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Wars of Attrition

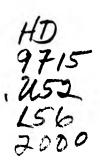
Vietnam, the Business Roundtable, and the Decline of Construction Unions



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Fighting Racist Unions' Militance by Fighting Race Discrimination

[A]lmost the only device and symptom of originality displayed by American employers in disciplining their labor force has been that of playing one race against another.

In our union we don't care whether you're an Irishman, a Jew, or a Nigger.²

What more do these people want?3

These fellows defend the integrity of their crafts the way horse fanciers defend the blood line of their favorites. Where the horsemen have controlled breeding, the union fellows have apprenticeship.⁴

The history of the exclusion of black workers from the building trades and from building trades unions goes back to the nineteenth century. The ability of construction unions to restrict the number of skilled workers in their industries played an important role in preserving their members' bargaining power regardless of the race or ethnicity of the excluded, but it exerted its most concentrated and baneful impact on blacks, and that exclusion, in turn, was the most destructively divisive for the U.S. working class as a whole.⁵ Affirmative action was necessary to exclude black building tradesmen because the heavy reliance on slaves as a source of craftsmen in the antebellum South had created a relatively favorable distribution of skills for entry into the industry in the latter part of the nineteenth century.⁶ Thus,

Sterling Spero & Abram Harris, The Black Worker: The Negro and the Labor Movement



¹John R. Commons, Races and Immigrants in America 150 (1920 [1907]).

²Philip Foner, Organized Labor and the Black Worker 1619-1973, at 247 (1974) (citing Fortune, June 1942, at 73, quoting William Hutcheson, president of Carpenters union, although no such quotation is there).

³"Building Trades Warn: Won't Budge Much," *ENR*, Oct. 2, 1969, at 13 (quoting George Meany defending the building trades' civil rights record).

⁴Speech by Virgil Day to the Cleveland Engineers Society, in CUAIR *Report*, Dec. 7, 1970, at 2.

The exclusion, for example, of Jewish carpenters and painters from unions in New York City at the beginning of the twentieth century forced them into the alteration and repair sectors of the building industry, which they also organized to a degree. Melech Epstein, Jewish Labor in U.S.A.: An Industrial, Political, and Cultural History of the Jewish Labor Movement 1882-1914, at 372-74 (1950); Philip Zausner, Unvarnished: The Autobiography of a Union Leader (1941). On the exclusion of Italians by the Bricklayers and Masons, see Edwin Fenton, "Immigrants and Unions: A Case Study: Italians and American Labor, 1870-1920," at 378-429 (Ph.D. diss., Harvard U., 1957); Edwin Fenton, "Italian Immigrants in the Stoneworkers' Union," 3 (2) LH 188-207 (Spring 1962).

although the building trades unions' reaction to the possibility of the influx of a large number of new members was similar to that of other craft unions such as shipping and railroading, blacks' situation was exacerbated precisely by the fact that their skills presented an excellent opportunity to be integrated into the organized labor movement.⁷

Some unions, for example in the trowel trades, "organized Negroes as a matter of self-defence. ... But the race psychology of a local union often counteracts the wholesome effect of the international union's stand." In other trades, such as carpentry and painting, for which blacks' slave experience made them well qualified, they were often segregated into separate locals. In the South, where employers preferred, for example, black bricklayers because their wages were lower, unions' function was to prevent such hiring. The extreme reluctance with which the Painters organized black workers is captured by an article that a district organizer in Birmingham, Alabama, published in the union's journal in 1902: "While we as individuals may oppose the negro, he is here, as he is in the majority of Southern cities, and no power of our labor organizations can deprive him of making a living." 10

¹⁰J. R. Camp, "A Business Proposition: For the Sunny South: Organize and Educate the Negro," 15 (5) *PJ* 70 (May 1902).



^{5 (1969 [1930]);} F. Ray Marshall & Vernon Briggs, Jr., The Negro and Apprenticeship 37 (1967); The Negro Artisan: A Social Study 8, 158-76 (Atlanta U. Pubs. No. 7, W.E.B. Du Bois ed., 1902); Lorenzo Greene & Carter Woodson, The Negro Wage Earner 316-24 (1930); Herbert Northrup, Organized Labor and the Negro 19 (1944); Foner, Organized Labor and the Black Worker at 125.

⁷Philip Foner, History of the Labor Movement in the United States: From the Founding of the American Federation of Labor to the Emergence of American Imperialism 355-56 (1955). For an historical account of the policies of building trades unions toward blacks, see Ira De A. Reid, Negro Membership in American Labor Unions 39-48 (n.d. [1930]); F. Wolfe, Admission to American Trade Unions 19, 112-34 (1912); Sterling Spero & Abram Harris, The Black Worker: The Negro and the Labor Movement 22, 56, 59-60, 70, 76-85, 159-61; Robert Weaver, Negro Labor: A National Problem 28-32 (1946); Herman Block, "Craft Unions and the Negro in History," 43 (1) JNH 10-33 (Jan. 1958); Ray Marshall, The Negro and Organized Labor 101-102, 109-32 (1965); idem, The Negro Worker 63-81 (1967); Herbert Hill, "The Racial Practices of Organized Labor: The Contemporary Record," in The Negro and the American Labor Movement 286-357 at 293-320 (Julius Jacobson ed., 1968). For more general treatment, see Herbert Hill, "The Racial Practices of Organized Labor—The Age of Gompers and After," Employment, Race and Poverty 365-402 (Arthur Ross & Herbert Hill, eds., 1967); John Hutchinson, "The AFL-CIO and the Negro," in id., at 403-31.

^{*}Spero & Harris, Black Worker at 69. In 1881, the Bricklayers' convention guaranteed black members of locals a travelling card, but locals retained discretion not to admit them. Harry Bates, Bricklayers' Century of Crastsmanship: A History of the Bricklayers, Masons and Plasterers' International Union of America 52 (1955). For a strong antiracist statement regarding the exclusion of blacks by the international president, William Bowen, see Fifth Biennial and Fifty-Seventh Report of the President and Secretary of the Bricklayers, Masons and Plasterers' International Union of America: For the Term Ending June 30, 1928, at xlii-xlvii (n.d.).

⁹Industrial Commission, 7 Reports: On the Relations and Conditions of Capital and Labor Employed in Manufactures and General Business 488-89 (H. Doc. No. 495, 56th Cong., 2d Sess., 1901) (testimony of Thomas Rennie, superintendent, Graniteville Mfg. Co., S. Carolina).

The high point of racial exclusion was reached in the trades based on more recent technological developments such as the plumbing and electrical trades. The IBEW's constitution did not expressly exclude blacks, but "it was the general understanding and practice...that they were not to be accepted as members." After it was discovered that a chapter of black workers in Florida had been admitted as a result of inadequate information in 1899, its charter was revoked. As late as 1921, the annual convention voted that blacks were not ripe to be organized. Where outright exclusion did not suffice, racist unions could rely on state licensing laws and boycotts of plumbing supply stores in the North and the South that sold fixtures to black plumbers to bar the few who had managed to learn the trade.¹²

In 1935, of 37,536 building trades union members in Manhattan, only 1,008 were black, of whom 635 belonged to the Hod Carriers.¹³ These trends continued until the advent of the modern civil rights movement.¹⁴ As late as 1967, Ray Marshall found that there were "virtually no Negroes" in the Electricians, Plumbers, Ironworkers, Sheet Metal Workers, or Elevator Constructor unions "in any Southern city and outside of a few exceptions, the most notable of which is New York, there are very few in most Northern or Western cities."15 Table 20 shows the evolution of black participation in the building trades after World War II.

The proportion of black plumbers and electricians was minuscule throughout this period. They were also under-represented among carpenters and painters. Only in the trowel trades and among construction laborers were blacks over-represented. Even this concentration was largely driven by their domination of these occupations in the South.¹⁶

¹⁶Herbert Northrup & Howard Foster, Open Shop Construction, tab. XII-1 at 323-25, tab. Digitized by Google



¹¹Michael Mulcaire, "The International Brotherhood of Electrical Workers: A Study in Trade Union Structure and Functions" at 37-39 (Ph.D. diss., Catholic U. of America, 1923).

¹²Northrup, Organized Labor and the Negro at 17-47; Spero & Harris, Black Worker at 59-60, 477-81.

¹³Charles Franklin, The Negro Labor Unionist of New York 168-71 (1968 [1936]).

¹⁴Greene & Woodson, The Negro Wage Earner at 316, 322, 324; Weaver, Negro Labor at 28-32; Mark Kruman, "Quotas for Blacks: The Public Works Administration and the Black Construction Worker," 16 (1) LH 37-51 (Winter 1975). Racism was not unique to the building trades unions. Even segments of the CIO, at the high point of its southern organizing campaign after World War II, discriminated against black workers while recruiting them as members; for example, the bathrooms in the CIO organizing hall in Memphis were segregated. Michael Honey, Southern Labor and Black Civil Rights: Organizing Memphis Workers 256 (1993).

¹⁵Marshall, The Negro Worker at 64. For details, see id. at 63-91. For an extended argument that racial discrimination in construction stemmed largely from the membership's and not the leadership's attitudes, and that public policy mistakenly focused on integrating a blue-collar industry-which was not even the most discriminatory manual trade-at a time when white-collar occupations were both far more segregated and the future growth areas for employment, see Mills, Industrial Relations and Manpower in Construction at 143-77.

Table 20: Blacks as a % of All Workers in Selected Building Trades, 1950-1970				
Trade	1950	1960	1970	
Electricians	1.1	1.5	2.9	
Plumbers	3.0	3.3	4.6	
Carpenters	3.8	4.4	5.2	
Painters	5.4	6.8	9.0	
Masons, tile setters, & stone cutters	10.4	11.4	15.2	
Plasterers & cement finishers	19.3	21.7	27.4	
Total selected trades	4.8	5.6	6.9	
Laborers	25.3	25.9	22.2	

Source: USBC, Census of Population: 1950, Vol. II: Characteristics of the Population, Pt. I: United States Summary, tab. 128 at 1-276, 277 (1953); USBC, Census of Population: 1960, Vol. I: Characteristics of the Population, Pt. 1: United States Summary, tab. 205 at 1-544, 545 (1964); USBC, 1970 Census of Population, Vol. 1: Characteristics of the Population, Pt. 1: United States Summary, Sect. 2, 1-749, 750, 755, 756 (1973).

To be sure, it might not be in members' economic interest to exclude blacks, who could then work at lower rates in the nonunion sector, thus possibly threatening the competitive viability of the union sector. But this argument could lose some of its force when applied to the technologically newer trades: here unions could plausibly exclude blacks from employment altogether by denying them access to union-controlled apprenticeship programs. To the extent that firms were not in a position to escape the effects of such 'artificial' restrictions on the supply of labor by introducing more capital-intensive construction methods, they would have had an interest in encouraging an enlarged supply of skilled tradesmen.¹⁷ Moreover, where, as in Chicago in the 1910s and 1920s, unions succeeded in imposing a closed shop on construction, skilled black tradesmen migrating from the South could be excluded with impunity: their only choice was to perform less

¹⁷"Building Trades Feel Pressure to Admit Negroes as Apprentices," WSJ, Oct. 16, 1967, at 1, col. 6; "Crafts Ease Their Stand on Bias," BW, Dec. 9, 1967, at 133-34; "Racial Progress in the Building Trades," AL, Sept. 1968, at 37-43; "Effort to Train Blacks for Construction Jobs Falters in Pittsburgh," WSJ, July 24, 1969, at 1, col. 4; "Negro Drive for Jobs in Construction Unions Is Gaining Momentum," WSJ, Sept. 26, 1969, at 1, col. 6; AFL-CIO, Report of the Proceedings of the Fifty-Fifth Convention, 1969, at 176-83 (1969); "Organized Labor's Excellent Racial Policy," The Lather, Nov. 1969, at 7-10.



skilled work in other industries.18

Despite only tepid initiatives by the Kennedy administration, which owed its advent to overwhelming black electoral support, the civil rights movement used the rhetorical political opening to launch a series of well-publicized demonstrations against the building trades unions, which it viewed as chiefly responsible for the exclusion of blacks from well-paid jobs in an expanding industry at highly visible construction sites across the country. The struggle moved to a higher level after the election in 1964 of Lyndon Johnson, whose administration sought to reconcile its labor and black constituents while recognizing that it could no longer neglect the latter's grievances against the former. Black workers excluded from unions or deprived of employment opportunities by unions found potentially powerful legal recourse in Title VII of the Civil Rights Act of 1964, which made it an unlawful employment practice for a labor union to discriminate, or to cause or attempt to cause an employer to discriminate, against any person on the basis of race. The construction industry and unions quickly became the target of more protest and litigation than any other.

The early litigation provides a good sense of the range and pervasiveness of the discrimination.²² In February 1966 the United States filed the first construction industry lawsuit under the new law against the Building and Construction Trades Council of St. Louis and electricians, laborers, plumbers, pipefitters, and sheet metal workers locals there. The suit arose out of work performed on the National Park Service Gateway Arch. In order to satisfy the nondiscrimination provisions of federal contracts, the general contractor entered into a subcontract with a black plumbing contractor, who employed black workers, who were members of a non-AFL-CIO union. The unions, which refused to work together with non-AFL-CIO members, in an effort to remove the nonunion contractor and his employees, violated the NLRA by engaging in an unlawful secondary boycott.²³ By 1967, the plumbers and

²³IBEW Local 1, 164 NLRB 313 (1967); United States v. Building and Construction Trades



¹⁸James Grossman, Land of Hope: Chicago, Black Southerners and the Great Migration 182, 216-17 (1991 [1989]).

¹⁹Jill Quadagno, The Color of Welfare: How Racism Undermined the War on Poverty 62-78 (1994).

²⁰§ 703(c), 78 Stat. 253, 255-56 (1964).

²¹William Gould, *Black Workers in White Unions: Job Discrimination in the United States* 281-84 (1977), speculates on why blacks focused on construction when other industries lacked superior records.

²²In order to underscore the intractability of racist white construction unions, a noted black author stated in 1964 that Vice President Johnson had made a secret visit to New York during the summer of 1963 to settle the dispute over discrimination in the building trades. During a marathon 35-hour session with union leaders Johnson was unable to persuade them: "I failed.... No one can move these people. They simply don't mean to do it." In 1964 the White House did not fully confirm or deny the report. "Lomax Says Chaos Looms in Negro Drive for Rights," *NYT*, Apr. 13, 1964, at 20, col. 3-6.

pipefitters had agreed to cease discriminating and to implement "a community relations program designed to dispel from the minds of Negroes any notion that they are not welcome in this Local equally with white persons," and to cooperate in operating remedial and preparatory training programs for blacks.²⁴ The trial against the electricians and sheet metalworkers unions, which virtually monopolized work in St. Louis, revealed that when the suit was filed, all the members of both locals, numbering more than 2,500, were white; the electricians local did not accept its first black apprentice or refer for employment its first black worker until 1966.²⁵

These patterns and practices were replicated throughout the United States and formed the basis of numerous other suits filed in the 1960s and 1970s. In the mid-1960s, in Pittsburgh, for example, no nonwhite members were reported in the Asbestos Workers, Boilermakers, Plumbers, Sign Painters, Steamfitters, Stone and Marble Masons, Tile Setters, Elevator Constructors, Terrazzo Helpers, Plumbers Laborers, or Marble Polishers and Helpers locals. Similarly, in New York City, none of the 4,000 Construction Steamfitters, 3,300 Sheet Metal Workers, or 3,000 Construction Plumbers was black. Of Local 28 of the Sheet Metal Workers' International Association of Greater New York The New York Times wrote: "No Northern union has resisted demands for the elimination of Jim Crow practices more

Council of St. Louis, 271 F. Supp. 447 (E.D. Mo. 1966). Intriguingly, in November 1966, the council met with the Midwest Contractors Association, which employed black workers, to discuss possible collective bargaining and the employees' admission into the unions, but the employers voted not to continue these discussions—in part because the wage scale of the black workers' union (Local 99 of the Congress of Independent Unions (CIU)), which the black contractors had organized in 1960, was at least two dollars lower than that of the AFL-CIO unions. United States v. Sheet Metal Workers International Association, Local Union 36, 416 F.2d 123, 128 n.9 (8th Cir. 1969). According to Ray Marshall, *The Negro Worker* 66 (1967), the CIU (which he erroneously calls the "Congress of Industrial Unions"), was integrated. The complex conflict between black employers and unions was shaped in part by the consequences of the discrimination to which black contractors were themselves exposed: "To some extent...their personal interest may work at cross purposes with a central goal of national labor policy, the inclusion of minority workers. [U]nion membership is an essential element in minority demands, and yet most minority contractors are anxious to continue employing nonunion workers so that they are not deprived of one of their few competitive cost advantages." Gould, *Black Workers in White Unions* at 283-84.

²⁷Marshall, The Black Worker at 63-78.



²⁴United States v. Sheet Metal Workers International Association, Local Union 36, 416 F.2d 123, 125 (8th Cir. 1969). See also "Bias Suits Force Big Changes," *ENR*, June 29, 1967, at 54.

²⁵United States v. Sheet Metal Workers International Association, Local Union 36, 280 F.Supp. 719, 721 (E.D. Mo. 1968); United States v. Sheet Metal Workers International Association, Local Union 36, 416 F.2d at 127-28. Local 1 represented 95 percent of all electricians employed in major residential, commercial, and industrial construction projects in St. Louis City and County, while Local 36 had collective bargaining agreements with most sheet metal contractors in the area. *Id.* at 129 n.12.

²⁶For a partial listing, see GAO, Federal Efforts to Increase Minority Opportunities in Skilled Construction Craft Unions Have Had Little Success 56-67 (HRD-79-13, 1979).

stubbornly...."²⁸ Until 1964, when an agreement was reached and approved by a New York State trial court following an enforcement proceeding brought by the State Commission for Human Rights, Local 28 had never admitted a black as a member or apprentice in its entire 76-year history. The court specifically rejected the union's last-ditch effort to retain some version of the key mechanism undergirding the exclusion of blacks—namely, that 80 percent of the trainees participating in the apprenticeship program, which was the "only realistic way of becoming a member," were relatives of members.²⁹

Why black workers might have found building trades unions lacking credibility on the issue of their racial exclusionism is evident from the obfuscation deployed by the president of the Ironworkers at the union's convention in 1968. Conceding the "widespread belief that all building and construction trades discriminate against minorities," John Lyons nevertheless found it

hard to say why such a concept developed, other than to possibly oversimplify what is probably the national feeling by stating that the average citizen feels or has heard that it is hard to get into a building trades union. These two conclusions have been put together to develop a general line of thought that if they are true, then building trades unions must necessarily discriminate. I believe the existence of the first concept "that a building trades union is hard to get into" is the result of the necessities of maintaining uniform wage rates and working conditions in an industry as diverse and widespread as...construction.... If building trades unions were going to exist at all over the years, they had to be, by the very nature of our industry, militant organizations. Further, if they are going to continue on into the future, they must remain militant organizations. The maintenance of a militant type of organization quite obviously gives to those not within the industry, an impression of a barrier. The impression of a barrier to admittance into building trades unions or to the possibilities of employment in the building industry...exists to a far greater extent among the Negro than it does among the White citizens. This, more than any other single factor, bears upon the low number of Negroes.³⁰

³⁰"Report of the General President John H. Lyons to the Thirty-Third Convention of the International Association of Bridge, Structural and Ornamental Iron Workers," 58 (10) *Ironworker* 1, 29 (Oct. 1968).



²⁸"Union Bias Breakthrough," NYT, Aug. 25, 1964, at 32, col. 2 (editorial).

²⁹State Commission for Human Rights v. Farrell, 252 NYS2d 649, 652 (N.Y. Sup. Ct. 1964); Robert Tomasson, "Union Must Drop Father-Son Rule," NYT, Aug. 25, 1964, at 1, col. 5, at 15, col. 3. In 1922 Samuel Gompers acknowledged in testimony that since 1920 the Plumbers union in New York City had closed the book and that only members' sons and brothers were permitted to enter. Mr. Gompers Under Cross-Examination: Excerpts from the Testimony of Mr. Gompers Before the Committee of the New York Legislature Investigating Housing Conditions (Lockwood Committee) 6798 (1922). The then largest study of occupational mobility revealed that in 1962 13.7 percent of construction craftsmen were offspring of fathers who were also construction craftsmen—the highest degree of self-recruitment in any nonagricultural manual occupation. Similarly, 13.9 percent of the sons of construction craftsmen were construction craftsment. Peter Blau & Otis Duncan, The American Occupational Structure tab. 2.8 at 39, tab. 2.2 at 28 (1967).

In contrast, a remarkable metamorphosis on the race issue was on display in the Plumbers union, whose general president, Peter T. Schoemann, articulated a program that rapidly underwent radical change. Two months before Title VII went into effect in mid-1965, he had declared to the members that the national union's three-word policy with regard to admitting blacks to apprenticeship and membership, "Take them in," was the better part of valor because: "Neither the old labor injunctions nor the American Plan of the 20's nor Taft-Hartley nor 'right-to-work' laws, nor anything else I can think of, can inflict such injury on us as clumsy regulation of apprenticeship and hiring practices in the name of equal opportunity."³¹

At the union's 1966 convention, Schoemann was still beholden to a mythical explanation of racial underrepresentation that he found useful to analogize to the breaking of the color line in major league baseball in 1947 after which "the opportunity was there, it was up to each individual young man to take advantage of it." But if, unlike black baseball players, few blacks were employed in plumbing, Schoemann wondered whether that "sociological fact...is traceable not to widespread discrimination, but rather to a simple lack of interest or inclination? If this is the case, then we are not going to criticize any racial group for not wanting to be plumbers and pipe fitters, and I sure wish they would quit criticizing us for not having more of their own people."³²

The next year, Schoemann resumed his rearguard defense of his union's racially-biased nepotistic training practices: "Well, is there something indecent about giving reasonable preference to sons of union members on apprenticeship entrance? Is there something unclean about a contractor taking his own son into his own shop in preference to a Negro boy whom some academic Liberal in a Washington office thinks he ought to take in instead?" In a "gloves-off" speech to building trades unionists, Schoemann then asserted that "the civil rights organizations and their allies have more political power to break down our hiring practices and our union security than the NAM, the Chamber of Commerce, the National Right-to-Work Committee and all big business tycoons and conservative senators and congressmen who ever existed." Schoemann assured his audience that the union's view "on this racial issue is shared by the large American middle class and by the great majority of our fellow citizens. They are not for any spoon feeding or coddling or giving special breaks to

³³Peter Schoemann, "Enough Is Enough," 79 (4) *UAJ* n.p. [inside front cover], n.p. [inside back cover] (Apr. 1967). Schoemann's implicit analogy between plumbers and plumbing contractors inadvertently uncovered the illogical structure of Title VII, which does not prohibit discrimination against self-employeds.



³¹"Schoemann Urges Full Compliance with Civil Rights Law," *CLR*, No. 503, May 12, 1965, at A-14, A-16.

³²"UA President Schoemann's Convention Keynote Address," *CLR*, No. 568, Aug. 10, 1966, C-1, C-3, C-4.

anybody because of the color of their skin."³⁴ Finally, the plumbers' leader warned that the mere fact that the labor movement had always been in the vanguard of progressive social movements in the past did not mean that

we ought to be in the forefront of an effort to seek out and recruit members of the minority race for the skilled trades. We have been in the forefront of certain social fights in the past, but I think you will always find that it was something that benefited our membership rather directly, because in our type of building trades craft unionism, we are not social revolutionaries. We are business unionists, we are bread-and-butter trade unionists, and within the construction industry, we are the agency whose job it is to protect the standards.

For this reason we would hope that the employers would be giving us more support than they have been.³⁵

By the end of 1967, Schoemann announced union support for some measure of affirmative action. Ostensibly, his change of direction was inspired by the insight that the union's stake in society would be jeopardized if "those at the bottom of the ladder" created "upheavals" in their search for another society."36 In the spring of 1968 Schoemann told a group of his union's delegates at a BCTD meeting that this acceptance of affirmative action was tactical, involving merely other means. The ultimate goal, serving the welfare of 300,000 member plumbers by protecting institutions such as the hiring hall and apprenticeship, remained constant: "If we want to remain free, if we want to keep our apprenticeship programs out of the hands of the federal government...it is absolutely imperative that we institute affirmative action programs." Schoemann did not conceal that, unlike the "impersonal corporation," which could promote affirmative action by spending some money, union plumbers "are among the people who will be threatened economically by the rise of the Negro multitudes. We are the ones who will have to make some sacrifice...." His advice, however, was that: "the way to take the castor oil is take it in a big dose now."37

Schoemann's transformation culminated in an article he wrote in the May 1968 issue of the Plumbers' journal calling on unions to make a large contribution to the elimination of racism. In past legislative struggles:

We stood with the little people, with the people who worked with their hands, with the people who worked for others. We did not stand with the financiers, and the giant corporations. Consequently, we were counted on the liberal side of most political arguments, and the

³⁷Peter Schoemann, "United Association and Affirmative Action," 80 (4) *UAJ* n.p. (Apr. 1968).



³⁴Peter Schoemann, "Equal Employment Opportunity: A Statement of Principles," 79 (7) *UAJ* n.p. [inside front cover]-n.p. [inside back cover] at 61, 63 (July 1967).

³⁵Schoemann, "Equal Employment Opportunity" at 64-inside back page.

³⁶Peter Schoemann, "Some Reflections on Thanksgiving," 79 (11) *UAJ* n.p. [inside front page]-n.p. [inside back page] at inside back page (Nov. 1967).

liberals in Congress, in the state legislatures and the general public could usually be found on our side, and we on theirs.

Now, rather suddenly, all of that has changed. We find ourselves embroiled in a social crisis where we are no longer the little people. It is a case of the "haves" and the "have nots" and we are definitely numbered among the "haves." We do not belong there as much as a lot of other people who make more money than we do, but considering where the protest and the trouble are coming from, we are definitely "haves."

And so it turns out, that just as we are winning more economic security than we ever had, we are finding ourselves deprived of a certain kind of security, a psychological security that we enjoyed right up until the onset of the newest revolution. For there was indeed a kind of security in being always the underdog and feeling that we had no direction to go but up. Today we still have plenty of room for going up, but it is not nearly so important for the moment as the people who are coming up from below.³⁸

To be sure, this rare piece of introspection, concluding that the "innocence of our trade union childhood is over," was not driven by altruism or perhaps even by solidarity. For as Schoemann observed, with the election of black mayors in Cleveland and Gary and the prospect of black majorities in more than a dozen of the largest cities, union plumbers had to hold present to mind that: "Most of our bread and butter is located right in the heart of those cities."

State efforts to eliminate racist barriers to employment were neither simply a humanist solution of the "American Dilemma" nor a response to demands by black men for equal access to "manly' jobs with...high status implications" of especial importance to those either denied employment altogether or shunted into low-paid, menial jobs. They reflected employers' interests insofar as this integration was to be structured so that the concomitant changes in the size and qualitative structure of the labor supply favored long-term and cyclical profitability. Herbert Northrup, a longtime advocate of employers against unions, explained this kill-two-birds-withone-stone approach at the November 19, 1968 National Conference on Construction Problems sponsored by the Chamber of Commerce. After bemoaning the building unions' "tremendous power" as reinforced by the "union-government power axis," Northrup saw a ray of hope: "The civil rights issue may well provide a means of solving some construction problems.... Minority groups are the best potential sources of...craftsmen in view of the college orientation of white youth today. ... I look on the civil rights problem not only as one that must be solved for its own sake because

⁴⁰ Excerpts from Testimony of Herbert Hill on Equal Opportunity Contract Compliance," *CLR*, No. 690, Dec. 11, 1968, at C-1, C-3. See generally, Quadagno, *The Color of Welfare* at 61-78.



³⁸Peter Schoemann, "Affirmative Action: Initial Response Encouraging," 80 (5) *UAJ* n.p. [inside front page]-n.p. [inside back page] at inside front page-56 (May 1968).

³⁹Schoemann, "Affirmative Action: Initial Response Encouraging" at 56. On Schoemann's negative reaction to the Philadelphia Plan—an "illegal and unworkable" initiative requiring the union to "utilize certain workers, whether qualified or not"—see "UA Head Blasts Union Critics," *ENR*, Aug. 28, 1969, at 109.

in a free enterprise [sic], everyone...deserves equal rights and equal opportunity, but also as a means of helping to alleviate the shortage of construction craftsmen and to relieve the country of a situation which should not and cannot endure."

A few months later, Peter Pestillo, a GE official at the Roundtable, in an internal working paper asked not only whether the civil rights issue could be "used to drive a wedge into the restrictions on apprentice training," but also: "Can Negro contractors be used to serve as a new source of construction labor?" Unfortunately, he concluded, they generally lacked some of the skills needed for major construction projects. But the theme absorbed the Roundtable, which repeatedly revisited it. In October 1970, for example, its Coordinating Committee debated the extent to which the "Roundtable should seek to use the minority question." Opponents of such a tactic feared that token compliance with minority guidelines might remove all pressure against inflation. Since it might prove difficult to manufacture public outrage over the increasing cost of building chemical or rubber plants, B. F. Goodrich's representative on the Coordinating Committee ventured that "it might be more politically palatable to tie the attack on spiraling costs in the construction industry to their effect upon social needs, including employment of minorities...."

Once again Fortune made itself the spokesperson of this new strategy to undercut construction unions. An October 1969 editorial ("Black Mondays' Are Good for Us") praised black "militants" for having forced the closure of projects in which "the monopoly power of the building-trades unions" had excluded Blacks. Fortune viewed the introduction of black construction workers as a means of rolling back the unions "notoriously high wage levels" to a level that no longer stemmed from an "artificially contrived labor shortage." At the same time the magazine assured its readers that the incessantly growing pie was after all large enough for all workers: "The white union members have no legitimate cause for complaint; there will be plenty of jobs for everyone. The President's Committee on Urban Housing...estimated last year that two million more construction workers will be

⁴⁵On the course of some of these campaigns, see "U.S. Steel Won't Halt Building in Pittsburgh over Negroes' Demands," WSJ, Aug. 28, 1969, at 4, col. 3; Elwood Hain, Jr., "Black Workers Versus White Unions: Alternative Strategies in the Construction Industry," 16 WLR 37-76 (1969); Irwin Dubinsky, "Trade Union Discrimination in the Pittsburgh Construction Industry," 6 (3) UAQ 297-311 (Mar. 1971); idem, Reform in Trade Union Discrimination (1973); Challenge 6 (7-8) (Oct.-Nov. 1969). On the first black Monday in Chicago, see Seth King, "4,000 Negroes in Chicago Rally in Bid for Skilled Building Jobs," NYT, Sept. 23, 1969, at 56, col. 3.



⁴¹Herbert Northrup, "Restrictive Practices and Racial Barriers" at 9, 11, in *Papers Presented at the National Conference on Construction Problems* (Nov. 18-19, 1968). The paper is also available as "Restrictive Practices in Construction': Remarks of Herbert R. Northrup of University of Pennsylvania," *CLR*, No. 687, Nov. 20, 1968, at F-1-F-4. On the conference, see above chapter 7.

⁴²Peter J. Pestillo, "Construction Problems: In Search of a Solution" at 11-12 (Mar. 14, 1969), in BR, 1969; CCH.

⁴³BR, CC, Minutes, Oct. 26, 1970, at 7, in BR, 1970: Vol. II-Minutes.

⁴⁴BR, CC, Minutes, Dec. 1, 1970, at 4, in BR, 1970: Vol. II-Minutes.

needed by 1975. In today's full-employment economy, the only substantial pool of jobless males to meet that need is in the black community." Several months later the boom phase of the business cycle turned into a crisis/depression; by 1975 fewer construction workers were employed than at the time of *Fortune*'s prognosis, and the *Wall Street Journal* reported on its front page: "Nonunion Firms Get an Increasing Share of Construction Work."

The coordinated approach of antiunionism and antiracism was unveiled at the NAM's Congress of American Industry in New York City in December 1969. Roger Blough, representing the CUAIR, and Arthur Fletcher, Assistant Secretary of Labor for Wage and Labor Standards, and one of the highest ranking Blacks in the Nixon administration, presented a "package" for cutting construction costs and "a warning that the civil rights headaches of unions and contractors have just begun...." Fletcher declared that the federal government would insure that collective bargaining in the 1970s would "require the presence of a third party at the table"; on behalf of minority groups, he would push the civil rights agenda from the social to the economic sphere by "sharing the wealth by sharing the jobs." One of his chief methods of desegregating the labor supply was the elimination of the "nonsense requirements' of apprenticeship...."48 Within liberal circles of black academics and politicians it was "common knowledge" at the time that Fletcher's function in the DOL was "to crack the building trades unions." Indeed, Fletcher was an "early advocate of Davis-Bacon suspension as a tool for opening up construction work to minorities" by improving "the competitive position of ABC contractors bidding on federal and federal-aid projects...."50

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^{46&}quot; Black Mondays' Are Good for Us," Fortune, at 86 (Oct. 1969).

⁴⁷James Hyatt, "Nonunion Firms Get an Increasing Share of Construction Work," WSJ, Dec. 18, 1975, at 1, col. 6. As Jonathan Grossman, *The Department of Labor* 222-23 (1973), noted: "The drive for more blacks in the 'hard hat' trades was initiated when business was booming. Later...the building slump brought unemployment.... Unions that have therefore been reluctant to set aside future openings for blacks fight even harder when the jobs of members seem in jeopardy." See also 98 (6) MLR 85-86 (June 1975).

⁴⁸"Wages, Civil Rights Need an Answer," *ENR*, Dec. 11, 1969, at 61. For an excellent contemporaneous analysis, which has stood the test of time, see Pacific Studies Center, "Black Monday," *PRWET*, Nov.-Dec. 1969, at 18-23. Although described as reprinted from *Ramparts*, it was published there later and lacked the CUAIR membership list. "Black Monday's Sunday Allies," *Ramparts*, Jan. 1970, at 34-38.

⁴⁹Interviews at Metropolitan Area Research Council (New York City, Jan. 1971). See generally, Arthur Fletcher, "The Black Dilemma If Nixon Wins," WSJ, Sept. 25, 1972, at 12, col. 3.

⁵⁰⁴Administration Works on a Plan to Stabilize Wages," *ENR*, Mar. 18, 1971, at 186. The president of one construction union urged Nixon to dismiss Fletcher on the grounds that Fletcher had stated that the real reason for Nixon's suspension of the Davis-Bacon Act was not to control inflation, but rather "to weaken and even destroy the great construction unions...." "Union Leader Urges Labor Aide's Ouster," *NYT*, Apr. 5, 1971, at 31, col. 3 (quoting Edward Carlough of Sheet Metal Workers). Fletcher had purportedly told a group of nonunion contractors on March 12, 1971, that "the union grip on the processes of government has been weakened." *Id.*

Federal government intervention assumed a more concrete shape at the end of the 1960s when the Nixon DOL began implementing Executive Order No. 11246 of Sept. 24, 1965, which required that all federal contracts include language forbidding contractors to "discriminate against any employee or applicant for employment because of race, creed, color, or national origin." On June 27, 1969, Arthur Fletcher issued an order on the "Revised Philadelphia Plan for Compliance with Equal Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction." (An earlier Philadelphia Pre-Award Plan of Nov. 30, 1967 had been suspended because the Comptroller General had issued an opinion that it violated competitive bidding principles.)⁵³

Why the Nixon administration revived and implemented an affirmative action program in construction that the Johnson administration had abandoned is a question that has occupied political scientists and historians. Joan Hoff has argued that the Philadelphia Plan "allowed the Nixon administration to keep the focus on the racism of the northern craft unions...rather than switching it to the equally racist hiring practices of the southern textile industries." This tactic frustrated the hopes of prominent Democrats that a Republican focus on the South would have precluded successful application of Nixon's southern strategy. This explanation tracks the resolution passed by the annual convention of the BCTD on September 22, 1969, the day before the Revised Philadelphia Plan was issued. In addition to defending its overall record in admitting blacks, attacking the discriminatory employment practices of the news media, and declaring that it was "unalterably opposed to the quota system," the BCTD called the plan "a part of a pattern of conduct formulated by political strategists in the Nixon administration to divide the labor movement while slowing the process of implementing the civil rights program on voting and education

⁵⁵Damon Stetson, "Building Unions Spur Negro Jobs," NYT, Sept. 23, 1969, at 1, col. 6, at 56, col. 5; "Excerpts from Building Trades Statement on Hiring Minorities," NYT, Sept. 23, 1969, at 56, col. 3.



⁵¹Exec. Order No. 11246, § 202(1), 30 Fed. Reg. 12,319, 12,320 (1965). See also Contractors Association of Eastern Pennsylvania v. Shultz, 311 F. Supp. 1002, 1005 (E.D. Pa. 1970); "Building Trades Feel New Pressure to Admit Negroes as Apprentices," WSJ, Oct. 16, 1967, at 1, col. 6. Exec. Order No. 11246 superseded Exec. Order No. 11925, 26 Fed. Reg. 1977 (1961), which it largely repeated; Michael Sovern, Legal Restraints on Racial Discrimination in Employment 104 (1966).

⁵²DOL, "Memorandum: Revised Philadelphia Plan" (June 27, 1969). The memorandum was also reprinted in 115 Cong. Rec. 39,951-56 (1969).

⁵³DOL, "Memorandum: Revised Philadelphia Plan" at 4. For a concise analysis of the various government-imposed and consensual plans in various cities, see Gould, *Black Workers in White Unions* at 297-315.

⁵⁴Joan Hoff, Nixon Reconsidered 91-92 (1994). See also J. Larry Hood, "The Nixon Administration and the Revised Philadelphia Plan for Affirmative Action: A Study in Expanding Presidential Power and Divided Government," 23 (1) Presidential Studies Q. 145-67 at 163 n.11 (Winter 1993).

in the South."56

Nixon himself savored the "delicious prospect of setting organized labor and the civil rights establishment at each other's throats." Nevertheless, his sponsorship of the affirmative action Philadelphia Plan, ironically, split his southern strategy coalition of Republicans and conservative Democrats, while Blacks accused him of undermining the Plan's compulsory features in favor of meaningless "hometown" programs designed to pay back the construction unions for their support for the Indochina war.⁵⁷

In trying to explain why Nixon would have pursued a program that was bound to alienate his newly won hard-hat voters while propitiating Blacks, 90 percent of whom had voted against him in 1968, Jill Quadagno points to his desire to counteract criticism from the civil rights movement of his Supreme Court nominees and his opposition to school busing, the threat of racial violence in connection with violent demonstrations at construction sites, and above all "a political calculus designed to keep the core Democratic constituencies at odds" with each other while the administration appeared moderately in the middle. Quadagno also roots the Philadelphia Plan in the Nixon administration's expansion of a federal housing program and the concomitant employment boom for construction workers. Although the federal government could have geared the job growth to "alleviate the tensions between African Americans and the unions...[it] focused instead on increasing the labor supply to reduce spiraling wages" because "[o]nly by flooding the labor market with skilled workers could wages be reduced." The extraordinary efforts that the DOL undertook to expand apprenticeship programs outside of the unions' control resulted in "new trainees flooding a recession-dampened market"; consequently, instead of the predicted labor shortage, construction unemployment "skyrocketed."58

The ostensible occasion for these efforts was blacks' underrepresentation in the skilled trades, which was in part concealed by their overrepresentation in the category of "laborers." Thus the Equal Employment Opportunity Commission (EEOC) issued data based on reports from so-called referral unions (locals that had agreements with employers to refer workers) showing that in 1967 blacks nationally accounted for 30.5 percent of all laborers; in the so-called trowel trades, they accounted for 9.6 percent of bricklayers and 14.0 percent of plasterers. Their share in the skilled occupations, however, was minuscule: plumbers, 0.2 percent; elevator constructors, 0.4 percent; electrical workers, 0.6 percent; carpenters, 1.6 percent; iron

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⁵⁶"Resolution 270," reprinted in The Philadelphia Plan: Congressional Oversight of Administrative Agencies (The Department of Labor): Hearings Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 91st Cong., 1st Sess. 179 (1970).

⁵⁷Hugh Graham, The Civil Rights Era: Origins and Development of National Policy 1960-1972, at 325, 340-41, 344 (1990).

⁵⁸Quadagno, Color of Welfare at 79, 81-82, 84. Quadagno's analysis is so indebted to Nixon administration documents in the National Archives that it at times incorrectly conflates draft documents with implemented programs.

workers, 1.7 percent; painters, 3.7 percent; and operating engineers, 4.0 percent.⁵⁹
Because Philadelphia, which had witnessed the first protests by Blacks in 1963 against their underrepresentation in construction,⁶⁰ was the site of the test case, the program was called the Philadelphia Plan. Fletcher based the order—which prohibited awarding federal construction contracts in excess of \$500,000 in the Philadelphia area "unless the bidder submits an acceptable affirmative action program which shall include specific goals of minority manpower utilization" for iron workers, plumbers and pipefitters, steamfitters, sheetmetal workers, electrical workers, roofers, and elevator construction workers—on the finding that enforcement of the executive order had

posed special problems in the construction trades. Contractors and subcontractors must hire a new employee complement for each construction job and out of necessity or convenience they rely on the construction craft unions as their prime or sole source of their labor. Collective bargaining agreements and/or established custom between contractors and subcontractors and unions frequently provide for, or result in, exclusive hiring halls; even where the collective bargaining agreement contains no such hiring hall provisions..., as a practical matter, most people working in these classifications are referred to the jobs by the unions. Because of these hiring arrangements, referral by a union is a virtual necessity for obtaining employment in union construction projects, which constitute the bulk of commercial construction.

Because of the exclusionary practices of labor organizations, there traditionally has been only a small number of Negroes employed in these seven trades. ... At the end of 1967, less than one-half of one percent of the membership of the unions representing employees in these seven trades were Negro, although the population in the Philadelphia area

⁶⁰Marshall & Briggs, *The Negro and Apprenticeship* at 87-92. On violent clashes in 1969 in Chicago, Pittsburgh, and Seattle, see "Federal Agencies Move in to Put Out Fire of Racial Unrest in Chicago Construction," *CLR*, No. 730, Sept. 17, 1969, at A-4. See also Michael Stern, "Effort to Train Blacks for Construction Jobs Falters in Pittsburgh," *WSJ*, July 24, 1969, at 1, col. 4.



⁵⁹NYT, Jan. 25, 1970, sect. 1, at 71, col. 5. The referral unions' membership accounted for about three-fifths of all construction union membership. Between 1969 and 1972, total minority membership in the building trades unions increased from 13.2 percent to 15.6 percent, but gains in the skilled trades were far below average. By 1971, blacks accounted for 2.0 percent of elevator constructors, 3.8 percent of plumbers, 5.6 percent of electrical workers, 6.7 percent of sheet metal workers, and 8.3 percent of iron workers. ENR, Oct. 16, 1969; Herbert Hammerman, "Minority Workers in Construction Referral Unions," 95 (5) MLR 17-26, tab. 5 at 21 (May 1972); idem, "Minorities in Construction Referral Unions—Revisited," 96 (5) MLR 43-47, tab. 2 at 44 (May 1973); "U.S. Mandates New Minority Hiring Goals in 21 Localities," ENR, July 11, 1974, at 17. For an explanation of the weaknesses of these data, especially for comparisons over time, see Robert Glover & Ray Marshall, "The Response of Unions in the Construction Industry to Antidiscrimination Efforts," in Equal Rights and Industrial Relations 121-40 at 121-25 (Leonard Hausman et al. eds., 1977. For data on various large cities, see F. Ray Marshall & Vernon Briggs, Jr., The Negro and Apprenticeship 48, 85, 114, 138, 152, 160, 177, 183 (1967). Ironically, as blacks' share of laborers fell from 31 to 22 percent between 1960 and 1973, the inflow of young white men was associated with stabilization of the skilled-unskilled construction wage differential, which had been narrowing. Harold Wool, "Future Labor Supply for Lower Level Occupations," 99 (3) MLR 22-31 at 24 (Mar. 1976).

during the past several decades included substantial numbers of Negroes.⁶¹

The racist mentality that the compulsory Philadelphia Plan had to circumvent or overcome was nicely captured in congressional testimony by the executive director of the General Building Contractors Association of Philadelphia, the self-professed "oldest trade association in any industry in North America." In listing this enlightened organization's actions to promote integration in construction, he highlighted the fact that "a few months ago we employed a young Negro lady as a secretary in our association office" at a time when thousands of black workers were in the streets shutting down projects to lend force to their demands for equal access to jobs. The cavalier attitude adopted by the mainstream union movement can also be gauged by George Meany's understanding of affirmative action in 1967: "If we run into boys that have the educational qualifications to take the apprenticeship of the various trades, I think we should make it as easy as possible for them to acquire the skills...."

Following public hearings in August and the issuance of an opinion by the Attorney General confirming the legality of the DOL order, 64 Fletcher issued an implementing and amendatory order on September 23, 1969. Based on new data, he found that although minorities accounted for 30 percent of all Philadelphia-area construction workers and 12 percent in the skilled trades, in the designated trades minority participation varied between a low of 0.51 percent among plumbers and pipefitters and 1.76 percent among electricians—a figure "far below that which should have reasonably resulted from participation in the past without regard to race, color and national origin." In addition to determining that more than 2,000 qualified minority workers were available in these trades, Fletcher made the politically crucial finding that firms could add significant numbers of skilled minority workers to their work forces "without adverse impact upon the existing labor force." Based on a 2.5 percent annual retirement rate, a 1 percent annual death or disability occurrence rate, and a further 3 percent annual leave rate for other reasons, he calculated that "each construction craft should have approximately 7.5% new job openings each year without any growth in the craft." Projected craft-specific growth rates extrapolated from the previous six years' figures generated estimates of annual vacancy rates ranging from 9.6 percent among elevator construction workers to 11.2 percent among iron workers. This political leeway was supposed to enable contractors to commit to hiring minority workers, on the basis of one minority craftsman for each nonminority craftsman, in such numbers that after four years they would account for 19

⁶⁴Letter from the Attorney General to the Secretary of Labor (Sept. 22, 1969).



⁶¹DOL, "Memorandum: Revised Philadelphia Plan" at 2-3.

⁶²Philadelphia Plan: Congressional Oversight at 66, 67 (testimony of Harry Taylor).

^{63&}quot;Union-Government Consultation, Not Conflict, on Tough Issues Urged at BTD Convention," CLR, Dec. 6, 1967, No. 637, at A-1, A-4.

to 25 percent of all employees in those trades. 65 Indeed, an assistant attorney general in the civil rights division of the Department of Justice candidly testified to the Senate Judiciary Committee that "the entire plan...assumes an expansion of the rate of construction."66

Fletcher expressly characterized the jobs created by the Philadelphia Plan as "a major thrust of the Administration in dealing with employment problems of the disadvantaged of our major urban areas."67 As his Assistant Secretary was announcing the implementation, Secretary of Labor Shultz, cautioning that the DOL would use "all due process possible," urged local leaders to "be sensitive to the potentially explosive nature" of the problems.⁶⁸ In order to increase the minority share, the government proceeded to increase the share of black apprentices.⁶⁹ When a year later the Plan had "not begun to produce even minimal gains toward its modest goal of breaking the color barrier in six construction trades," the DOL prepared to sue contractors as unions accused Nixon and the contractors of "trying to lower wages and standards...and to cause friction between two normally Democratic allies, labor

⁶⁵DOL, Office of the Assistant Secretary, "Order: Establishment of Ranges for the Implementation of the Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction" 3-16 (quotes at 12, 9, 14) (Sept. 23, 1969). See also "Negro Drive for Jobs in Construction Unions Is Gaining Momentum," WSJ, Sept. 26, 1969, at 1, col. 6. On the fate of the Philadelphia Plan a quarter-century later in the wake of "harder times," see Louis Uchitelle, "Union Goal of Equality Fails the Test of Time," NYT, July 9, 1995, § 1, at 1, col. 1.

⁶⁶ The Philadelphia Plan: Congressional Oversight at 105 (testimony of Jerris Leonard).

⁶⁷⁴ Statement by Assistant Secretary Arthur A. Fletcher on Philadelphia Plan Guidelines" 2 (USDL 10-696, Sept. 23, 1969).

^{68&}quot;Statement by Secretary Shultz on Philadelphia Plan Guidelines," Sept. 23, 1969 (USDL 10-964). See also ENR, Oct. 2, 1969, at 16.

⁶⁹On the regulations regarding equal employment opportunity in apprenticeship and training, see 29 C.F.R. § 30 (1972). According to Byron Calame, "Labor Agency Seeks to Void Unions' Right to Veto On-the-Job Training of Minorities," WSJ, Dec. 21, 1970, at 7, col. 1, union influence was supposed to be reduced. On the disputes over the implementation of this program in New York City, see Thomas Ronan, "Construction Men Sign Trainee Pact," NYT, Dec. 11, 1970, at 1, col. 2; William Farrell, "City Plan for Minority Building Workers Assailed," NYT, Dec. 22, 1970, at 26, col. 5. See also Alex Maurizi, "Minority Membership in Apprenticeship Programs in the Construction Trades," 25 ILRR 200-206 (Jan 1972); Gladys Gruenberg, "Minority Training and Hiring in the Construction Industry," 22 (8) LLJ 522-36 (Aug. 1971). Since empirical studies revealed that only a fraction of skilled tradesmen went through a formal apprenticeship, some doubted the effectiveness of this state strategy: "[I]t is almost certainly true that for some of the union spokesmen, hearty endorsement of apprenticeship as an entry method is motivated in part by a desire to close nonapprenticeship routes to minorities." William Franklin & Robert Glover, "Entry into the Building Trades Unions: A Comparison of Apprenticeship and Other Routes," in Labor & Manpower 77-103 at 101. See also Strauss, "Apprenticeship: An Evaluation of the Need"; Edgar Weinberg, "Reducing Skill Shortages in Construction," 92 (2) MLR 4 (Feb. 1969); Howard Foster, "Nonapprenticeship Sources of Training in Construction," 93 (2) MLR 21-26 (Feb. 1970); idem, "Apprenticeship Training in the Building Trades: A Sympathetic Assessment," 22 (1) LLJ 3-12 (Jan 1971): ginal from Digitized by GOOSIC

and minority groups."70

The timing of this antidiscrimination campaign was, to be sure, not completely coincidental: at the height of the Vietnam War boom employers were no longer enamored of the law of supply and demand in the labor market. President Nixon himself repeatedly defended the Philadelphia Plan on this basis. At a news conference on September 26, 1969, he stated that "it is essential that black Americans, all Americans, have an equal opportunity to get into the construction unions. There is a shortage in construction workers." (A new watchword appeared five years later: "Manpower shortages may push women into construction work.")?

Despite the limited success of the Philadelphia Plan,⁷³ at the March 1971 annual convention of the AGC,⁷⁴ Fletcher boastfully announced complete victory:

I am here to announce what is already a fact.

The old order is not only under pressure to change; the order is collapsing. ... The era of arrogance and discrimination by some trade unions has ended. Corrupted by their sense of power, they have overreached. ... We are within a year of a great influx of minority workers into the construction trades, as the citadel of labor supply control plus over discrimination is being destroyed. ... I want to explain my announcement to you that the era of union domination of the employment pattern in the construction industry is over. ... The union grip on the processes of government has been weakened considerably if not broken. ...

When I came into office, the union movement in the construction industry thought it could control the Congress, the courts and the President. It has been demonstrated since then that, not only do they not control these institutions, but their practices of discrimination make all of their institutions very vulnerable. They have lost public support because of the outrageous abuse of their power, both in terms of demands for heavy wage increases, and in the effort which they have made to preserve the segregated character of some of the unions.

⁷⁴Fletcher gave the same speech to the ABC's annual legislative conference and to the Roundtable's national meeting of local user groups. "Administration Works on a Plan to Stabilize Wages," *ENR*, Mar. 18, 1971, at 186; CUAIR *Report*, May 28, 1971, at 1, 3.



⁷⁰Paul Delaney, "Nixon Plan for Negro Jobs in Construction Is Lagging," NYT, July 20, 1970, at 1, col. 5, at 18, col. 7. See also Elliot Carlson, "The Philadelphia Plan to Integrate Unions Called Failure by Some," WSJ, Dec. 3, 1970, at 1; Richard Rowan & Lester Rubin, Opening the Skilled Construction Trades to Blacks: A Study of the Washington and Indianapolis Plans for Minority Employment (1972).

 ^{71&}quot;The President's News Conference of September 26, 1969," in Nixon, PPPUS: 1969, at 748, 755. See also "Statement about Congressional Action on the Philadelphia Plan," in id. at 1040.
 72"Manpower Shortages May Push Women into Construction Work," ENR, May 9, 1974,

at 24-26.

⁷³Glover & Marshall, "The Response of Unions in the Construction Industry to Antidiscrimination Efforts" at 131, pointed out that a central defect in the plan was that it required employers to hire black workers without requiring unions to admit them; as a result, blacks became attached to temporary jobs rather than to the labor market.

And that is why I am here to announce the end of the...era of union dominance in the construction industry. 75

Although Nixon's construction industry policies could hardly have satisfied building trades union leaders, the nomination in 1972 of Senator George McGovern as the Democratic presidential candidate, purportedly drove them to support Nixon's reelection. Finding McGovern "wholly unacceptable," but claiming that Nixon "now understands the complexities of the construction industry and sympathizes with the most fundamental concerns of the construction workers," nine union presidents extolled Nixon's "belief in the dignity of honest work and his opposition to policies which would sap and undermine the fundamental strength of American character."76 (The worst point that the president of the Ironworkers could make against McGovern was that he had "condemn[ed] wages as a means of attaining an income" by supporting a guaranteed annual income.)⁷⁷ Nixon's appointment in 1973 of Peter Brennan, president of the Building and Construction Trades Council of Greater New York and a long-time opponent of affirmative action and other means of rectifying racial discrimination against blacks by construction unions, as Secretary of Labor not only betokened backsliding in the effort to integrate, but also represented an attempt, in the words of a future black chairman of the NLRB, by the administration "to establish a firmer foundation for its newly won blue-collar constituency" by "cleverly widen[ing] the cleavage between the industrial unions...and the more conservative crafts, whose social vision does not extend further than the next wage increases for their white memberships."78 By late 1973, Brennan urged that the Philadelphia Plan be

⁷⁸William Gould, "Moving the Hard-Hats In," 216 (2) Nation 41 (Jan. 8, 1973). This important issue concerning discrimination was overlooked in an otherwise insightful letter to the editor calling attention to the inconsistency of the appointment of a construction union leader by a president beholden to the CUAIR. Daniel Wilton, "Brennan as Labor Secretary," NYT, Dec. 7, 1972, at 36, col. 4. See also "Brennan Appointment to Secretary of Labor Draws Varied Reactions from Labor, Civil Rights Groups," CLR, No. 897, Dec. 6, 1972, at A-16.



⁷⁵"Address by Assistant Secretary of Labor Arthur Fletcher at Annual Convention of Associated General Contractors," CLR, No. 808, Mar. 17, 1971, at D-1, D-2.

⁷⁶ Chiefs of Nine Building Trades Unions Endorse Candidacy of Nixon for Second Term in Office," CLR, No. 887, Sept. 27, 1972, at A-6, A-7. Supporting Nixon were the presidents of the Ironworkers, Plumbers, Lathers, Bricklayers, Masons, Operating Engineers, Plasterers, Laborers, Asbestos Workers, and Marble Workers unions; the presidents of the Carpenters, Electrical Workers, Painters, Sheet Metal Workers, Boilermakers, Roofers, Elevator Constructors, and Granite Cutters unions remained neutral. They were "understood to be happy with the Construction Industry Stabilization Committee, which has imposed wage restraints in their industry but not so strenuously or arbitrarily as has the Pay Board in other industries." Philip Shabecoff, "9 Heads of Building Unions Back Nixon for Re-election," NYT, Sept. 27, 1972, at 34, col. 1. Brennan organized similar support in New York City; Damon Stetson, "200 Labor Chiefs in City Form Nixon Committee," NYT, Sept. 28, 1972, at 52, col. 7.

⁷⁷John Lyons, "The President's Page," 72 (10) Ironworker 2-4 at 3 (Oct. 1972).

terminated in favor of voluntarily negotiated "hometown" systems, which the Nixon administration introduced after it had "made political peace with the 'hard hat' unions during the 1972 Congressional election campaigns," and most of which failed to meet their minority hiring goals.⁷⁹

Union resistance to integrationist policy was ambiguous. Even if the racism underlying such opposition originally represented a defensive reaction—which employers cultivated—against the use of blacks and other minorities as strikebreakers and wage-depressants, it took on a social-psychological life of its own, which could be reactivated even when it lacked any "rational" basis. The prominence of such discriminatory policies in building trades unions originated in special features of the construction industry.

First, because unions in the organized sector of the industry performed the function of furnishing the required number of workers with the requisite skills, they exercised a degree of control over the selection process that most unions lacked. Although this arrangement was, given the structure of the industry, favorable to employers, it would have stood in the way of an industrial revolution of construction. In connection with efforts to promote such a development, unions regarded the policy of racial integration as a means of accelerating the dissolution of union power. As Lefkoe, the Roundtable's hired analyst, after emphasizing the necessity of transferring the labor-supply system to employers, stated: "Employment would be open to any qualified person, but it is likely that 'ghetto' residents and members of minority groups would be a prime source of manpower. Many organizations have already been set up to aid members of these two groups in obtaining employment, and contractors would use these organizations to help recruit employees." If the unions tried to prevent the hiring of non-members, then, according to Lefkoe, the firms would gain a progressive image: "[T]he fact that a great many of the workers being hired were members of minority groups would enable contractors to obtain a considerable amount of assistance from the courts; from federal, state and municipal agencies; and from powerful civil rights organizations." 81

Second, the particularly frequent and sharp cyclical oscillations in construction—which workers experienced to an extraordinary degree in the form of unemployment—historically prompted unions to seek to keep the reserve army of workers as small as possible. That black workers were particularly hard hit by this phenomenon stemmed from the fact that unions' demands pertained only to their own members; to the extent that no other union took up the struggle for Blacks, unions virtually drive them into employers' waiting arms.

⁸¹Lefkoe, Crisis in Construction at 159 (quote), 161 (quote), 169, 173.



⁷⁹ The Snags in Trying to Get Minorities Hired," BW, Dec. 1, 1973, at 86; Gould, Black Workers in White Unions at 297-315.

⁸⁰On the extent to which racially discriminatory policies are expressions of members' attitudes in democratically run locals, see Orley Ashenfelter, "Racial Discrimination and Trade Unionism," Working Paper No. 17 at 7-13 (Indus. Rel. Sect., Princeton U., Nov. 1969).

To be sure, the union movement did initiate certain programs that signaled a change of direction. For example, by early 1969, the AFL-CIO invested in a program to rehabilitate ghetto housing in St. Louis with people from the neighborhood. Yet during the first Nixon administration Blacks were able to increase their share of skilled construction workers only modestly. According to data collected by the EEOC, from 1969 to 1972 black membership in the higher paid mechanical trades (such as boilermakers, electrical workers, elevator constructors, iron workers, plumbers, and sheetmetal workers) rose only from 1.6 percent to 2.2 percent. Halting progress toward integration in the early 1970s was due not only to union resistance, but to employers' flagging interest resulting from depressed conditions in the construction industry. Table 21 shows the relative increase of black men in the crafts:

One defense that the unions mounted against attacks on their willingness to admit blacks to apprenticeship was to belittle the contribution that such formal training could make toward alleviating black unemployment: even if blacks achieved the 15-percent share of 50,000 annual openings set by civil rights groups, it would, given the across-the-board 50-percent dropout rate, have amounted to only 3 percent of the total number of unemployed nonwhite males under 21.85 When the DOL issued regulations in 1971 setting goals for recruiting minority workers into apprenticeship programs, the BCTD protested on the grounds that the proportion of nonwhites was already high and above their share of the adult male work force. The union umbrella organization added this revealing ideological broadside: "This attempt at social engineering is a poorly disguised effort to restructure our economic society to the whims of a handful of federal mandarins. We prefer free choice by free men, and we are certain that the vast majority of Americans, white and non-white alike, prefer such freedom." 86

⁸⁶ AFL-CIO Building Trades Department Blasts Federal Apprentice Regs," CLR, No. 804, Feb. 17, 1971, at A-12, A-14.



^{*2&}quot;Program to Train Area Residents During Urban Improvement Project Established in St. Louis," CLR, Jan. 8, 1969, No. 694, at A-6.

⁸³"Blacks Made Slight Progress Between 1969-1972 in Entering Building Trades," *CLR*, No. 978, July 10, 1974, at B-1. In 1967, the even lower shares varied from 0.2 percent among plumbers and sheet metal workers to 3.9 percent among boilermakers. "Top-Paid Crafts Have Fewest Negroes, Laborers Most, EEOC Survey Shows," *CLR*, No. 732, Oct. 1, 1969, at B-8, B-10.

⁸⁴John Landon & William Peirce, "Discrimination, Monopsony, and Union Power in the Building Trades: A Cross-Sectional Analysis," *Proceedings of the IRRA: 24th Annual Winter Meeting* 245-61 (1971); idem, "Discrimination, Monopsony, and Union Power in the Building Trades," 95 (4) MLR 24-26 (Apr. 1972); Benjamin Wolkinson, Blacks, Unions and the EEOC: A Study of Administrative Futility 10-16 (1973); Jonathan Grossman, The Department of Labor 222-23 (1973).

⁸⁵"Excerpt of Remarks of AFL-CIO Secretary-Treasurer William F. Schnitzler at Apprenticeship and Training Conference," CLR, No. 616, July 12, 1967, at C-1, C-2.

Table 21: Black Men as a % of All Male Craft Workers, 1962-1974				
Occupation	1962	1974	Year of Highest % if not 1974	
All craft workers	4.7	7.4		
Masons	12.7	18.2		
Carpenters	5.4	6.0	6.7 (1970)	
Cement finishers	27.8	30.4	42.0 (1966)	
Crane/hoist operators	10.0	17.9	19.6 (1969)	
Electricians	2.3	4.4		
Machinists	1.5	5.6	6.2 (1973)	
Auto mechanics	9.0	7.9	10.6 (1973)	
Painters	8.3	11.1		
Plumbers	3.9	5.6	6.0 (1972)	

Source: Stuart Garfinkle, "Occupations of Women and Black Workers, 1962-74," 98 (11) MLR 25-35, tab. 4 at 30 (Nov. 1975).

Many observers have either overlooked these realities or left the impression that humanistic-progressive management and union leaders were, unfortunately, not always able to prevail over their reactionary subordinates.⁸⁷ Similarly misleading were analysts who fell into an illusory politics by proposing to offer accurate prognoses to workers to prove to them that increasing their supply by several hundred thousand would exert no negative impact on their employment situation.⁸⁸

Although it has been an axiom of radical working class politics since the nineteenth century that white workers can never be free so long as black workers remain subordinates, the situation, at least in the North, was fundamentally different from that in the South even as late as the 1950s or 1960s. As the historian of race and unionism in Memphis astutely observes: "[A]s long as... exclusionary practices prevailed among white workers, employers had little reason to fear labor challenges to the 'southern way of life.' Furthermore, should any such challenges arise, workers faced the likelihood of repression, since the white community had largely sacrificed the civil rights protections embodied in the Bill of Rights in the process of imposing a racial dictatorship over blacks. When workers did begin to demand change, the

^{**}Herbert Hill, "Racial Inequality in Employment: The Patterns of Discrimination," 357 AAAPSS 30-47 at 43-44 (Jan. 1965).



⁸⁷E.g., Marshall & Briggs, Negro and Apprenticeship at 34, 242-43.

repressive exercise of state power...provided the ultimate guarantor of the South's racial and class system." Nothing even remotely analogous characterized the political-economic structure of the North during the Vietnam war era. As long as the building trades unions monopolized the labor market in the large cities, it is difficult to discern how, in light of their superior wages and control over working conditions, they, as business unionists, were in any appreciable economic way injured by their exclusionary policies toward blacks.

Ironically, however, the very decline of the unions in the 1980s underscored the robustness of this counterintuitive argument: despite the threats and plans by big business and the state to undermine the unions by flooding the labor market with black workers, the spectacular expansion of the nonunion sector in fact never relied on that labor force. Indeed, during the rest of twentieth century, nonunion firms employed even fewer blacks than their union competitors. In a final consequence of the cunning of history, however, racist policies did come to haunt unions; for even if excluding blacks failed to harm the unions in a direct economic way, the political and moral disrepute which they incurred made it easier for their enemies to mold public opinion against them and to deprive them of public (and to some extent even AFL-CIO) support when the Roundtable and the federal government launched their multipronged assaults. Though driven in large part by the same strengths and weaknesses, the exclusion of black workers would ultimately harm the unions less than their failure to organize the much larger group of white labor market competitors.

