"Time and a Half's the American Way"

A HISTORY OF THE EXCLUSION OF WHITE-COLLAR WORKERS FROM OVERTIME REGULATION, 1868-2004

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Men do not want the liberty to be compelled to work all the time....

Senator EAGLETON. [W]hat if there was a law that prohibited anybody from working in excess of 40 hours a week for compensation?

Mr. [Nat] GOLDFINGER [research director, AFL-CIO]. I don’t know whether a Federal regulation of that sort, a prohibition, would make sense. I think that another way of doing it would be to apply a penalty—I mean a penalty which would discourage the scheduling of overtime. [W]e have found that the time-and-a-half penalty for overtime which was an effective penalty back in 1938, is hardly effective today because of the changes in fringe benefits.... We would rather apply a penalty for long hours than prohibit them. It may be at certain times and certain places in a given plant or a location that the employer may have to schedule overtime. But those circumstances...are rare. The general condition of overtime today...is that employers schedule overtime because it’s cheap to do so. In fact, there are cost savings, because you have an increased volume and as a result the fixed costs per unit are reduced.
Universal Eight-Hour Initiatives in California, Oregon, and Washington in 1914, and the Dispute Between the Socialists and the American Federation of Labor

What is a man to do who, with his household, breakfasts at 7, lunches at 12 and dines at 6? He must hire two cooks and two waiter girls where he now hires one, or overwork his wife, or go to jail.

Must...all of us who do not cook our own food and attend to our own toilettes go unfed, unshaved and unbathed on Sundays [...]...

All the laws that cranks and dreamers can devise will never give the race to the slow or the battle to the weak. Two and two make four, they do not make five, and no legislature can alter or repeal the multiplication table. The law of supply and demand will always dominate written statutes.

And at last there is the inborn ineradicable right of every American citizen to work...as few or as many hours as he pleases.

In order to appreciate the profoundly regressive character of the exclusion of millions of white-collar workers from even the very modest protection from excessively long workweeks that the FLSA began requiring in 1938, it is useful to focus attention on the existence of a serious political movement to enact much more stringent hours laws from which neither white-collar nor any other workers would have been excluded. Mobilized by the Socialist Party on the Pacific Coast in 1914, this campaign engulfed California, Oregon, and Washington that year; although it failed to achieve legal embodiment in those states, within three years it did succeed in territorial Alaska, where, spurred on by the radical Western Federation of Miners and Socialist Party, the legislature enacted the most radical piece of hours legislation in the history of the United States. The history of this abortive statutory intervention—which was judicially declared unconstitutional by

2The Utah State Federation of Labor also adopted a resolution favoring “enactment of a universal eight-hour day law covering all classes of labor,” but apparently no such initiative campaign took place in Utah. “Many Candidates Say They Favor Extension of the Eight-Hour Law,” (Salt Lake City) Evening Telegram, Oct. 29, 1914 (14:5-6).
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1918—has been told in depth elsewhere.3 Here an account of the historiographically similarly obscure developments on the West Coast is offered.4

California

If I understand the aim and object behind every move toward the adoption of a shorter work day it is that we may be able to give the fagged brain and tired body of the worker who, through long hours of toil, is reduced in physical strength, an opportunity to study and develop mentally and physically.5

Whereas leisure was the driving force behind the eight-hour movement under the special circumstances prevailing in climatically demanding Alaska, unemployment formed the impetus for hours regulation further south down the Pacific Coast. Thus the annual convention of the California State Federation of Labor passed a resolution in 1912 declaring: "Whereas, In view of the fact that the greatest problem affecting the whole people of the State of California is the unemployed problem; and ... Whereas, Under our modern industrial system this is largely due to employers compelling men to labor too many hours per day; therefore, be it Resolved, That the State Federation of Labor...do hereby pledge our full support to an eight-hour day in all industrial occupations."6

Three months later, the only Socialist Party member of the California state legislature, O. W. Kingsley of Los Angeles,7 introduced a bill in the Assembly


4David Roediger and Philip Foner, *Our Own Time: A History of American Labor and the Working Day* 179 (1989), briefly mention these eight-hour initiatives, but fail to recognize that they were not overtime, but maximum-hour regimes.


7California Legislature—Fortieth Session, 1913: Final Calendar Legislative Business 510.
limiting hours of labor: "No person shall be employed in any manufacturing, mechanical, mining or mercantile establishment, laundry, barber shop, hotel, restaurant, telegraph or telephone establishment or office, or employed by any express or transportation company, or any common carrier in this state more than eight hours during any one day or more than forty-eight hours in one week." The bill, which did not cover agricultural or domestic employment, imposed a fine of between $50 and $200 or imprisonment for 5 to 30 days, for violations. After the Committee on Labor and Capital recommended passage, it submitted several amendments during the second reading of the bill, which were adopted and altered the character of the proposal. First, in keeping with the venerable tradition of maximum-hours laws protecting miners in various western states, a proviso was inserted "that in cases of emergency involving injury to persons or property or both," the eight and 48-hour limits could be exceeded, provided, further, that time and a half be paid for any hours in excess of eight per day. In addition, the Assembly voted to extend the workday and workweek to 10 and 60 hours, respectively, in the transportation industry, subject, again, to the overtime premium. Finally, railway engineers, firemen, brakemen, and conductors were totally excluded from the bill. Despite the submission of a petition signed by 90,000 people, the Assembly narrowly refused passage of the watered-down bill by a vote of 37 to 30.

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8 Assembly Bill No. 31, § 1 (Jan. 13, 1913).
9 Assembly Bill No. 31, § 2.
10 Journal of the Assembly During the Fortieth Session of the Legislature of California: 1913 at 2210 (Apr. 26, 1913). The wording of the amendments that the committee included in its recommendation was not specified.
11 See, e.g., 1909 Cal. Stat. ch. 181 at 279; 1913 Cal. Stat. ch. 186 at 331; 1896 Utah Laws ch. 72 at 219. To be sure, these permitted emergency work after 8 hours but did not provide for premium overtime pay. See also Ariz. Rev. Stat., Civil Code, § 3099 at 1039 (1913) (electric light and power plants), and Idaho Rev. Code 1909, § 1464 at 661 (stamp mills); but see 1913 Missouri Laws at 399 revising Missouri Rev. Stat. § 7814a (eight-hour law for plate glass works without an emergency proviso).
12 Journal of the Assembly During the Fortieth Session of the Legislature of California: 1913 at 2276 (Apr. 29, 1913).
13 Journal of the Assembly During the Fortieth Session of the Legislature of California: 1913 at 2646 (May 6, 1913).
14 Journal of the Assembly During the Fortieth Session of the Legislature of California: 1913 at 2801 (May 9, 1913). The claim by Earl Crockett, "The History of California Labor Legislation, 1910-1930" at 22 (Ph.D. Diss. U. California 1931) that "[t]he measure did pass in the Assembly only to be voted down by the Senate," is erroneous.
In a post-mortem discussion of the bill at its annual convention in the fall of 1913, the California State Federation of Labor, revealing a tension with the Socialists, observed: "The Socialists of the State by their actions seem to have considered this bill the only important measure before the Legislature, as some of their publications had very little to say on other measures. In justice to Assemblyman Kingsley it should be said that he was not of a narrow partisan type, for he did valiant service on every labor measure that came before him. He also knows that if he had not introduced this bill it would have been introduced by others. The arguments in the committee...were made by trade-unionists, and we believe that the 31 votes that were cast for the measure were cast through the influence of trade-unionism. The petition of 90,000 signers was also circulated and signed to a large extent by trade-unionists."15 Indicating that the movement for the eight-hour day remained undaunted by the legislative setback, the convention at the same time passed a resolution requesting its affiliated central bodies, local unions, and members at large to help secure sufficient signatures for an initiative petition being circulated on behalf of a general eight-hour law, and recommending the appointment or election of agitation committees to bring about enactment of the law.16

California had adopted the initiative and referendum in 1911 as part of the Progressive movement, which swept the governorship and legislature in 1910 and reshaped state labor law in 1911, but left labor advocates wanting more and pushing for the eight-hour law initiative.17 Endorsed in addition by the Socialist Party of California and the San Francisco Labor Council,18 an initiative petition was presented in early 1914 to be submitted to voters at the November election,19

15Proceedings of the Fourteenth Annual Convention of the California State Federation of Labor Held at Old Armory Hall, Fresno, California October 6 to 11, 1913, at 101. Though only 30 names had been recorded as having voted for the bill, the Federation stated that "at the time all who watched the roll call are unanimous in saying that they heard 31 ayes." Id. at 102.

16Proceedings of the Fourteenth Annual Convention of the California State Federation of Labor Held at Old Armory Hall, Fresno, California October 6 to 11, 1913, at 17.


19As amended in 1911, the Constitution of the State of California, Art. IV, § 1 provided for the initiative: "Upon the presentation to the secretary of state of a petition
adding the following section to the penal code:

Any employer who shall require or permit, or who shall suffer or permit any overseer, superintendent, foreman or other agent of such employer, to require or permit any person in his employ to work more than eight hours in one day, or more than forty-eight hours in one week, except in case of extraordinary emergency caused by fire, flood or danger to life or property, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $50 nor more than $500, or imprisoned in the county jail not less than 10 nor more 90 days, or both so fined and imprisoned.

This eight-hour day and 48-hour week proposal was radical in its universal applicability—neither adult men, nor farmworkers, nor domestic servants, nor managers nor professionals were excluded—and in the very narrow exception it allowed for “extraordinary emergency,” which employees would not be eager to work since no overtime premium was mandated.

Four months before the election, the seriousness of the campaign had become sufficiently prominent that, “[i]n view of the importance of the changes in industry that would follow adoption of such a law the Board of Governors of the Commonwealth Club of California arranged for a discussion” to inform both its members and the public at large. The debate at the Club in San Francisco on July 8, 1914, of which the press took note, featured the vice president of the San Francisco Labor Council and the editor of its organ, Labor Clarion, which the Club had requested to arrange for a presentation, despite the fact that the initiative certified as herein provided to have been signed by qualified electors, equal in number to eight per cent of all the votes cast for all candidates for governor at the last preceding general election, at which a governor was elected, proposing a law or amendment to the constitution, set forth in full in said petition, the secretary of state shall submit the proposed law...to the electors at the next succeeding general election occurring subsequent to ninety days after the presentation aforesaid of said petition. Any act, law or amendment to the constitution submitted to the people by...initiative...petition and approved by a majority of the votes cast thereon...shall take effect five days after the date of the official declaration of the vote. No act, law or amendment to the constitution, initiated or adopted by the people, shall be subject to the veto power of the governor, and no act, law or amendment to the constitution, adopted by the people at the polls under the initiative provisions...shall be amended or repealed except by a vote of the electors.”

Secretary of State, Amendments to Constitution and Proposed Statutes with Arguments Respecting the Same To Be Submitted to the Electors of the State of California at the General Election on Tuesday, November 3, 1914, at 58 (1914).


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measure had been drawn by “unofficial organizations of members of the Socialist party,” because the Council had passed a resolution approving of it. Speaking against the measure were one representative each of farmers and of industrial employers.23 The Council’s vice president, A. W. Brouillet, who was also its attorney, focusing almost exclusively on legal-constitutional issues, sought to make a virtue of a necessity by asserting that the proposal’s very universality would immunize it against the kinds of judicial attacks that had struck down several hours laws. Conceding that the “this measure is more general in its scope than any measure regulating hours of employment in any American state, and it differs essentially from all other such measures brought to the attention of the courts,”24 Brouillet stressed that it lacked certain defects that had triggered judges’ displeasure in other cases: it was “flexible to some extent, and permit[ted] overtime employment in certain enumerated emergencies”;25 it contained no exempted classes and therefore could not be held to be special legislation discriminating against, for example, farm or domestic laborers; and, by not trying to fix overtime compensation, it did not deny employers’ and employees’ constitutional right to contract with regard to compensation.26 Though exuding an unfounded speculative optimism concerning the courts’ hands-off attitude toward the measure (“courts will to a certainty refuse to interfere with the verdict of the people on a question involving a social evil and a remedy generally conceded capable of alleviating or removing it”),27 Brouillet was sufficiently circumspect to abandon safety or health considerations as the constitutional basis for the validity of the proposal. Instead, proponents were “frankly willing to place the statute on a decisive foundation of public policy, namely the economic and social welfare of the class of people for whose benefit the act is proposed,”28 although he himself refrained from identifying that non-safety or health benefit.

In rebuttal, G. H. Hecke, a fruit grower from one of the most important producing communities, was introduced as discussing the impact on agriculture.29 Eventually he did depict what he viewed as the nightmarish consequences of the law for farming, but first he anticipated its effect on urban wage earners, whom he divided into skilled Americans and alien laborers. The former “enjoy already the

23“The Eight Hour Law” at 417, 420.
29“The Eight Hour Law” at 429.
advantages of a short day of labor," but “[t]heir income would be materially reduced by the fact that ‘overtime’ work is absolutely prohibited by the proposed bill.”30 Hecke failed to notice the self-contradiction in which he had trapped himself: if a material part of these workers’ wages consisted of overtime pay, then in fact they had not yet achieved the “short day” that the initiative measure sought to secure. Instead of lingering over this logical flaw, Hecke moved on to xenophobic labor market analysis, alleging that organized skilled workers’ strong position “would be much endangered by the powerful, alluring inducement to workers all over the civilized world, that California is to be the paradise of labor. Short hours and easy life promised by this law would cause an invasion of elements that might not be desirable as citizens....” Indeed, they would be a “menace” both to employers “by their disposition to limit hours and service to mere existence” and to the skilled workers “by their disposition to deprive efficient workers of their well-earned jobs.” The other group performed either “stoop-over farm work” or used a pick and shovel—“the monotonous hand work, performed under discouraging but unavoidable conditions, in cold wet weather or under the burning sun of an interior California summer....” A large proportion of them were “Oriental laborers, of which type too many have already become the owners of good California land,” but they were “not in such deplorable physical and financial condition that they need the arbitrary hand of state in an eight-hour law.” Without revealing which groups faced such deplorable conditions that they might actually need such state help, Hecke asserted that these “Oriental” laborers “would no doubt thrive better under any enactment that would further deplete the farm of its white help....”31

Retaining the racist world-view as he turned his attention to agriculture, Hecke noted that “[t]he white man’s burden is carried more patiently by the farmers than by any other calling, but when the last straw is added something will break.” In this case the straw was the ban on overtime work, which, he admitted, would not apply to family members, but “[o]vertime work is imperative in the packing and shipping of perishable fruits to market.... There is no other way of getting the work done under the prevailing condition of the labor supply.”32 The parade of horribles reached its lowest point when Hecke contended that farm owners would be induced to lease to “alien ‘partnerships’ which could evade...the law” since the partners would be owners and not employees. But neither “American working men...nor...the allied types of German, English or Scandinavian” workers would

31Hecke, “The Standpoint of the Farmer” at 432.
32Hecke, “The Standpoint of the Farmer” at 433.
combine into partnerships, whereas “the Oriental” and southern European would.” In any event, “California agriculturalists...do not propose to submit to any arbitrary system that will necessitate an army of delegates to police the rural homes and parcel out the time,” and by defeating the initiative, the citizens would leave to them “the God-given right to use their time as may seem best to them for their own good....”

James Mullen, the editor of the *Labor Clarion* was then called on to discuss the proposed law’s economic and social aspects. He stressed that proponents of the initiative wished to discourage and penalize “systematic overtime” because of its injurious effects, whereas employers “generally favor the overtime privilege notwithstanding its higher cost or attendant lessening of efficiency.” Offering a more differentiated analysis than the other debaters—though, to be sure, at times he misleadingly conflated labor unions’ achievement of the “eight-hour system” with their abolition of overtime work—Mullen pointed out that since women and children were already covered by an eight-hour law and skilled men seldom favored legal enactments to obtain what they could achieve through their organizations, the focus had to be industries employing unskilled nonunion men such as farming, commerce, transportation, office work, personal services, the food and wine industry, and factories. In many of these industries it was impossible to assume that reduced hours would compensate employers by increasing output through increased efficiency; it would thus be necessary to employ more workers to produce the same output. Employers regarded this admission as fatal to the proposal, but in fact “on this admitted and uncontested fact, the best and strongest argument for the law is to be based. For our argument is, that modern conditions of society have developed to that stage of efficiency of production and saturation of economic activity that a general reduction in the normal workday seems to be the only social means of sustaining the general welfare of all its citizens....” It was the “evil of unemployment” that was driving the shorter hours movement, which, if it furnished the cure, would be “socially justified and the accompanying hardships or mal-adjustment that may result in individual cases, can have but little consideration in the eyes of those who recognize that heroic treatment is necessary....” Mullen’s overly optimistic prognosis was especially poignantly visible in his seemingly plausible claim, unfulfilled even 90 years later, that: “The time has gone by when farm operators may be exempted from all statutes for the social

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33Hecke, “The Standpoint of the Farmer” at 436-37.
35Mullen, “The Standpoint of the Workman” at 440.
and economic advancement of labor. Work on the farm must become as remunerative and attractive as in the factory, if the farmers as a class are not to be placed outside the pale of modern progress.  

Finally, Charles Bentley presented manufacturers' view, arguing that, since most vocations in California were already on a general eight-hour day, the real question for debate was stripped down to that of permitting overtime work with pay and the further question of creating an exception for peculiar conditions on farms. Bentley correctly observed that “[t]he object of the law is apparently to require employers to provide help enough to care for the work in the eight-hour period, and that if further work is necessary, it must be so arranged as to run two or three shifts....” The problem with this approach was rooted in a shortage of labor, which meant that since full day shifts could not be secured, night shifts were “out of the question.” Moreover, apart from the impossibility of performing most farm work by artificial light, Bentley was able to impale proponents on their own logic by noting that: “as the motive of this proposed legislation is presumably for the physical, moral and social welfare of the employed, careful consideration and experience force one to the conclusion that night shifts do not conserve these desirable conditions.” Not content to confine himself to raising this important unintended practical consequence, Bentley could not resist veering off into an ideological sermon on how “the evils of improvidence are even greater” than those of overwork: “To deprive our youth and manhood of the opportunity for extra reward by extra industry is very likely to give habits of idleness and unthriftiness, leading to the tragic despair of impoverished old age.” While not denying the need “to secure for the laborer some leisure,” he insisted that once wages rose above subsistence level, it was questionable whether a reduction in working hours was desirable. After all: “Men who get on in the world, whether they be laborers, merchants, manufacturers, doctors, journalists or lawyers, do not as a rule restrict themselves to eight hours of labor, even when their income may permit.”

In reply, Mullen, while failing to address the issue of night-shift work as a consequence of a strict eight-hour day, sought to stress that wage workers did not desire overtime pay because they wanted the money. On the contrary: “There is no labor organization that I know of that does not penalize overtime for the sole purpose of preventing the employer from forcing the employee to work overtime.”

37Mullen, “The Standpoint of the Workman” at 442.
39Bentley, “The Standpoint of the Manufacturer” at 447.
40Bentley, “The Standpoint of the Manufacturer” at 448.
41Bentley, “The Standpoint of the Manufacturer” at 451.
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As an example he adduced the International Typographical Union, which prohibited members from working more than six days per week where a substitute could be found; if a member worked more than six days because of inability to obtain a substitute or if his overtime work amounted to a day in hours, he was required to give the first available substitute such accumulated day or days.42

Two months later, with two months to go before the election, the state Attorney General Webb issued an opinion to the Progressive Governor Hiram Johnson43 on the constitutionality of the eight-hour law initiative measure.44 Before reaching that question, however, the attorney general presented a sociological perspective:

No one can contend that any one man or woman can work continuously twenty-four hours in a day without injury to his health and resultant harm to the state. No one would contend that the state may not prohibit the employment of man or woman for such period as would affect [sic] such injury to the state. That there must be a cessation for labor for some period less than twenty-four hours, both as to man and woman, must be admitted by all. For how long in any one day or in any week such cessation shall be, in other words how long in any one day or in one week one may labor without the resultant injury to the individual and to the state is the question in dispute. This question, however, it is submitted is a question of fact to be resolved from the experience of mankind, to be determined as an economic question and not as a judicial one. ... In view of the fact that many persons throughout this and other countries deem that eight hours is a sufficient time for labor in any one day by man or woman, in view of the fact that this opinion is held by many public writers and men of public affairs, and individuals the world over, it cannot be said that the requirement of eight hours labor only in one day is an unreasonable limitation upon the individual's liberty. Neither is it a judicial question for the determination of a court.45

However, the attorney general deemed it "idle" to discuss the economic viewpoint any further since the United States and California Supreme Courts "have been unwilling to sanction legislation which has for its object the limiting of the hours of individuals, unless that limitation is restricted to some class or occupation
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wherein the limitation has some bearing in the eyes of the Court upon the health or general welfare of the public, and that heretofore those Courts have not found that such limitation has such bearing when addressed generally to all individuals irrespective of sex or occupation.” Since the California initiative was unprece-dented, it is unclear to what cases Webb was alluding, but he nevertheless con-cluded that the measure would be unconstitutional.46

If this opinion alleviated employers’ anxiety, it did not appear to diminish their vigorous agitation and propaganda against the initiative,47 which became especially intense about one month before the election on November 3 and was heavily supported by almost daily articles in the state’s two major newspapers, the Los Angeles Times (which under Harrison Gray Otis spearheaded the antiunion move-ment in Los Angeles)48 and the San Francisco Chronicle (a conservative Republic-an antiunion paper).49 Thomas W. Williams, the state secretary of the Socialist Party of California said of “the opposition to the eight hour bill, and articles in the capitalist papers” that the Merchants and Manufacturers Association (Otis’s ally in the open-shop movement)50 was

the inspiration back of the opposition. They are furnishing the sinews of war. ... They have organized a “Farmers and Fruitgrowers Association” and are centering their attack on the injury that the passage of this bill would inflict on the agriculturalists. Necessarily they are resorting to falsehood and misrepresentation. They are playing upon the prejudices of the farmers and frightening the workers.

The power of the Merchants and Manufacturers is so far-reaching that they have frightened the country newspapers into refusing any of our matter, and of course the big dailies are afraid to give us audience, the big merchants using their power of coercion.

Organized labor has helped us somewhat, altho it is difficult to get the leaders to appreciate the necessity of heroic action. The labor councils of Alameda County have invited [AFL President Samuel] Gompers to make a tour of the Pacific Coast states in


47Despite its unconstitutionality, the Los Angeles Times urged that “there is every need for added effort in behalf of the defeat of the law....” “What’s the Use? Could Never Enforce an Eight-Hour Law,” LAT Oct. 29, 1914 pt II (3:1) (editorial).


favor of the law. I do not know with what results.51

A member of the Socialist Party observed that the Merchants and Manufacturers Association of Los Angeles’s “stuff is now filling the columns of every daily and weekly publication outside of the socialist press, on the Pacific Coast; is simply a flood, a complete inundation of the public press with lies, sophistry, and hypocritical cant, and if that kind of a campaign can win, then the eight hour law is doomed. Our own and the labor press is totally inadequate to meet the situation.”52 The California State Federation of Labor agreed that agents of the Merchants, Manufacturers, and Employers Association’s and the newly organized Farmers’ Protective League were conducting a campaign of misrepresentation among the small farmers as to the amendment’s effect, which would “without doubt defeat the measure unless affected by logical argument” by supporters. Its annual convention therefore passed a resolution authorizing the incoming executive board to expend a reasonable amount of funds on literature contradicting the opponents’ false and malicious statements.53

The reporting in the Chronicle and the Times was so blatantly propagandistic that it merged with the numerous negative editorials on the initiative. For example, in early October, a Chronicle article celebrated that: “More than 50,000 farmers, members of the Farmers’ Protective League of California, are demanding the overwhelming defeat” of the measure and praised “the astonishing growth” of an organization that had been launched on June 4. The piece ended with the implausible allegation, misleadingly phrased as an indirect quotation, that Socialist Party state secretary Thomas Williams “rejoices that the proposed law will increase the cost of living and tend to abolish all profits.”54 Two weeks later the Chronicle falsely claimed that the proposed law “makes absolutely no exceptions. When a person has worked eight hours he must stop or his employer will go to jail. The law would mercifully excuse the really guilty party from any penalty.” In case any readers had failed to recognize to what horrors the actual eight-hour day was


53Proceedings of the Fifteenth Annual Convention of the California State Federation of Labor Held at Moose Hall, Stockton, California October 5 to 9, 1914, at 31.

merely the prelude, the editorial added that some of these "would-be destroyers of society...are bold enough to say that this is only the beginning of what they intend to do to us."\(^{55}\)

Not to be outdone in the yellowness of its journalism, the Los Angeles Times, whose coverage focused on Southern California, trumpeted under the headline, "Women War on Eight-Hour Law," that Los Angeles clubwomen were preparing to vote almost unanimously against the universal eight-hour day measure fathered by the Socialist Party: "Unrelenting in its opposition to the measure, the Farmers' and Fruit Growers' Association, representing more than 15,000 ranchers in Southern California alone, is now engaged in making a canvass among the women's clubs south of the Tehachepi, the results of which, so far returned, indicate that the Socialist measure will have little or no measure from that quarter." As one of the clubwomen succinctly put it: "Nature does not recognize the eight-hour law."\(^{56}\)

As part of the capitalist press's mission of disorienting workers, the Times reported that the Commercial and Industrial League had issued a general warning to all the employees of its members against the probable effects of passage of the universal eight-hour law: "'By passing this law you will be conspiring to overcrowd nearly every one of your trades and occupations...for coincident with announcement that an eight-hour day is compulsory in California will go forth the news that there is room for an army of workers one-third the size of that already here, and so will all the work your unions...have done to keen [sic] out superfluous labor be undone. Those of you who are buying your homes will soon find that you are being underbid on your wages by the members of the industrial army which will flock here from everywhere....'" Moreover, if crowded out of their present job, workers would not be able to get work on farms "'because the citrus industry cannot stand the imposition of this law without employing Japanese and Hindus and Mexicans, who can work on "a partnership basis," and so evade compliance with this eight-hour law.'"\(^{57}\)

Without citing a single source or example, the Times, which called the proposal "utterly and inconceivably absurd,"\(^{58}\) claimed: "Strenuous opposition to the Socialist 'universal eight-hour law' has developed within the ranks of organized labor. Ostensibly planned for labor's benefit, labor men are coming to realize that the law, as drawn,...is no less a menace to themselves than to their employers."

\(^{57}\)"It Would Crowd Out Workers Themselves," LAT, Oct. 15, 1914, pt. II (1:3-4).
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Labor's chief objection to this proposed legislation was that it would end the overtime system, "a device of the unions themselves." Workers' "earnings capacities would be largely impaired by this Socialistic measure which denies to the labor the right to sell in [sic] open market his labor for the best price and under the best terms he can get for it...." The newspaper also took at face value the Farmers' and Fruit Growers' Federation report of growing opposition among field workers. Remarkably, when the FFGF was "coming into the metropolis to make a face to face appeal to its citizens for support in their fight against a measure, which, if adopted, they say will mean the virtual destruction of agricultural interests all over the State," it issued a statement conceding that, despite the destructive impact on farming, "'[t]here may be industrial lines in which such a law might serve a good purpose, but on the farm it would prove destructive....'" Nevertheless, a few days later, this softer line had evaporated as the Times quoted a state senator urging: "'Don't, above all, allow persons to believe that the eight-hour law has even the seeds of humanitarianism in it.... It is a plain revolutionary, Socialistic measure....'"

As election day neared, the press became more insistent and specific in its mission of instructing the public. The Chronicle, in printing the position of the Chamber of Commerce, advised readers to vote against the eight-hour amendment on the grounds that it would reduce wages, prohibit overtime, and "place an absolute limit on man's earning capacity.... No country has so drastic a law on its statute books.'" The editorial the next day, the Sunday before the election, transcended all of its previous ideological exaggerations and non sequiturs:

- A mistake has been made in basing the main opposition to this law on the injury to farmers. It will be comparatively easy for farmers to evade the law by leasing their land to co-operative associations of Asiatics.

And they will do it to the extent that Asiatics are available, and if there are not enough there is a danger that the farmers' vote will reverse the sentiment of the State on that

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59 "Proposed Law Splits Unions," LAT, Oct. 16, 1914 (pt. II, 6:4). The paper also reported that employees of 12 trades including cigar makers and printers had delegated committees to spend three hours each evening telephoning all industrial workers in their occupations to urge them to vote No. "Ask City Folks to Defeat Law," LAT, Oct. 28, 1914 (pt. II, 2:5, 5:2).

60 "Here to Fight Ruinous Law," LAT, Oct. 17, 1914 (pt II, 3:1). The FFGF's assertion that "'[a]n identical measure was overwhelmingly defeated when introduced in the Legislature at its last session,'" was incorrect since the bill had not covered farming and lacked emergency clause.


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The greatest danger is to the householders and working men engaged in the industries. [T]he affairs of the households employing help cannot be turned over to co-operative associations. Such a law, if its enactment were possible, would break up a multitude of families who would be driven into apartment life. Of course, all would leave the State who could.

The proposed eight-hour law is an emanation of the infernal spirit of hatred which permeates a considerable element of our population and which is bent on the destruction of confiscation of all property, the suppression of personal liberty and enterprise, and the institution of a government of loafers, by loafers and for loafers.63

The final editorial blast on the Sunday before the election in the Times, which delighted in calling the eight-hour initiative "this Socialistic freak,"64 was also suffused with rhetorical flights of fancy:

It is part of the punishment of a convict in a penitentiary that he cannot choose his own time for work and rest. By the proposed eight-hour law on the ballot...and the Sunday law..., it is designed to rank the working men and women of this State with thieves and assassins in that it prescribes the number of hours in which they will be permitted to work and fixes one day in the week in which they must absolutely abstain from work. ...

The proposed eight-hour and the proposed "Sunday rest law" are invasions of individual freedom and would establish a slavery as unendurable to free men as that which the nation abolished fifty years ago.65

In contrast, the report the same day about "a bevy of pretty costumed packing-house girls invad[ing] Los Angeles, campaigning for votes" noted that one of the main arguments of these citrus-belt "girls whirl[ing] through the city, tossing broadcast handbills pleading their cause" was that the elimination of overtime pay would "cost[] tens of thousands part of their incomes."66 Unlike the editors, who specialized in ideological hectoring, the citrus capitalists were articulating a most practical consideration that, by the beginning of the 21st century, when the question of absolute limits on working hours had long since been decided in employers' favor, constituted virtually the only argument that the labor movement could muster against congressional and federal regulatory proposals to restrict overtime—namely, that many workers' standard of living had come to depend on

65"Vote Against the Two Eight-Hour Propositions," LAT, Nov. 1, 1914 (pt. II, 10:7-8).
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premium overtime pay.\textsuperscript{67}

Williams, signing as the Socialist Party's state secretary, also wrote the quasi-official argument in favor of the initiative that was published in the election booklet sent to the electorate. The \textit{Chronicle}, which in a non-editorial article headlined "Progressive Fads Boost Election Costs," deemed much of the proposed direct legislation "vicious, fanatical and demagogic," thundered that the 1,800,000 amendment booklets, which cost $144,000 to print and distribute, contained "148,000 words of technical laws and arguments for and against" which the voter was supposed to digest and pass upon in the one or two weeks before the election.\textsuperscript{68}

In an editorial published the same day, the \textit{Chronicle} complained that, outside of newspaper offices, no voter had seen the 112-page election pamphlet and that "we doubt whether there are a thousand voters of the State who know a thing about any of" the 48 measures on the ballot except for two (not identified), being energetically discussed: "Never on earth before was there such a travesty on legislation."\textsuperscript{69}

Williams focused on the measure's impact on unemployment and leisure:

An eight hour day means an increased demand for men. It relieves the unemployment pressure. Under a long hour day some men work while others are idle. Enforced idleness is not leisure. Idleness will impoverish, degrade and dwarf. Leisure will enrich and elevate character. It will give workers opportunity for study and organization. More idlers working, more workers thinking. ...

The eight hour day conserves the health of the worker, and extends the working period of his life.\textsuperscript{70}

Williams also contended that the eight-hour day would not reduce wages because workers were not paid according to what they produced, but according to law of supply and demand, which would discourage the import of cheap labor and

\textsuperscript{67}For example, according to AFL-CIO President John Sweeney: "[T]he Republican leadership finally realized that not all of their members would blindly go along with unraveling the basic right to overtime pay, which could literally take billions out of the paychecks of working families." "Supporters Vow to Continue Fight to Pass Plan to Revise Comp Time," \textit{LRR} 172:259 (June 16, 2002). See also below chs. 16-17.


\textsuperscript{70}Secretary of State, \textit{Amendments to Constitution and Proposed Statutes with Arguments Respecting the Same To Be Submitted to the Electors of the State of California at the General Election on Tuesday, November 3, 1914}, at 58 (1914).
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“prevent the employing class from manipulating the labor market when it shall have become flooded by immigration through the Panama canal. Employers of labor in this state are planning to abolish the eight hour day. It rests with the voters to decide whether the standard of living in California shall be reduced to the level of southern Europe.” In contrast: “All the arguments against this measure resolve themselves into this one—it will encroach on the profits of the exploiters of labor.”

Hecke presented the argument against the eight-hour law to the electors, which largely covered the same ground he had outlined in the debate at the Commonwealth Club. This time he pithily added that the measure “substitutes rigid rule of law for reasonable liberty of action. It prohibits ‘overtime’ by which employees and employers divide the burdens of emergency by co-operation.”

At the election the initiative measure (Proposition 3), which the FFGF on the eve of the vote accurately characterized as “the most sweeping and drastic measure of its kind ever submitted to vote anywhere in America,” was defeated by a vote of 282,692 (33.5 percent) to 560,881 (66.5 percent), losing in every county. In the three counties with approximately half of the state’s total registered voters, Alameda (Oakland), Los Angeles, and San Francisco, in which “the farmers maintain[ed] that they must get a big vote...against the measure if the agricultural interests...are to be preserved from the menace which confronts them,” the vote was 29,080 to 50,884, 74,583 to 133,704, and 49,629 to 70,909, respectively. Thus in the three largest cities, which accounted for 54.2 percent of all yes votes and 45.6 percent of all no votes, 37.5 percent of the voters supported the measure (the highest proportion, 41.2 percent, being attained in San Francisco). The closest

71Secretary of State, Amendments to Constitution and Proposed Statutes with Arguments Respecting the Same at 58.
72Secretary of State, Amendments to Constitution and Proposed Statutes with Arguments Respecting the Same at 58-59.
73“A Final Appeal for Fair Play,” LAT, Nov. 2, 1914 (pt. II, 2:4). However, its further claim that “all existing State laws permit employers to pay extra wages for voluntary overtime” was untrue since some women’s laws and almost all men’s laws did not; its use, moreover, of “voluntary” was misleading at best. Of 26 states with eight-hour laws for government work, 22 permitted overtime only in (extraordinary) emergencies or to protect life or property, while the other four specified nothing. None of the women’s hours laws had emergency clauses and almost all had more permissive clauses. Most laws governing men’s hours in special industries had emergency clauses. Marion Cahill, Shorter Hours: A Study of the Movement Since the Civil War 263-81 (1932).
74Secretary of State, Statement of Vote at General Election held on November 3, 1914 in the State of California 42 (1914).
vote was counted in Contra Costa County (in the Bay Area), where 47.5 percent of the voters said Yes.\textsuperscript{76} The eight-hour measure received the largest total vote and by far the largest No vote of any proposition.\textsuperscript{77} Although the following day the \textit{Chronicle} prematurely understated the breadth of the defeat in observing that the south and the big farmers' vote opposed it,\textsuperscript{78} that a radical Socialist Party measure abolishing both mandatory and voluntary overtime work (except in extraordinary emergencies) secured one-third of the total vote in spite of a massive capitalist media campaign\textsuperscript{79} was no mean feat.\textsuperscript{80}

Little wonder that by the time the election returns were posted at the end of 1914 the \textit{Commercial and Financial Chronicle} opined of the initiative system: "This thing has been as a sort of new toy offered to children, but its attraction of novelty appears to have failed. The...indications are that the people are tired of it."\textsuperscript{81}

Undeterred by the two to one defeat of the eight-hour initiative two months earlier, in January 1915 one of the two Socialists in the California State Assembly introduced a no-overtime eight-hour bill similar to the one that the Assembly had voted down in 1913.\textsuperscript{82} However, despite the fact the bill sought to neutralize agricultural opposition by excepting the harvesting, curing, canning, or drying of any variety of perishable fruit or vegetables (as well as graduate nurses in

\textsuperscript{76}Secretary of State, \textit{Statement of Vote at General Election held on November 3, 1914 in the State of California} at 42.

\textsuperscript{77}Key and Crouch, \textit{The Initiative and Referendum in California}, tab. 3 at 475. See also "Direct Legislation," \textit{CSJ} 28(15):6 (Dec. 23, 1914).

\textsuperscript{78}"Johnson Winner; Eight Hour Law and Drys Beaten," \textit{SFC}, Nov. 4, 1914 (1:5).

\textsuperscript{79}To be sure, according to those very media, alone in one week in late October the Socialists had sent out one million pieces of literature on the measure. "Say Worst Is Yet to Come," \textit{LT}, Oct. 22, 1914, pt. II (1:3, 2:6).

\textsuperscript{80}But see Cahill, \textit{Shorter Hours} at 132-33, who opined that the fact that the initiatives in California and Washington had been rejected 2-1 was "apparent proof that public opinion either did not approve of the eight-hour principle, or did not approve of it by the legislative method."

\textsuperscript{81}"Direct Legislation on the Decline," \textit{CFC}, xcix:1632-3 at 1633 (Dec. 5, 1914) (mentioning Washington and Oregon but not California or the eight-hour campaigns).

\textsuperscript{82}Lewis Spengler, a merchant from Los Angeles, introduced the bill. \textit{California Legislature—Forty-First Session, 1915: Final Calendar Legislative Business} 455.
hospitals), the Committee on Labor and Capital recommended against passage and the Assembly as a whole refused passage by a more decisive vote of 19 to 43. Although the Socialists remained unfazed, in the aftermath of this reverse, the State Federation of Labor ceased supporting such legislation.

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Oregon

"[F]lexibility of hours"...seems to be a term that is generally current throughout these hearings. I should like to ask whether flexibility of hours just includes where an employer asks a man to throw in gratis any additional work required, or whether it also includes on a hot day like this, when a fellow would rather go fishing, whether he would be excused without being paid for it, or be paid for it. In other words, if there is such a thing as flexibility of hours it should work both ways.

Unlike California, Oregon adopted the initiative process in 1902 before the surge of the Progressive movement. Then in 1911 the Progressives gained control of both houses of the legislature and in 1913 were able to enact much important labor legislation governing working hours on government works and in manufacturing. During the intervening decade, however, the initiative process

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83 Assembly Bill No. 98, § 1. Jan. 11, 1915
84 Journal of the Assembly During the Forty-First Session of the Legislature of California: 1915, at 894 (Mar. 30), 1116 (Apr. 6).
87 Ellis, Democratic Delusions at 32, 186. See also Joseph LaPalombara, The Initiative and Referendum in Oregon: 1938-1948, at 1-11 (1950); Piott, Giving Voters a Voice at 32-50. The initiative and referendum were adopted as Art. IV, § 1 of the Oregon Constitution, the language of which strongly resembled that used in California, which was presumably borrowed from its neighbor.
88 Ellis, Democratic Delusions at 181. The hybrid maximum hours-overtime pay law
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had constituted an “unused right, which has been a disregarded privilege of the socialists of Oregon....” But by October 1913, initiative measures had become “the most important work of the socialist party of Oregon or any other state having the initiative right of legislation.” In this practical way, “the socialist party will be given a practical standing as a political party, seeking legislation rather than notoriety in nominations for office.”

The Universal Constitutional Eight Hour Day Amendment, initiated by authority of Mrs Jean Bennett on behalf of Universal Eight Hour League, which was filed on Oct. 30, 1913, would have added a section 9 to Art XV of the state constitution making it a criminal offense for any person, firm, corporation or his or its foreman, manager, or agent to employ any man, woman, boy or girl more than 8 hours in a calendar day or 48 hours in a calendar week, whereby the eight hours had to be confined to nine consecutive hours, allowing one hour for eating and rest, which nine hours had to be identical for each and every calendar day and week. The measure applied to every person employed for pay, remuneration, profit, or compensation of any kind in and around each and every farm, hospital, canning or packing plant, factory, lumber yard, logging camp, sawmill, railway, telephone and telegraph, engineering, mechanical, mercantile, mining, foundry, iron, and machine work, to laborers, domestics, artisans, mechanics and tradesmen in the building trades, office, store, barber shop, garage, workshop, wharf, cafe, club, restaurant, hotel, and laundry. Neither the professions, nor children, nor relatives of employers or their agents were exempt:

The only exemptions allowed...under this law...shall be in case of accident, breakdown, fire, flood, or storm; when in such cases, it shall be legal for any employer, his, or her agents, to employ their help for more than eight hours in one calendar day; provided, however, that, for each additional hour, or fraction thereof, such help shall receive twice their usual remuneration for each additional hour, or fraction thereof.

Enforcement was made even more stringent than the substance—which was more rigorous than the contemporaneous measures in California and Washington—inasmuch as failure by the Labor Commissioner to enforce without delay each and

limited work to 10 hours plus an additional three hours if paid at time and a half. 1913 Or. Laws ch. 102, § 3 at 169.


90Art. XV was entitled “Miscellaneous”; § 8 prohibited any “Chinaman” not resident in Oregon at the time of the adoption of the state Constitution from ever holding real estate or a mining claim.
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every provision of this law and to prosecute each and every violation without delay “shall make it mandatory for the Governor...to dismiss said Labor Commissioner.” Violations were subject to punishment by a fine of between $100 and $1000 or imprisonment of between 30 days and one year in jail, or both.\textsuperscript{91}

The state-provided election booklet included a brief negative argument by the Non-Partisan League, which was confined exclusively to criticizing the measure’s impact on agriculture. It contended that alone the fact that the bill covered farm hands and household servants showed it to be impracticable: farm work was impossible to limit to eight hours. Moreover: “The average farmer today is not amassing any fabulous fortunes and if he has to put in two shifts of men to harvest his crops it will put the farmer absolutely out of business. No matter what or how many laws we may pass, we cannot change the fact that crops ripen and have to be gathered in a very small portion of the entire year and unless everybody works early and late without much regard to hours, the crops will be damaged, if not lost.” The farmer had difficulty finding enough farm hands as it was for harvest; if he could get twice as many, “what would these extra hands do during the rest of the year. We don’t need any additional army to take care of during the winter.”\textsuperscript{92}

On November 3, Measure No. 320-321, the Universal Constitutional Eight-Hour Day Amendment was defeated more decisively than in neighboring California by a vote of 49,360 (22.7 percent) to 167,888 (77.3 percent). The proposal lost in all 34 counties; even in Multnomah County (Portland) it was defeated 20,468 (30.5 percent) to 46,686 (69.5 percent).\textsuperscript{93}

\textbf{Washington}

Some industrial nations absolutely have a prohibition on working beyond so many hours a week, and I think rightfully so, but this is too inflexible....\textsuperscript{94}

\begin{flushright}
691 State of Oregon, Secretary of State, \textit{Proposed Constitutional Amendments and Measures with Arguments Respecting the Same to Be Submitted to the Electors of the State of Oregon at the General Election Tuesday, November 3, 1914, at 27-28 (n.d. [1914]).}


693 [Oregon] Secretary of State, \textit{Abstract of Votes: Cast in the Several Counties of the State of Oregon at the General Election held on the Third Day of November, A.D. 1914 (Dec. 3, 1914) [n.p. unpagedinated 6x10 pamphlet].}

\end{flushright}
In early 1913, a bill was introduced in the Washington State Assembly making it "unlawful for any person, corporation, or joint stock association to cause, require or permit any employe to work more than eight hours during any day of twenty-four hours: Provided, however, That the provisions of this act shall not prohibit persons engaged in harvesting, packing, curing, canning or drying any perishable product from working employes ten hours during any day of twenty-four hours, if such employe is paid double time for such extra hours of labor." Violations constituted gross misdemeanors. Thus for the non-agricultural sector the bill would have permitted no deviations at all from the eight-hour day—not even for emergencies; and even in agriculture, the maximum workday was 10 hours for 11 hours of pay.

Remarkably, this radical proposal had not been introduced by a Socialist or leftist of any sort; on the contrary:

This bill was introduced into the legislature by Representative Grass, a stand-pat Republican from King County. Mr. Grass had no intention or desire of this bill becoming a law. He introduced it merely [crossed through by hand] purely as a retaliative measure. The State Grange had been very active in assisting the Federation of Labor in the passage of labor legislation, especially in securing the passage of a bill providing for an amendment to the constitution by the initiative of the people. This made some of the stand-patters very angry with the Grange and they wanted to get something with which to chastise the farmers, and they thought that a universal eight hour day would make the farmers squeal as quick as anything, so they drew up the bill, and had Representative Grange present it to the legislature. They soon found that the grange [sic] was in favor of an eight hour gate to gate law so they got busy and had the bill killed in the committee.

This account was written by in July 1913 W. H. Kingery, the first socialist elected to the Washington State legislature, in response to a request by the Party’s Information Department in Chicago for an “abstract of the Socialist’s work” in the legislature. Kingery declared that at the 1914 election he “will have the universal eight hour law that was before the legislature presented to the people for their approval or rejection under the new initiative and referendum law that we passed at the last session....” After Grass’s bill had been killed, Kingery “picked up the

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97 Letter from Kingery to Thompson at 1-3. The voters approved the measure in 1912 and it was added to the state constitution amending Art. II, § 1. The initiative petition had
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cue" and circulated a petition for which he obtained 30,000 signatures. He took no action on the matter in the legislature, but planned to file the proposed eight-hour law with the secretary of state in January: "If the Socialist party will give me the proper support in the campaign for the passage of this law, we are sure to place the State of Washington on the eight hour law basis in the election of 1914." Kingery admitted that the proposed law was "a reform measure, but I sincerely hope and trust that the secretary and executive committee of the Washington Socialist Party, [sic] will at least surrender enough of their impossibilism to give me the support of the state office in the passage of this eight hour law." Although no one realized the futility of reform more than Kingery, he could not agree with his impossibilist comrades in their bitterness toward helping evolutionary social forces.98

More than four months before the election, The New York Times, which otherwise ignored the eight-hour campaigns on the West Coast, published an editorial, largely based on material in Pacific Coast newspapers, attacking both the initiative process and the substance of the proposal in Washington:

Some of the by-products of direct legislation are not altogether lovely. ...

One of the initiative bills now being circulated for signatures in Washington applies the penalties of the eight-hour law to all employers, including the farmer and the housekeeper.... Under it the farm hand or housemaid cannot relieve his or her employer from the penalty even if he or she wishes to do so. It may be said that this is not a fair example of the sort of legislation that is enacted under the initiative and referendum; but, as The Tacoma Ledger points out, if each voter does not scrutinize every one of the propositions submitted to him such an insane measure as this may slip through.99

The initiative, which was backed by the State Federation of Labor,100 provided:

It shall be unlawful for any person, persons, corporation, company or joint stock association to cause, require or permit any male or female employee in his, her or its employ to work more than eight hours during any day of twenty-four hours nor more than forty-eight hours during any week of seven days, except that in agricultural labor an additional two hours per day may be allowed for work which is unavoidably and necessarily incidental to farm management.

Provided, however: That in case of extraordinary emergency, such as danger to life

98Letter from Kingery to Thompson at 3-5.
100Piott, Giving Voters a Voice at 195.
or property, or where such eight-hour limit would unavoidably and necessarily prevent other workers in the same mine, mill, factory or other industrial unit from working the full eight-hour day the hours for work may be further extended, but in such cases the rate of pay for time employed in excess of eight hours of each calendar day shall be one and one-half the rate of pay allowed for the same amount of time during eight hours service.101

The measure thus permitted 10-hour days in agriculture (without overtime pay) and work beyond eight hours in industry in extraordinary emergencies at time and a half. Violations were subject to fines of 10 to 100 dollars.102

The secretary of state printed two arguments against the initiative in its election Pamphlet. According to the Farmers’ Education and Cooperative Union of America for the Counties of Walla Walla, Colombia and Garfield, farming could not be conducted under the handicap of six eight-hour days: “[N]o matter what wages the farmer may offer to save threatened disaster to his crop or how willing the laborer may be to earn the extra money, this law prevents it....” More fancifully, the group complained that: “This provision might necessitate the presence in the field of a competent witness, provided with a stop-watch, to protect the farmer from the extortion or blackmail of a disgruntled crew.”103 The United Metal Trades Association, Pacific Coast Loggers Association, and Washington State Fisheries were even more dramatic in their predictions of doom: “The compulsory 8-Hour Day Law will destroy our present manufacturing, commercial, domestic and social systems.” These organizations both posed rhetorical questions as to whether an employer could pay a “living salary” to workers whose “efforts are confined to 8 hours in any one day...or 48 hours in any one week....” On the contrary: “The certain result” of the initiative measure “would be that the employee’s earning power would by law be reduced by 20 per cent and his living expenses increased in a like ratio.” And just in case these arguments failed to make the desired impression, these employer groups brought the message literally home: “Mrs. Housewife, can you arrange your domestic affairs so as to permit your help to work only 8 hours...? Who will cook, take care of the house and children on the 7th day, or can you hire two girls where you are now using one and pay

101Secretary of State, State of Washington, A Pamphlet Containing a Copy of All Measures “Proposed by Initiative Petition,” Proposed to the People by the Legislature,” and “Amendment to the Constitution Proposed by the Legislature”: To Be Submitted to the Legal Voters of the State of Washington for Their Approval or Rejection at the General Election to be held on Tuesday, Nov. 3, 1914 , at 87-88 (n.d.)

102Secretary of State, State of Washington, A Pamphlet Containing a Copy of All Measures “Proposed by Initiative Petition” at 88.

103Secretary of State, State of Washington, A Pamphlet Containing a Copy of All Measures “Proposed by Initiative Petition” at 89.
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them a living wage?" 104

Support for the eight-hour measure in Washington was somewhat stronger than in California and Oregon: 35.8 percent or 118,881 of 331,816 voters said Yes and the proposal actually prevailed in two counties—Kitsap (across Puget Sound from Seattle), where it won 3,259 to 2,435, and Clallam (on the northwestern coast), where it won 1399 to 1338. Although the initiative lost in King County (Seattle), it nevertheless gained 33,724 votes or 42.5% of the total cast there. 105 As had also been the case in California, however, the eight-hour proposed received more No votes than any other initiative. 106

The Dispute Between the Socialists and the Gompers Leadership of the American Federation of Labor Over Eight-Hours Laws

Q. [Sen. Wilkinson Call, Dem. FL] Let me see if I understand your idea about this eight-hour law. I understand that...you propose a rule of action by which shall be prohibited the exaction of more than eight hours of labor daily of any one man. Now, suppose the man wants to work more than eight hours, would you favor a law prohibiting it?—A. [Samuel Gompers] No; I would not favor such a law. I believe that the regulation of that would easily evolve out of the organized efforts of labor and the means that would be taken to agitate the question and educate the workers to understand that it would be to their benefit, to their lasting benefit, to abstain from more than eight hours’ work. 107

The national press failed to pay close attention to the eight-hour initiative movement on the Pacific Coast 108 despite the fact that that campaign was tightly

104 Secretary of State, State of Washington, A Pamphlet Containing a Copy of All Measures “Proposed by Initiative Petition” at 90.
105 State of Washington, Department of State, First Biennial Report: Election Division 56 (1914).
106 State of Washington, Department of State, First Biennial Report: Election Division at 65.
107 Report of the Committee [on Education and Labor] of the Senate upon the Relations of Labor and Capital, and Testimony Taken by the Committee 1:300 (1885 [Aug. 16, 1883]).
108 The Bulletin of the Public Affairs Information Service 114-15 (1915) at least reported the vote in the three states. Two years later, when The New York Times was attacking the eight-hour basic day imposed by the Adamson Act, the paper found it opportune to quote the socialist Milwaukee Leader on the defeat of the three initiatives in
bound up with a sharp debate within the American Federation of Labor between Socialists and the Gompers leadership over the appropriateness of government regulation of the working hours of adult men in private employment. The immediate source of the controversy was created by a decision that the AFL made at its November 1913 convention at Seattle. A Painters union delegate proposed a resolution to push for the six-hour day in order to deal with unemployment caused by machinery. Although the secretary of the Committee on Shorter Hours, Paul Scharrenberg, who came from the California State Federation of Labor, expressed the committee's sympathy with the proposal, it believed that first the eight-hour day had to be universalized by inaugurating three eight-hour shifts in continuous industries and by limiting women's and children's to eight and 48 hours. The committee then added the sentence that launched the dispute: "Where women's eight-hour laws already exist an agitation should immediately begin for the enactment of general eight-hour laws." The convention adopted this recommendation.109

Before the AFL convened again, Gompers and the Socialists had an opportunity to debate the question of the achievement of the eight-hour day in a larger public forum. In May 1914 the U.S. Commission on Industrial Relations devoted several hearings to labor organizations at which representatives of the AFL, the Socialist Party, and the International Workers of the World testified and questioned one another. On May 22 a historically important mutual interrogation took place between Gompers and Morris Hillquit, one of the Socialist Party leaders.110 Expressing his suspicions of governmental activities, Gompers declared that the AFL "has some apprehensions as to the placing of additional powers in the hands of Government which may work to the detriment of working people, and

1914. It is unclear what empirical basis the Times had for the claim that: "The voters were largely those who employ and pay labor." "Eight-Hour Politics," NYT, Sept. 16, 1916 (10:1) (editorial). Two weeks later the paper repeated that "it is known that several electorates have rejected the eight-hour day." "Social Sanction for the Eight-Hour Day," NYT, Oct. 1, 1916 (E2:4-5) (editorial).


110For a sense of the importance that the Socialists attached to the confrontation, see "Hillquit-Gompers Debate," AS 1(10):4 (Sept. 19, 1914).
particularly when the things can be done by the workmen themselves."\textsuperscript{111} In response to Hillquit's question Gompers noted that the AFL had not opposed successful efforts by miners' unions in the West to limit the workday for underground miners by law, but also added "that some men unconsciously and with the best of intentions get to rivet chains on their wrists."\textsuperscript{112} When Hillquit asked Gompers directly whether the AFL would oppose a law imposing an eight-hour day on all employers in a state or the whole country, he stated that it would "because it has in large measure accomplished it and will accomplish it by the initiative of the association, the organization, and the grit and courage of the manhood and womanhood of the men and women in the American Federation of Labor." Yet when Hillquit observed that the unions may have proposed to enforce such rules, but had not yet done so, Gompers was constrained to admit: "Unfortunately, that is so."\textsuperscript{113} Gompers did not add, as he would six months later, that his patience was dictated by a very long view of history: "There are some men who fail to understand...that the labor movement of America is still in its infancy, and that in the cycle of time fifty or a hundred years count as but a minute."\textsuperscript{114}

By the time of the AFL's next convention in mid-November 1914 at Philadelphia, the outcomes of the eight-hour initiatives on the Pacific Coast were already known and invited an assignment of blame. On November 20, with AFL President Gompers in the chair, the Committee on Resolutions reported a resolution by Scharrenberg, delegate of the California State Federation of Labor:

WHEREAS, The Seattle convention of the American Federation of Labor urged upon all State branches to work for the enactment of laws limiting the working hours of women and children to eight per day, and (where such laws already exist) to begin an agitation for the enactment of a general eight-hour law; and

WHEREAS, During the year President Gompers publicly declared that the American Federation of Labor does not favor a legal limitation of the workday for the adult male workers; and

WHEREAS, Said statement of President Gompers was very effectively used by the

\textsuperscript{111}\textit{Industrial Relations: Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations} 2:1500 (Sen. Doc. No. 415, 64th Cong., 1st Sess., 1916).

\textsuperscript{112}\textit{Industrial Relations: Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations} at 2:1502.

\textsuperscript{113}\textit{Industrial Relations: Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations} 2:1502.

opponents of the shorter workday in defeating the eight-hour initiative which was before the people of California, Oregon and Washington at the recent general election; therefore, be it

RESOLVED, By the Thirty-fourth Annual Convention of the American Federation of Labor, that we reaffirm the declaration of the Seattle convention upon the shorter workday as enunciated in the report of the Committee on Shorter Workday.\(^\text{115}\)

A somewhat less antagonistic resolution was proposed by a delegate from the International Association of Machinists, the International Union of Timber Workers, and the Washington State Federation of Labor urging that, since the “tremendous” efforts by the labor bodies in the three states to pass eight-hour laws had been “considerably handicapped” because the press had “misrepresented” the AFL as being opposed to such laws, the convention “does reaffirm its action favoring the direct-legislation method of shortening the workday in such States as the Federation of Labor...shall deem it desirable and expedient....” Instead, the committee offered a substitute resolution stating that the AFL again declared that “the question of the regulation of wages and the hours of labor should be undertaken through trade union activity, and not to [sic] be made subjects of law through legislative enactment,” except with respect to women, children, health and morals, and government employees.\(^\text{116}\)

In the ensuing debate, J. A. Taylor, the IAM delegate, related that after an eight-hour law for women had been passed in Washington, some employers fired women and hired instead Japanese and “Chinamen” and boys in order to work them 10 and 12 hours: “Therefore, the men in the State of Washington knew it was necessary to try to make the law universal....” Since the IAM had spent $800,000 unsuccessfully trying to reduce hours in the metal trades in the Northwest after 1910, it paid an organizer to get 35,000 signatures on the petition for the eight-hour initiative, but one of the main causes of its defeat was the circulation of a statement that the AFL president was opposed to it. As a result, according to Taylor, employers in Washington had been able to use Gompers’ statement to the Resolutions Committee that the 1913 recommendation had meant only government employees.\(^\text{117}\)

A poster put up all over Washington by the Manufacturers Association and Metal Trades had read:


"President Gompers, of the American Federation of Labor, denounces a compulsory eight-hour law Initiative.... Mr. Gompers ought to know, and he does know, and every intelligent laboring man knows, a compulsory eight-hour day will...hurt the laborer more than anything else. Mr. Laborer, do you want eight hours instead of ten, and maybe lose your job altogether? Do you want to quit having overtime. Your employer cannot give you overtime under this law. And there are thousands of unemployed men in the State of Washington and no one should be allowed to work one minute overtime. "Can you pay higher prices for all you eat and wear and still support your family on eight hours a day and no overtime?"118

In order to undercut one of Gompers' arguments, Taylor insisted that if laws were passed reducing working hours "so that all the men are employed...[i]t is a great deal easier to...organize people when they have jobs and their stomachs are full than it is...in...Washington at the present time where there are 30,000 men out of employment." In any event, Taylor declared that "the people on the Pacific coast feel that the American Federation of Labor owes it to them to give them the right to go out two years from now and fight for this eight-hour law and pass it with the full consent of this body.... If you don’t, we will pass it anyway, and the American Federation of Labor goes on record that it does not believe in getting anything when we can go straight across and get it...."119

Other delegates persisted in blaming Gompers for the defeat of the initiatives, although two from Washington and California conceded that when Gompers had heard what use employers had been making of his comments, he stated that he had given no opinion on the pending legislation.120 Scharrenberg declared (less than accurately) that in California: "We came so near carrying the eight-hour law that some of our dear friends on the other side had their hair standing up straight; and we did it notwithstanding the fact that the billboards were covered from one end of the State to the other with the warning of our distinguished president."121

121Report of Proceedings of the Thirty-Fourth Annual Convention of the American Federation of Labor at 429-30. Another delegate incorrectly asserted that the vote in California had been 341,000 for and 390,268 against. Id. at 434. A quarter-century later, in his capacity as the AFL's national legislative representative, Scharrenberg testified before Congress praising the FLSA's "flexible standards of hours of work with complete elasticity to adjust production to the needs of a particular situation." To Expedite Naval
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Delegate Andrew Gallagher, a San Francisco labor union official, offered a substitute resolution that the AFL approved the efforts of the workers of western states to secure legal enactment of the eight-hour day and trusted that this effort would encourage workers in all other states to follow suit.122 Whereas Adolph Germer, a United Mine Workers delegate and Socialist party member, argued that organized labor had “become an adjunct to the capitalist political machines...[b]ut the capitalists do not say it is unsafe to leave the legislation to the legislative bodies,”123 AFL vice president James Duncan, when asked whether he distinguished between initiative legislation and legislative enactment and whether he would oppose a “nationalization of the workday for eight hours for all the people of the country, conveyed a sense of the gulf between the factions by replying directly: “I would oppose the Federal Government enacting a law governing private employment as being one of the greatest interferences with the liberties of the people.”124

Gompers himself, in order to undercut the significance of legislation, pointed out that less than a month earlier Congress had declared that the labor of a human being was not a commodity; it had required a third of a century to accomplish that declaration and yet the ink had scarcely dried when a judge enjoined men from quitting work.125 His essential point in resisting legislation was that: “If we can get an eight-hour law for the working people, then you will find that the working people themselves will fail to have any interest in your economic organization, which even the advocates declare is essential in order that such a law can be enforced.”126 At the close of Gompers’ remarks, Gallagher’s substitute resolution lost 64-115 and the vote on the committee report, repudiating the radicals’ position,

Shipbuilding: Hearings Before the Committee on Naval Affairs United States Senate on H. R. 9822, at 108 (76th Cong., 3d Sess., May 31-June 7, 1940).
125Report of Proceedings of the Thirty-Fourth Annual Convention of the American Federation of Labor at 440. AFL unions praised the Clayton Act of 1914 for declaring that human labor was not a commodity, yet they were willing to sell it if the price was right, even though they charged that overtime work caused fatigue, injured workers, and deprived them of leisure.
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was 11,237 to 8,107.127

Gompers' victory did not mark the end of the controversy, although the initiative movement for a overtime-free maximum eight-hour day had, unknowest to its proponents, already passed its high point. As a leading student of industrial relations observed at the time, the fact that the AFL convention had voted down the resolution favoring the eight-hour day by legislation placed thousands of members in an anomalous position since they had recently begun a campaign for such laws.128 The National Executive Committee of the Socialist Party guaranteed the intensification of the dispute by issuing a pamphlet (Are the Workers of America Opposed to an Eight-Hour Law?) attacking Gompers and the AFL in the wake of the action at the Philadelphia convention, which the Socialists predicted was "bound to create an immense discussion in labor circles." Boasting of the 30 state legislators and one Congressman whom the Party had elected in 1914 and who were pledged by its program to support an eight-hour law for all workers, its leaders conceded that it was "probable that for several years to come their efforts will be defeated" because Democrats, Republicans, and Progressives would oppose such legislation, "but now, after the action of the A. F. of L. Convention, we shall find Democrats, Republicans, Progressives, Manufacturers, Sweaters, Mine Owners and Mill Owners opposing an eight-hour law and claiming that THEY ARE CARRYING OUT THE WISHES OF THE A.F. OF L."129

Convinced of the centrality of the eight-hour campaign to the priorities of the working class, the Party declared that the AFL had "made a serious mistake," which "if the mass of trade unionists have any say in the matter," would be reversed at the next AFL convention. In the meantime: "If the Socialist party is the only labor group in America advocating a universal eight-hour law it will soon be discovered that it is the only party in America worthy of the support of all the workers. That will bring us millions of recruits."130

Gompers did not wait for the next AFL convention to respond to this broadside. In August 1915 he devoted almost 30 pages of American Federationist, whose editor he was, to a critique bearing the baroque subtitle: "A Reply to the Socialist Politician's Pamphlet and Pronunciamento, in Which their Mask of Hypocrisy is Torn Away and the True Inwardness of their Antagonism is

127Report of Proceedings of the Thirty-Fourth Annual Convention of the American Federation of Labor at 443-44. In addition, 607 were recorded as not voting.


129Socialist Party, Are the Workers of America Opposed to an Eight-Hour Law? 1 (n.d. [1915]).

Disclosed, and Labor’s Position for the Attainment of an Eight-Hour Workday—A Shorter Workday—is Set Forth.” In it Gompers laid out the traditional defense of voluntarism: “Where the workers are strong enough to protect themselves through their organized power, they are not left helpless before the forces of greed, but absolute faith in the legislative method has been shattered by the demonstration of its danger and its failure.” In contrast, he rebuked the Socialists who regarded the legislated eight-hour day as a “‘short cut.’” Gompers sought to explain why legislation was a less straightforward approach than its advocates imagined: “Lawmakers have regard for those who have power—economic power is what gives John D. Rockefeller political power—organization secures for wage-earners economic power that makes them a political force. For placing labor laws on the statute books and for their enforcement economic organization is necessary.” Merely enacting a law secured no protection for anyone; laws were enforced by administrative agents on whom interested parties brought their power to bear: only through economic organization could workers obtain power and wield influence to appoint desirable administrative agents and compel enforcement. Since redress for violations was to be sought in the courts, workers would have to control legislators, administrative agents, and the judiciary: “The stipulation of industrial relations by law does not result in industrial freedom—it only restates all industrial problems in terms of political issues. It substitutes a political boss for an industrial employer. What would it profit the wage-earners working for the Rockefeller interests to exchange Rockefeller for Root or Taft?” In fact, industrial freedom could be achieved only when workers participated in determining their own working conditions because an industrial problem could be worked out only in the industrial field; it became a political problem only when government was connected with the industry or the industry was “especially hazardous.” Consequently, there was “no ‘short cut to industrial freedom. Industrial freedom can not be bestowed on workers. They must achieve their own freedom and enjoy it as the reward of a good fight to establish their rights.”

The debate at the AFL convention at San Francisco in November 1915 echoed the preceding year’s, but the antagonists furnished a richer socio-economic and

132Gompers, “The Workers and the Eight-Hour Workday” at 583. Gompers adduced as examples one proposed bill in California outlawing union apprenticeship regulation and anti-democratic amendments to the Washington State initiative and referendum statute. Id.
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political context. A resolution was introduced that the AFL go on record favoring the direct legislation method of shortening the workday in such states as the state federations deemed. Instead, the Shorter Workday Committee recommended endorsement of the executive council’s report, which declared that the question of wages and hours should be regulated by trade-union activity and not by legislative enactment except with regard to women and minors, health and morals, and government employees: wage earners had to depend on their own economic organizations for shortening the workday and maintaining their independence.135

To the claim by a California State Federation delegate that the initiative law would have made it possible to establish an eight-hour law for men “had it not been for the fact that the enemies of labor availed themselves of the declaration of the American Federation of Labor that it is not in favor of the eight-hour day for men,”136 Andrew Furuseth, the long-time leader of the Seamen’s union who inveterately distrusted labor protective laws,137 objected that if California had enacted an eight-hour day for men by referendum, the U.S. Supreme Court would have invalidated it immediately: “You cannot get the eight-hour law for men within the United States except for a few and peculiar occupations, except by an amendment of the Constitution of the United States.”138 To subvert the claim that a legislated eight-hour day “will act as a preventative of organization,” an IAM delegate pointed out that, despite the statutory eight-hour day in arsenals and navy yards, the workers there “are just as responsive to the appeal of the labor movement as any men....”139 Another IAM delegate sought to refute another voluntarist shibboleth by observing that the labor movement had been pushing for the eight-hour day by organization for 35 years and yet not even two million (AFL) workers had secured it of a total of 30 million workers in the United States, at which rate it would take 125 years to gain the eight-hour day for all workers.140

140Report of Proceedings of the Thirty-Fifth Annual Convention of the American Federation of Labor at 494. The AFL’s membership fluctuated around two million from
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President Gompers, as usual, had the last word. Granting that "we did not secure the eight-hour day nor the shorter work day as fast as we wanted it," he insisted that "the thing is of slow growth, slow success, natural development and natural achievement. The whole case was given away by one of the delegates who favors the eight-hour work day by law when he said, 'It is so much easier!' Somehow or other there are people who think they can find the easy way in the travail of the world; they fail to understand that there must be struggle and travail in the natural growth of human development. There are people who are afraid of the battle and the battle scars; they want to run away from them and think they can do it by dropping a ballot in the ballot box, forgetful of the fact that that power is gravitating from the ballot box in politics to the industrial field of human activity." Gompers' mistrust of government apparently transcended class boundaries since it was undifferentiated: "There never was a government in the history of the world and there is not one today that, when a critical moment came, did not exercise tyranny over the people." In light of how little the AFL had undertaken, let alone achieved, in organizing the vast majority of unskilled, semi-skilled, black, female, and immigrant industrial workers it was disingenuous of him to accuse those in favor of eight-hour legislation of imagining that "the working people are unorganizable and therefore the strong arm of the law should come in and 'protect' them. Now, there is nothing more unstable and untrue than that any working people are unorganizable. You may work for weeks and months and years upon some workers and apparently not move them,... but there comes a time, through the exercise of some special injustice by a great corporation or employer, when the spark that had remained untouched...is stimulated and they organize and fight...."

Finishing with a pathos-laden flourish, Gompers confided that what he primarily wanted from government was the "right to...exercise the normal human activities of self-development and associated effort...so that we may fight the battles, not by a piece of paper dropped in an urn or a beautifully carved ballot box, but by scars


141Lorwin, American Federation of Labor at 105-12. From 1910 to 1930, the number of organizable workers (that is, the total labor force excluding agricultural workers and professional, supervisory, and self-employed persons) rose from 20.7 to 30.2 million, while the proportion organized by AFL unions increased only from 7.7 to 9 percent. During the same period, organized workers in manufacturing (whose labor force rose from 7.1 to 10.1 million) actually fell from 6 to 3.8 percent. James Morris, Conflict Within the AFL: A Study of Craft Versus Industrial Unionism, 1901-1938, at 9-11 (1974 [1958]).

of battle, by the hunger of the stomach, of the weeping and the wailing of life...."  
Although this rhetoric failed to motivate the casting of 4,061 votes, of those who 
did vote, Gompers’ voluntarism prevailed 8,500 to 6,396. 

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