

and mores and the faltering stewardship of the federal state—encouraged labor's interest in the ordinance from the start. As the ordinance campaign played out, both supporters and opponents had to craft their cases so as to garner support in the context of local politics and survive challenges based on legal precedent.

First, in order to survive preemptory challenges, the ordinance had to chart its way through the maze of reefs and shoals developed over time by case law. To avoid being found regulatory, it could not be perceived as coercive, punitive, or attempting to enforce certain behavior. Nor could it be construed as setting broad policy or establishing general rules. To qualify as necessary to protect the city's proprietary interests, it had to be narrow in scope and tailored to a particular and limited set of circumstances, or specific project, in which the city's financial involvement was clear and the threat to it, demonstrable. Second, to secure the wide base of support required by San Francisco's political system—and to legitimate the city's stance since the legitimacy of public institutions depends on a definition of their actions as benefiting the collectivity<sup>45</sup>—both supporters and opponents had to represent their positions as "in the general interest." This representation was especially important for supporters, since an appearance that the ordinance intended to promote unionization would open it to the challenge that it aimed to foster certain behavior: i.e. regulate. Third, given San Francisco's history as a union town and its acceptance of public restrictions on the conduct of business, opponents could not afford to speak negatively of unions or labor organizing. Nor could they appeal to norms vaunting unfettered private property rights, as they might in a city with a non-interventionist local government and a weak labor tradition. Rather they had to argue that their position promoted the general good and also took labor into account.

In addition to these structural constraints which established the ways that local actors could represent the ordinance to mold an outcome to their advantage, there were also nonstructural aspects to their creation of political opportunity. These included their strategic choices of meaning and efforts to communicate it, as well as their moral and

emotional visions of social practice—for example, as to the entitlements of labor and capital. Union and business responses to the "economic threat" contention that was required to justify the ordinance exemplified their selective appropriation of meaning. This contention placed both Local 2 and local business leaders in awkward positions. While unions often show muscle by pointing out that strikes and labor-management conflict can cause economic damage, Local 2 relied on community support and did not want to portray itself as harming the public. Similarly, although business leaders were incensed at the economic damage that the union was able to inflict and distressed by an ordinance that could give it an edge, they also wanted to portray their firms as strong and impervious to harm from a union—both as a negotiating stance and signal to the other side and as a reassurance to their investors, since their representation of unions as too dangerous could undermine perceptions of their stability. Ironically, but not surprisingly, these constraints led unions to frame their support for the bill as "good business" and protecting property rights, and business groups to frame their opposition in terms of protecting workers' rights.

The representation of legitimacy. About 70 individuals attended the Finance Committee hearing, including hotel and restaurant workers, employers, attorneys, and spokespersons from business and labor organizations. At this hearing, as in press audiences and the Mayor's Small Business Advisory Commission hearing preceding,<sup>46</sup> supporters and opponents made cases as to the *identity* of the city in relation to the law and the *principled grounds* on which its involvement was or was not justified. In her verbal presentation at the hearing and in the packet of materials she presented in support of the ordinance,<sup>47</sup> Supervisor Katz represented the ESAO as good business practice for the city, and as neither favoring nor discounting organized labor. She characterized it as her independent introduction, designed in consultation with experts and interested parties representing both sides of the issue.<sup>48</sup> She argued that the bill was legally defensible on the basis of Boston Harbor: it was the legitimate action of a local government to protect its

proprietary interests. She discounted herself as a labor ally and underscored her concern for the economic well-being of private business and the city.

...this Ordinance is not motivated by an effort to assist unions, although we need to forthrightly recognize that the Hotel Workers' Union is likely to benefit from it. Our purpose in sponsoring and passing this Ordinance is to save the City, and the particular hotel and restaurant projects in which we have an interest beyond the usual regulatory interests, from disruptive labor disputes, and thereby protect the City's financial interests from harm resulting from such disputes.<sup>49</sup>

Katz documented the aggressive organizing campaigns that HERE locals had conducted, including the costly campaign against the Parc 55, the bitter labor dispute at the Marriott that elicited a \$6 million suit against then-mayor Art Agnos, and the politically-charged corporate campaign against the Japanese owners of the New Otani Hotel in Los Angeles. She presented written testimony from four labor scholars attesting to the severe economic damage caused by labor-management conflict and the stabilizing impact of card-check agreements. She provided newspaper articles and statements from a Nevada state assemblywoman and the general counsel and senior vice president of the Circus Circus Hotel in Las Vegas affirming the efficacy of card-check agreements in fostering labor peace in Las Vegas, and underscoring the economic losses and damage to the city's reputation caused by labor strife at companies that refused to enter into such agreements. She cited, as local precedent for the ESAO, the city's 1980 requirement that the Marriott Corporation sign a card-check neutrality agreement with Local 2 as a condition of its receiving a contract to build a hotel on city land. This agreement was breached by Marriott when the hotel opened, brought to court by Local 2, and upheld in 1993 on the basis of Boston Harbor.<sup>50</sup>

Further aligning herself with private business and the financial interests of the city, Katz referred sympathetically to testimony before the mayor's Small Business Advisory Commission the previous month describing the "terribly disruptive" role that Local 2 played in the 1984 city-wide restaurant strike. She warned that not only would the city's reputation and thus its income stream from tourism be damaged by such labor-management

strife, but that the city, as the hotels' partner in development, would likely be attacked in the process. As a result, she concluded:

We need this Ordinance not to curry favor with the Hotel Workers' Union but to protect our business and related interests from them!<sup>51</sup>

After establishing the threat posed by union organizing, Katz circled back to affirm her belief in unionization and praise unions for their salutary impact on the community, in terms of helping reduce poverty and crime, and assure wage levels that fostered stability and home ownership. She also distanced herself from some employers' anti-union stance:

We understand, of course, that certain hotel operators or developers may prefer to operate non-union, either because of a philosophical opposition to unions or a mere preference to avoid dealing with them on a day to day basis. We do not share such a philosophical opposition to unions.... No one is forcing any of these developers to do business with us or to seek our economic or other participation in the projects.<sup>52</sup>

Finally and importantly, Katz reviewed the reasons why the ordinance could not be construed to set broad policy and therefore regulate. This demonstration was especially crucial and difficult because, unlike Boston Harbor and other prior cases of permitted local involvement in labor relations, the ESAO was prospective: it applied to situations that had not yet arisen, rather than being initiated after the advent of a specific threat to a locality's economic interests. This feature made it especially vulnerable to the claim that it set general policy. To deflect this claim, the ESAO required a case-by-case determination of applicability, established by the presence of a particular and limited set of circumstances. Most important, the city had to have a demonstrated and substantial proprietary interest in a hotel or restaurant project based on a lease, loan, or loan guarantee. Only firms with at least 50 employees were covered, so that the extent of the threat was assured to be substantial.<sup>53</sup> Seven categories of exemption were detailed, including firms in operation before the bill was enacted and those operating with a union contract. Finally, the ordinance applied only in the initial start-up period of an enterprise, when labor strife could do most damage and when the subsequent tenor of labor relations was established.

All of the business groups opposing the ordinance noted earlier were represented at the hearing. In different ways but with common themes, their spokespersons argued that the bill was unnecessary and illegal because the NLRA already adequately protected workers' rights and preempted local interference in such matters. Moreover, they insisted, the bill was a threat to employees' right to a secret and private ballot, and potentially exposed them to unfair pressure and coercion by union organizers. Subsectors of the business community articulated particular concerns at the hearing. The executive director of the Committee on Jobs announced that his group would strongly oppose extending the ordinance to other sectors, such as the city's nonprofits. The president of the San Francisco Council of District Merchants read a letter from the Golden Gate Restaurant Association arguing that the ordinance addressed a problem that did not exist in the restaurant industry, where union contracts were rare because workers had to depend on each other like a family. Moreover, restaurants were too small and had too narrow an operating margin to support unionization, so that "dragging restaurants under (the) ordinance" could "lead to unintended, unnecessary, and expensive consequences for the city and its tourism industry."<sup>54</sup>

Several spokespersons expressed labor's support for the ordinance. Michael Reich, a labor economist from University of California, Berkeley, presented the results of his research documenting the substantial economic damage that labor-management conflict can inflict.<sup>55</sup> Lorraine Powell, a former waitress and Local 2 organizer, detailed the creative and costly union tactics employed in the Parc 55 union recognition battle. Local 2 President Mike Casey articulated the overall position of organized labor. Casey began by aligning himself and his organization with the economic concerns of private business and the public. He praised the ordinance as making good business sense—as providing an opportunity for the city to follow the advice of a recent "economic summit" of the city's business interests: to "operate in a more businesslike manner." Casey observed that many

hotel giants in around the country have embraced card-checks as a peaceful and cost-effective way to recognize a union.

Next, Casey obliquely dismissed the charge—unspoken at the hearing but freely articulated by business and its advocates in the community at large<sup>56</sup>—that the bill was a "political gift to labor" that would upset the already labor-friendly balance of power between San Francisco unions and management in labor's favor. Casey pointed out that the bill took away the armory of pressure tactics that unions could deploy—a restriction they did not suffer gladly. His organization, he emphasized, was

not ecstatic about all the terms of this legislation. We are conceding a considerable leverage by giving up the right to picket, protest, demonstrate, boycott, and strike over recognition issues. And no union does that blithely....

He underscored that it only concurred with this limitation in light of the common good. At the same time, he firmly signaled his organization's determination to organize, implying that any resultant strife or economic damage would be due to management intransigence:

I think that, in the interest of a secure industry future, secure labor relations are useful. Because the reality is, it is our commitment that these new hotels will be organized. Local 2 is committed to organizing and we can do it in one of two ways. We can do it in the way in which we have traditionally organized, which is like at the Parc 55, a four-year fight, or the Mark Hopkins in 1994, a 73-day strike, or the four-year strike going on right now at the Sir Francis Drake. Or we can do it in a peaceful, more civil manner as Supervisor Katz refers to it, and bring an environment conducive to fair and cooperative labor relations and avoid that war over recognition.

In the absence of further public comment, the only committee member to oppose the ordinance, Barbara Kaufman, spoke briefly. She reiterated the points made by business speakers, questioning the ordinance's legality, expressing concern that it deprived workers of a secret ballot and exposed them to intimidation, and pointing out that the Mayor's Small Business Advisory Commission voted strongly against it. The vote was then called and the ordinance passed, with two members supporting it and one opposed. The Board of Supervisors enacted the ordinance in early January. Mayor Willie Brown signed it and it went into effect on February 15, 1998.

Aftermath. The long-term fate of the ESAO is still emergent. Two days after its enactment, the Golden Gate Restaurant Association (GGRA) filed suit to overturn it on the grounds that it was regulatory, a veiled excuse to promote unionization, and therefore preempted by the NLRA.<sup>57</sup> On May 26, 1998, the suit was dismissed by the U.S. District Court, Northern District of California, but without prejudice or written comment, on the basis that it was not yet ready for federal review because application of the ordinance depended on the evaluation of specific circumstances, so its impact and legitimacy could not be determined in the abstract. Moreover, as it had not yet been applied, GGRA members had suffered no damage, so had no standing to bring a suit. In June 1998, the GGRA brought a second federal suit, attempting to demonstrate that the ESAO had indeed inflicted burdensome harm on its members. This suit was amended on January 12, 1999,<sup>58</sup> but withdrawn and dismissed without prejudice on August 31, 1999, and refiled in state court in more limited form.

At this point, however, the ordinance's challenges were interrupted by the dynamics of another local issue campaign: that to pass a living wage ordinance in the city. This campaign was led by a broadly-based community coalition whose steering committee included the San Francisco Labor Council, HERE Local 2, SEIU Locals 250 and 790, OPEIU Local 3, the Bay Area Organizing Committee (comprised of churches and unions), the Northern California Coalition for Immigrant and Refugee Rights, the Coalition for Ethical Welfare Reform, and People Organized to Win Employment Rights (comprised of general assistance workers).<sup>59</sup> The proposed ordinance would require that a "living wage" be paid by employers on all city service contracts and potentially at the city airport and port, and by the In-Home Supportive Services Public Authority (home care workers). The GGRA hotly opposed the ordinance on the grounds that it would negatively impact restaurants on the Wharf. In early July 2000, as part of the negotiations surrounding the passage of this ordinance, the GGRA agreed to withdraw its suit to overturn the ESAO for

three years, in return for the port's being excluded from the Living Wage Ordinance. This is where the ESAO's challenges rest to date.

Meanwhile the ESAO has been applied formally to three hotel development projects, one of which is going forward. Local 2 has also obtained card check neutrality agreements from some new restaurants opening on port land. In addition, the ordinance has had a penumbral effect: at least four hotels not on city land have voluntarily signed card check neutrality agreements. Involved politicians and labor leaders attribute this agreement to several factors: to the perception by employers that the city made a policy statement with the ESAO, expressing card checks as locally approved business practice; to the fact that the same developers work on private and public projects, so if they oppose the union in a private development, they will face stiff opposition to future public ones; and to the high union density in hotels which creates a relatively level playing field for all operators whether they operate under union contract or not. Given these conditions, as one individual put it, "employers say, 'let's not have a fight we don't have to have.'"

## **Conclusion**

This analysis demonstrates that a conception of the state that acknowledges its multiple levels, and the ways that these shape and are shaped by culture and human agency, helps elucidate the state's role in preserving and extending labor's rights in a global era. As we have seen, the federal retreat from labor protection and the growing responsibilities of local jurisdictions have fostered a convergence between municipal and labor interests to shift authority over labor relations from the federal to the local level. The decentralized structure of the American federal state and the contestability of its common law precedents widen the window for such initiatives, permitting—even inviting—local agents to launch campaigns that capture the resources and power inherent in state structure to their ends. This process means that state authority is neither fixed nor self-evident—nor its response to

global pressures foregone or unidimensional. Rather, the state's role in labor protection is emergent and multifaceted, and subject to alteration by local groups.

The processes delineated here make the political and economic characteristics of localities and the strategies of local actors key to the protection of workers' rights. They reshape the dynamics of class relations by shifting the contests between capital and labor away from the point of production and toward the courts and local arenas of activity. They differentiate the constraints on industries, making certain industries more conducive to unionization than others. They also reorient U.S. unions' longstanding engagements with the law more affirmatively toward the local level, where they gain force through alliances with local groups and broaden the discourse on which unions' claims are made. This local embeddedness, however—as the withdrawal of legal challenges to the ESAO illustrates—makes labor protections more fragile and locally-contingent than when vested in federal structure. As we have seen, localities with nucleated development patterns and substantial financial investments in urban renewal, with political processes that foster labor-community alliances and economies that depend on the immobile, face-to-face businesses of tourism, and with strong, politically-engaged labor movements with an established niche of high union density, are especially conducive to convergences of community and labor interests that can foster the protection of workers' rights. In such settings, the mechanisms that undergird labor protections can come to inhere in the local periphery, rather than at the national governmental core.

This study reveals the continued—even enhanced—import of locality in a globalizing system. Although the federal protection of U.S. workers' rights has indeed dwindled over the past two decades, it has fostered an interest by unions in initiatives at the local level. San Francisco's card check ordinance is part of a wider push by U.S. labor unions and their allies toward what are termed "non-Board strategies." These include a range of policies passed by state and local jurisdictions and public agencies that apply to firms that contract with such entities or operate on their land. They include: "labor peace"

rules such as the ESAO passed by cities and municipally-run agencies like airports; prohibitions on the use of public funds by private employers to influence employees about unionization, such as California's recent AB1899; responsible contracting policies requiring local governments to consider a firm's labor relations history in making contracting decisions; successorship laws stipulating that existing employees be retained for some period of time after a successor firm takes over, to deter successorship as a means of breaking unions; and various labor standards rules, such as health insurance and living wage ordinances. All of these measures are an explicit response to the federal retreat from labor protection and Congress' failure to raise the minimum wage in step with the cost of living.<sup>60</sup> "Living wage" ordinances are the most widely-dispersed of such initiatives, springing up in 63 localities across the country since 1994, and reaching far beyond the issue of wages to mandate health insurance, vacations, sick pay, job security, labor organizing protections, and incentives to unionize.<sup>61</sup>

This analysis suggests several conclusions regarding the involvement of the state in movements of social protest: that social conflict is inherent in state structure, that the contradictions between structural levels and operating principles offer purchase for structural change, and that culture-based legal arguments as to the legitimate rights of different state levels are crucial resources for local groups to allocate state power to their ends. The centrality of the law to such initiatives arises from the fact that it manifests social power: it has the authority to legitimate certain views of social order, establish the relations among social actors, and manipulate cultural discourses and understandings.<sup>62</sup> The very contestability of the law, in fact, contributes to its inherent power: because it can be interpreted in different ways, it can be harnessed and put to the service of diverse interests. As we have seen, the common law tradition enlarges the scope of legal contestability, so that each new instance virtually "asks" to have its relevance to precedent confirmed. Thus the law constrains as well as fosters social conflict, constituting an important way in which the state is, as John Walton suggests, "both a relationship of domination and an invitation

to protest."<sup>63</sup> In the case studied here, therefore, as in the fight for access to the water resources of California's Owens Valley,<sup>64</sup> the multi-layered complexity of the state created openings for local collective movements to appropriate power through interpretations of the legitimate authority of different state levels. This is comparable to the process that Elisabeth Clemens<sup>65</sup> documents in which late 19th and early 20th century progressive coalitions in Wisconsin and Washington challenged cultural representations as to the realm of public responsibility, redefining it to engage the state in problems that had previously been defined as private responsibilities.

It is worthwhile to reflect briefly as to where the representations in such arguments come from. Most social movement theory, following Ann Swidler's useful "culture-as-toolkit" approach,<sup>66</sup> locates meaning as embedded in concrete social practices. The social construction of meaning then becomes a matter of instrumentally maneuvering static symbols and meanings to achieve goals. Such treatments of meaning, however, fail to clarify where such "frames" or representations originate. I have tried to answer this question in part by locating meaning construction at a more structural level: in case law, in the structural characteristics of the locality, and in the relationship between the locality and the global system. Yet this location tells only part of the tale. Although these structures constrained the representations of local actors, their creation of political opportunity embodied nonstructural dimensions as well. These included their active choices and initiatives, as well as cultural factors such as the moral visions and cognitive understandings that they brought into the fray, but that may also have been changed by it. Thus, by focusing on the strategic *choices* of local actors we observed the strategic act of selective appropriation: case law was not simply culturally *interpreted* differently by competing actors, but was rather strategically *re-represented* differently in ways that produced conflicting meanings of the text, which were then debated in court.

Finally, as the dialogue between San Francisco ordinance supporters and opponents illustrates, and as other studies of legal conflict show as well,<sup>67</sup> the focusing of power

struggles on the law shapes the processes and outcomes of social conflict, because such contests must be articulated in the terms, constructs, and procedures of the law. Legal contests direct claimants to normative legal theory for the information, principles, and distinctions on which re-interpretations can be based. Thus though arguments may express local values, they must ultimately refer to legal sources of authority. This requirement can result in strange bedfellows, as in labor's support for San Francisco's card check ordinance on the basis of private property rights and employers' opposition to it based on workers' rights. Finally, the influence of legally-embedded power contests is far-reaching, in that decisions made in one venue can be deployed on behalf of groups both socially and physically distant. It is this last consequence that raises the import of the local conflict studied here to the level of the general, and begs attention to its unfolding over time and space.

### **Acknowledgments**

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## Notes

- <sup>1</sup> Jeremy Brecher and Tim Costello, "Global Village or Global Pillage: A One-World Strategy for Labor," *International Labour Rights* (Washington, D.C., 1994); Jerry Mander and Edward Goldsmith, "The Case Against the Global Economy and for a Turn Toward the Local," *Institute for the Study of Globalization* (San Francisco, 1997); Charles Tilly, "Globalization Threatens Labor's Rights," *International Labor and Working Class History*, 47 (spring 1995): 1-23.
- <sup>2</sup> Tilly, "Globalization Threatens Labor's Rights," 21.
- <sup>3</sup> Craig Jenkins, *The Politics of Insurgency: The Farmworker Movement in the 1960s* (New York: Columbia University Press, 1985); Charles Tilly, *From Mobilization to Revolution* (Reading, PA: Addison-Wesley, 1978).
- <sup>4</sup> William H. Sewell Jr., "A Theory of Structure: Duality, Agency, and Transformation," *American Journal of Sociology* 98: 1 (1992): 1-29.
- <sup>5</sup> Germany and Switzerland, however, are quite decentralized and Canada probably even more so than the U.S.
- <sup>6</sup> Bodenheimer et al., *An Introduction to the Anglo-American Legal System*, (St. Paul, MN: West Publishing Co., 1980); Glendon et al., *Comparative Legal Traditions*, (St. Paul, MN: West Publishing Co., 1994); John H. Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, (Stanford, CA: Stanford University Press, 1985).
- <sup>7</sup> Bodenheimer et al., *An Introduction to the Anglo-American Legal System*, 12.
- <sup>8</sup> William E. Forbath, *Law and the Shaping of the American Labor Movement*, (Cambridge, MA.: Harvard University Press, 1991); Christopher L. Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960*, (N.Y.: Cambridge University Press, 1985)
- <sup>9</sup> This article is based on a larger research project funded by the Cultural Anthropology Program of the National Science Foundation and the University of California, Davis, that explores the relationship between unionization and globalization in the San Francisco hotel industry. A total of 85 interviews

of from one to four hours long each were conducted by the author between October 1996 and June 2001 with government officials and staff, attorneys, hotel workers and managers, union staff, employers' association spokespersons, representatives of community and immigrant organizations, and the staff of several firms that do research on the hotel industry. Attendance at the meetings of governmental bodies that considered the ordinance provided useful data on the positions and self-presentations of vested actors, as has perusal of local newspapers for the duration of the project.

10. Robert Gorman, *Basic Text on Labor Law, Unionization, and Collective Bargaining*, (St. Paul: West Publishing, 1976), 1.
11. Belying claims that nation-states are uniformly unwilling or unable to protect labor's rights, U.S. law provides less protection from attacks than do the laws of most other advanced industrial countries because of administrative features that increase its vulnerability to unsympathetic political leadership and diminish the speed and fairness with which it expedites unfair labor practice litigation (Edwards et al., *Unions in Crisis and Beyond: Perspectives from Six Countries*, (Dover, Mass: Auburn House, 1986); Jane Jenson and Rianne Mahon, eds., *The Challenge of Restructuring: North American Labor Movements Respond*, (Philadelphia, PA: Temple University Press, 1993). Lengthy election procedures and the law's permission to permanently replace striking employees are also impediments.
12. Kate Bronfenbrenner and Tom Juravich, *The Impact of Employer Opposition on Union Certification Win Rates: A Private/Public Comparison*, Economic Policy Institute Working Paper No. 113, Economic Policy Institute, (Washington, D.C., 1995).
13. Paul Weiler, "Promises to Keep: Securing Workers' Right to Self-Organization Under the NLRA," *Harvard Law Review* 96 (1983): 1769-86.
14. Paul C. Weiler, "Milestone or Tombstone: The Wagner Act at Fifty," *Harvard Journal on Legislation* 23: 1 (winter, 1986), 1-31; For a detailed critique of the NLRA's performance, see *Has Labor Law Failed?: Oversight Hearings before the Subcommittee on Labor-Management Relations of the Committee on Education and Labor, and the Subcommittee on Manpower and Housing, the Committee on Government Operations 98th Congress, 2nd Session* (1984).

15. Steven Greenhouse, "Bruised Unions Trying an End Run," *New York Times*, (March 10, 1997), Section A.
16. *Ibid*, A10.
17. Matthew Josephson, *Union House, Union Bar: The History of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO*, (New York: Random House, 1956), 46-49.
18. Dorothy Sue Cobble and Michael Merrill, "Collective Bargaining in the Hospitality Industry in the 1980s." in Paula Voos, ed., *Contemporary Collective Bargaining in the Private Sector*, (Madison, Wisconsin: I.R.R.A, 1994), 447-89; Josephson, *Union House, Union Bar: The History of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO*, 46-49; Miriam J. Wells, "Unionization and Immigrant Incorporation in San Francisco Hotels," *Social Problems* 47: 2 (2000): 241-265.
19. James Russell, "Letter from San Francisco: Rank-and-File Union Victory," *Radical America* 12 (5) (1978): 70-4.
20. Wells, "Unionization and Immigrant Incorporation in San Francisco Hotels," 252-56.
21. Dean Calbreath, "Union-Hounded Parc Fifty-Five Cuts Back Staff," *San Francisco Business Times* 6 (46) (17 July 1992), Sec. 1, p. 1.
22. Eric Brazil, "Hotel, Union End Long Battle," *San Francisco Examiner*, (30 March 1993), A1.
23. *San Diego Building Trades Council v. Garmon (Garmon)*, 359 U.S. 236, 79 S. Ct. 773, L.Ed.2d 775, (1959).
24. *Machinists v. Wisconsin Employment Relations Commission (Machinists)*, 427 U.S.132, 96 S. Ct. 2548, 49 L.Ed.2d 396, (1976).
25. Both *Machinists* and *Garmon* allow localities to regulate the conduct of industrial relations in two particular circumstances: when the conduct is of peripheral concern to the NLRA and when the conduct implicates interests deeply rooted in local feeling and responsibility.
26. *Associated Builders v. Seward (Seward)*, 140 LRRM 2541 (9th Cir.) 287, (1992).

- <sup>27</sup>. The NLRA permits pre-hire agreements in the construction industry, but no other, to accommodate its special conditions such as the short-term nature of employment, the contractor's need for predictable costs and a steady supply of skilled labor, and the longstanding custom of prehire in the industry.
- <sup>28</sup>. *Building and Trades Council v. Associated Builders (Boston Harbor)*, 113 S. Ct. 1192, (1993).
- <sup>29</sup>. *Ibid*, 1196.
- <sup>30</sup>. Harvey M. Jacobs, ed., *Who Owns America? Social Conflict Over Property Rights*, (Madison: University of Wisconsin Press, 1998).
- <sup>31</sup>. *Babler Brothers, Inc. v. Roberts*, 995 F.2d 911 (9th Cir., 1993); *Colfax Corporation v. Illinois State Toll Highway Authority*, 79 F.3d 631 (7th Cir., 1996); *Alameda Newspapers, Inc. v. City of Oakland*, 1996. 95 F. 3d 1406 (9th Cir.).
- <sup>32</sup>. *Cannon v. Edgar*, 1994. 33F.Ed 380 (7th Cir.); *Chamber of Commerce of U.S. v. Bragdon*, 1995. 64 F.3d 497 (9th Cir.); *Chamber of Commerce of U.S. v. Reich*, 1996. 74 F.3d 1322 (D.C. Cir.).
- <sup>33</sup>. Manuel Castells, *The City and the Grassroots: A Cross-Cultural Theory of Urban Social Movements*, (Berkeley: University of California Press, 1983), 102-3.
- <sup>34</sup>. *Ibid*, 102ff.
- <sup>35</sup>. Economics Research Associates, *The Economic and Employment Impacts of Visitors to San Francisco*, (San Francisco, CA, August 1987); Michael Potepan and Elisa Barbour, *San Francisco's Employment Roller Coaster: A Report on the City's Employment Economy from 1980 to 2000*, Report submitted to the Mayor's Office of Community Development, (San Francisco, CA, 1996); Richard Walker, "Another Round of Globalization in San Francisco," *Urban Geography* 17 (1) (1996): 60-94.
- <sup>36</sup>. Richard De Leon, *Left Coast City: Progressive Politics in San Francisco: 1975-1991*, (Lawrence: University Press of Kansas, 1992), 50ff; Chester Hartman, *The Transformation of San Francisco*, (Totowa, N.J.: Rowman and Allanheld, 1984), 164ff.
- <sup>37</sup>. Castells, *The City and the Grassroots: A Cross-Cultural Theory of Urban Social Movements*, 104.

- <sup>38</sup> For example, hotel developers in the Tenderloin agreed to create a housing subsidy and a social services fund for the neighborhood, and to give priority in half of the jobs at the new hotels to residents.
- <sup>39</sup> Hartman, *The Transformation of San Francisco*, 289.
- <sup>40</sup> Castells, *The City and the Grassroots: A Cross-Cultural Theory of Urban Social Movements*, 105.
- <sup>41</sup> Katz was appointed to the Board of Supervisors by Mayor Willie Brown in June 1996 and elected in November 1996. Her involvements exemplify the diverse bases of support that successful city leaders must develop. She is also: Vice Chair of the Health, Family and Environment Committee former President and a continuing member of the San Francisco Community College Board; Vice Chair and member of the San Francisco Democratic County Central Committee; President of the local chapter of the National Women's Political Caucus and a member of the Planned Parenthood and Jewish Community Relations boards.
- <sup>42</sup> Rachel Gordon, "Joining Union Would be Easier Under Katz Plan," *San Francisco Examiner*, (28 October 1997), A4; John Diaz, "Tilting the Field," *San Francisco Chronicle*, (22 December 1997), A22.
- <sup>43</sup> These included Leslie Katz, Amos Brown, Mabel Teng, Sue Bierman, Susan Leal, Michael Yaki, Leland Yee, Tom Ammiano, and Jose Medina.
- <sup>44</sup> Gordon, "Joining Union Would be Easier Under Katz Plan," A4.
- <sup>45</sup> Paul Johnston, *Success While Others Fail: Social Movement Unionism and the Public Workplace*, (Ithaca, N.Y.: ILR Press, 1994), 30-32.
- <sup>46</sup> Gordon, "Joining Union Would be Easier Under Katz Plan," A4; Diaz, "Tilting the Field," A22.
- <sup>47</sup> Leslie Katz, *Packet Submitted to the Finance Committee of the San Francisco Board of Supervisors*, 17 December 1997, in Support of the San Francisco Employee Signature Authorization Ordinance, (San Francisco, CA. 1997).
- <sup>48</sup> Experts cited included attorneys for the city, the Chamber of Commerce, and HERE Local 2, as well as labor scholars Professors Kate Bronfenbrenner, Adrienne Eaton, Jill Kriesky, and Michael Reich. Interested parties cited included the Chamber of Commerce, the San Francisco Committee on Jobs, the

Golden Gate Restaurant Association, and the San Francisco Building Owners Management Association, as well as the San Francisco Labor Council and HERE Local 2.

- <sup>49</sup>. Katz, *Packet Submitted to the Finance Committee of the San Francisco Board of Supervisors*, 5.
- <sup>50</sup>. *Hotel Employees and Restaurant Employees Union, Local 2, AFL-CIO, Plaintiff, vs. Marriott Corporation, Defendant*, NO C-89-2707 MHP, Memorandum and Order. August 24, 1993.
- <sup>51</sup>. Katz, *Packet Submitted to the Finance Committee of the San Francisco Board of Supervisors*, 7.
- <sup>52</sup>. *Ibid*, 8.
- <sup>53</sup>. The size of firm was a matter of political negotiation. The ordinance was initially written with a 25 employee cutoff; pressure from the Mayor's Small Business Advisory Commission and the City Attorney, plus the pragmatic recognition that larger firms were more defensible as posing a significant economic threat, led to the cutoff being raised to 35 then to 50.
- <sup>54</sup>. The quotations in this section are from the transcript of the hearing, at which the author was present.
- <sup>55</sup>. Reich found a permanent drop in shareholder equity of about 4 percent and a per-strike cost of about \$80 million in 1980 dollars for 700 industrial strikes studied between 1968 and 1982. He indicated that losses in service sector firms would likely be much higher.
- <sup>56</sup>. Diaz, "Tilting the Field," *San Francisco Chronicle*; Gordon, "Joining Union Would be Easier Under Katz Plan."
- <sup>57</sup>. *Golden Gate Restaurant Association v. City and County of San Francisco (GGRA-1)*, N.D. Cal. No. C-98-0642-VRW, (1998).
- <sup>58</sup>. *Golden Gate Restaurant Association v. City and County of San Francisco "First Amended Complaint for Declaratory and Injunctive Relief (GGRA-2)*, N.D. Cal. No. C-98-2342-VRW, (1999).
- <sup>59</sup>. This section has benefited especially from interviews with several union leaders and labor lawyers, and with Ken Jacobs, former campaign director of the San Francisco Living Wage Coalition.
- <sup>60</sup>. Indi Talwani and Scott Kronland, "Organizing-Related State and Local Legislation," paper presented at the Lawyer's Coordination Conference, AFL-CIO, (San Francisco, CA, 24 May 2001); Louis

Uchitelle, "Minimum Wages, City by City: As More Local Laws Pass, More Businesses Complain," *New York Times*, (19 November 1999), A10.

- <sup>61</sup> Rochelle Sharpe, "What Exactly is a 'Living Wage?'" *Business Week*, (28 May 2001), 78-9; Carol Zabin and Isaac Martin, "Living Wage Campaigns in the Economic Policy Arena." Mss. Report, Center for Labor Research and Education, (Berkeley: University of California, Berkeley, 1999).
- <sup>62</sup> Mindy Lazarus-Black and Susan Hirsch, eds., *Contested States: Law, Hegemony, and Resistance*, (N.Y., London: Routledge, 1994), 1.
- <sup>63</sup> John Walton, *Western Times and Water Wars: State, Culture, and Rebellion in California*, (Berkeley: University of California Press, 1992), 307.
- <sup>64</sup> Ibid.
- <sup>65</sup> Elisabeth Clemens, *The Peoples' Lobby: Organizational Innovation and the Rise of Interest Group Politics in the United States, 1890-1925*, (Chicago: University of Chicago Press, 1997).
- <sup>66</sup> Ann Swidler, "Culture in Action: Symbols and Strategies," *American Sociological Review* 51 (April 1986): 273-86.
- <sup>67</sup> Lazarus-Black and Hirsch, *Contested States: Law, Hegemony, and Resistance*; E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act*, (New York: Pantheon, 1975); Walton, *Western Times and Water Wars: State, Culture, and Rebellion in California*; Miriam J. Wells, *Strawberry Fields: Politics, Class, and Work in California Agriculture*, (Ithaca: Cornell University Press, 1996).