interstate commerce. The government created a right to police strikes when they restricted interstate commerce, and a nation-crippling strike was the perfect pretext for federal intervention. Country-wide labor unrest amounted to insurrection; the federal government

²⁹ Cooper, *The Army and Civil Disorder*, 177, 185, 187, 188, 186, 188.

conjured images of the Civil War by branding the strike as a dangerous insurrection. This affirmed President Hayes' authority to intervene, under the Constitution's express powers. From 1877 through the eve of the Pullman Strike, the government defined the rules of conduct for dealing with national strikes. Judicial tools, such as the standing injunction, developed alongside military action, even in the face of the Posse Comitatus Act.

The expansion of federal powers in the wake of the first national strike was alarming for many Americans. But the fear of the mob made many citizens comfortable with the powers the government gave itself. The editor of the St. Louis Dispatch was quoted to have said that with “ ‘the absence of the army’ ” America became nothing more than “ ‘a stupendous mob... not a nation of law abiding people.’ ” The Merchant's Exchange of Baltimore City said that the government should use any and all lawful means deemed necessary to achieve results, “including an immediate increase of the military forces of our government.” Several other telegrams and letters urged the president to use the entire military to end the insurrection. What one can glean from this is not simply widespread disrespect for labor. Never had the federal government been confronted with nation-wide strikes which crippled the entire flow of commerce across state lines. The absence of precedent allowed the executive and judiciary to craft its responses to perceived threats to both the nation and the liberal free market. Popular support for the use of federal soldiers provided justification for the government to exert control over interstate commerce, and secured its position as a guarantor of commerce,

uninterrupted by national strikes. Questions regarding this power would not resurface again until the Pullman strike.³⁰

³⁰ Cooper, *The Army and Civil Disorder*, 135; James Carey Coale to R. B. Hayes, July 26, 1877. R. B. Hayes Papers, Library of the Rutherford B. Hayes Presidential Center (microfilm edition, roll 175).

The Pullman Strike, Federal Intervention and the Posse Comitatus Act

The Pullman strike began just a few months after the Coxey Movement. As the second major national strike in American history, Pullman tested the precedents laid down in the 1877 railroad strike. Worker dissatisfaction began over a wage dispute. But the situation was far more complex than the average pay problem. The Pullman Palace Car Company owned and operated its railroad car producing factories within the limits of a company town, Pullman, Illinois. The company town model championed by George Pullman involved “the belief that Americans of ordinary incomes could afford superior homes built with the economies of mass production.” The Strike Commission, formed after the Pullman Strike, concluded that the main reason for the labor unrest was due to Pullman’s understanding of his position as landlord and employer.³¹

Stanley Buder succinctly characterized the Pullman model town experiment, suggesting that the company “dispersed wages with its right hand, and collected with its left.” The company’s purpose of running the model town was to take the liberal American tradition of free labor, and transform it with contemporary laissez faire ideologies. Pullman wished to give his workers the “dignity and hope” of an honest living

³¹ Buder, *Pullman*, 160.

wage, by providing “human needs” through the corporate system. Pullman created competition with neighboring residential areas by providing the best accommodations; from elegant library, to lavish theater (two buildings rarely seen in small towns like Pullman), no expense was spared in accoutrements for the town. He never required his workers to live in the model town, but attempted to offer the best standard of living to his employees.³²

Opponents pointed out the shortcomings of the company town experiment; particularly the way which Pullman handled the growing economic depression in 1893. Whereas travelers could splurge for the best accommodations as a one-time cost, residents were constrained by the rents in the Town of Pullman, with little alternatives for residence. His company policy of fluctuating wages while holding rents independent and steady undermined his ability to effectively retain employees. While the town itself was hailed as a model for visitors, the Strike Commission called the town of “little money value to employees, especially when they lacked bread.” With rates nearly 20 or 25 percent higher in Chicago, the luxury of living in the town of Pullman was just that – a luxury which most could not afford. While most resentment toward the Pullman Palace Car Company began due to wage cuts during economic downturn, the fact that Pullman failed to leave his model town residents “something to live on” drove his workers to action. Many felt trapped in the model town system, as characterized by The Chicago Strike Commission report. Testimony stated that the general rule for the company was to provide work first and foremost to citizens of the town of Pullman. Workers at the Pullman Palace Car Company were informally coerced into living outside their means, in

³²Buder, *Pullman*, 161, 62.

disadvantageous working conditions, in order to receive minimal pay.³³

The breakdown between Pullman's unyielding ideologies, which held no place for his workers' right to voice complaints about management, and the reality of the situation on the ground, which threatened many with starvation, led to the Palace Car Company's workers seeking unionization. The American Railway Union (ARU) offered them a chance to do so. Eugene V. Debs founded the Union in 1893. The ARU wished to create a national union of railroad workers, and based itself in the railroad hub of Chicago, Illinois. The union's organization and charter was designed to encompass a broad spectrum of railroad workers, including skilled and unskilled laborers. Pullman's workers never operated railroad cars, a fact which would normally exclude them from railroad brotherhoods. But the fact that the model town contained roughly 20 miles of rail meant that all workers on the premises were considered railroad workers in the eyes of the ARU. Theoretically, had the ARU not stepped in to help the workers, the strike may have remained obscure and private in nature.³⁴

Debs' approach involved creating a nation-wide sympathy strike, a tactic which William Forbath called "a web of sympathetic boycotts," which represented both "republican mutualism" and "all that was 'lawless' in the labor movement." A sympathy strike was used by a union to strike on behalf of an original instigator, in order to raise awareness and show a level of solidarity toward their cause. In this case, the national railway union struck on behalf of a small group of organized workers in the Town of Pullman. Forbath characterized Debs as prudent. He urged the union to reject the Pullman

³³ Buder, *Pullman*, 73, 161, 160, 161; United States Strike Commission, Carroll Davidson Wright, *Report on the Chicago Strike of June – July of 1894: With Appendices Containing Testimony, Proceedings and Recommendations* (Washington: Government Printing Office, 1895), 617.

³⁴ Buder, *Pullman*, 152.

workers' plea for help, at first. But union members overruled his advice, appalled by George Pullman's treatment of his employees; Pullman's refusal to allow workers' a chance to air their grievances in a productive manner was particularly damning. The initial walkout was described as a "model strike," its conduct designed to build sympathy for the strikers. Sympathy came from unexpected places; not only did the ARU join the battle on behalf of the strikers, but so did the general public, and local governments of Midwestern towns.³⁵

A major problem for federal enforcement during both the Coxe Movement, and later the Pullman Strike was the government's early reliance on special deputies to carry out court-ordered injunctions. The use of federal marshals to resolve a strike was problematic when local empathy for strikers led whole towns to support the strike. Oftentimes, marshals were recruited from unscrupulous members of society, men already at odds with the public who supported the strike. The problem was often deeper than a town's participation in the strikes. State and local governments of western communities oftentimes protested the use of troops in the quelling of riots. Governors of Missouri, Colorado, Texas, Kansas and Oregon all protested Grover Cleveland's use of federal force during labor unrest. The protest caused by Governor Altgeld of Illinois was most important to the study of the Pullman Strike, as his argument with President Grover Cleveland clearly defined the question of federal supremacy and states' rights during the strike.³⁶

³⁵ Forbath, *Law and the Shaping of the American Labor Movement*, 74; Buder, *Pullman*, 170.

³⁶ Cooper, *The Army and Civil Disorder*, 172, 268.

The decision to send in troops rested on two factors, and half of the reason lay with Governor Altgeld. He refused to intervene in the Pullman Strike, mainly because of his politics. As a Democrat, Altgeld was branded as pro-labor by the General Manager's Association (GMA), a collusion of railroad management engaged in wage-fixing and anti-union action throughout the Pullman Strike in Chicago. As a consequence, federal authorities were skeptical about his ability to contain the strikes. Of particular note, the GMA questioned the governor's resolve, as he "had a reputation for defending the underdog." The association remained unsure that the state government would willingly call in the National Guard, despite Altgeld's approval of force during local labor unrest only a few months prior. While the GMA questioned Altgeld's resolve, Attorney General Richard Olney outright refused to believe the governor would act.³⁷

The Attorney General, Richard Olney, was the other leading factor in the decision to send federal soldiers to Chicago during the Pullman Strike. Olney's career, and position as Attorney General, was indebted to the railroad system. David Ray Papke, in his book The Pullman Case: The Clash of Labor and Capital in Industrial America, was not only critical of Olney's role in suppressing the strike, but of his credentials as a leader. He described the Attorney General's livelihood as one of railroad "management, merger and consolidation." Olney began his career as an actively practicing lawyer for major railroad companies, and continued practicing railroad law while serving in the cabinet. Papke also suggests that two of Olney's most prominent clients, "the Burlington and Santa Fe Railroads," pressured him to act upon the strike. With pressure from other business connections, including George Pullman himself, and given Olney's propensity

³⁷ Cooper, *The Army and Civil Disorder*, 230.

to place his job over his duty to the country, it is easy to see why he advocated military intervention. Inferring from this, one could easily see why he stepped up to influence many of the cabinet's decisions during the strike.³⁸

Olney's exceptionally the federal reaction to the strike was pivotal to the success of strikebreaking. Buder examined the two-pronged method by which Attorney General Olney helped to craft the government's response. With his position as the Attorney General, he used his relationship with local federal courts to secure an injunction from the Chicago circuit courts.³⁹ This assessment alone was remarkable, as it signaled near-collusion between the federal government and the railroad companies, a position upheld by Cooper's assessment. He argued that the Attorney General was "under the influence of" prominent railroad attorneys, and the GMA itself. But this was only half of Richard Olney's role in the Strike. Buder also cited the staggering influence Olney held over the military chain of command. It was a federal marshal who initially called for the Attorney General to deploy United States troops in response to the growing strikes. Cooper echoed this view during his research, as it was clear that United States Marshals men who were undisciplined and unfit to enforce federal laws, creating confusion and the potential for violence.⁴⁰

The Attorney General saw that the only way to uphold his particular interpretation of the law was to bring national soldiers to bear on the strike. With the perceived threat of Governor Altgeld doing nothing, the Attorney General took matters into his own hands.

³⁸ Papke, *The Pullman Case*, 30, 31.

³⁹ Buder, *Pullman*, 183.

⁴⁰ Cooper, *The Army and Civil Disorder*, 229; Buder, *Pullman*, 183; Cooper, *The Army and Civil Disorder*, 299.

Cooper suggested that Olney did not care whether or not the Marshals were qualified for their positions because he never intended to use them for strikebreaking; he was determined to use federal troops to stop the strike. This decision, in part, is evident by the swift application of force. The American Railway Union began its boycott on June 26th of 1894. On July 3rd, Olney relayed a request sent by Federal Marshal Arnold, his chief attorneys during the strike, and a federal justice, asking for federal troops to enforce an injunction issued a day earlier. The same day, President Grover Cleveland called a cabinet meeting to discuss the issue, quickly overriding opposition, and siding with Olney's decision to commit troops. The President even quipped that “ ‘if it takes every dollar in the Treasury and every soldier in the United States Army to deliver a postal card in Chicago, that postal card shall be delivered.’ ” Troops received the order to move out that afternoon, a mere seven days after the boycotts began.⁴¹

Federal intervention was spurred on by the upper echelons of the executive branch; Olney in particular wished to take charge of the situation, leading with his personal experience and influence. Executive and judicial action worked in tandem during the strike, as a way to circumvent restrictions on federal police action, which were traditionally reserved for the states. The national government rarely needed to address the Posse Comitatus Act of 1878, which explicitly limited the federal government from interfering in state police powers when “expressly authorized by the Constitution or by act of Congress.” The executive branch did not wait to see what Governor Altgeld would do to contain and control the strike. Records showed Altgeld felt his authority was circumvented; Altgeld and Cleveland exchanged heated telegrams once the governor he

⁴¹ Cooper, *The Army and Civil Disorder*, 229; Buder, *Pullman*, 181; Cooper, *The Army and Civil Disorder*, 231; Papke, *The Pullman Case*, 30.

learned that national soldiers were ordered into his state. Altgeld argued that the decision was an “impingement on state's rights,” and accused the president of acting without a request for help from the local officials. Grover Cleveland’s main defense was that the government had a duty to act in defense of decisions reached by “the justice offices of the United States.”⁴²

The federal government primarily argued that the executive was only responding to enforce federal court rulings, when accused of interfering with state police activity. The army served injunction orders issued by federal courts, and enforced them when they went ignored. But throughout and after the event, President Cleveland advocated a variety of other reasons explaining why the federal government could rightfully involve itself in traditionally state affairs. It was not simply serving the orders of the federal judiciary; Cleveland argued that his powers as commander in chief of the armed forces was designed to put down insurrection, as seen in his proclamation of Marshal law on July 8th, 1894. In it, he admonished all involved citizens, and warned off potential supporters by branding the strikers as unlawful obstructions or combinations. He called on the parties involved to stop “forcibly resisting and obstructing the execution of the laws of the United States, or interfering with the function of the government,” or attempting to destroy property belonging to, or guarded by, the federal government. Cleveland publically enumerated and reinforced his claim that strikers violated federal injunctions. His rhetoric called for protecting innocents from indiscriminate action taken against the strikers, warning that no asylum or restraint will be shown. The applied force

⁴² ed. Young, *Posse Comitatus Act*, Document 2, P. 152; Buder, *Pullman*, 184; Grover Cleveland to John Altgeld, July 5, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26427/26427a).

would act with the express purpose of breaking the strike, not simply to police the actions of those on the ground.⁴³

Suppressing a domestic insurrection was the president's main reason for federal intervention. To define a strike as insurrection put the strikers outside the realm of a private struggle between labor and capital. It was more than just a nuisance in the private sphere, but as a threat to the security of the nation. President Cleveland had precedent on his side; President Hayes acted against the 1877 railroad strike upon deeming it an insurrection. A major difference between Pullman and the Great Railroad Strike, was the support and sympathy garnered from local populations. Pullman showed that regional attitudes during a national strike hindered its resolution. At best, sympathies complicated the search for special deputies to bring a strike to its end. At worst, it crippled the National Guard forces who were supposed to police the strikes. Cleveland won back some sympathy from many prominent places in America, simply by defining the strike as an insurrection.⁴⁴

Support for the president's actions grew daily, as shown by his correspondence and incoming telegrams during the Pullman strike. Letters poured into the White House over a short period of time, from business organizations and private citizens alike, with a wide range of opinions, some of which mirrored the views expressed to Rutherford Hayes during the 1877 Railroad strike. George A. Williams, a citizen of Chicago Illinois, telegraphed the president on the 6th of July, and expressed his belief that the president's actions were not tough enough, saying that "National security demands Martial law."

⁴³ ed. J. F. Watts and Fred L. Isreal, *Presidential Documents: The Speeches, Proclamations and Policies that Have Shaped the Nation from Washington to Clinton* (New York: Routledge, 2000), 175, 176.

⁴⁴ Cooper, *The Army and Civil Disorder*, 172, 135.

Further, he expressed that the rebellion was far beyond the president's control, the only solution was to "arrest all mobs" and to provide a strong proclamation. This particular telegram was similar in structure to many sent during the earlier railroad strike, and came to the president's office just two days before his July 8th declaration of martial law.⁴⁵

Another common feature of correspondence offered support for the president's decision to overstep state authority. The exchange between Grover Cleveland and Governor Altgeld was not unnoticed by the people. Harmon H. Hart, a member of the South Orange, New Jersey, Democratic Club, wrote a letter of support dated July 7th to the Grover Cleveland, commending the president for being "close... to the hearts of the people." To Hart, not only did the president have his finger on the nation's sentiments, but his "brief and pointed reply to Governor Altgeld," would sway further sentiment towards the side of law and order. Further letters to the president acknowledged the power his words held in swaying the populace, and the fervor with which business men of the 1890's defended the president's actions. W. H. McDoel, a member of the board of directors for the Monon Railroad wrote that the action of calling out the troops was "approved by all classes but the mob element." While hardly an unbiased source, evidenced by the fact that he called Governor Altgeld "our anarchist governor," his observation was recounted time and again in the presidential papers, from many different writers. John J. Valentine, the first president of Wells Fargo applauded Cleveland's "wise temperate firmness in dealing with the strike." These characterizations gave a stronger view of how the industrial elite viewed the strike, even if their writings could not be taken as unbiased or representative of the. Considering the close relationship Attorney

⁴⁵ George A. Williams to Grover Cleveland, July 6, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26449).

General Richard Olney held as a prominent railroad lawyer, it was no surprise that President Cleveland was swayed by the opinions of business moguls.⁴⁶

More important, and representative of the nation's feelings, was the stress placed on the rule of law by ordinary citizens and legal figures alike. Law and order were a rallying point for many who advocated federal action, as the threat of insurrection mounted. Fear of the strike's lawlessness was ubiquitous across the country. Aldermen for the city of Brockton, Massachusetts, exemplified a general fear that the erosion of law threatened areas of the country untouched by the strike. The council unanimously resolved that mob action caused "great destruction of property," put citizens in danger, prevented interstate commerce, enhanced "the value of the necessities of life." The Aldermen not only framed their resolution in those terms expressed by the federal government, protecting property and interstate commerce. They feared for basic human needs: food and safety. Rule of law was the way to return to normalcy. A belief in "the supremacy of the law, and in liberty under the law" guided their decision to support the president's actions. To them, the effects of the strike may have been as damaging as the Civil War was a half-century prior. The strike was an insurrection, unfettered "lawlessness" which could only be destroyed by "peace and order." Citizens without a stake in the railroad market feared the labor strike would affect them as consumers.

⁴⁶ Editorial, *The New York Times*, September 7, 1892; Harmon H. Hart to Grover Cleveland, July 7, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26459); W. H. McDoel to Calvin S. Brice, July 7, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26466); John J. Valentine to Grover Cleveland, July 8, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26494).

Lawlessness was tantamount to a second Civil War, and for those who lived through the secession, the fear was very real.⁴⁷

Average citizens not only debated use of law as a tool to prevent chaos; lawyers weighed in on the application of current law when dealing with the Pullman strike. However, as a form of the American elite, lawyers made up a cadre of important and influential individuals in America. Their opinions held heavy weight in the United States. Attorney General Richard Olney was well connected in this legal sphere, and letters he received showed this. Everett P. Wheeler, a prominent lawyer from Harvard, and a founding member of the American Bar Association, expressed his support for Olney's use of "old legal principles" applied to "the novel conditions growing out of the recent strikes." Unfortunately, his letter was terse, and didn't explain which old legal principles he was referring to. However, he went on to argue that the "omnibus injunction" would continue to rank among the great legal triumphs. An omnibus injunction broke the will of unions by making every activity connected to striking illegal. It developed out of Justice Thomas Drummond's standing injunction, by making all forms of "broad unionism" and "aggressive... class-based tactics" illegal. Wheeler treated it as settled law, and assumed it was a standard tool to stop labor action. Edwin Walker, Olney's personal appointee as special counsel for the injunction, offered further commentary on labor's view of the law. To the ARU, Pullman was a "test case" to prove whether "law or equity" could stand up to and "control the action of" organized labor. Walker noted that the law itself was on

⁴⁷ John J. Whipple to Grover Cleveland, July 10, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26536).

trial. The powers of injunctions and general federal authority to control strikes were tested in the Pullman strike.⁴⁸

Labor unions wrote the president less frequently, and more often presented resolutions to the government than opinions on the executive's action. However, different labor groups reacted to the use of law in different ways. While the American Railway Union, as Buder explains, saw "Cleveland's unilateralness" as "evidence of the federal government's partiality toward capital," Debs still felt the best option was to approach with a voluntarist attitude. They hoped to force arbitration with the Pullman Palace Car Company; the addition of federal troops presented a radical problem for Debs, as government intervention made private arbitration impossible. The ARU acted in concert with the American Federation of Labor's tactics of apolitical voluntarism during the strike. In contrast, the old-style Knights of Labor continued their political activism campaign. In a resolution sent to the President from the Union Square Knights of Labor, the union workers outlined their grievances and demands. The most glaring suggestion of the resolution was not a call for federal intervention to cease, but for all workers to vote for the party who would bring an impartial solution to the Pullman strike, without extreme favoritism towards the side of capital. It went so far as to denounce the government, and state apparatus involved in the strike, but offered no solution other than political action. This showed that different labor unions had different ideas as to how to bring about change. The ARU's strategy of direct action was not unanimously supported by all national unions in America. In contrast, organized capital could generally agree

⁴⁸ Everett P. Wheeler to Richard Olney, July 18, 1894. Richard Olney Papers, Washington: Library of Congress (microfilm edition, roll 6, item 2834); Forbath, *Law and the Shaping of the American Labor Movement*, 94; Edwin Walker to Richard Olney, July 26, 1894. Richard Olney Papers, Washington: Library of Congress (microfilm edition, roll 6, item 2896-2899).

that breaking the strike was beneficial to their interests. And the federal military offered plenty of help in breaking the strike.⁴⁹

Pullman, as a case study in federal military intervention, was both violent and uncharacteristic for its sheer application of federal force. A large numbers of federal troops were made available during the course of the strike, with nearly 2,000 men assigned to the city of Chicago, and roughly 16,000 men held in reserve for the express purpose of securing the nation's railroads. Out of an army numbering 25,000 soldiers, this high proportion showed not only the urgency placed on recovering the railroads, but the trust most executive officials placed in the standing army. That the government could step in with a sparse force of 2,000 men proved the army's professional nature, and effectiveness operating in small numbers. They opened railways and dispersed mobs as required, simply getting the job done. The federal government embraced the idea of using national troops to police labor strikes. It was only logical to send in army regulars when enforcing federal law to achieve better results than militiamen. But even with such small numbers, violence was unavoidable.⁵⁰

The presence of soldiers did not end the Pullman Strike immediately; the army implemented a systematic campaign of clearing blockages to the railroads. Buder describes the process well, as soldiers literally “ ‘rode shotgun’ on trains bringing mail and food to” Chicago, in order to clear the tracks. Federal intervention did incite violence and destruction; the 6th of July alone saw an estimated \$340,000 in damages to railroad

⁴⁹ Buder, *Pullman*, 184, 185; Patrick Murphy to Grover Cleveland, July 8, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26489, 26490).

⁵⁰ Barton C. Hacker, “The United States Army as a National Police Force: The Federal Policing of Labor Disputes, 1877-1898,” *Military Affairs* 33, no. 1 (April 1969): 261.

property in Chicago, as soldiers made their presence known in the city. But as national force began to restore the rule of law in the city, it ultimately made the ARU's position untenable. The union was clearly violating federal court orders, and national soldiers were on hand to enforce the injunctions they were violating. It would be better to label the use of military intervention during the Pullman affair as strike breaking, as that was the end result. While not expressly sent in to support capital, the ultimate result would be the destruction of the ARU, and the failure of the Pullman strike.⁵¹

Official justification for the president's actions held support from many Americans. While local support for strikers helped their cause, the American Railway Union was severely disadvantaged. Differences between labor organizations, such as the rift between the Knights of Labor and the ARU, were only half the reason. The broad, national scale of the strike put laborers at odds with the entire country. President Cleveland had the upper hand when he branded the strike an insurrection. But despite calling attention to the strike as a matter of national security, the president still had to contend with potential backlash from Congress. The government only received criticism during the strike from a minority of governors, who claimed the federal government surmounted state authority. While state arguments tended to invoke federalism, they never directly questioned federal limitations via the Posse Comitatus Act, which ultimately gave Congress the right to decide when federal force was appropriate to use. The national legislature still had to weigh in its own opinion on the matter, and evaluate the federal response in relation to the act's prohibitions. Two resolutions to support the president's actions were introduced into both branches of congress, with the purpose of

⁵¹ Buder, *Pullman*, 184-186

consolidating federal support for the executive's decision to restore order with a troop presence.⁵²

The most striking feature of the congressional record is the length of time taken between the executive's response and the congressional hearings. The office of the executive was designed for fast response, when congressional indecision could hinder action. But the Senate only began to debate the issue on July 11th, eight days after the initial order to send in federal soldiers, and five days after Governor Altgeld ordered the state militia to police strategic points in the city, in order to relieve federal soldiers' of riot-control duties in Chicago. The House of Representatives opened deliberations even later, on the 16th of July. This delay is significant because the strike was all but over by this time; Eugene V. Debs, and many conspirators were indicted for contempt on July 17th. The delay in action, despite the threat of a paralyzed nation, and insurrection, showed the lack of immediate need for congressional authority during the strike. Even with Posse Comitatus Act restrictions, it was understood that the president would act to prevent the nation from harm.⁵³

The House debate contained the most spirited questions on the issue, not to mention the strongest legal analysis of the president's actions. The Speaker pro tempore allotted only fifteen minutes for either side to debate the issue, given the rules of debate. The opening argument, which favored the executive's actions, made a bold statement. Mr. McCreary, a Democrat from Kentucky audaciously asked to reserve his time, because the resolution was so self explanatory, a motion met with calls to vote

⁵² Cooper, *The Army and Civil Disorder*, 268.

⁵³ *Ibid.*, 242; Buder, *Pullman*, 187.

immediately. During his turn on the floor, McCreary focused on rule of law rhetoric to make his argument. To him, no American of any class or upbringing could deny the need for law and order in the country. The real enemy was lawlessness; “preservation of the Republic and the enforcement of the law” overruled the rights of both labor and capital. McCreary restated the president’s claim that the Pullman Strike was an insurrection, which he framed as a question of law and survival; the “perpetuity of national government” was at stake if law and order could not be restored. The strike required swift retribution because it was a breakdown of the law.⁵⁴

McCreary’s reliance on the concept of the rule of law was clear as he defended the president’s actions in debate. Two sections of the statute law of the United States illustrated his point. Section 5298, enacted in 1861, enumerated the Executive’s authority to call forth the armed forces “to enforce” any law which protected the authority of the Government when “it shall become impracticable to... enforce... the laws of the United States within the states or territories.” This law was straightforward, and gave the President power to act when any federal laws were threatened. This Reconstruction statute was repurposed for a new use against labor unrest. No longer was its purpose to re-enforce the president’s power to enforce civil rights, but it allowed the government to act when federal injunctions were ignored. The statute was used to reinforce the federal right to clear obstructions of the mail system, and violation of the federal injunctions. This added weight behind the usual justifications for enforcing federal authority. The statute also provided for federalizing the militia, as well as bringing about both army and navy for use in suppressing rebellion. By invoking this statute, McCreary was able to

⁵⁴ Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7544.

show that the federal government acted with restraint, and reserved far greater rights than were exercised during the Pullman strike. State militias remained under the control of their state governors throughout the strike.⁵⁵

The other repurposed federal Reconstruction statute, Section 5299, enacted in 1871, stated that the federal government reserved the right to intervene in domestic violence or insurrection, where laws of the federal government, either enumerated in the constitution or “secured by the laws” of the nation, were obstructed.⁵⁶ The obstruction had to deprive “any portion or class of people” their constitutional immunities in order to validate federal use of force. This law was originally used to reinforce the federal application of civil rights protections. When one portion of people obstructed the civil rights of another, the army could be used to restore order. With the end of Reconstruction, the statute’s wording allowed the government to frame the already volatile phrase of insurrection as class warfare; no economic group was allowed to obstruct another of its right to protections by the government. It also legitimized the federal government’s decision to intervene on behalf of one class. Obviously the government sided with and defended capital during Pullman strike. The statute required states to intervene during such insurrections. Failure for state governments to contain insurrection gave the opportunity for federal forces to step in. In this case, Governor Altgeld’s slow response was not only preempted by Grover Cleveland, but his lack of early action was a justification for sending in army regulars.⁵⁷

⁵⁵ Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7544, 7545.

⁵⁶ *Ibid.*, 7545.

⁵⁷ *Ibid.*, 7545.

Mr. Lafayette “Lafe” Pence, of the Colorado Populist Party, stepped up as a main opponent to the bill. He argued against the resolution, because of the heavy influence Richard Olney held during the strike. The weight of his authority was unsettling to the representative; he suggested that Olney acted as a “leader in the [Cleveland] Administration” while promoting a kind of corporate nepotism when he designated “the attorney of the railroad companies” of Chicago to be a special U.S. Marshal deputy to “take charge in Chicago.” However, his approach to admonish the Attorney General was ineffective and lukewarm at best. While denouncing Olney, Pence simultaneously supported the president’s actions, which were ultimately driven by Olney’s efforts. He suggested that the American people would not allow the government’s highest prosecutor to have as close bonds with the side of capital as Olney undoubtedly did. Olney was well known to both the House and Senate as a trust attorney. This made his actions prime fodder for opponents of the overreach of federal power. Mr. Pence argued that the decision went “further than the Republican side” of the house really wanted to push their free trade ideology, as it solidified both the “President ‘and his administration’ ” as an active unit, and gave it precedent to intervene into the labor market on the side of capital.⁵⁸

Pence’s counterargument was vague because of the very limited time he had to deliver his address to the floor. But it was possible to tease out potential meanings from his argument, based on the political parties’ sentiments. This raised an important question. Did the executive branch overreach its authority, via the actions of its cabinet members? Was the operation, which was obviously spearheaded by Olney, an overreach

⁵⁸ Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7544, 7545.

of the president's authority? The threat of federal power exceeding its authority was squarely on the minds of Democrats during this time period. No citizen could mistake the charge of insurrection as a reference to the Civil War, one which symbolized an overreach of federal power for many southern Democrats. Mr. Pence would not idly sit by and watch the Cleveland Administration make a decision based solely upon the interests of its cabinet members. Of note, the Representative specifically explained that Edwin Walker, Olney's special counsel for the injunction, was already a prominent railroad attorney in the Chicago area. To Pence, the Attorney General acted out of self-interest, with direct ties to the multitude of railroad companies involved in the strike. But his rhetoric undid the argument quickly. The office of the Executive acted as one unit, no matter who made up its parts. There was no room to debate the constitutional powers of the federal government; Pence said it himself at the start of his allotted time, that one who withheld proper praise from the Cleveland administration was "a public enemy."⁵⁹

Mr. Richard P. Bland, a Democrat from Missouri, picked up where Mr. Pence left off, and eloquently touched on the issue of federalism. His argument began with a declaration of Democratic Party policy, chiefly a love of local, state police action. What most threatened the order of localized government was the omnibus injunction. He argued the injunction symbolized the national usurpation of states' rights. The heavy hand of the federal government, in the form of U.S. marshals and soldiers, threatened to overrule state officials. He cited that such acts already happened during the Pullman Strike, including arrests made on local sheriffs (without mentioning specific incidents) who were replaced with "the strong arm of the federal government." Bland condemned

⁵⁹ Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7544.

this as a symptom of imperialist urges in America; the late Nineteenth Century was a time of growing federal power, and renewed use of the standing army. Questions regarding state and federal power, the main contention of the Civil War, resurfaced during these debates. For many legislators, the Pullman Strike was improper use of executive power.⁶⁰

However, Representative Pence's argument brought up a second question. Was the level of involvement and partiality the executive showed too excessive? Mr. Pence did not question the federal government's necessity to act in times of crisis, but instead attacked the impartiality of the Attorney General's actions. Similarly, Mr. Bland's interpretation of imperialism suggested a fear that America could become a bureaucratic nation-state, much like European powers of the day. Attorney General Olney, as an agent of the executive, assumed too much power within the federal system. This may have mimicked the bureaucracy of a federal nation state. Anti-imperial Democrats would see the greatly empowered role of the Attorney General as a sign of consolidation and expanding roles of the national government.

Those backing the resolution to support President Cleveland did not frame the President's use of force as an increase of federal power. There was no doubt that Olney influenced every major decision during the Pullman strike. Instead, Representative Thomas Clendinen Catchings, a Democrat from Mississippi used his remaining time to remind detractors that the executive functioned as a singular unit. Catchings admonished the house that there was "not a nook or corner or crevice in all the broad land of ours where the federal government may not lawfully go when proper occasion arises."

⁶⁰ Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7545.

America was not an imperial power, but state and local officials had to understand that “the shadow of the national flag obscures and obliterates all state lines.” Drawing on the rule of law interpretation espoused by Mr. McCreary, the representative talked of the executive’s appropriate response, “maintaining the constitution” and preserving the laws of the country. Mr. Catchings seamlessly intertwined the rule of law with his explanation of federal prerogative. The government reserved the right to enforce its own laws, but further, it reserved the right to stop lawlessness, and enforce constitutional supremacy, in times of crisis. Attorney General Olney was not a bureaucrat, acting to exert federal jurisdiction over the states, but a competent lawyer doing his duty to the country. Olney was treated as a member of the executive; his decisions were important, but with no weight. The president still held ultimate authority. The extent to which a single federal officer acted during the strike, under the president’s orders, was of no consequence when “any class of citizens” took “the law into their own hands.”⁶¹

Congress debated the issues of federalism and an expanded executive’s powers, in a mere half hour. The Speaker continually reminded House members that a gag rule limited the debate to fifteen minutes per side, despite multiple attempts to expand the time limit. This not only indicated the Republican majority in Congress. It suggested the representative’s feelings on the Posse Comitatus Act. Many did not believe that upholding the separation of federal and state police action was important when a strike threatened to restrain national trade. President Cleveland’s justifications for intervention not only placated Republican representatives, but emboldened them to work around prohibitions on federal policing. Despite the debate, the resolution to support the

⁶¹ Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7545.

president's use of force passed the House with relative ease; over two thirds of representatives voted in favor, with only eighteen percent of voting representatives against the motion.⁶²

By comparison, the Senate resolution sparked a civil debate, despite being a much longer and detailed resolution. Their discussion offered no new opinions on the legality of federal intervention. Senators also took for granted many facts about the case which dominated the debate on the house floor. There were no questions of federalism, or executive overreach. Senator Orville H. Platt, a Republican from Connecticut, summed up his fellow representatives' feelings on the matter. "The question is whether the person whom we elected to be our Chief Executive is the Chief Executive" or whether "President Debs is the President and Chief Executive of the United States." That the resolution ultimately passed signified that the Senate chose the acting Commander in Chief over the assumed authority of Eugene V. Debs. Ultimately, both branches of congress concluded that the use of federal force was necessary to resolve the strike.⁶³

The Pullman Strike contained a complexity of legal justifications. But the evidence, once laid out and examined piecemeal, showed an underlying theme, that federal authority gained widespread legal justification to regulate labor disputes after Pullman. Debate over state authority and the role of federal action in state police matters was central during the crippling railroad strike. It reflected the growing tensions of the time. The nation as a whole debated between the government keeping its hands off antebellum industrial expansion, and the call for effective, progressive reform, with the

⁶² Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7546.

⁶³ Cong. Rec., 53rd Cong., 2d sess. July 11, 1894, 7283.

national government as the vanguard. Pullman was the apex of laissez faire economics, because of the government's invasive response. Soldiers reigned in a crippling national strike with the intent of stopping a public insurrection. This was not odious to the ideology of laissez faire, as a public nuisance endangered the economy and stifled the ability for private enterprise to function.

In the pursuit of ensuring a level economic playing field, by assuring the free flow of interstate commerce, the national government greatly expanded its role both as executor of police action against blockages to interstate commerce, and guarantor of the national economy. While the American Railway Union organized the strike, it could only operate across interstate boundaries through the use of local chapters. Just as manufacturing was subject to local regulation, the regulation of striking labor was a power generally reserved for the individual states.⁶⁴ By intervening without the consent of Governor Altgeld, President Grover Cleveland and Attorney General Richard Olney created new precedent for federal authority to influence labor disputes, despite a prohibition on interfering with state police powers. It was beside the point to say that soldiers left the job of arresting up to Federal Marshals, and thus never violated the Posse Comitatus Act in the first place. Marching orders came direct from the President's desk, without prior consent from the governor, or from Congress. This set precedent for the executive office to act with impunity when a strike threatened to arrest or halt interstate

⁶⁴ The influential case of *United States v. E. C. Knight Co.* (156 U.S. 1) was decided in 1895. In it, Chief Justice Fuller argued that manufacturing was a local enterprise, and subject to regulation by state government. In the same year, *In re Eugene V. Debs* (158, U.S. 568) upheld the right for the federal government to enjoin labor strikes which obstructed interstate commerce. While there is no legal precedent which reserves for states the right to police strikes, Barton C. Hacker in "The United States Army as a National Police Force: The Federal Policing of Labor Disputes, 1877-1898" suggested that between 30 and 50 percent of National Guard troops engaged in strike duty between 1886 and 1895 (P. 259). State governments had a historic interest in strike regulation, one which the federal government created its own authority to intervene upon. See page 51 for further discussion.

commerce. The practice of voluntarism, when applied on a nation-wide scale, was open to regulation by the federal government, and made national strikes fair game.

Arbitration and the Development of Federal Labor Policy

Pullman was a culmination of many different Gilded Age policies coming to bear in one event. The executive marshaled national resources to police the growing problems associated with industrialization and the preservation of free labor ideology. The most important facet of this ideology was the assertion that the relationship between employer and employee was one of equals, where wages were agreed upon civilly. Denying labor this right impinged upon their liberty to contract. The growth of organized labor symbolized the breakdown of this ideology, and labor law was one among many fields which the federal court system expanded its role as guarantor of this right to contract. The Gilded Age government did not always reserve powers of regulation for itself, but sometimes restrained its own ability to act, in order to protect the ideology of free trade. But the Pullman Strike was unique; it offered a different way for the government to expand its ability to guarantee the idea of free labor ideology. The majority of action taken against the strike was exacted by the executive branch, not the court system. Traditionally, the antebellum government extended its authority through legal rulings, using court cases to reinforce its ability to act on the market. This would prove ineffective

sometimes, as court decisions occasionally limited federal power to interfere with commerce.⁶⁵

In Re Debs v. United States was the Supreme Court case to emerge from the Pullman Strike, just a year later in 1895. This case involved the United States efforts to enjoin the American Railway Union, and prevent the restraint of interstate commerce. The case tackled two main questions. First, the court attempted to discern the power of the federal government to prevent the obstruction of mail and interstate commerce. But more important was whether the federal courts' injunction power overstepped the authority of the national government. The case came to a conclusion about the nature of the strike, affirming that the strikers disobeyed an injunction which was meant to keep the peace, not designed to "enjoin a mob or mob violence." The court suggested that the proper means to solve wrongs was through the court systems, and that "no wrong" carried "with it legal warrant to invite as a means of redress the cooperation of the mob." In essence, the federal court reaffirmed its own rights to issue injunctions, and condemn mob action.⁶⁶

But in the same breath, the Supreme Court not only affirmed the power of the omnibus injunction, but reaffirmed the right for the executive to use United States regulars to police labor unrest. It did so by downplaying the role of soldiers during the Pullman Strike. Quoting from testimony in the Strike Commission report, the justice suggested that " "it was not the soldiers that ended the strike' " but " "the United States courts' " who brought it to its conclusion. This implied that the act of providing law and

⁶⁵ Forbath, *Law and the Shaping of the American Labor Movement*, 39

⁶⁶ *In Re Debs*, 158 US 564, (1895).

order through the court system ultimately broke the back of any resistance, and brought the mob into line. This viewpoint was purely rhetorical; it reinforced the decision in favor of the court's right to enjoin strikers. Never once was the Pullman affair referred to as an insurrection during the justice's opinion. Instead, the prevalent phrases used to describe the event were mob action, riot and even impassioned excitement. The courts took a radically different approach in characterizing the strikes. ARU members no longer spelt ruination for interstate commerce, but instead were no worse than a gaggle of childish ruffians in the court's eyes. The courts, and by proxy the federal government had the right to "command a keeping of the peace" by restraining "forcible obstructions of the highways" of "interstate commerce." This made the use of soldiers a means to an end, and reserved the right for the executive to use the means at his disposal to ensure the flow of commerce.⁶⁷

The court made its decision a year after the insurrection, after tensions had settled. The shock and awe caused by United States soldiers marching into Chicago and other major cities was only a memory for America. The original rhetoric surrounding the strike faded in light of restored law and order. Americans could accept federal intervention as a necessary, and common, power of the government in times of danger, because American citizens had seen similar applications of state militia forces. By 1894, most Americans lived in a world dominated by police action levied against strikers on a state level. As the labor movement grew, state militia units expanded in order to police the growing number of local strikes. Military force became an effective way to police strike conduct; the localized nature of militia made it the primary weapon for use against unruly strikers.

⁶⁷ In Re Debs, 158 US 564, (1895).

Large proportions of National Guardsmen were used in strike duties across America during the latter quarter of the nineteenth century. For example, between 1886 and 1895, no less than 36 percent of “National Guard active duty troops” were committed to policing “ ‘riots consequent upon labor troubles’ ” throughout the country. A second source produced a similar statistic, calculating that, of all active duty National Guardsman from 1877 through 1892, 30 percent of the country’s guardsmen were used in policing local strikes. In both instances the numbers may be too low. Upwards of 50% of National Guard soldiers may have been involved in policing local labor strikes, because state officials often reported engagements using colorful euphemisms. In short, using a military presence to keep the peace during labor unrest was not unheard of during the Gilded Age.⁶⁸

The question then was not the legality of soldiers policing labor strikes, because soldiers were commonplace as part of the mechanism for keeping the peace during labor. Instead, Pullman was crucial in defining the function of federal troops when a strike occurred. There was, obviously, no reason for national soldiers to involve themselves in local disputes. But army regulars could legally propagate and serve injunctions when they were issued by federal justices, during national labor unrest. Soldiers served a functional role when policing labor disputes. While local militias made up the backbone of local strike regulation, many in the upper echelon of American government saw the Army as a natural choice to police industrial unrest, particularly when it threatened interstate commerce. Members of the War Department and establishment called the standing force calm, calculating and steady in comparison to levy soldiers of the National Guard. Army

⁶⁸ Hacker, “The United States Army as a National Police Force,” 259.

officers saw the federal army as nothing more than a national gendarmerie by the end of the Nineteenth Century.⁶⁹

Just as the federal government carved out and reinforced its position as the guarantor of inter-state commerce and trade, so too did the executive and legislative branches take an active role in labor relations. The national government secured the right to intervene with military force, a power traditionally reserved for the state. There was little legal, or even executive, precedent for the federal government to rely on in the quarter-century leading up to the Pullman strike. But in a broad sense, the use of militia forces in past strikes paved the way for federal application of force. By 1894, it was commonplace to use soldiers to keep the flow of commerce moving. The executive exercised its right to use soldiers to police strikes which violated national laws.

This power, with the government acting as guarantor of interstate commerce, was short-lived. Rather than focusing on direct intervention, with the physical insertion of soldiers, the executive and legislative branches started to craft a modern, bureaucratic system of regulation for American business and labor. This shift happened for two reasons. On a more practical and pragmatic level, the government stopped viewing the army away as a national police force. The gendarmerie of regulars turned into a fighting force overseas as the United States changed its focus from national to international relations. The wars of 1898 and subsequent imperial occupation of former Spanish territories kept the regulars busy abroad. While the federal government retained the right to act with force on national issues, the new impetus for intervention abroad tied up federal forces offshore. This was certainly not the only reason why the government

⁶⁹ Hacker, "The United States Army as a National Police Force," 259, 260.

backed off from direct military intervention into strikes, but it shifted military leaders' focus, just as the ideologies espoused in congress shifted from strikebreaking to arbitration.⁷⁰

An evolution in thought and ideology was already developing during the Pullman strike, and became part of the public discourse by the turn of the century. Advocates who favored federal intervention began to evolve their views on proper governance from that of private, court-based litigation as conflict resolution, to pre-emptive regulation through administrative bodies. The progression of thought is not evident when the Pullman Strike is examined as a case study. But early Progressive views were espoused during the Pullman strike, arguments which echoed in Theodore Roosevelt's Progressive thought; he favored the use of non-military force in his handling of the Anthracite Coal Strike, a position he would reiterate later, in his famous Square Deal editorial from 1911. While it would be inappropriate and short sighted to call the Pullman strike Progressive, the beginnings of progressive thought involving labor-capital relations surfaced during this period; new ideas about how to handle future strikes came into conflict with the idea that litigation would suffice to control national strikes. Particularly, the same Senate which resolved to support the President's application of force during the Pullman Strike simultaneously resolved to favor arbitration as the preferred method of resolving industrial unrest.

Grover Cleveland's presidential papers revealed much of his attitude on the strike, not to mention yielded popular opinions of private individuals across the country during the insurrection. But as the strike came to its climax, and interstate trade routes opened up

⁷⁰ Hacker, "The United States Army as a National Police Force," 261.

once more, President Cleveland's incoming correspondence changed from critiques of executive authority, to an overwhelming focus on how to avoid future labor conflicts. The president provided his first assessment of labor relations during his first term in office, in 1886, in a letter to Congress. Surprisingly, the president urged the legislature to take care in crafting laws regarding workingmen; "the value of labor as an element of national prosperity" was evident to the president. He espoused nothing less than arbitration to Congress, suggesting that it was the prudent measure for dealing with labor relations. Cleveland suggested that relations between workers and capital were antagonistic; employers demanded "grasping and heedless exactions" from their workers and, the federal government perpetrated grievous discrimination on behalf of capital. Prophetic phrases aside, the president offered a proper assessment of the relationship between organized labor and capital.⁷¹

The solution to this problem was a theory of voluntary arbitration, one which would allow the executive government to intervene with the affairs of combinations before a strike took root. The president advocated for a labor commission to handle arbitration, using temporary arbitrators, whose decisions would hold little legal weight. Cleveland insisted that the process should remain free of legal interference, and the selection of arbitrators should be kept out of the federal courts' hands. This would not only ensure fairness, separate the process from the courts; he surprisingly branded arbitration, "foreign to the judicial function." Without any legal weight, the board was designed on an honor system. Based on the past precedent set down by state railroad

⁷¹ Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7282, 7283.

commissions, which acted similarly, President Cleveland felt that a national version would be as effective, if not better at achieving its goals.⁷²

The President suggested that the national government reserved the right to involve itself in the arbitration process, which was normally the job of state and local railroad commissions. His argument was that a pre-emptive measure was protected by the constitution; the legislature had a duty to guard the states in the event of domestic violence, and such a board would pre-empt the necessity for guard action.⁷³ In addition, he suggested that congress confer additional powers on the Bureau of Labor, particularly oversight of all labor disputes, whether or not they reached the arbitration phase.⁷⁴ The president's suggestions seemed like idle talk in light of his heavy-handed reaction during the Pullman strike. But during the strike the Senate took their lead from the president's 1886 suggestions. Their endorsement of his military action came with an extra paragraph attached, one which approved "the principal of voluntary arbitration as a potent means of settling disputes between employers and employees."⁷⁵

Voluntary arbitration did not occur in the 1877 railroad strikes. No national effort to bring both parties to the table emerged from Rutherford Hayes' handling of the earlier strikes. But Grover Cleveland's words did not fall on deaf ears. Many constituents flooded his correspondence in the ending days of the Pullman Strike to voice their opinion and support for a proposed board of arbitration and investigative committee. An overwhelming number of letters and telegrams sent to the president suggested people

⁷² Cong. Rec., 53rd Cong., 2d sess. July 16, 1894, 7283.

⁷³ Ibid., 7283.

⁷⁴ Ibid., 7283.

⁷⁵ Ibid., 7283.

held favorable opinions of the president's proposed actions. First, citizens and labor organizations alike wanted to understand how the Pullman Strike formed and escalated so quickly. One such example was the letter of James H. Carr, on behalf of the L.A. No. 1 Garment Cutters of Philadelphia, who wrote a recommendation for Terrence V. Powderly, suggesting he would be the perfect candidate for the strike commission. He expressed an interest in the investigative process, and felt that a committee to investigate the "disturbed condition between capital and labor" would be "productive of much good" Much talk during the immediate aftermath of the strike wanted to understand the reasons behind it, and how it could be prevented from happening again.⁷⁶

Second, and more important, the letters showed an outpouring of support from both labor unions and conservative forces alike, trying to influence the president's appointments to the strike commission. As mentioned before, many labor unions supported Terrence V. Powderly, a former member of the Knights of Labor, for a position on the commission. The Knights of Labor of Cincinnati, Ohio made it clear that Mr. Powderly would secure the "implicit confidence of the wage workers of the country" regarding the commission's fairness. The letter went on to say he was not simply supportive of labor, but "his integrity, clear judgment, and fair-mindedness are well known to the general public." This assessment was correct in many ways. It was not simply labor organizations which touted the effectiveness of Mr. Powderly to bridge the gap between labor and capital. Writing on behalf of his "Dyestuffs and Supplies" company, Philadelphian John H. Lorimer called upon President Cleveland to appoint Powderly to the Strike Commission. He characterized the candidate as "eminently fittest

⁷⁶ James H. Carr to Grover Cleveland, July 18, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 86, item 26781).

to represent intelligent labor in such a committee of investigation.” This widespread support is important for two reasons. First, it showed that a single man bridged the gap between both labor and capital; he was trusted by multiple classes as a potential force for honor and stability in the investigation.⁷⁷

But more important, the widespread call for a prominent member of the Knights of Labor to sit on the president’s appointed committee showed that many Americans favored some level of fairness toward labor unions during the proceedings. With a vocal push for the inclusion of such a prominent member of the labor establishment, the American public showed its willingness to give labor unions equal status in American institutions. Despite the heavy rhetoric espoused by the executive office, calling the labor movement an insurrection and danger to America, the public already realized that national labor movements not only existed, but had a right to exist. While many felt that crippling the national rail systems was an unforgivable act, once the threat to public order was over, citizens began to demand equal representation for labor during the inquest into the strike. Labor had come a long way in securing recognition for itself. Unions were not only a legal force, but a socially acceptable force, even worthy of inclusion in the investigation.

Despite pouring their support for Terence V. Powderly into the president’s mail box, the public had no luck. President Cleveland dismissed their suggestions, and installed Carrol D. Wright, John D. Kernan and Nicholas E. Worthington as commissioners for the investigation. The commission came across a variety of findings,

⁷⁷ Fred Kallenhorn to Grover Cleveland, July 18, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 86, item 26786); John H. Lorimer to Grover Cleveland, July 18, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 86, item 26787).

compiled into a single record. The report involved hundreds of pages of observations, recommendations, and testimony. The council's examination of the federal use of military force during the Pullman strike, stunningly, takes up only one page. Out of a 683 page report, one page devoted to the legality of military intervention was paltry. It reiterated the four basic tenants of presidential authority: protection of property, prevention of mail obstructions, safeguarding interstate commerce, and enforcing federal injunctions. These assertions were backed up by only two federal statutes. Assuring the reader that "other statutes," in addition to those listed, "tend to confer authority in the same direction," the Strike Commission put an end to the question regarding military intervention by simply dismissing the issue.⁷⁸

The lack of alternative viewpoints was perhaps indicative of the prevailing national sentiment on federal military intervention. As previously mentioned, it was generally expected that soldiers would police industrial strikes. But the committee did not simply see the federal government as a reactionary force. They held confidence in the executive and legislature's ability to resolve labor unrest. They would do this first as the guarantor of security, and second as the impartial arbiter between capital and labor. The commission's recommendations suggested committee members not only affirmed the supremacy of the national government, but incorporated early ideas of administrative regulation. The Chicago Strike Commission did not deny that the common law tradition upheld the doctrine of free labor, citing the railroad system as the quintessential example of industrial competition. Yet with the "concentration of power and wealth" of trusts and combinations, came purposefully abuse of the laws of supply and demand. The continued

⁷⁸ United States Strike Commission, *Report on the Chicago Strike*, iii, XX.

practice of individual bargaining amongst workingmen perverted free labor, as it was inherently unequal in nature. No working man could hope to bargain his labor fairly when his potential boss held a monopoly on the job market.⁷⁹

While upholding the idea that free labor competition was a viable tactic, its application proved problematic for the commission. With “virtually one” employer, the concept of traditional wage bargaining was unattainable. The commission suggested there was no way to turn back the clock, and it would take only a half-century’s time for organized labor to achieve the power necessary to counter consolidated capital. In the meantime, the state had to step in and regulate arguments between labor and capital. This ability was already vested in Congress, because railroad corporations “engaged in interstate commerce” as “quasi-public corporations.” The commission framed the powers of this regulatory committee as a form of federal police power, suggesting that the people have a right to “investigate and report upon” labor unrest, with the aim to lessen national disturbances and promote interstate commerce. Corporate combinations obstructed regulatory legislation when it threatened their power; a federal board of oversight was the solution to avoid unfair interference in regulation efforts.⁸⁰

Despite the massive national reaction to labor insurrection, the committee found capital just as at fault, if not more so due to the inherently unequal position they. The solution to this was to form a permanent Strike Commission, with powers similar to those of Congress for regulating interstate commerce. Similarly, the commission suggested the executive adopt a different strategy for dealing with nation-wide strikes. Rather than

⁷⁹ United States Strike Commission, *Report on the Chicago Strike*, XLVII.

⁸⁰ *Ibid.*, XLVIII, L, LI.

approach these events as disturbances once labor reached the pinnacle of resistance, the board urged conciliation and arbitration ahead of major disruptions. This concept, which ran counter to the government's first reaction to the Pullman strike, was both forward looking, and rooted in precedent.⁸¹

Just as the federal government assumed the role which militia forces traditionally played in the suppression of labor unrest, so too did the federal government express interest in the concept of arbitration. The practice of settling differences between labor and capital was one of many experiments that states adopted as a counter-measure against mounting labor disturbances. Writing on behalf of the Massachusetts Bureau of Statistics and Labor, Joseph D. Weeks of Pittsburgh, Pennsylvania established a report on *Industrial Conciliation and Arbitration in New York, Ohio and Pennsylvania*. A year prior, in 1880, the Boston legislature enacted a resolution to examine the “practical working of the principles of industrial conciliation and arbitration, and to consider what legislation” would provide the best results. The commentary provided by Carrol D. Wright, chief of the Bureau of Statistics and Labor and future commissioner for the Chicago Strike Commission, provided a glowing review of Mr. Weeks's work, calling it balanced, fair and analytical in method.⁸²

One of the most common features in Weeks report was the idea that arbitration often involved wage scales. Laborers arbitrated in order to hold their wage prices steady based upon the sale price of a particular product. In many areas, these sliding wage scales “governed for years the wages paid” to workers. Arbitration, as a method to create these

⁸¹ United States Strike Commission, *Report on the Chicago Strike*, LII, LIII, LIV.

⁸² Joseph D. Weeks, *Industrial Conciliation and Arbitration in New York, Ohio, and Pennsylvania* (Boston: Rand, Abery & Co. Printers to the Commonwealth, 1881), 3, 4.

scales, was not only designed to encompass large numbers of workers, but to leave a public, formal history of the decisions reached. While the practice of arbitration was commonplace in England as early as 1823, it took until 1871 for the first American case to appear, in the anthracite regions of Pennsylvania.⁸³

Weeks summed up the result of arbitration in the anthracite region by suggesting that the process afforded a solution to the most dire of labor situations. The choice to adopt conciliation in the 1871 case was significant, because Pennsylvania coal strikes had a number of “adverse circumstances,” which made them unique. The region was characterized by a “grim regularity” of “periods of plenty and suffering,” which touched off “ ‘a pandemonium of outrage, violence and anarchy’ ” during strikes. Given the dangerous and violent nature of unrest, Weeks suggested that if an agreement could be reached in lieu of lawlessness, the process of arbitration could work for anyone. Other trades would find little issue in coming to a settlement that was long-lasting and largely self-regulating. The remainder of Mr. Weeks’s pamphlet explained a myriad of different arbitration styles, and reasons why particular non-voluntary plans failed. Effective arbitration not only prevented strikes, but a potential loss of life for the state. Mr. Weeks suggested that ending the senseless loss of life associated with strikes was reason enough to incorporate the arbitration method into practice.⁸⁴

The Chicago Strike Commission’s recommendation, that voluntary arbitration was the correct solution to labor unrest, had some precedent to draw from. The idea of a permanent labor board began as a state-run enterprise to relieve the burden of strikes, and

⁸³ Weeks, *Industrial Conciliation and Arbitration in New York, Ohio and Pennsylvania*, 18-20.

⁸⁴ *Ibid.*, 33, 21-23, 42.

regulate unions on a collective scale. The success of these ventures in state venues, particularly Massachusetts' adoption of arbitration, made it the primary focus the Chicago Strike Commission report. Commissioners urged its use on both a national level, and through state regulatory agencies, in order to preserve order and prevent future strikes. They encouraged not only arbitration, but "giving labor organizations equal standing before the law." By taking this position, the commissioners gave federal voice to what was traditionally a state measure. Just as the national government adopted the states' use of military force to police labor unrest, they also acknowledged a desire for the federal government to become an arbiter of labor relations, following the model of the states.⁸⁵

The Pullman strike was not a Gilded Age reaction against labor unions. While many might call the overwhelming show of military force a conservative backlash against national railroad strikes, the Pullman case had many liberalizing effects on the future of national labor policy. The federal government cemented its place as the guarantor of interstate commerce, backed up by the strength of the nation's army. Moreover, it took an active role in regulating the relationship between labor and capital, not only by intervening in the dispute, but by promoting the concept of arbitration as a nationally sanctioned measure. The Chicago Strike Commission suggested the use of federal supervision over fifteen years before Theodore Roosevelt called for legislative regulation of combinations in his Square Deal editorial. This clearly foreshadowed the direction the American government would take. It did not matter that the concept of arbitration was ignored by the Cleveland Administration after the Pullman Strike. The concept was

⁸⁵ United States Strike Commission, *Report on the Chicago Strike*, LIV.

imbedded in the federal government's rhetoric. Picked up by progressives, it would slowly evolve into a constitutionally recognized body of oversight.

Lasting Implications, Federal Bureaucracy and Conclusion

Pullman's lasting legacy was not the spectacular use of force perpetrated by the military. Instead, it was the concept of federal oversight, with the government acting as an impartial arbiter between labor and capital, which survived. While injunctions and military might offered a solution to halt the actions of labor unions, they were weak tools when pitted against amalgamated capital's wealth and legal defense. With the crushing defeat of the American Railway Union, coupled with the powers granted the government in *In re Debs*, the court system had ample weapons to combat labor insurrection. Within a decade, the public at large would no longer see labor as the sole cause of national damages. The government instead squared off against the interests of a few men, business moguls who controlled most of the country's industry. It was when the federal government turned its focus to capital that the policy of arbitration advanced onto the national agenda.

As mentioned before, President Cleveland never followed through with the plan for arbitration he proposed in 1886. Even after the Strike Commission's report, he did not champion its use. In his defense, the president said, in 1886, that arbitration was a power of congress, not one for the executive branch to spearhead. He even expressed doubt whether the powers of congress could mitigate all grievances or regulate all aspects of

labor relations, but believed that the greatest good could be achieved by an expansion of federal authority to fill the role of arbiter. His belief in a national board of arbitration would take decades to realize, but the concept of federally spearheaded arbitration became more and more common as the Gilded Age gave way to the Progressive Era.⁸⁶

The Anthracite Coal Strike of 1902 was remarkably different from its predecessor because of the method used to resolve the strike. Military intervention was not necessary; arbitration proved to be a potent force when resolving the problem. Theodore Roosevelt was still nine years away from composing his Square Deal, but much of his rhetoric from the later publication appeared in the correspondence to the executive office during the strike. The most noteworthy change in the short time between the 1894 Pullman Strike, and the 1902 Anthracite Coal strike, was that the drastic change in rhetoric. No longer did citizens see labor unions as perpetrators of a nation-crippling crime, nor did they frame the national strike as an insurrection. Instead, as evidenced by many letters sent to the Department of Justice, the groups at fault were the coal corporations.

Some correspondence called attention to the inherent greed of corporations. The Board of Aldermen of the City of Lowell, Massachusetts drafted a resolution which demanded the government take control of the coal mines in order to protect and benefit the people. The city's citizens were threatened with a heating coal shortage as the strike progressed into the fall. Their board suggested that any of the city's suffering people were direct victims of "conspiring capitalists who control the different necessities of life" not the laborers who instigated the strike. In the eight years since Pullman, state and local authorities stopped calling strikes labor insurrections, and instead placed blame on the

⁸⁶ Cong. Rec., 53rd Cong., 2d sess. July 11, 1894, 7283.

evils of capital. Chas Bechstein wrote to President Theodore Roosevelt that the people “require and desire... decisive action” from the executive, to ensure “neutral, independent and highminded arbitration.” Citizens were not only aware of the inherent inequality between capital and labor, they understood that the way to create equality was through collective bargaining. For the first time, average citizens recognized the danger of consolidated corporations, and the detrimental effects they had on the public good.⁸⁷

The Department of Justice received countless telegrams and letters urging the federal government to use arbitration, not military force. In a letter sent from Sam Hartman, a lawyer from Kansas, to the honorable J. D. Bowersock of the Department of Justice, he dismissed the usefulness of the injunction approach to labor regulation. An attempt to enjoin the coal company would end in disaster. Placing an injunction on a labor union stopped their activities and effectively dismantled the strike. But for a corporation, with vast wealth and the ability to marshal legal force, an injunction would be a precious opportunity “to litigate, reorganize, delay and continue to violate the Sherman Anti-Trust Act.” An injunction had no more force than a civil suit against the corporation. Hartman offered his opinion, based on first-hand experience, to the Department of Justice in order to influence them to use arbitration. It was a standard Progressive response to suggest that litigation and direct intervention into labor-capital relations was ineffective at best. Theodore Roosevelt, who would openly support

⁸⁷ Gerard P. Dadman to Theodore Roosevelt, September 27, 1902. Department of Justice Strike Files, Part 1, Washington: Library of Congress (microfilm edition, roll 4, frame 207); Chas Bechstein to Theodore Roosevelt, September 17, 1902. Department of Justice Strike Files, Part 1, Washington: Library of Congress (microfilm edition, roll 4, frame 210).

Progressive ideology, highlighted the need for a national regulatory body as a mechanism for controlling the behavior of combinations, be they capital or labor.⁸⁸

Theodore Roosevelt's Square Deal policy, published as an editorial in 1911, was the logical conclusion of his experiences in the 1902 Anthracite Coal Strike. His piece called for greater executive and legislative accountability when controlling trusts and economic monopolies. He spoke from direct experiences in office, particularly related to the shortcomings of the Sherman Anti-Trust law. Roosevelt cited that there was "little real enforcement of the Sherman Anti-Trust Law" and "little more effective enforcement of the Inter-State Commerce Law" when he assumed office. Legal decisions were "chaotic" and laws were "vaguely drawn" in a way which allowed corporate executives treat the "laws as dead letters." The law was designed to disband combinations. Despite his focus on breaking apart trusts, the connotation of the word combination traditionally referred to labor combinations and organizations of journeymen. Roosevelt argued that dismantling combinations, of any kind, "confers a great good" to society. Ultimately, Anti-Trust laws were ineffective; they so often failed to accomplish their goals that the law was beyond simply amending.⁸⁹

Roosevelt did not believe it was right to strangle trade or commerce, but he also did not believe that all consolidated businesses should be dismantled. Placing the Supreme Court in a position to judge the illegality of a trust usurped the legislature's proper role. The court assumed a legislative role when it broke up combinations; it

⁸⁸ Sam Hartman to J. D. Bowerstock, September 2, 1902. Department of Justice Strike Files, Part 1, Washington: Library of Congress (microfilm edition, roll 4, frame 224).

⁸⁹ Theodore Roosevelt, *Theodore Roosevelt: An Autobiography* (New York: Da Capo Press, 1985), 578.

⁸⁹ Roosevelt, *Autobiography*, 578-579, 581.

prescribed, corrected, and regulated actions of interstate commerce through its rulings. This was not only the purvey of Congress, but was well within the Constitutional powers of the legislative body. Roosevelt felt that the oversight of large businesses was a part of the national agenda, as a general power reserved to the legislature and protected under the constitution. His logic drew from the history of the labor movement, pinning much of his regulation plan on the “treatment of their employees, including the wages, the hours of labor and” other incidents of mistreatment perpetrated by business men. It was not enough to punish a business for being big or successful; a trust needed to think of the human cost, and carefully chose its actions.⁹⁰

Therefore, it was the role of the government to regulate and control the effects of corporations. Those who were dependant on corporations, both the consumer and the worker, needed some form of protection from destructive combinations. The national government’s goal was to secure “from the corporation the best standard of public service.” The law should be “clear, unambiguous, certain” and honest, so there would be no confusion over violations. The arbitrary application that characterized the Sherman Anti-Trust Law gave the Supreme Court too much leeway in assessing the legality or illegality of businesses, a blessing that corporate defendants exploited. Instead, “an appropriate governmental” administrative body would better regulate “all industrial organizations engaged in inter-State commerce.” Roosevelt ended his Square Deal proposal with a telling suggestion, that “the courts cannot... permanently perform executive and administrative functions” Here the former president delineated the divide between executive authority, and the Supreme Court’s functions. It was a break in

⁹⁰ Roosevelt, *Autobiography*, 582, 587.

traditional ideology, a new progressive solution to the problems of industrialization. The Progressive model focused on the government's right to intervene in interstate commerce, in order to regulate the actions of businesses before they violated the law.⁹¹

There would be no need for litigation in this model; the government would regulate the actions of combinations before they became a problem, with clear-cut rules to define violations. Anti-trust litigation was shortsighted and unable to keep up with the fast pace of modern industry. The law needed support, and "if left unsupplemented by additional legislation," there would be "no compensating advantage" to "secure justice for the people." As courts could not adequately regulate business, nor were they constitutionally empowered to do so, "supervision" by "the National Government, either through a commission or otherwise" was necessary to achieve results. Roosevelt's concept of governmental accountability was unprecedented by 1877 standards. He delegated the position of regulator to the legislature, a suggestion which broke with decades of tradition. The court system held the power to review and judge combinations for their legality throughout the Gilded Age. By suggesting that any combination's legality should be judged by a national regulating bureau, Roosevelt intended to modernize the governmental bureaucracy.⁹²

Breaking up combinations was not the answer to Roosevelt. The idea that individuals could contract with one another as individuals was a dead letter of the law. A return to the idea of Gilded Age laissez faire would mean "all the modern conditions of" civilization would be obliterated. Yet thirty years prior, at the start of the 1877 railroad

⁹¹ Roosevelt, *Autobiography*, 587-589.

⁹² *Ibid.*, 575, 576.

strike, the idea that the federal government could use its oversight of interstate commerce to affect individual businesses would have been seen as an affront to the state's right to regulate intra-State commerce. Roosevelt was not a lone maverick in his ideas; the bureaucratic model had to evolve from somewhere. As the Pullman strike came to its end, many ideas espoused in Roosevelt's Square Deal took root during the strike's conclusion. Federal regulation, enacted before the problem erupted into a crippling strike, was the only effective way to halt the inflammatory actions of capital.⁹³

The federal government no longer sought to crush strikes. The tools which the executive used during the Pullman Strike were effective against labor. But when the threat to interstate commerce was capital, the government needed a different approach. An injunction against a company which mistreated its workers' wages or hours was an unconstitutional breach of freedom of contract under the common law. The only solution to compel corporations was to regulate them ahead of time. Arbitration was a constitutional way for the federal government to influence wages and hours for laborers. Because this was the only way to compel corporations which hindered interstate commerce, and was a proven method for solving organized labors' demands, the system of arbitration became yet another tool for the federal regulation of business and interstate commerce. The ideology of federal oversight, first espoused during the Pullman Strike, would finally become a unified federal labor policy through the Wagner Act of 1935, and upheld in the 1937 court case *National Labor Relations Board v. Jones and Laughlin Steel Corporation*.⁹⁴

⁹³ Roosevelt, *Autobiography*, 581.

⁹⁴ *National Labor Relations Board v. Jones and Laughlin Steel Corporation*, 301 U.S. 1, (1937)

The government's actions both during and after the Pullman strike showed a clear evolution of thought. National actors developed traditional state powers into a new, federal method of regulation. Many felt the court system was the incorrect branch to handle industrial strife. The 1894 railroad strike cemented the national government's place in the process of labor regulation, and first gave voice to proponents of federal-sponsored arbitration. The strike was one major milestone along the path to developing a single, national policy for labor-relations. This policy not only affirmed the government's right to involve itself in the economy, and clear blockages to interstate commerce, but directly led to the creation of future systems of oversight. The progressive-minded individuals who espoused arbitration and pre-strike intervention during the Pullman strike may not have realized their minority opinions would quickly become a common argument within a decade. The judiciary would finally sanction the National Labor Relations Board in the late 1930's, solidifying the federal government's right to regulate the relationship between workers and employers. But the concept of governmental regulation of capital and labor which emerged from the New Deal had roots in the bloody Pullman Strike. Those who supported state-sanctioned, bureaucratic regulation first found their voice in the Pullman case.

BIBLIOGRAPHY

Primary Sources:

Chas Bechstein to Theodore Roosevelt, September 17, 1902. Department of Justice Strike Files, Part 1, Washington: Library of Congress (microfilm edition, roll 4, frame 210).

Edwin Walker to Richard Olney, July 26, 1894. Richard Olney Papers, Washington: Library of Congress (microfilm edition, roll 6, item 2896-2899).

Everett P. Wheeler to Richard Olney, July 18, 1894. Richard Olney Papers, Washington: Library of Congress (microfilm edition, roll 6, frame 2834).

Fred Kallenhorn to Grover Cleveland, July 18, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 86, item 26786).

George A. Williams to Grover Cleveland, July 6, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26449).

Gerard P. Dadman to Theodore Roosevelt, September 27, 1902. Department of Justice Strike Files, Part 1, Washington: Library of Congress (microfilm edition, roll 4, frame 207).

Grover Cleveland to John Altgeld, July 5, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26427/26427a).

Harmon H. Hart to Grover Cleveland, July 7, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26459).

In re Debs, 158 US 564, (1895).

James Carey Coale to R. B. Hayes, July 26, 1877. R. B. Hayes Papers, Library of the Rutherford B. Hayes Presidential Center (microfilm edition, item 175).

James H. Carr to Grover Cleveland, July 18, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 86, item 26781).

John H. Lorimer to Grover Cleveland, July 18, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 86, item 26787).

John J. Valentine to Grover Cleveland, July 8, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26494).

- John J. Whipple to Grover Cleveland, July 10, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26536).
- National Labor Relations Board v. Jones and Laughlin Steel Corporation*, 301 U.S. 1, (1937)
- Patrick Murphy to Grover Cleveland, July 8, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26489, 26490).
- R. B. Hayes to Governor Mathews, July 18, 1877. R. B. Hayes Papers, Library of the Rutherford B. Hayes Presidential Center (microfilm edition, roll 175).
- R. B. Hayes Scrapbooks, vol. 97, p. 4. R. B. Hayes Papers, Library of the Rutherford B. Hayes Presidential Center (microfilm edition, roll 175, item 1530).
- Roosevelt, Theodore. *Theodore Roosevelt: An Autobiography*. New York: Da Capo Press, 1985.
- Sam Hartman to J. D. Bowerstock, September 2, 1902. Department of Justice Strike Files, Part 1, Washington: Library of Congress (microfilm edition, roll 4, frame 224).
- United States Strike Commission, Carroll Davidson Wright, *Report on the Chicago Strike of June – July of 1894: With Appendicies Containing Testimony, Proceedings and Recommendations*. Washington: Government Printing Office, 1895.
- U. S. Congressional Record. 53rd Cong., 2d sess. July 16, 1894.
- U. S. Congressional Record. 53rd Cong., 2d sess. July 11, 1894.
- U.S. Congressional Record. 45th Cong., 2d sess., May 20, 1878.
- U.S. Congressional Record. 45th Cong., 2d sess., May 27, 1878.
- Watts, J. F. and Fred L. Isreal. *Presidential Documents: The Speeches, Proclamations and Policies that Have Shaped the Nation from Washington to Clinton*. New York: Routledge, 2000.
- Weeks, Joseph D. *Industrial Conciliation and Arbitration in New York, Ohio, and Pennsylvania*. Boston: Rand, Abery & Co. Printers to the Commonwealth, 1881.
- W. H. McDoel to Calvin S. Brice, July 7, 1894. Grover Cleveland Papers, Washington: Library of Congress (microfilm edition, roll 85, item 26466).
- Young, Stephen. *The Posse Comitatus Act of 1878: A Documentary History*. Buffalo New York: William S. Hein & Co., Inc., 2003.

Secondary Sources:

Buder, Stanley. *Pullman: An Experiment in Industrial Order and Community Planning 1880-1930*. New York: Oxford University Press, 1967.

Cooper, Jerry Marvin. "The Army and Civil Disorder: Federal Military Intervention in American Labor Disputes, 1877-1900." PhD diss., University of Wisconsin, 1971.

Foner, Philip S. *The Great Labor Uprising of 1877*. New York: Monad Press, 1977.

Forbath, William E. *Law and the Shaping of the American Labor Movement*. Cambridge: Harvard University Press, 1989.

Hacker, Barton C. "The United States Army as a National Police Force: The Federal Policing of Labor Disputes, 1877-1898." *Military Affairs* 33, no. 1 (April 1969): 255-264.

Papke, David Ray. *The Pullman Case: The Clash of Labor and Capital in Industrial America*. Lawrence Kansas: University Press of Kansas, 1999.

Tomlins, Christopher L. *Law, Labor and Ideology in the Early American Republic*. New York: Cambridge University Press, 1993.