

TO: Center for the Study of Work, Labor, and Democracy
FROM: Reuel Schiller
DATE: May 5, 2011
RE: Chapter Five of *Forging Rivals*

Attached please find a chapter from the book I am writing, provisionally entitled *Forging Rivals: Labor Law, Fair Employment Practices Law, and the Fate of Postwar Liberalism*.

The book uses a narrative about the changing the relationship between labor unions and civil rights groups in San Francisco as a basis for making the several claims about the way in which the conflicting goals of labor law and fair employment practice law weakened the postwar liberal political order. In particular, I argue that the contradictory assumptions of the two legal regimes created great difficulties for the alliance between unions and civil rights groups.

The narrative consists of five vignettes that took place between 1943 and 1975. Each involves some legal “event” (the litigation of a case, the passage of legislation, or a labor arbitration, for example) in which Bay Area unions and civil rights groups were either allies (before 1960) or rivals (after 1960). In addition to the vignettes, the book has a substantive introduction that lays out the historiographical context and give readers enough information about the mechanics of labor and employment law to understand the issues raised in the vignettes. Following the final vignette, there is a chapter demonstrating that the legal alliances and conflicts between labor and civil rights groups in the Bay Area were representative of the relationship between the two groups nationally.

I’ve given you the fifth chapter of the book, “1966: A Terrible Year for George Johns.” This chapter describes two bitter fights between the San Francisco Labor Council and several San Francisco civil rights organizations that occurred in 1966. The first was over the power of the City’s Human Rights Commission to require businesses that contracted with the City to implement affirmative action programs. The second concerned the intervention of civil rights groups in a labor dispute between the Hilton hotel and the union representing its workers: Local 283 of the Hotel, Motel, and Club Service Workers Union. This chapter illustrates how the relationship between Bay Area civil rights groups and labor unions, already extremely strained after events surrounding the election of 1964, collapsed. The chapter argues that part of the reason for this collapse was that the different groups were committed to antithetical legal strategies and doctrinal regimes for furthering their visions of social justice.

I am aware that asking you to read a single chapter of a book creates certain problems. First of all, it means that you won’t have read the first chapter of the book, in

which I define the characteristics of the two conflicting legal regimes. Secondly, it means that you will be picking up the narrative in mid-stream. Finally, you won't have any background on a number of characters who first appeared earlier in the manuscript. The rest of this memo tries to remedy these problems. It briefly describes the doctrines I am writing about. It summarizes the narrative told in chapters two, three, and four. Finally, it presents three thumbnail sketches of characters that appear in chapter five, who have been introduced in detail earlier in the book.

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One of the premises of *Forging Rivals* is that a fundamental characteristic of postwar liberalism was a commitment to mild forms of both economic and racial egalitarianism. This commitment manifested itself in the creation of specific legal regimes. Among the regimes that sought to further economic egalitarianism was labor law, embodied in the National Labor Relations Act. Two of the main premises of postwar labor law were **workplace majoritarianism** and **voluntarism**.

Workplace majoritarianism was put into operation by a constellation of legal rules known collectively as the principle of exclusive representation. This principle dictated that once a majority of workers in a given workplace had chosen to be represented by a union, that union became the sole representative of all the workers there, even those who did not wish to be represented by the union. Workers who did not like the union could not bargain on their own or choose some other group to bargain for them. Indeed, once a majority of employees at a given workplace chose a particular union to represent them, every employee, even those violently opposed to the union, had their employment contract negotiated on their behalf by that union.

Once workers had chosen to be represented by a union, labor law protected the relationship between the employer and the union from outside pressures. This was known as the principle of voluntarism. The union and the employer negotiated a collective bargaining agreement. If they were unable to agree, differences were resolved through the weapons of economic conflict – strikes, lockouts, replacement workers, boycotts, picketing. Labor law explicitly forbade the government from resolving these disputes. Similarly, disputes that arose under collective bargaining agreements were resolved through private arbitration, the arbitrators having been picked by the union and the employer. Absent exceptional circumstances, courts simply enforced the results of these private arbitrations, regardless of the merits of a particular decision.

During the immediate postwar years, the legal manifestations of liberalism's commitment to racial egalitarianism were inchoate as compared to labor law. The first four chapters of *Forging Rivals* demonstrate that this was a period of experimentation in fair employment practices law, albeit within a highly constrained political environment. Civil rights advocates litigated discrimination claims in court, trying to stretch existing statutes (including the NLRA) to encompass such claims. They lobbied, with some success, to create fair employment practices legislation at the state and local level. This legislation usually provided for some sort of administrative enforcement, though the

emphasis was on mediation and voluntary compliance. As the postwar period progressed, the legislation grew more and more coercive, culminating with the passage of Title VII of the Civil Rights Act of 1964.

By the time of the passage of Title VII, the doctrinal bases of fair employment practices law had solidified in a manner that was antithetical to labor law. First of all, they were contrary to workplace majoritarianism. In too many workplaces, African Americans could not count on the majority of workers to further their interests. Indeed, fair employment practices law can be seen as explicitly counter-majoritarian. In a unionized workplace, it was designed to prevent workplace majorities from pressuring employers to implement policies that would disadvantage racial minorities. Some of these policies might be intentionally discriminatory. Others, like seniority, might be facially neutral but have a discriminatory effect. In either instance, for fair employment practices law to be effective, it had to have the power to constrain the will of the majority.

Secondly, fair employment practices law was explicit in its attack on the autonomy of labor-management relations. State FEP agencies, the federal EEOC, and, ultimately, the labor movement's old bête noir, the federal courts, were empowered to insert themselves into the collective bargaining process and into the administration of collective bargaining agreements if doing so was necessary to combat employment discrimination. Indeed, as the 1960s wore on, the Civil Rights Movement used a large number of institutions – from private anti-discrimination organizations, to local, state, and federal administrative entities, to courts – to break down the autonomy of labor-management relations when it came to issues of race.

After the first chapter of *Forging Rivals* has introduced these legal concepts, chapters two, three, and four describe the developing relationship between Bay Area labor unions and civil rights organizations in the fifteen years following the end of World War II. In particular, these chapters show how the interaction between labor law and fair employment practices law shaped that relationship. These chapters (which describe the litigation surrounding *James v. Marinship* in 1944, the decade-long campaign to pass a city fair employment practices ordinance in San Francisco during the 1950s, and the defeat of a right-to-work proposition in 1958) demonstrate the strength of the alliance between civil rights groups and labor unions in the Bay Area. However, they also show how both groups struggled to avoid directly confronting the doctrinal conflicts between fair employment practices law and labor law that each of these legal incidents raised. In each case, the legal rules that emerged bore the marks of this struggle. They did little to improve the lot of African Americans while at the same time they demonstrated that even the mildest attempts to redress the problem of employment discrimination could undermine voluntarism and workplace majoritarianism.

The chapter of *Forging Rivals* that I have given you follows this description of the successes and limitations of the labor-civil rights alliance during the 1940s and the 1950s. It illustrates how, as fair employment practices law matured in the 1960s, it clashed with

the fundamental premises of labor law, wreaking havoc on the alliance between unions and the Civil Rights Movement.

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Here is some information about three characters that you will encounter in chapter five whose biographies have been developed earlier in *Forging Rivals*:

Terry Francois: An African American lawyer and civil rights leader in San Francisco. He was president of the local chapter of the NAACP in the late 1950s. During the 1950s, he successfully lobbied for the creation of a San Francisco city Fair Employment Practices Commission. As a member of the Council for Civic Unity – an interracial civil rights group – he drafted the legislation that created the Commission. The Commission existed for only three years, from 1957 until 1960, when a state-wide Commission was created.

Carlton Goodlett: The editor and publisher of the San Francisco *Sun-Reporter* from 1940 until 1978. The *Sun-Reporter* was the City's African American newspaper. Goodlett was the most visible civil rights leader in the City during the 1950s and early 1960s.

George Johns: The Secretary-Treasurer of the San Francisco Labor Council during the 1950s and 1960s. The Labor Council was made up of representatives of most of the City's labor unions. It was responsible for setting both the industrial policy of the City's unions (it approved strikes) and their political stances. The Secretary-Treasurer served as the Council's executive director. Johns was an ally of both Goodlett and Francois in the fight to create the City FEPC during the 1950s.

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Finally, let me say a word or two about my narrative strategy. Although *Forging Rivals* is not a trade book (it is being published by Cambridge University Press as part of its Historical Studies in American Law and Society series), it aims to have an audience beyond specialists. The editor and I envision it as a book that would be used in undergraduate American history classes in which the instructor wishes to incorporate legal history into a discussion of civil rights and postwar liberalism. My narrative strategy – using a limited number of specific legal events to illustrate a broader theme, and writing a detailed narrative of those events – is designed with that audience in mind. I hope that having a very concrete narrative will make the theoretical, analytic points easier to grasp for non-specialists.

Thank you for reading the chapter. This is very much a work in progress, so I look forward to hearing your comments.