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The Labor Injunction and the Federal Judicial Power

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Trump v. CASA, Inc. *substantially limited federal district courts' ability to issue universal injunctions to halt questionably lawful executive actions, reasoning that these injunctions lack sufficient historical pedigree for the Judiciary Act of 1789 to authorize them. But does the history at the heart of* CASA *hold up? This Note adds to the chorus questioning* CASA*'s history by recalling government by injunction, a period of sweeping judicial control over labor unions, their leadership, their members, even entire local communities. It explains how and why, procedurally, government by injunction came about, thereby allowing federal and state courts to bind not just the parties to a suit, but "all persons whosoever." It also examines the crossover of this procedural liberalization from equity to law and its lasting effects on the American view of party capacity to suit, which was eventually included in the Federal Rules of Civil Procedure. Finally, it adds to the historical pushback against* CASA *and argues that the extraordinarily broad non-defendant-confined injunctions issued during the reign of government by injunction support the legality of non-plaintiff-confined universal injunctions in modern administrative law contexts.*

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> [O]n the 2d day of July, 1894, the United States of America filed with the clerk of this court an information or complaint charging, among other things, that the defendants, Eugene V. Debs, George W. Howard, L. W. Rogers, Sylvester Keliher, the American Railway Union, and others, were engaged in a conspiracy unlawfully to interfere with and to prevent the transportation of the mails and interstate commerce over and upon the several railroads named in the complaint, and, praying an injunction. . . . [O]n that day, by order of the court, a writ of injunction was duly issued, whereby the defendants, and *all persons combining and conspiring with them, and all persons whosoever*, were commanded and enjoined 'to desist and refrain'—
>
> (1) From *in any way or manner* interfering with, hindering, obstructing, or stopping any of the business of any of [several] named railroads . . . .

United States v. Debs, 64 F. 724, 726 (C.C.N.D. Ill. 1894) (emphasis added).[1]

> Traditionally, courts issued injunctions prohibiting executive officials from enforcing a challenged law or policy only against the

1. The Circuit Court of the United States for the Northern District of Illinois continued listing the terms of its injunction, which is reproduced in full in the Appendix.

> plaintiffs in the lawsuit. The injunctions before us today reflect a more recent development: district courts asserting the power to prohibit enforcement of a law or policy against anyone. These injunctions—known as "universal injunctions"—likely exceed the equitable authority that Congress has granted to federal courts. We therefore grant the Government's applications to partially stay the injunctions entered below.

Trump v. CASA, Inc., 606 U.S. 831, 837-38 (2025).

INTRODUCTION

"[A]ll persons combining and conspiring with them, and all persons whosoever . . . ." The *Debs* injunction, issued to halt the great Pullman strike which William H. Carwardine called "the most unique strike ever known," was a pathbreaking judicial decree.[2] In what would prove to be "a pivotal moment in the history of equity jurisprudence in the United States," the Supreme Court signed off on this "groundbreaking use of federal equitable power" and altered the course of labor and legal history.[3] This intervention in "the fiercest, most stupendous battle ever waged between capital and labor"[4] created a dangerous precedent and ushered in a period of so-called *government by injunction* in which courts exercised widespread, coercive control over industrial strife. Yet the majority opinion in *Trump v. CASA, Inc.*—purporting to survey "our Nation's history" to cast serious doubt on the legality of universal injunctions granted by lower federal courts in cases involving the abortion drug mifepristone, the Travel Ban, the Deferred Action for Parents of Americans and Lawful Permanent Residents program ("DAPA"), the Public Charge Rule, various COVID-19 emergency measures,

2. WILLIAM H. CARWARDINE, THE PULLMAN STRIKE 11 (1894). *See generally* ALMONT LINDSEY, THE PULLMAN STRIKE: THE STORY OF A UNIQUE EXPERIMENT AND OF A GREAT LABOR UPHEAVAL (1942) (detailing the strike and its aftermath); EDWARD T. O'DONNELL, THE PULLMAN STRIKE: A GILDED AGE CLASH BETWEEN LABOR, CAPITAL, AND GOVERNMENT (2024) (similar).

3. ROBERT C. POST, THE TAFT COURT: MAKING LAW FOR A DIVIDED NATION: 1921-1930, at 1375 (2024); *see In Re* Debs, 158 U.S. 564 (1895).

4. OWEN M. FISS, TROUBLED BEGINNINGS OF THE MODERN STATE, 1888-1910, at 58 (1993).

and the revocation of birthright citizenship[5]—missed *Debs* and the labor injunction entirely.[6]

Calling into question Justice Barrett's (a)historical narrative in *CASA*, this Note revisits *Debs*, the legal landscape it disrupted, and the federal judicial power it embraced in the hopes of shedding new light on debates about the power of the courts today. I reconstruct the labor-injunction experience to chronicle the development of doctrine in response to a normatively laden threat and thus to explore the nature and boundaries of the judicial power. I argue that *Debs* and sweeping labor injunctions, for better or worse, perfectly encapsulate the nature of equity: "empowering courts to do" what *they consider to be* "complete justice, including through flexible remedies that have historically benefited parties and nonparties alike."[7]

Start with the present. For over one hundred years, American courts have entertained a legal fiction that recognizes unincorporated associations as legal persons, allowing those organizations to participate in litigation. But it was not always so. When the Circuit Court for the Northern District of Illinois issued the *Debs* injunction, and indeed until the early twentieth century, courts and litigants faced a procedural bar to suit on behalf of or against unincorporated associations. Perhaps a surprise to modern readers, individual members of an unincorporated entity could sue or be sued, but not the organization itself.[8]

But the federal courts, sensing injustice in labor organizations' technical immunity from suit, conceived a jurisprudential fix: *Debs* and the flurry of broad labor injunctions issued in the late 1800s and early 1900s helped remake the legal personality and thus the legal liability of unincorporated associations.[9] In doing so, the courts fashioned an institutional response to the growing problem of labor unrest.

As labor unions formed, expanded their membership, and engaged in increasingly disruptive forms of industrial interference in the later half of the nineteenth century,[10] courts and members of the corporate bar realized they had a problem.[11] They could not haul an entire union's membership

5. *See infra* notes 156-162 and accompanying text.

6. 606 U.S. 831, 845 (2025).

7. *Id.* at 895 (Sotomayor, J., dissenting).

8. *See infra* Section I.A.

9. *See infra* Section I.C.

10. *See infra* Section I.B.

11. *See infra* notes 41-51 and accompanying text.

into court to enjoin a strike, and as a result of the rules of party capacity, they could not bind the unions—which at the time generally chose not to incorporate as a matter of convention[12]—directly.[13] The representative suit available in courts of equity provided an early workaround for capital-friendly courts (allowing, for example, the American Railway Union to be enjoined by name in the *Debs* decree).[14] However, this device eventually proved unsatisfactory, as some strikes escaped injunctions or generated monetary harms that could not be recovered in an equity suit.[15] Business owners could not feasibly recover for these harms in courts of law, which could not reach funds held by the unincorporated association rather than its individual members.

The innovation that followed—the broadening of party rules completed by the Supreme Court in the *Coronado* case[16]—was an obvious and necessary answer to what jurists and the corporate bar framed as a fundamental threat to American capital and, indeed, the American way of life. In *Coronado*, the notorious judicial opponent of labor, Chief Justice William H. Taft, acknowledged that equity courts at the time were for all intents and purposes already allowing unincorporated entities to sue and be sued. He used this decades-long trend and the allegedly existential risk posed by labor to justify analogous treatment of unions in suits for damages at law.[17] By greenlighting the issuance of sweeping injunctions in equity in cases like *Debs* on the one hand and signing off on the expansion of party capacity rules at law in *Coronado* on the other, the Supreme Court over several decades paved the way for both government by injunction—which allowed federal courts to commandeer industrial policy by their own legal fiat—and monetary liability for unincorporated unions. Courts unapologetically justified both outcomes on pragmatic grounds. Judges came to believe that unions had grown too dangerous to remain beyond their reach and wound up asserting equitable and legal remedial powers in an attempt to secure their vision of justice.[18]

12. *See infra* note 36 and accompanying text.

13. *See infra* note 35 and accompanying text.

14. United States v. Debs, 64 F. 724, 726 (C.C.N.D. Ill. 1894).

15. *See infra* note 80 and accompanying text.

16. United Mine Workers of Am. v. Coronado Coal Co., 259 U.S. 344 (1922).

17. *Id.* at 387-89.

18. *See infra* Section I.B.

While the Norris-LaGuardia Act of 1932 eventually put government by injunction to rest,[19] monetary liability for unions survived, as did the logic of equitable liability for unincorporated associations. By the time the Supreme Court adopted the unified Federal Rules of Civil Procedure in 1938, a new, more expansive power over parties had become widely accepted.[20] I argue that this process of adaptation and change, which paved the way for the issuance of exceedingly broad federal injunctions to combat labor activity, bears on the current debate over non-plaintiff-confined (sometimes called universal or nationwide) injunctions in the administrative law context, which Justice Barrett's *CASA* opinion attempted to narrowly circumscribe.[21]

Part I of this Note traces the history of government by injunction back to the old common law and equitable rules of party capacity. It examines the growth of unions in the late nineteenth century and the pressures that labor put on capital and the courts, thereby generating the impetus for procedural reforms. Finally, it describes the processes of procedural reform that ensued, which resulted in increasingly expansive labor injunctions and a redefined rule of party capacity. Part II touches briefly on legislative efforts to combat government by injunction, which culminated in the passage of the Norris-LaGuardia Act in 1932. Although that piece of legislation stripped federal courts of most of their power to enjoin labor disputes, it otherwise left intact the view of the equity power which buttressed government by injunction, as evidenced by the drafting history and text of the unified Federal Rules of Civil Procedure. Part III returns to the present day, reflecting on the lessons that scholars of administrative and constitutional law should take away from the federal courts' experience with government by injunction. It focuses especially on the *CASA* decision and the errant historical generalizations that Justice Barrett relies upon in her opinion for the majority. Despite the unfortunate antilabor history sketched throughout the paper, I conclude that government by injunction represents part of the "historical pedigree" of non-plaintiff-confined injunctions that the *CASA* majority missed.[22] As a result, government by injunction supports the appropriately limited use of non-plaintiff-confined (indeed, even universal) remedies for unlawful executive actions.

19. Norris-LaGuardia Act, ch. 90, 47 Stat. 70, 70 (1932).

20. *See infra* Section II.B.

21. Trump v. CASA, Inc., 606 U.S. 831, 841-50 (2025).

22. *Id.* at 846.

I. GOVERNMENT BY INJUNCTION AND THE EXPANSION OF FEDERAL JUDICIAL POWER OVER UNINCORPORATED ASSOCIATIONS

Prior to the late 1800s, unincorporated associations could not sue or be sued in their organizational capacity.[23] During that century, labor unions rose to prominence in the United States to counteract the centralization of power in capital enabled by the Industrial Revolution, gradually becoming increasingly unruly in their efforts to do so.[24] Seeking a response, the federal bench and the corporate bar realized that because unions by custom did not file papers of incorporation, traditional capacity rules greatly hindered their efforts to protect the broad contract rights emblematic of *Lochner*-era jurisprudence.[25] To make the *Lochner* rights effective and combat threats to the economic and socio-political dominance of this elite coalition, capacity rules were bent—first in equity, then at law—paving the way for the much-maligned government by injunction, which went on to curb the effectiveness of American labor for decades.[26]

A. Traditional Party Capacity Rules: The Prelabor Ante

Traditionally, American courts could not bind unincorporated associations.[27] Instead, in the absence of an authorizing statute,[28] courts at law were required to join every member of the unincorporated association as a party in a suit for legal relief while, under the precursor to the modern class action procedure, courts in equity could make certain members of an unincorporated association representatives of them all.[29]

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23. *See infra* notes 27-29 and accompanying text.

24. *See infra* notes 39-42 and accompanying text.

25. *See infra* notes 46-51 and accompanying text.

26. *See infra* notes 54-55, 76-80 and accompanying text.

27. ALBERT VENN DICEY, A TREATISE ON THE RULES FOR THE SELECTION OF THE PARTIES TO AN ACTION 148, 266, 384, 468 (1870); *accord* SYDNEY R. WRIGHTINGTON, THE LAW OF UNINCORPORATED ASSOCIATIONS AND BUSINESS TRUSTS 135, 425 (2d ed. 1923); Wesley A. Sturges, *Unincorporated Associations as Parties to Actions*, 33 YALE L.J. 383, 383 (1924) ("The cases are remarkably in accord that, in the absence of enabling statute, an unincorporated association cannot sue or be sued in the common or association name.").

28. Sturges, *supra* note 27, at 383.

29. Pickett v. Walsh, 192 Mass. 572, 589 (1906) ("At law . . . every member of an unincorporated association must be joined as a party defendant. In equity, if

Wesley A. Sturges notes that the doctrine prohibiting suits against unincorporated associations forestalled potential uncertainty about the identities of the parties litigant.[30] Following this pragmatic logic, a long line of cases held that pleadings must specify the individual partners in an unincorporated business venture.[31] "In early times perhaps this [rule] worked no serious harm. Firms or associations were small in membership, and their creditors or other plaintiffs had reasonable opportunity to know or ascertain an entire membership, even their Christian and ancestral names, without resort to initials, if necessary."[32] However, as human organizations grew, the burden of identifying and naming all the members of an organization rapidly outstripped concerns with judicial convenience.[33] Hence, "the Court of Chancery early took into account the foregoing . . . and invented so-called representative actions."[34] By naming just one or a few of

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the members are numerous, a number of members may be made parties defendant as representatives of the class."). At law, "non-joinder [wa]s cause for abatement." Sturges, *supra* note 27, at 384; *see, e.g.*, O'Connell v. Lamb, 63 Ill. App. 652, 656-57 (1895); *accord* WRIGHTINGTON, *supra* note 27, at 135, 425-27. Immediately prior to the union of law and equity, Federal Rule of Equity 38 supplied the basis for proceedings by or against members of a class in equity. Rules of Practice for the Courts of Equity of the United States, 226 U.S. 649, 659 (1912).

30. Sturges, *supra* note 27, at 383 n.1.

31. *See, e.g.*, Cady v. Smith, 12 N.W. 95, 96 (1882) ("At common law a suit in the firm name by a company not incorporated could not be maintained without disclosing the names of the individual partners, because it lacked the certainty deemed to be necessary in judicial proceedings . . . ."); Reid & Co. v. McLeod, 20 Ala. 576, 577 (1852); Blackwell v. Reid & Co., 41 Miss. 102, 103 (1866); Holland v. Butler, 5 Blackf. 255, 256 (Ind. 1839); Bentley v. Smith, 3 Cai. 170, 170 (N.Y. Sup. Ct. 1805).

32. Sturges, *supra* note 27, at 384.

33. "What an economic loss of time, labor and printing paper to require the nomination of each member [of an association comprised of 450,000 people] by his Christian and ancestral name before the plaintiff can have his cause heard in a common law court!" *Id.* at 385.

34. *Id.* at 387; *see also supra* note 29. By 1863, it was "well established" that "if [the Defendants] are so numerous that they cannot be made parties to the cause, with any chance of bringing it to a hearing, in consequence of abatements and the like difficulties, then you may make two or three of a class Defendants to represent the interest of all of that class. Formerly that was not the practice of [the Court of Chancery], but the rules have been modified and altered so as to suit the exigencies of modern practice, as was done by Lord

the individual members of an association, plaintiffs could sue (and equity courts could bind) all similarly situated members, though not the unincorporated association itself, which lacked legal personhood.[35]

B. The Rise of Cantankerous Labor

Trade unions generally did not file for incorporation as a matter of convention,[36] though state and federal law often allowed them to.[37] Hence, legal "[r]edress against these organizations was theoretically confined to individual liability of [their] members."[38] As labor organizations grew in

Cottenham in several instances." Bromley v. Williams, (1863) 55 Eng. Rep. 69 (Rolls Ct.); 32 Beav. 177, 188. For a list of early English cases, see Hiram H. Lesar, *Class Suits and the Federal Rules*, 22 MINN. L. REV. 34, 34 n.2 (1937). The first federal rule on point dates to 1842, and was eventually replaced by Federal Equity Rule 38 in 1912. *Id.* at 36; *see supra* note 29.

35. DICEY, *supra* note 27, at 148 ("[A] firm is not, in the courts of common law, recognised as in any way distinct from the persons who compose it. Hence, the firm of M. & Co., being nothing more than the individuals A., B., and C., of whom it consists, any change amongst its members destroys its identity, and the so called property, debts, and liabilities of the firm are, in truth, merely the property, debts, and liabilities of A., B., and C., who compose the firm."). Note that "[a]n enabling statute expressly authorizing suits in the common name has been said 'to constitute the association an entity, at least for the purposes of the litigation.'" Sturges, *supra* note 27, at 383 n.1 (quoting Bhd. of R.R. Trainmen v. Cook, 221 S.W. 1049, 1051 (Tex. Civ. App. 1920)).

36. "With negligible exceptions, trade unions are unincorporated." FELIX FRANKFURTER & NATHAN GREENE, THE LABOR INJUNCTION 82 (1930).

37. *See, e.g.*, MASS. GEN. LAWS ch. 180, § 15 (1921); An Act to Legalize the Incorporation of National Trade Unions, ch. 567, 24 Stat. 86 (1886).

38. FRANKFURTER & GREENE, *supra* note 36, at 83; *see, e.g.*, Pickett v. Walsh, 192 Mass. 572, 589 (1906) ("[T]he plaintiffs have undertaken to make three unincorporated labor unions parties defendant. That is an impossibility. There is no such entity known to the law as an unincorporated association, and consequently it cannot be made a party defendant."); Hanke v. Cigar Makers Int'l Union, 27 Misc. 529 (N.Y. 1899) (dismissing an action for improperly naming as defendant an unincorporated union, rather than its president or treasurer); Am. Steel & Wire Co. v. Wire Drawers' & Die Makers' Unions Nos. 1 and 3, 90 F. 598, 606 (N.D. Ohio 1898) ("[T]here is not any specific provision for suits against unincorporated or voluntary associations. And there does not seem to be any uniform practice in the method of suing such societies. All that can be said is that, technically, it is a suit against the members of individually, and not in solido against the company, as in the case

size and reach in the late nineteenth century, this theoretical limitation began to present a problem for American corporations, their lawyers, and the federal judiciary, which during the Gilded Age viewed organized labor as "a more violent and menacing version of the same kind of monopolistic concentrations of economic power that they condemned in corporate 'aggrandizements of capital.'"[39]

Indeed, in the late 1800s, "local" and "informal" wage strikes were replaced with regionally and nationally coordinated actions which "mobiliz[ed] far-flung . . . organizations or entire working-class communities against a single employer."[40] New, national labor organizations employed novel tactics as well, engaging in "boycotts, sympathy strikes, and control and recognition strikes."[41] These twin transitions to larger, more disruptive collective actions "rubbed more abrasively against judges' individualism than did an ordinary wage strike."[42] Because labor "had . . . erected itself as a rival lawmaker, challenging courts' and the state's normative authority," unions began to present a threat to the rule of law so treasured by jurists,[43] who especially prior to the age of statutes viewed themselves as the primary authority responsible for its upkeep.[44] It was in large part "this special rage at unions

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of incorporated societies."); Allis-Chalmers Co. v. Iron Molders' Union No. 125, 150 F. 155, 182 ("A trade union . . . is simply an assemblage of persons. It is in no manner recognized by the law as an entity separate from its members . . . . No statute has permitted it to sue or be sued in its common name. Its members may sue or be sued, either by joining all of them or one or more for all, where the members are so numerous that it is impracticable to bring them all in, but it is the suit of the members, not of the union."); and Oxley Stave Co. v. Coopers' Int'l Union, 72 F. 695, 697 (C.C. Kan. 1896) ("[T]he defendant associations cannot be sued as a body, or its members enjoined who are not parties to the record.").

39. WILLIAM E. FORBATH, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT 63-64 (1991).

40. *Id.* at 63.

41. *Id.*

42. *Id.*

43. *Id.* at 65, 128-47.

44. GUIDO CALABRESI, A COMMON LAW FOR THE AGE OF STATUTES 3-5 (1982) ("In the nineteenth century the United States is said to have developed a unique solution to meeting the two requirements [of continuity and change]. The principal instruments of this system were the common law courts, for most law was court-made.").

as rival lawmakers" which explained "the readiness of Gilded Age courts to embroil themselves in labor strife."[45]

For example, in *In re Debs*—the Supreme Court case which eventually upheld the *Debs* injunction—Justice Brewer wrote that "the attempted exercise by individuals of powers belonging only to government" required "the fullest exercise of all the powers of the courts."[46] "If ever there was a special exigency, one which demanded that the courts should do all that courts can do, it was disclosed by" the *Debs* complaint, which alleged a conspiracy by members of the American Railway Union to forcibly obstruct interstate commerce.[47]

An additional factor—aside from antimonopolist fervor and a concern over unions' purported trampling of the rule of law—motivated the federal courts' antagonism towards labor around the turn of the century: their expansive view of property rights, most commonly associated today with the Supreme Court case *Lochner v. New York*.[48] Illustrating the point, the elder Justice Harlan relied on *Lochner* in *Adair v. United States*, which invalidated an act of Congress outlawing yellow dog contracts[49] on the grounds that the law violated employers' and employees' substantive due process rights to contract.[50] But even before *Lochner* and *Adair*, courts were drawing on old common law ideas of contract as property to protect capital.[51]

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45. FORBATH, *supra* note 39, at 66.

46. 158 U.S. 564, 592 (1895).

47. *Id.*

48. 198 U.S. 45 (1905).

49. The yellow dog contract was an employment agreement which allowed employers to terminate employees simply for joining a union. *See* FORBATH, *supra* note 39, at 115-16, 115 n.65.

50. 208 U.S. 161, 172-76 (1908). The logic of *Adair* was extended to strike down a state law prohibiting yellow dog contracts in *Coppage v. Kansas*, 236 U.S. 1 (1915). The Supreme Court recognized *Adair*'s abrogation in *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 187 (1941).

51. Forbath traces this view back to the common law of master-servant relationships:

> For centuries, the common law had recognized the property interests of "masters" in the labor of their "servants." As late as the 1820s, the common law, in order to guarantee this property right, continued to allow specific performance in certain categories of master-servant relationships: "laborers'" and "journeymen" as well as "apprentices."

Labor thus presented a tripartite threat to the Gilded Age socio-political order. It not only concentrated excess economic power in the hands of too narrow a class of society, threatening the prosperity and freedom of all, it also did so at the direct expense of both common law judges and property owners, who formed a natural alliance to take labor down a peg. Labor, for her part and with her greater numbers, enlisted state and federal legislatures.[52] The industrial and institutional strife that followed would remake not just the American economy, but its legal system as well.

C. Expanding Party Doctrine to Meet the Crisis of Capital

The difficulty of wrangling increasingly tempestuous, increasingly powerful organized labor provided the impetus for drastic changes in procedural practice. Judges first meddled with labor disputes via criminal conspiracy trials in the 1870s and 1880s.[53] However, empowered by passage of the Sherman Antitrust Act in 1890 and incensed by continued disruptions to the private employ of capital in the face of criminal sanctions, the equitable injunction soon took over as the modus operandi of strike breaking in federal courts.[54] Once the Supreme Court upheld the omnibus *Debs* injunction in 1895, none doubted that the equitable technique of the

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FORBATH, *supra* note 39, at 85. Even after courts shied away from specific performance, "the view that an employer could have a 'property' interest in his workers' toil continued to inform the old common law tort action for enticing away another's servants. In the 1870s, courts extended the enticement action to cases involving organized labor." *Id.* at 86. Late nineteenth-century constitutional law cases also supported the idea that an employer had a property right to his employee's labor. Justice Bradley, dissenting in the *Slaughterhouse Cases*, declared that the "right to choose one's calling is an essential part of that liberty which it is the object of government to protect, and a calling, when chosen, is a man's property and right." 83 U.S. (16 Wall.) 36, 116 (1872) (Bradley, J., dissenting). Similarly, Justice Fields, also dissenting, called "the right of free labor . . . one of the most sacred and imprescriptible rights of man." *Id.* at 110 (Field, J., dissenting). Following Justices Bradley and Fields, state supreme courts, beginning with New York's in *In re Jacobs*, 98 N.Y. 98 (1885), "declare[d] that an entrepreneur's or worker's right to pursue his calling or business was a constitutional property right." FORBATH, *supra* note 39, at 87.

52. FORBATH, *supra* note 39, at 37-57, 147-66.

53. *Id*. at 61.

54. *Id.* at 61, 71.

representative action could prove a potent remedy for opponents of labor.[55] By one conservative estimate, courts issued over 4,300 labor injunctions between 1880 and 1930, "signif[ying] an enormous increase in the pervasiveness of judicial regulation" and the rise of what labor activists disparagingly referred to as government by injunction.[56]

Courts and capital favored the equitable injunction for several reasons. First, employers could secure temporary restraining orders and preliminary injunctions ex parte—with only one side to the dispute present before the court. This distinctly advantaged the corporate bar, which was already cozy with the federal judiciary and whose members could present their one-sided view of a strike and secure relief before organizers even had a chance to rebut their allegations.[57] Second, the injunction procedure "did 'away with local grand juries, local petit juries, local officers [and elected officials] of all kinds,'" allowing federal judges to circumvent community sentiment supportive of workers' demands.[58]

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55. "Brewer's opinion in Debs had encouraged employers to resort to the labor injunction with increasing frequency, and the judiciary responded with ever more sweeping prohibitions on the activities of organizers and strikers." EDWARD A. PURCELL, JR., BRANDEIS AND THE PROGRESSIVE CONSTITUTION: *ERIE*, THE JUDICIAL POWER, AND THE POLITICS OF THE FEDERAL COURTS IN TWENTIETH-CENTURY AMERICA 70 (2000).

56. FORBATH, *supra* note 39, at 61-62; *see also id.* at 193-98 (describing the estimation technique). John Peter Altgeld, "Illinois's fiery governor," apparently coined the phrase "government by injunction" in December 1894, after a U.S. circuit court upheld the *Debs* injunction. POST, *supra* note 3, at 1376.

57. *Limiting Federal Injunctions: Hearing Before a Subcomm. of the S. Comm. on the Judiciary on H.R. 23635*, 62d Cong. 383-84 (1912) (statement of Thomas Carl Spelling, Esq., of New York, N.Y.) (describing the sparsity of initial injunction proceedings, and noting: "In the first place the complaint, though unusually voluminous and filled with irrelevant and immaterial allegations, is defective in material, essential specifications. Such a complaint will be presented to a judge who naturally shrinks from going through and scrutinizing a long document. He relies, in part upon the attorney's representations of what he can prove and issues a restraining order already prepared, and that is usually a drastic, comprehensive injunction, often so stringent that it barely leaves the defendants room to breathe. He serves the order on a few of the leaders among those participating in the trouble and takes care that his sharp practice is immediately exploited in the press. Even the leaders can seldom understand the matter, though aided by such lawyers as they are able to employ.").

58. FORBATH, *supra* note 39, at 99 (quoting NAT'L LAB. STANDARD, Aug. 15, 1901, at 1, col. 3).

Third, and perhaps most significantly, an injunction, once issued, could quickly dissipate the momentum behind a strike. As one commentator remarked, upon hearing of a court order, "all are completely demoralized and discouraged."[59] Especially after *In re Debs*, in which the Supreme Court upheld a federal court order granted "against great masses of men" and intended to "act *in terrorem* over the entire body of" them, courts had carte blanche to disregard traditional norms circumscribing their use of the equity power.[60] Countless onlookers complained of the breadth of labor injunctions. William H. Dunbar, "a conservative leader of the Bar,"[61] argued that "the federal courts[] have shown a disposition to extend their powers beyond any limits heretofore recognized" in issuing sweeping injunctions.[62] For example, by holding in contempt laborers who had not combined or conspired with the named defendants in *Debs* but who had otherwise violated the terms of the injunction, the court cast aside the idea that its ruling could only bind those actually present before the court and so

59. *Limiting Federal Injunctions*, *supra* note 57, at 384.

60. Charles Claflin Allen, *Injunction and Organized Labor*, *in* REPORT OF THE SEVENTEENTH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 309, 316 (1894); *see also* Note, *Strike Injunctions*, 8 HARV. L. REV. 227, 228 (1894) ("Last comes the 'omnibus injunction' issued against the world at large by Grosscup and Woods, JJ. It is difficult to see how such injunctions can stand the test of precedent or principle. An injunction issues in a civil suit against a party who has been complained of at least, and has had notice of the motion of his adversary. To be obliged to wait until the injunction is violated to determine against whom it was issued ought to be enough to show that it is not an injunction at all, but in the nature of a police proclamation, putting the community in general under peril of contempt if the proclamation be disobeyed."). Post notes that "corporate lawyers . . . tended to praise the court's bold intervention" in *Debs*, arguing "that it was a 'great advantage' of 'judge-made law' that it could 'mould itself to the exigencies of society and to the requirements of the occasion.'" POST, *supra* note 3, at 1376 (quoting REPORT OF THE SEVENTEENTH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 40 (1896)).

61. FRANKFURTER & GREENE, *supra* note 36, at 88.

62. William H. Dunbar, *Government by Injunction*, 13 L.Q. REV. 347, 353 (1897). Dunbar said this of the *Debs* injunction: "It may fitly be taken as typical of the most extreme exercise of equity powers in these respects. If the course there followed can be supported, the principles of equity jurisprudence have received an important extension which may render 'government by injunction' more than a mere epithet." *Id.* at 354.

extended its reign over the entire working community of Pullman, Illinois.[63] Felix Frankfurter and Nathan Greene levied a similar charge, documenting a bevy of cases where federal courts issued community-wide injunctions to quell labor unrest in the model of the *Debs* order,[64] which itself "was

63. *See id.* at 354. Dunbar describes the extent of the injunction:

> The informations for contempt of this injunction were filed not only against persons named as defendants, but against others not named in the bill, who were also charged with doing acts in violation of the order of the Court. The record does not even show that these individuals, not parties to the bill, fell within the description of persons combining and conspiring with the named defendants. It must be assumed from the terms of the order that the Court intended to restrain such persons although acting independently, and that it punished them as such independent actors. We have therefore to consider the proposition that a court of equity may *ex parte*, upon the motion of a plaintiff, issue an order restraining all persons from doing specified acts, although such persons are not parties to the cause, are in no way connected with the parties, are not identified in any way, and cannot be identified except by the fact of their violating the injunction. Such a course if justifiable marks, it is believed, an important departure from the rules of procedure that have heretofore prevailed in chancery.

Id. at 362.

64. FRANKFURTER & GREENE, *supra* note 36, at 87-89. The year before the Pullman strike, an injunction issued against "all persons generally." Farmers' Loan & Trust Co. v. N. Pac. R.R. Co., 60 F. 803, 806 (C.C.E.D. Wis. 1894). The Supreme Court allowed an injunction against "the said defendants . . . and each of them, and all persons combining with, acting in concert with, or under their direction, control or advice, or under the direction, control, or advice of any of them, and all persons whomsoever." Am. Steel Foundries v. Tri-City Cent. Trades Council, 257 U.S. 184 (1921), *aff'g in part*, *rev'g in part* 238 F. 728 (7th Cir. 1916). Frankfurter and Greene list other sweeping injunctions issued after *Debs*:

> The Indianapolis Car Strike decree embraced "each and every person having knowledge of the existence of this order;" the Coal Strike injunction of 1919, "all other persons whomsoever;" the Railway Shopmen's injunction in 1922, "all persons acting in aid of or in conjunction with them;" the Ohio Coal Strike injunction in 1927, "all persons to whom notice of this order shall come."

FRANKFURTER & GREENE, *supra* note 36, at 88-89 (footnotes omitted) (quoting injunctions reproduced in *id*. app. 4 at 259, and in *Limiting Scope of Injunctions in Labor Disputes: Hearings on S. 1482 Before a Subcomm. of the S. Comm. on the Judiciary*, 70th Cong. 233, 525, 552 (1928)).

intended to be[] a veritable dragnet."[65] Courts didn't just expand their reach numerically; the substantive terms of labor injunctions extended broadly as well.[66] In this context, where an injunction brought the summary criminal

65. FRANKFURTER & GREENE, *supra* note 36, at 96 (quoting Ardemus Stewart, *The Legal Side of the Strike Question*, 33 AM. L. REG. & REV. 609, 620 (1894)).

66. *Id.* at 96-99. For example, in the *Hitchman Coal Case*, "the injunction was directed against 'threats, intimidation, violent or abusive language,' representing to any employee or potential employee that he 'will suffer or is likely to suffer some loss or trouble', and persuasion of employees to 'fail or refuse to perform their duties as such.'" *Id.* at 97 (quoting Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229, 261-62 (1917)). In *Gompers v. Buck's Stove & Range Co.*, "the defendants were enjoined from 'interfering in any manner with . . . the complainant's . . . business', from 'declaring or threatening any boycott', from referring to the complainant as 'unfair', from 'in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business.'" *Id.* at 97 (quoting 221 U.S. 418, 420 (1911)). "Thus the highest court in the federal system sanction[ed] legal restraints couched in terminology of vague and profoundly controversial significance," and the "trial courts . . . utilized the Supreme Court's sanction with great fecundity." *Id.* at 97. In the injunctions issued by trial courts,

> [t]here were restraints upon behavior already illegal by criminal statutes, such as force, violence, intimidation and trespass. There were prohibitions upon the calling and the conduct of strikes; upon picketing, sometimes without qualification, but frequently with such limiting phrases as "for the purpose of inducing by threats, violence or intimidation", "in such a manner as to intimidate", "in such a manner as to interfere with the complainant's business." There were restraints against speech,—"abusive language", "annoying language", "indecent language", "bad language", "opprobrious epithets",—and against specific words such as "scab", "traitor", "unfair". Federal injunctions prohibited persuasion or inducement "in any manner whatsoever" of employees to break their contracts, or to quit work, or of potential employees to refrain from accepting work. They prohibited parading or marching "near to or in the sight of" the complainant's mines; "boycotting" or "conducting a boycott" likewise were restrained. Finally, there were the catch-all clauses—"from doing any and all other acts in furtherance of any conspiracy to prevent the free and unhindered control of the business of the complainants", "generally from in any manner whatsoever interfering with the complainant", "from unlawfully interfering", "from doing all unlawful acts described in the said bill of complaint and the affidavits of the complainants thereto attached."

Id. at 98-99 (footnotes omitted). Passage of the Clayton Act only made things worse. *Id.* at 99-103. "Examples testifying to the Spencerian evolution of

proceedings associated with the contempt power into play, "[t]he first act of the judge [was] as destructive to the strike as would be a volley of musketry with its incidental carnage."[67]

Courts thus possessed both the equitable discretion to effectively bind unincorporated labor unions through the representative action and a willingness to use this device to enjoin extraordinarily broad swaths of society. However, in order to effectively employ the labor injunction, they needed to make two initial procedural moves. First, equity courts had to justify their jurisdiction over such "garden-variety crimes" as conspiracy, assault, battery, and trespass—common charges levied against labor organizers; they did so "candidly . . . on instrumental grounds," fearing that

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federal injunctions" were widespread. *Id.* at 103. In drafting these injunctions, "[p]hrases, and sometimes whole paragraphs, [were] stereotyped and transferred *verbatim* from case to case. . . . The language [was] prolix, implying a rhetorical theory that repetition of jargon makes for meaning." *Id.* at 106. And yet, the injunctions worked:

> Verbally . . . the injunction is designed to include within its sweep of prohibitions "all persons whomsoever." The whole world is asked to pay heed. To what extent is it bound to do so? Parties to the suit, persons named and served, their agents and employees—of these there is no doubt in all jurisdictions. Injunctions against representatives of a class bind the class. And one who knowingly assists a person named in the injunction to violate it may be held in contempt. But this does not exhaust the range of responsibility. All who have knowledge of a decree must obey it. Actual notice proven in any way is enough. Publicity is the only limit to the injunction's authority. As a consequence, the complainant uses every available device to spread knowledge of the decree. The injunction is printed, sometimes in all the languages prevalent in the community, distributed by deputy marshals, posted in conspicuous places throughout the city or county, published in newspapers of general circulation, and mailed to all possible offenders. Some, or all of these measures for publicity have at times been expressly ordered by courts in their decrees. Given knowledge of the injunction, the tradesman who exhibited a notice "No Scabs Wanted In Here", and the newspaper publisher who characterized strike-breakers as "dirty scabs", though otherwise completely outside the area of contention, were held to be within the class of persons subject to attachment for contempt.

Id. at 123-25 (footnotes omitted).

67. *Limiting Federal Injunctions*, *supra* note 57, at 384.

the criminal law could not handle "such vast conspiracies as these."[68] Second, equity courts had to expand their definition of property beyond tangible things to include anything with pecuniary exchange value, such as labor.[69] Equity's earlier definition of property focused narrowly on physical or real property, and so until the 1890s, courts sometimes refused to grant injunctions on these grounds,[70] until citywide boycotts "spurr[ed] judges to surmount these obstacles."[71]

As a byproduct of this process of doctrinal expansion and in connection with the move towards issuing exceedingly broad injunctions, equity courts effectively reimagined who could sue and be sued, even if they didn't always acknowledge it. Reflecting upon developments in 1924, Sturges called the claim "that suits in the common name *cannot* be maintained" an "extravagance of expression."[72] For example, in *Pickett v. Walsh*, the Massachusetts Supreme Judicial Court called joining an unincorporated union as a party defendant "an impossibility" yet conceded that "[a] trade union was made a party defendant in *Vegelahn v. Guntner*"—an earlier case in which the same court upheld an injunction against a union picket line—and that "the anomaly seems to have escaped attention."[73] With courts already issuing injunctions against "all persons combining and conspiring with [union officials], and all persons whosoever," this technical point may

68. FORBATH, *supra* note 39, at 84-85; *see, e.g.*, THOMAS S. COGLEY, THE LAW OF STRIKES, LOCKOUTS AND LABOR ORGANIZATIONS 342-46 (1894); Arthur v. Oakes, 63 F. 310, 327-29 (7th Cir. 1894); Thomas v. Cincinnati, New Orleans & Tex. Pac. Ry. Co., 62 F. 803 (C.C.S.D. Ohio 1894).

69. FORBATH, *supra* note 39, at 85.

70. *See, e.g.*, Johnston Harvester Co. v. Meinhardt, 24 Hun 489 (N.Y. Gen. Term, 4th Dep't 1881), *aff'g* 9 Abb. N. Cas. 393 (N.Y. Sup. Ct. 1880).

71. FORBATH, *supra* note 39, at 81-82.

72. Sturges, *supra* note 27, at 388. "[T]he present status of the general rule is that of a technical matter of form in our procedure, and . . . it is cause of unnecessary inconvenience. . . . [I]t can well be abolished by the courts of their own motion and suits allowed to be brought in the association name." *Id.* at 405.

73. Pickett v. Walsh, 192 Mass. 572, 589 (1906) (citing Vegelahn v. Guntner, 44 N.E. 1077 (1896)). Notably, future United States Supreme Court Justice Oliver Wendell Holmes dissented in *Vegelahn*, but made no mention of any party-capacity issues. For similarly 'anomalous' cases, see, for example, *Barr v. Essex Trades Council*, 53 N.J. Eq. 101 (1894), and *Southern Railway Co. v. Machinists' Local Union No. 14*, 111 F. 49 (C.C.W.D. Tenn. 1901).

seem of limited importance.[74] But one cannot separate the rules of party capacity from courts' power to grant remedies,[75] and what commentators once considered anomalous, the Supreme Court eventually elevated to black-letter law.

In *United Mine Workers of America v. Coronado Coal Co.*, Chief Justice Taft—no friend of labor's throughout his time on the federal bench[76]—declared unincorporated trade unions suable in their own names as a matter of practical necessity.[77] While this ruling merely acknowledged (and confirmed the legitimacy of) the longstanding equity practice of the representative action which already allowed unions to be hauled into court—if not always in form, then at least in function—it broke new ground for the common law. In "America's analogue to the Taff Vale judgment,"[78] the Chief Justice held "that a labor union is to be considered in law, what it

74. *See supra* note 1 and accompanying text.

75. Dunbar writes:

> Courts of equity, like courts of law, are established for the determination of controversies between individuals. The power to issue preliminary injunctions is incidental to the power of determining such controversies. . . . The jurisdiction of every court depends upon the existence of a cause in which it is called upon to adjudicate. Except in the instances of courts created to decide actions *in rem* the scope of the jurisdiction is limited to the persons who are actually *or constructively* before the court. . . . In the absence of statutory provisions the jurisdiction of equity is wholly *in personam*, and can be exercised only against those persons who are parties to the litigation.

Dunbar, *supra* note 62, at 362-63 (emphasis added).

76. Christopher Woods, Chief Justice Taft, Labor, and Agenda-Setting 13-14 (Apr. 22, 2025) (unpublished manuscript) (on file with author).

77. 259 U.S. 344, 383-92 (1922).

78. FRANKFURTER & GREENE, *supra* note 36, at 85 (citing Taff Vale Ry. Co. v. Amalgamated Soc'y of Ry. Servants [1901] AC 426 (HL) (appeal taken from Eng.)). The *Taff Vale Railway* case determined—in light of the Trade Union Acts of 1871 and 1876 which regulated trade unions but did not explicitly authorize suits against them—that an injunction could issue against a union in its own name. *The* Taff Vale Railway *Case*, 15 HARV. L. REV. 310, 311-12 (1901); *see also id.* at 311 ("The orthodox doctrine of the common law, which recognizes only individuals and corporations as entities, undoubtedly lags far behind the ordinary conceptions of laymen. The principal case is indicative, perhaps, of a tendency to abandon this doctrine whenever justice or expediency requires it.").

is in life, an entity distinct from its individual members, suable in the common name and liable to damages from the common fund."[79] No longer were union coffers effectively judgement proof. While, before *Coronado*, employers who failed to secure an injunction to halt a strike but who nonetheless sought money damages afterwards could only sue union members in their personal capacities—often a fruitless endeavor given the high costs of recovering from numerous adverse parties and the limited fortunes at the average union member's disposal[80]—after *Coronado*, employers could pursue much more lucrative union dues and strike funds.

Chief Justice Taft's opinion unapologetically engaged in judicial pragmatism; his reasoning was plainly outcome oriented, presuming that unions *must be* suable and then finding a justification to support that premise. After recognizing the old rule that an unincorporated association "could only sue or be sued in the names of its members," Taft deftly noted that "the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection."[81] Thus:

> [O]ut of the very necessities of the existing conditions and the utter impossibility of doing justice otherwise, the suable character of such an organization as this has come to be recognized in some jurisdictions, and many suits for and against labor unions are reported, in which no question has been raised as to the right to treat them in their closely united action and functions as artificial persons capable of suing and being sued.[82]

Reaching the crux of the matter, Taft argued:

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79. FRANKFURTER & GREENE, *supra* note 36, at 85.

80. "For damages already suffered action lay only against the individual tort feasors, or against those from whom they had express or implied authority. The practical difficulty of identifying and serving so large a group, added to the fact of financial irresponsibility in many cases, makes this a remedy of questionable value. The alternative is a suit against the union as such," which *Coronado* ultimately blessed. Katherine B. Magill & Roswell F. Magill, *The Suability of Labor Unions*, 1 N.C. L. REV. 81, 87 (1922).

81. *Coronado*, 259 U.S. at 385-86. Taft's framing of legal recognition as a victory for unions coheres with his reversal in *Coronado* of a $625,000 judgment on behalf of the plaintiff coal companies; nevertheless, it was a "Pyrrhic victory" for the United Mine Workers. Magill & Magill, *supra* note 80, at 81.

82. *Coronado*, 259 U.S. at 387-88. For representative cases, see *supra* note 73.

> It would be unfortunate if an organization with as great power as this International Union has in the raising of large funds and in directing the conduct of 400,000 members in carrying on, in a wide territory, industrial controversies, and strikes out of which so much unlawful injury to private rights is possible, could assemble its assets to be used therein free from liability for injuries by torts committed in course of such strikes. To remand persons injured to a suit against each of the 400,000 members, to recover damages and to levy on his share of the strike fund, would be to leave them remediless.[83]

Hence, unions simply became too large and too powerful for the courts of law and equity not to have power over them directly.

Coronado's consequentialist approach[84] drew significant criticism. One commentator mused that "[n]o case which has recently come down from the United States Supreme Court . . . has been the subject of more general comment."[85] Another found the Chief Justice's reasoning "an important change in practice."[86] Felix Frankfurter himself took note of "great perturbation on the part of some spokesmen of labor."[87] But *Coronado*'s

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83. *Coronado*, 259 U.S. at 388-89.

84. "Whether we permit or deny such a remedy is a matter of policy." Magill & Magill, *supra* note 80, at 87.

85. *Id.* at 81.

86. WRIGHTINGTON, *supra* note 27, at 427.

87. Felix Frankfurter, *The* Coronado *Case*, 31 NEW REPUBLIC 328, 329 (1922). Frankfurter was no critic of *Coronado*, however:

> The common law has had difficulties, wholly apart from economic conflicts, in dealing with any "entity" except an individual and a corporation. By all kinds of compromises and exceptions, the law has been seeking to adjust itself to the recognition of collective entities—aggregations of human beings acting as a unit—that are not corporations. That law is a laggard in facing reality is the constant complaint of lay critics. Just such an adjustment to reality is the issue involved in this aspect of the *Coronado* Case. And as the decisions have been progressively recognizing as entities associations acting as units, for instance, social clubs, but not partaking of the corporate form, it would have been a distinct departure from reality for the Supreme Court solemnly to hold that that which is an entity for all the affairs of life, the law, for some mystical reason of its own, cannot so recognize. The Supreme Court has held to the contrary—that there is

exact meaning was, for a time, uncertain. Some argued that Chief Justice Taft had not, in fact, altered the common law rules regarding unincorporated associations. These scholars pointed to his invocation of the Sherman Act and other federal statutes to claim that *Coronado* stood for the limited proposition that Congress had provided the necessary legislative authority for unions to sue and be sued.[88] Others found that the Chief Justice's reasoning extended further. For example, Frankfurter and Greene described Taft's decision as merely "[f]ortified by a statutory definition."[89] Similarly, Katherine B. Magill and Roswell F. Magill argued that the holding did not rest on statute alone; the Sherman Act's general language could not mean to create such "a radical change in common law procedure," nor could several other subsidiary statutes mentioned by Taft, since none "expressly authorize[d] a suit against labor unions by name."[90] At best, "Chief Justice Taft felt that, even in the face of judicial opinion to the contrary, the general legislative policy of the past thirty years justified him in treating unions as entities."[91]

Coronado's language reaches more broadly than we would expect from a narrow ruling of statutory interpretation. Justice Taft remarked:

> [T]he only question is whether when [the members of an unincorporated union] have voluntarily, and for the purpose of acquiring concentrated strength and the faculty of quick unit action and elasticity, created a self-acting body with great funds to accomplish their purpose, they may not be sued as this body, and the funds they have accumulated may not be made to satisfy claims for injuries unlawfully caused in carrying out their united purpose.[92]

Consider also the Chief Justice's use of the past tense—"[u]ndoubtedly at common law an unincorporated association of persons *was not*

> no technical procedural reason why a trade union, like any other association, should not sue or be sued.

Id. at 330.

88. *See, e.g.*, EDWARD H. WARREN, CORPORATE ADVANTAGES WITHOUT INCORPORATION 661-65 (1929).

89. FRANKFURTER & GREENE, *supra* note 36, at 85.

90. Magill & Magill, *supra* note 80, at 85-86.

91. *Id.* at 86.

92. United Mine Workers of Am. v. Coronado Coal Co., 259 U.S. 344, 390-91 (1922).

recognized as having any other character than a partnership in whatever was done"—followed immediately by, "*[b]ut* the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence."[93] True, Taft cited state and federal statutes to demonstrate the extent of the legal recognition of unions; yet he also appealed to equitable holdings[94] before remarking on the urgent practical need to sue such entities as the 400,000-member international union before him.[95] Taft's discussion of *Taff Vale* confirms that he intended to render a common law opinion, not a statutory one: "The legislation in question in that case did not create trade unions, but simply recognized their existence and regulated them in certain ways, *but neither conferred on them general power to sue nor imposed liability to be sued*."[96] Yet Taft thought it proper that the House of Lords found such liability of its own accord and borrowed its logic on the way to finding unions suable in their own names.[97] Thus, the view that *Coronado* left in place the common law rule that, in the absence of an authorizing statute, an unincorporated association could not be sued in its organizational name "is a distortion of Chief Justice Taft's thought as expressed in the opinion."[98]

93. *Id.* at 385-86 (emphases added).

94. *See supra* note 82 and accompanying text.

95. *See supra* note 83 and accompanying text.

96. *Coronado*, 259 U.S. at 390 (emphasis added).

97. *Id*. at 390-91; *see* FRANKFURTER & GREENE, *supra* note 36, at 85 (calling *Coronado* "America's analogue to the Taff Vale judgment").

98. E. Merrick Dodd, Jr., *Dogma and Practice in the Law of Associations*, 42 HARV. L. REV. 977, 1003 (1929). Dodd describes the implications of *Coronado*:

> [T]he materials gathered together in the opinion of the Chief Justice—state statutes, decisions of courts in which no question was raised by anyone as to the suable character of labor unions, a decision of the House of Lords holding English unions to be suable although no English statute explicitly so provided, and collateral federal legislation—were properly treated as factors justifying the decision. They indicated what patent lawyers would call the state of the prior art and showed that to treat the labor unions in question as suable would be no revolutionary step but well within the legitimate function of the judicial process—a process of cautious development, but of development, not stagnation. Moreover, if the decision in the *Coronado* case indicates, as we believe it does, a change in the judicial attitude towards the dogma that legal personality is necessarily a legislative gift, its effects cannot be confined to suits under the Sherman Anti-Trust Act or to those against labor unions. The

Coronado thus extended a long series of equitable holdings (such as *Debs*) which treated unincorporated unions as suable entities, applying their pragmatic logic to the common law and consummating the decades-long process by which labor unions became suable across the board in a marked departure from traditional rules of party capacity. Unencumbered by these limits, courts could not only issue extraordinarily broad injunctions to dissipate strike energy before any damage to property could be done,[99] but could also grant monetary relief against unions directly when the injunction power proved inadequate in the eyes of capital.[100] And with the Supreme Court's blessing, federal district courts did so with aplomb.[101]

> convenience of treating any large group as an entity for purposes of litigation is obvious, and after this decision no progressively minded court need hesitate so to treat it. Nor will the effect of the decision necessarily be confined to procedural questions. . . . [I]t is an indication that the Supreme Court is now viewing the association problem from a realistic standpoint. Other courts are likely to follow its lead.

Id. at 1005-06.

99. Frankfurter and Greene note the connection between the expansion of party-capacity rules and the rise of the omnibus labor injunction:

> The technique for bringing litigants formally before a court has required a dialectic adjustment between common law conceptions regarding legal personality and the modern industrial phenomena of concerted group action. No such intellectual scruples have embarrassed the courts in demanding obedience for labor injunctions from the community at large, however limited the court's authority in defining the formal litigant. Injunction suits have been entitled by naming as defendants the union and its officers, or, less frequently, persons prominent in activities deemed illegal. But the parties defendant named in the moving papers by no means disclose the sway of injunctive relief in labor disputes.

FRANKFURTER & GREENE, *supra* note 36, at 86.

100. *Contrast* Lawlor v. Loewe, 235 U.S. 522, 533-37 (1915) (affirming treble damages judgment against individual members of the Danbury Hatters prior to *Coronado*), *with* Apex Hosiery Co. v. Leader, 310 U.S. 469, 481, 513 (1940) (affirming appellate court's reversal of treble damages judgment against a labor union). *See also* Comment, *Labor and the Sherman Act*, 49 YALE L.J. 518, 530-31, 530 n.77 (1940) (juxtaposing *Lawlor* and *Apex* and citing *Coronado* for the proposition that an unincorporated union may be "liable to a damage action under the Anti-Trust Law").

101. For examples of broad injunctions used to halt strikes, see *supra* note 66. For more limited examples of damages judgments against union members before

II. NORRIS-LAGUARDIA AND LIFE AFTER DEATH

The widespread judicial management of industrial conflict which followed *Debs* and provided the context for *Coronado* drew harsh criticism. Friends of labor pushed back strongly, generating numerous legislative reform efforts and eventually giving rise to the Norris-LaGuardia Act, which stripped federal courts of their power to enjoin most labor disputes.[102] The several-decades-long reign of government by injunction, however, had lasting effects on judicial practice. Thanks to *Coronado*, unions remained procedurally, if not always substantively, liable for money damages.[103] By the time the Federal Rules of Civil Procedure came into force in 1938, *Coronado*'s approach to party capacity had become deeply embedded in American law,[104] suggesting that while government by injunction did not survive Norris-LaGuardia and the New Deal, the view of the federal judicial power which underlay government by injunction did.

A. The Reception of Government by Injunction and the Long Road to Reform

Almost as soon as the federal courts tapped the labor injunction pipeline, Progressives and labor cried foul. Illinois Governor John Peter Altgeld provided an illustrative rebuke of the Supreme Court's ruling in *Debs*. He "immediately charged that the Court had marked 'a turning-point in our history,'" alleging that "the theory that ours is a government of law is now at an end, for every community is now subject to any whim or caprice which any Federal judge may promulgate."[105] As Altgeld's tirade suggests,

Coronado and against unions themselves after *Coronado*, see *Labor and the Sherman Act*, *supra* note 100, at 530-31 (noting that "because the injunction was so quick and so thorough a remedy, there have been but few treble damage suits in the past," and that the few successful damages actions "dragged on in the courts for years and finally resulted in actual recovery of comparatively small damages," but explaining that "the number of treble damage suits [wa]s on the increase" and that such suits remained "a thinly concealed threat to the ranks of labor").

102. *See infra* notes 117-118 and accompanying text.

103. United Mine Workers of Am. v. Coronado Coal Co., 259 U.S. 344, 383-92 (1922).

104. *See infra* notes 121-126 and accompanying text.

105. POST, *supra* note 3, at 1376 (quoting *Altgeld's Blow-Off*, L.A. TIMES, June 3, 1895, at 1).

much hatred of government by injunction stemmed from its interference with local-community control. "[T]he sole inadequacy in the remedy at law as compared with the remedy in equity in these cases [is] the fact that trials in the former are by jury."[106] Hence, friends of labor charged that federal judges silenced local communities' input by issuing broad injunctions, substituting the bench's (biased) judgment for that of the demos.[107] In 1896, just a year after *Debs*, "the Democrats denounced [the labor injunction] in their platform."[108] And by the turn of the century, government by injunction had become "a synonym of modern tyranny."[109]

Among government by injunction's most prominent critics was Samuel Gompers, longtime head of the American Federation of Labor (the "AFL"), who in 1907 declared that "[t]he federal courts have long needed . . . a lesson. They have been encroaching, meddling, adding to their powers, acting in arrogant, high-handed ways and assuming to be the whole government."[110] Motivated by this outrage, Gompers led the charge to put a legislative end to federal courts' control over labor disputes. Beginning in the late 1890s, labor lobbyists touted anti-injunction bills in state legislatures across the country.[111] And they secured many victories; legislation limiting courts' power to interfere in industrial disputes passed in California, Illinois, Nebraska, Minnesota, and more.[112] All in all, Professor William E. Forbath counts over forty enacted laws "attacking portions of the substantive law . . . seeking procedural changes . . . or repealing or narrowing equity jurisdiction over labor controversies" in the first quarter of the twentieth century.[113]

However, the courts struck back: "At least twenty-five of these anti-injunction statutes were struck down on constitutional grounds," and those

106. Dunbar, *supra* note 62 at 360.

107. *Id.*; *accord* FORBATH, *supra* note 39, at 99-105.

108. PURCELL, *supra* note 55, at 70.

109. Ronald Ellis, *The Criticism of Courts*, 10 AM. LAW. 111, 113 (1902).

110. Samuel Gompers, *Taft, the Injunction Standard Bearer*, 14 AM. FEDERATIONIST 785, 791 (1907).

111. FORBATH, *supra* note 39, at 149.

112. *Id.* at 150.

113. *Id.* at 151; *see also* FRANKFURTER & GREENE, *supra* note 36, at 136-98 (describing state and federal legislative efforts to narrow the courts' ability to control labor through changes to substantive law, equity jurisdiction, and equity procedure).

that remained in force "were vitiated by narrow construction."[114] Labor fared just as poorly in Washington, D.C. "Three times between 1897 and 1912 anti-injunction bills passed one house of Congress but failed in the other," and when labor managed to get "two sections that seemed to restrict the labor injunction" included in the Clayton Antitrust Act of 1914, the Supreme Court quickly defanged those provisions.[115]

After government by injunction reached its apex in the 1920s, with over "2,100 anti-strike decrees" affecting a whopping twenty-five percent of all strikes in just one decade, Gompers's AFL and its allies again compelled Congress to consider anti-injunction legislation.[116] The outcome of the four-year legislative battle that ensued—eventually named the Norris-LaGuardia Act for its two principal sponsors—would spell an end to government by injunction after all by stripping the federal courts of the far-reaching injunction power they had wielded over unions in the over three decades since *Debs*.[117] The Act declared "[t]hat no court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute."[118] Though

114. FORBATH, *supra* note 39, at 151-52; *see also id.* app. C at 200-02 (listing anti-injunction legislation either struck down, narrowed, or vitiated, as well as cases construing anti-injunction laws to restate previous law).

115. PURCELL, *supra* note 55, at 70; *see also* Duplex Printing Press Co. v. Deering, 254 U.S. 443, 468-79 (1921) (construing the Clayton Act not to restrict injunctions against labor unions); FORBATH, *supra* note 39, at 156-58 (describing passage of the Act, Gompers's warm reception to the legislation, and its eventual undoing in *Duplex Printing*); POST, *supra* note 3, at 1378 (noting that "[t]he Clayton Act in fact enlarged the availability of injunctions, making them for the first time accessible to private parties"); FRANKFURTER & GREENE, *supra* note 36, at 176 ("The Clayton Act was the product of twenty years of voluminous agitation. It came as clay into the hands of the federal courts, and we have attempted a portrayal of what they made of it. The result justifies an application of a familiar bit of French cynicism: the more things are legislatively changed, the more they remain the same judicially.").

116. FORBATH, *supra* note 39, at 158.

117. *Id.* at 159-63 (detailing the legislative history of the Act). While Norris-LaGuardia by and large terminated government by injunction, federal courts could still issue injunctions to quell labor disputes when the federal government was involved as an employer, as the Supreme Court held in *United States v. United Mine Workers of America*, 330 U.S. 258 (1947); *see also* Charles O. Gregory, *Government by Injunction Again*, 14 U. CHI. L. REV. 363, 364-69 (1947) (criticizing the decision in *United Mine Workers*).

118. Norris-LaGuardia Act, ch. 90, 47 Stat. 70, 70 (1932).

doubts remained about the Act's constitutionality when it was passed,[119] the Supreme Court would not have its say until 1938, and "[b]y then a constitutional revolution had occurred, and New Deal judges and jurisprudence had begun to vanquish the old order."[120]

B. Codification in the Federal Rules of Civil Procedure

On September 16, 1938, just six months after the Supreme Court passed on the constitutionality of Norris-LaGuardia in *Lauf v. E.G. Shinner & Co.*,[121] the Federal Rules of Civil Procedure went into effect.[122] By that time, the once-startling outcome of *Coronado* had become second nature. Indeed, Charles E. Clark—dean of Yale Law School, reporter to the Supreme Court's Advisory Committee on Rules for Civil Procedure, and the man "principally responsible for the drafting of the Federal Rules"[123]—praised its rule as "desirable" in his *Yale Law Journal* preview to the Advisory Committee's work.[124] His view of the case—that unincorporated associations should be treated as a legal entity by federal courts, even if they are not so considered under state law, as long as "a federal substantive right would otherwise be

119. *See, e.g.*, Comment, *Labor Injunctions—Federal Statute Defining and Limiting the Jurisdiction of Courts Sitting in Equity*, 30 MICH. L. REV. 1257, 1258 (1932) ("If the powers of Congress over federal courts of equity are no wider than the powers of state legislatures over state courts, then the main provisions of the Norris Act are exposed to serious risk of unconstitutionality. But there is language in Supreme Court decisions which lends support to the view that the authority of Congress, in creating courts and in conferring on them all or much or little of the judicial power of the United States, is unlimited by the Constitution. The underlying assumption of the Norris Act, and very many of its specific provisions, raise constitutional questions which will remain debatable until the Supreme Court has spoken.").

120. FORBATH, *supra* note 39, at 163.

121. 303 U.S. 323, 329-30 (1938).

122. H.R. COMM. ON THE JUDICIARY, 119TH CONG., FEDERAL RULES OF CIVIL PROCEDURE vii (Comm. Print 2025).

123. Michael E. Smith, *Judge Charles E. Clark and The Federal Rules of Civil Procedure*, 85 YALE L.J. 914, 915 (1976).

124. Charles E. Clark & James Wm. Moore, *A New Federal Civil Procedure—II. Pleadings and Parties*, 44 YALE L.J. 1291, 1315-16 (1935).

impaired"[125]—eventually made it into Rule 17 on party capacity.[126] As initially adopted by the Supreme Court, that Rule read, in relevant part:

> The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held; except that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States.[127]

The original notes to and the drafting history of Rule 17 demonstrate the pervasive effect of the *Coronado* decision on the new, unified party-capacity rule. Tentative Draft II, circulated to the Committee in December 1935, contained a paragraph substantively similar to the language eventually included in the final Rule.[128] And in that draft, in a note describing the "[d]erivation" of what was then numbered Rule 21, the Committee explained that "the balance of the paragraph is a re-statement of the rule laid down in *United Mine Workers of America v. Coronado Coal Co.*"[129] A reference to *Coronado* also made it into the notes on Rule 17 included in the Committee's April 1937 report to the Supreme Court.[130]

Thus, in unified proceedings under the new, permissive Federal Rules of Civil Procedure, an unincorporated association could sue or be sued in

125. *Id.*

126. FED. R. CIV. P. 17.

127. Rules of Civil Procedure for the District Courts of the United States, 308 U.S. 645, 685 (1938).

128. Advisory Committee on Rules for Civil Procedure, Tentative Draft II—December 23, 1935 (unpublished draft) (on file with the Yale University Archives, Charles Edward Clark papers, Box 98, Folder 18). ("Every unincorporated association, whether partnership, joint stock company, club, union, business trust, or other association, shall have capacity to sue or be sued when it has such capacity by the law of the state in which the district court is sitting, or when lacking such capacity by such state law it is necessary to accord to it the capacity to sue or be sued for the purpose of enforcing for or against it a federal substantive right.").

129. *Id.*

130. REPORT OF THE ADVISORY COMMITTEE ON RULES FOR CIVIL PROCEDURE APPOINTED BY THE SUPREME COURT OF THE UNITED STATES CONTAINING PROPOSED RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES 49 (1937).

federal court whenever a federal substantive right was at stake, consistent with the rule laid down in *Coronado* for cases at law.[131] Except in labor controversies governed by the Norris-LaGuardia Act, a court could enjoin an unincorporated association from violating a federal statutory or constitutional right, procedurally consistent with the *Debs* injunction. And even in labor controversies (at least hypothetically), damages could be awarded out of the unincorporated association's assets, rather than from its individual members, in line with *Coronado*.[132] For a time, employers had at their disposal very few substantive claims against labor unions under federal law. But after the Taft-Hartley Act—named for the former Chief Justice's son, Senator Robert A. Taft—passed in 1947, defining certain union activities as unfair labor practices for the first time, employers could more easily sue unincorporated unions for damages under Rule 17.[133] If not for Norris-LaGuardia, the same statutory authority conferred by Taft-Hartley would have supported injunctions against unincorporated unions as well.[134] Though Congress pronounced government by injunction dead in 1932, the pragmatic view of the power of the federal courts which underlay *Debs* and *Coronado* lived on, dormant though it may have been, in Rule 17.[135]

131. Permissiveness was a major theme of the Federal Rules, as Clark believed that pleading and joinder should be simplified and broadened. *See* Smith, *supra* note 123, at 916-21; Charles E. Clark, *The Proposed Federal Rules of Civil Procedure*, 22 AM. BAR ASS'N J. 447, 448-50 (1936).

132. *See Labor and the Sherman Act*, *supra* note 100, at 530-31.

133. Charles F. Bagley, Jr., *Suits Against Labor Organizations Under Section 301 of the Labor Management Relations Act*, 9 WASH. & LEE L. REV. 29, 29-30 (1952); *see, e.g.*, Int'l Union United Furniture Workers of Am. v. Colonial Hardwood Flooring Co., 168 F.2d 33, 34 (4th Cir. 1948) (entertaining a suit brought under Section 301 of the Taft-Hartley Act against a union "to recover damages on account of a strike, in violation of the provisions of a contract, and a secondary boycott").

134. Bagley, *supra* note 133, at 32 (discussing how Norris-LaGuardia's prohibition on labor injunctions was interpreted by federal courts to supersede broad language in Section 301 of the Taft-Hartley Act).

135. This conclusion is supported by Armistead M. Dobie, *The Federal Rules of Civil Procedure*, 25 VA. L. REV. 261, 301 (1939) ("The subject of injunctions in federal courts (particularly in labor disputes) is so loaded with potential dynamite that the committee played quite safe and made very few changes in the existing practice under the single rule [Rule 65] covering this field.").

III. GOVERNMENT BY INJUNCTION AND UNIVERSAL REMEDIES IN ADMINISTRATIVE LAW

The historical episode of government by injunction sheds considerable light on pressing debates in administrative law concerning the constitutionality of and statutory authorization for non-plaintiff-confined remedies, namely universal injunctions of unlawful agency actions.[136] Scholars such as Professors John Harrison and Samuel L. Bray argue that when federal courts enjoin administrative rules and regulations nationwide, they violate Article III,[137] while Professors Alan M. Trammel and Mila Sohoni find no such constitutional infirmity.[138] Closely related to the constitutional question, the Supreme Court touched on whether the Judiciary Act of 1789's grant of equitable authority allows federal courts to grant universal injunctions in *Trump v. CASA, Inc.*[139]

A majority of the Court, led by Justice Barrett, concluded that the Judiciary Act *likely* does not authorize universal injunctions because the High Court of Chancery in England in 1789 did not issue such injunctions.[140]

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136. First, a note on terminology. While many in the literature, and even federal courts, refer to "nationwide injunctions," Wasserman argues that this nomenclature is in error:

> [T]hese injunctions . . . prohibit government officials from enforcing the challenged laws, regulations, and policies against the universe of persons who might be subject to enforcement, regardless of whether they were parties to the lawsuit producing the injunction. These injunctions are better described as 'universal,' a term that suggests something about the scope of the injunction with respect to who is protected and from what. 'Nationwide' speaks more to where protected persons enjoy those protections.

Howard M. Wasserman, *"Nationwide" Injunctions Are Really "Universal" Injunctions and They Are Never Appropriate*, 22 LEWIS & CLARK L. REV. 335, 338, 349-53 (2018). I follow Wasserman and refer to either universal injunctions or, more broadly, non-plaintiff-confined remedies.

137. *See infra* note 149.

138. *See infra* notes 150, 152 and accompanying text.

139. 606 U.S. 831, 839 (2025) ("The issue before us is one of remedy: whether, under the Judiciary Act of 1789, federal courts have equitable authority to issue universal injunctions.").

140. *Id.* at 842. I emphasize "likely" because the Supreme Court did not definitively resolve the issue; the Justices considered the legality of the district court injunctions on the government's applications for partial stays. The case was decided on the Court's emergency docket, meaning the majority did not finally

To justify this ruling, Barrett commented extensively on what she considered a lack of "historical pedigree" for universal injunctions.[141] But as Justice Sotomayor pointed out in dissent, the majority conveniently papered over a checkered past.[142]

This Part briefly introduces the scholarly and judicial debate over non-plaintiff-confined remedies[143] before reflecting on the takeaways that both

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answer the question and instead found only that "[t]he Government is likely to succeed on the merits." *Id.* at 841. The Court could therefore reconsider its position in future litigation. *See, e.g.*, Biden v. Texas, 597 U.S. 785, 794-95, 814 (2022) (invalidating injunction against the recission of the Remain in Mexico policy, despite earlier refusal to grant a stay of the injunction based on the Biden Administration's failure to show likelihood of success on the merits). Nevertheless, most commentators have assumed that *CASA* represents the final view of the conservative majority on the propriety of universal injunctions. *See, e.g.*, Stephen I. Vladeck, *The Supreme Court, October 2025 Term—Foreword: The Court Against the Courts*, 140 HARV. L. REV. (forthcoming 2026) (manuscript at 29) (describing the "ruling in *Trump* v. *CASA, Inc.*, that the Judiciary Act of 1789 does not authorize federal courts to issue 'universal injunctions' . . . except where necessary to provide the plaintiffs with 'complete relief'"). For analysis of the Court's use of the emergency docket during the second Trump Administration, see William N. Eskridge, Jr., *Trump 2.0 Removal Cases & The New Shadow Docket*, U. CHI. L. REV. ONLINE (Sept. 23, 2025), https://lawreview.uchicago.edu/online-archive/trump-20-removal-cases-new-shadow-docket#heading-0 [https://perma.cc/A7ME-X5KA].

141. 606 U.S. at 844-47.

142. *Id.* at 895-908 (Sotomayor, J., dissenting) (describing the history and purposes of equity and recounting cases where American courts issued or upheld universal injunctions).

143. Two closely related debates are worth noting, though this Part will spend little time addressing them:

First, there are arguments on both sides about the *practical value* of universal remedies, regardless of whether or not they are constitutional. Bray, who kicked off the academic frenzy over non-plaintiff-confined remedies in 2017, argues strongly against the utility of universal injunctions. *See* Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 457-69 (2017). Joining him are Wasserman, *supra* note 136; Ronald A. Cass, *Nationwide Injunctions' Governance Problems: Forum-Shopping, Politicizing Courts, and Eroding Constitutional Structure*, 27 GEO. MASON L. REV. 29 (2019); and Justice Gorsuch, Dep't of Homeland Sec. v. New York, 589 U.S. 1173 (2020) (Gorsuch, J., concurring). Arguing on behalf of universal injunctions are Spencer E. Amdur & David Hausman, *Nationwide Injunctions and Nationwide Harm*, 131 HARV. L. REV. F. 49 (2017); Suzette M. Malveaux, *Class Actions, Civil Rights, and the National Injunction*, 131 HARV. L. REV. F. 56 (2017); Amanda

sets of scholars and the Justices should glean from government by injunction and the expansive equity jurisprudence it involved. As an underappreciated example of broad remedial orders extending beyond the parties to litigation, government by injunction provides additional support for the historical pedigree and thus legality of universal injunctions.

A. The Controversy over Non-Plaintiff-Confined Remedies

The bulk of the scholarly debate about the legality of non-plaintiff-confined remedies focuses on the constitutionality of such broad remedial orders. Article III, Section 2 of the Constitution declares that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority," and to several categories of "Controversies" delineated on the basis of party identity.[144] Some

Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. REV. 1065 (2018); Robert L. Glicksman & Emily Hammond, *The Administrative Law of Regulatory Slop and Strategy*, 68 DUKE L.J. 1651, 1694-1707 (2019); and Doug Rendleman, *Preserving the Nationwide National Government Injunction to Stop Illegal Executive Branch Activity*, 91 U. COLO. L. REV. 887 (2020). Middle of the road, reformist positions are taken by David Hausman, *When Congress Requires Nationwide Injunctions*, 91 U. COLO. L. REV. 835 (2020); and *District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701 (2024).

Second, scholars argue whether Section 706 of the Administrative Procedure Act (the "APA") authorizes courts to universally enjoin agency rules and regulations. John Harrison leads the way in arguing that the APA does not authorize universal vacatur of regulations. *See* John Harrison, *Section 706 of the Administrative Procedure Act Does Not Call for Universal Injunctions or Other Universal Remedies*, 37 YALE J. ON REGUL. BULL. 37, 42-47 (2020). Cass also makes the point, *see* Cass, *supra*, at 52-58, as do Bray, *supra*, at 438 n.121, and Justice Gorsuch in his concurring opinion in *United States v. Texas*, which was joined by Justices Thomas and Barrett, 599 U.S. 670, 693-703 (2023) (Gorsuch, Thomas & Barrett, JJ., concurring). On the opposite side of the APA § 706 debate are Mila Sohoni, *The Power to Vacate a Rule*, 88 GEO. WASH. L. REV. 1121 (2020); Glicksman & Hammond, *supra*, at 1698-1701; Frost, *supra*, at 1100; Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 VA. L. REV. 933, 950-51 (2018); and Justice Kavanaugh, Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys., 603 U.S. 799, 829-43 (Kavanaugh, J., concurring). *See also* Trump v. CASA, Inc., 606 U.S. 831, 847 n.10 (2025) (noting that the Court has not "resolve[d] the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action").

144. U.S. CONST. art. III, § 2.

constitutional and administrative law scholars see in this language and its definition of the "judicial Power" a strict requirement that courts benefit or bind only those present before them—in other words, the actual parties to the case or controversy.

One version of the constitutional argument derives from the Supreme Court's standing jurisprudence, "contend[ing] that while a party to a lawsuit may seek a remedy on her own behalf, she lacks standing to pursue a remedy that directly and intentionally benefits nonparties."[145] However, as Professor Trammell points out, "Standing presents a quintessential threshold question, whereas the appropriate scope of remedy—including whether a remedy may directly benefit a nonparty—is a logically distinct matter."[146]

The second version of the constitutional argument contends that the judicial power includes only the authority "to decide a case for a particular claimant."[147] The Constitution confers upon the judiciary the "Power" to decide "Cases" and "Controversies,"[148] and this narrowly circumscribed power allegedly provides "no constitutional basis to decide disputes and issue remedies for those who are not parties."[149] Pushing back against this

145. Alan M. Trammell, *The Constitutionality of Nationwide Injunctions*, 91 U. COLO. L. REV. 977, 981 (2020); *see, e.g.*, Michael T. Morley, *De Facto Class Actions? Plaintiff- and Defendant-Oriented Injunctions in Voting Rights, Election Law, and Other Constitutional Cases*, 39 HARV. J.L. & PUB. POL'Y 487, 516, 523-27 (2016); Aaron-Andrew P. Bruhl, *One Good Plaintiff Is Not Enough*, 67 DUKE L.J. 481, 519 (2017); Andrew Coan & David Marcus, *Article III, Remedies, and Representation*, 9 CONLAWNOW 97, 97-106 (2018).

146. Trammell, *supra* note 145, at 981. "[T]he Supreme Court steadfastly decouples *standing* and *scope of remedy*." A contrary view would be "exceedingly difficult (if not impossible) to reconcile with the traditional rule—which the Court has long embraced—that a 'court's equitable powers to remedy past wrongs [are] broad, for breadth and flexibility are inherent in equitable remedies.' This includes remedies that extend far beyond the actual plaintiffs to a lawsuit." *Id.* at 984. *But see* Bray, *supra* note 143, at 472.

147. Bray, *supra* note 143, at 471.

148. U.S. CONST. art. III, § 2.

149. Bray, *supra* note 143, at 471. For judicial adoption of this reasoning, see, for example, *Trump v. Hawaii*, 585 U.S. 667, 713-21 (2018) (Thomas, J., concurring) (citing Bray, *supra* note 143, at 425-27, 440-45, 451); and *CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 255-59 (4th Cir. 2020). For other scholars who make the point, see, for example, Wasserman, *supra* note 136, at 359-63; and Harrison, *supra* note 143, at 39-40. More specifically, the argument goes like this:

claim, Professor Trammell argues that it "fails as a historical and descriptive matter," since "federal courts have never understood their power solely in terms of resolving the parties' specific disputes."[150] Professors Amanda

> [A] court's ultimate power rests in its authority to bind the parties through a judgment, which necessarily is specific to those parties properly before the court. Conversely, a court lacks power to bind anyone who isn't actually before it. In this telling, nationwide injunctions violate the Article III judicial power precisely because they directly and intentionally, rather than just incidentally, accord relief to persons who are not parties to the lawsuit.

Trammell, *supra* note 145, at 987 (footnote omitted).

150. Trammell, *supra* note 145, at 987. To support this proposition, Trammell cites *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), where Chief Justice Marshall went far afield to discuss the overarching principle of judicial review in a case where the Supreme Court had no jurisdiction—as well as several "collusive" cases "in which the supposed dispute was a contrivance," including *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810), and *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857). Trammell, *supra* note 145, at 987-88. He also points to the Supreme Court's more recent practices of "direct[ing] parties to brief new issues that the Court itself has added and appoint[ing] amici curiae to argue points that the parties do not actually contest." *Id.* at 988. Finally, Trammell argues that § 1983, at least since its expansion in *Monroe v. Pape*, 365 U.S. 167 (1961), and the "prophylactic injunctions" which began issuing in the 1960s—most notably to desegregate schools—support the idea "that the nationwide injunction isn't a remedial anomaly." *Id.* at 990-97.

Frost[151] and Mila Sohoni[152] also appeal to historical practice to support universal injunctions, finding ample evidence in the record to suggest a broader equity power than Professor Bray and company would prefer.

Yet the Supreme Court did not put its *CASA* ruling in constitutional terms. Instead, it took a narrower position, that whatever the constitutional status of non-plaintiff-confined remedies, Congress has not authorized them for the mine-run of cases.[153] The Court therefore took the Judiciary Act of 1789 as its interpretive nexus, rather than Article III.[154] That being said, the inquiry in *CASA* and the scholarly constitutional debate revolve around the same essential disagreement: whether American courts have granted non-plaintiff-confined remedies for long enough and regularly enough to

151. Frost, *supra* note 143, at 1080-81. Frost claims that the English bill of peace, "which allowed courts to issue remedies to individuals closely connected and similarly situated to the plaintiff, suggests that, in traditional equity courts could grant injunctions that applied to nonparties." To justify application of this historical analogue, she argues:

> [F]ederal courts' equitable authority should keep pace with the expansion of the political branches' role in enacting laws and implementing policies with nationwide effect. The narrower scope of injunctions in traditional equity may be due to the limited scope and nature of the laws being challenged, and not an inherent limit on the powers of the federal courts. Accordingly, the historical understanding of "judicial Power" does not bar modern courts from issuing broad equitable relief affecting nonparties in response to sweeping executive orders and actions. Indeed, historical antecedents such as the bill of peace illustrate that federal courts have long exercised such authority.

Id. at 1081.

152. Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 HARV. L. REV. 922 (2020). "Surveying cases involving both state and federal law and drawing on decisions by courts at all three levels of the federal judicial hierarchy," Sohoni finds "that Article III courts have issued injunctions that extend beyond just the plaintiff for well over a century." *Id.* at 924. *Contra* Michael T. Morley, *Disaggregating the History of Nationwide Injunctions: A Response to Professor Sohoni*, 72 ALA. L. REV. 239 (2020).

153. Trump v. CASA, Inc., 606 U.S. 831, 850-54 (2025) (entertaining the claim that a universal injunction may be appropriate in limited circumstances where universal relief is necessary to afford complete relief to a named plaintiff).

154. *See supra* note 139.

render those remedies "traditional."[155] As a result, this Part engages both the constitutional and statutory questions on level terms.

The stakes of these seemingly academic disagreements about constitutional and statutory remedial minutiae could hardly be greater. In recent years, federal district courts have issued nationwide injunctions suspending U.S. Food and Drug Administration approval of the abortion drug mifepristone,[156] lifting President Trump's Travel Ban,[157] preventing implementation of DAPA,[158] invalidating the Public Charge Rule,[159] blocking various COVID-19 emergency measures,[160] and preventing enforcement of religious exemptions to contraceptive requirements for health insurance providers,[161] to name just a few.[162] In each of these cases, a single, unelected

155. 606 U.S. at 841 ("[T]he statutory grant [of equitable authority] encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception." (quoting Grupo Mexicano de Desarrollo, S. A. v. All. Bond Fund, Inc., 527 U.S. 308, 319 (1999))).

156. All. for Hippocratic Med. v. U.S. Food & Drug Admin., 668 F. Supp. 3d 507 (N.D. Tex. 2023), *aff'd in part*, *vacated in part*, 78 F.4th 210 (5th Cir. 2023), *cert. granted*, 144 S. Ct. 537 (2023), *cert. granted sub nom.* Danco Lab'ys, L.L.C. v. All. for Hippocratic Med., 144 S. Ct. 537 (2023), *cert. denied*, 144 S. Ct. 537 (2023), *rev'd and remanded*, 602 U.S. 367 (2024), *vacated and remanded*, 117 F.4th 336 (5th Cir. 2024).

157. Hawaii v. Trump, 265 F. Supp. 3d 1140 (D. Haw. 2017), *aff'd in part*, *vacated in part*, 878 F.3d 662 (9th Cir. 2017), *rev'd and remanded*, 585 U.S. 667 (2018).

158. Texas v. United States, 86 F. Supp. 3d 591 (S.D. Tex. 2015), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *aff'd by an equally divided court*, 579 U.S. 547 (2016).

159. CASA de Maryland, Inc. v. Trump, 414 F. Supp. 3d 760 (D. Md. 2019), *rev'd and remanded*, 971 F.3d 220 (4th Cir. 2020); New York v. U.S. Dep't of Homeland Sec., 408 F. Supp. 3d 334 (S.D.N.Y. 2019), *aff'd as modified*, 969 F.3d 42 (2d Cir. 2020).

160. *See, e.g.*, Georgia v. Biden, 574 F. Supp. 3d 1337, 1357 (S.D. Ga. 2021) (enjoining vaccine mandate for federal contractors), *aff'd in part, vacated in part sub nom.* Georgia v. President of the U.S., 46 F.4th 1283 (11th Cir. 2022); Louisiana v. Becerra, 571 F. Supp. 3d 516, 544 (W.D. La. 2021) (enjoining Centers for Medicare & Medicaid Services' vaccine mandate), *vacated and remanded*, No. 21-30734, 2022 WL 2116002 (5th Cir. June 13, 2022).

161. Pennsylvania v. Trump, 281 F. Supp. 3d 553 (E.D. Pa. 2017), *aff'd sub nom.* Pennsylvania v. President U.S., 930 F.3d 543 (3d Cir. 2019), *rev'd and remanded sub nom.* Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania, 591 U.S. 657 (2020), *rev'd sub nom.* Pennsylvania v. President United States, 816 F. App'x 632 (3d Cir. 2020).

162. *See also* Wasserman, *supra* note 136, at 336-37 (collecting cases).

federal judge effectively set nationwide policy (if only for a time), affecting millions of Americans and thwarting the goals of one or both of the democratic branches. Whatever one's personal views of the various programs enjoined over the last decade-plus and of the propriety of this technique of dispute management, the power to universally enjoin Executive Branch action is a monumental one, and it must be closely guarded and scrutinized, if it is to be employed at all.[163]

With the terms of the debate over non-plaintiff-confined remedies in administrative law properly before us, we may now return to government by injunction.

B. The Link Between Expansive Labor Injunctions and Universal Remedies

Government by injunction and modern universal injunctions represent two sides of the same coin. Early twentieth-century labor injunctions and early twenty-first century universal injunctions share a fundamental similarity: a loose connection between the parties appearing in court and the scope of the remedy afforded to the plaintiffs. Because of the logical nexus between parties and remedies,[164] the questions presented are equivalent regardless of whether the injunction *benefits* parties not present before the court (as with universal injunctions) or *binds* parties not present before the court (as with government by injunction). At the very least, universal injunctions and government by injunction must rise or fall together.

However, scholars have generally disregarded government by injunction. The non-plaintiff-confined-remedies literature rarely mentions the federal courts' experience of discretionarily and pragmatically wielding the equity power to manage industrial strife and effectively control entire working class communities.[165] The connection has perhaps gone unnoticed

163. *See* Frost, *supra* note 143, at 1115-19 (noting that hers "is not an unqualified defense"); Trammell, *supra* note 145, at 997-98 (similar); Sohoni, *supra* note 152, at 994-96 (similar).

164. *See supra* note 75 and accompanying text.

165. To briefly review this literature's treatment of labor injunctions, Sohoni makes a single reference to the Norris-LaGuardia Act and, in a footnote, mentions FRANKFURTER & GREENE, *supra* note 36, which she characterizes as "criticizing (ab)uses of injunctive power to quell boycotts and picketing." Sohoni, *supra* note 152, at 997, 997 n.508. Rendleman tersely notes that labor injunctions "were a scandal." *See* Rendleman, *supra* note 143, at 926. Buried

because the current debate over administrative law remedies focuses on non-*plaintiff*-confined injunctions, whereas labor injunctions created so much controversy because they extended beyond the *defendants* actually before the court.[166] Furthermore, law reviews at the time of government by injunction focused more on the displacement of community control than the constitutional question of judicial power. However, the distinction between non-plaintiff-confined and non-defendant-confined injunctions is ultimately one without a substantive difference. Recall that the old Federal Equity Rule 38 governed representative actions brought either by or against members of a class.[167] Equity courts could bind the members of an unincorporated association with their judgments through res judicata when a representative subset of the association's members filed suit as plaintiffs *just the same* as when a representative subset were joined as defendants to a suit.[168] Put differently, the equity power worked the same on either side of the *v*. Hence, whether a given injunction extends beyond the *plaintiffs* properly before the court or beyond the *defendants* properly before the court (like the question of whether a given injunction is nationwide or merely statewide) "is really beside the point, as nearly everyone who writes about this topic recognizes. Rather, the critical insight is that courts issued injunctions that consciously and directly affected nonparties."[169]

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deep in a footnote, Zayn Siddique quotes a 1939 law review article which mentions the explosiveness of the labor injunction issue. *See* Zayn Siddique, *Nationwide Injunctions*, 117 COLUM. L. REV. 2095, 2142 n.261 (2017) (quoting Dobie, *supra* note 135, at 301).

Bray also omits the connection in his recent article with Aditya Bamzai on *In re Debs* and the federal equity power. Aditya Bamzai & Samuel L. Bray, Debs *and the Federal Equity Jurisdiction*, 98 NOTRE DAME L. REV. 699 (2023). Despite realizing that "[f]or decades, *Debs* and the concept of the 'labor injunction' were at the heart of not only legal but political debate," even remarking that it "defined a legal era," Bamzai and Bray focus only on the backdrop authority of the federal government "to invoke equitable remedies in the absence of express statutory authorization"—an understandable exclusion given the procedural posture of *Debs* and most other labor injunction cases. *See id.* at 701-02.

166. *See supra* notes 57-67 and accompanying text.

167. Rules of Practice for the Courts of Equity in the United States, 226 U.S. 649, 659 (1912).

168. WRIGHTINGTON, *supra* note 27, at 430, 430 n.13 (collecting cases).

169. Trammell, *supra* note 145, at 991; *see also* Frost, *supra* note 143, at 1071 ("[T]he dispute is about *who* can be included in the scope of the injunction, not *where* the injunction applies or is enforced."); Sohoni, *supra* note 152, at 929

One could also colorably distinguish government by injunction from universal remedies in administrative law by appealing to the special status of Executive Branch defendants. Perhaps prohibiting a democratically elected President from imposing his will upon a wide class of nonplaintiffs raises policy concerns distinct from those presented by prohibiting nondefendant labor and community forces from (as courts at the turn of the century would put it) imposing their will upon plaintiff employers. This accords with the Supreme Court's recent practice of "treat[ing] presidential

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("At bottom, the current debate over the universal injunction is as much a debate over the proper role of the federal courts as it is a debate over the arcana of equitable remedies. May courts decide disputes only for the parties before them, or may they declare the law for nonparties, too?"). For a discussion of the levels-of-generality game in constitutional law generally and in the specific realm of administrative law remedies, see *id.* at 930-35; however, note that Sohoni still does not comprehend the import of government by injunction, pointing only to the following examples of the kinds of cases opponents of the universal injunction "gerrymander" out of debates about the proper scope of remedies:

> "true" *in rem* cases, cases in which injunctions incidentally benefitted nonparties by enjoining nuisances, cases enjoining defendants from future illegal conduct, cases enjoining state officials from enforcing state laws against nonplaintiffs, cases restraining federal officials from enforcing federal laws against nonplaintiffs within a single judicial district, and cases in which plaintiffs obtained relief on behalf of others well before the modern-day class certification procedure came to be adopted.

Id. at 935. Also note that, in the administrative law context, Morley draws a distinction between plaintiff-oriented injunctions, in which courts "grant relief solely in favor of the plaintiffs in the case," and defendant-oriented injunctions, in which courts "enjoin the defendant officials or agencies . . . from enforcing or implementing the challenged provision against anyone in the state or even the nation, as appropriate." Morley, *supra* note 145, at 489-90. Labor injunctions granted at the behest of private employers flip this framework on its head; while in the administrative law context, a singular government agency might be the subject of a broad defendant-oriented injunction prohibiting it from violating the rights of numerous (unnamed) parties in a similar position to the named plaintiffs, in the labor-injunction context, numerous (unnamed) members of the community in a similar position to the named defendants might be the subject of a broad plaintiff-oriented injunction protecting a single employer against any and all interference with its property.

preferences as dispositive of injury to the government and of the public interest" in evaluating stay applications on its emergency docket.[170]

This democratic distinction does not hold up on closer inspection, however. While the President can invoke a popular mandate to rhetorically reinforce his policy initiatives, unlawful and unconstitutional policies cannot be deemed consistent with that mandate, or else the Constitution must bend to executive whim. Far from allowing this sorry state of affairs, the Constitution commands the President to "take Care that the Laws be faithfully executed"[171] and to take an oath to "preserve, protect and defend the Constitution."[172] The underlying constitutional question in *CASA* demonstrates the point. The President's personal or political interest in enforcing a "patently unconstitutional" executive order[173] was clearly distinct from the *public interest* in the case—enforcement of the Constitution against that *ultra vires* proclamation. The President and his Cabinet's policy preferences may shed light on—but crucially, do not equal—the will of the sovereign people, especially given the intermediary Electoral College and the mathematical possibility (and, several times, reality) of winning the presidency while losing the popular vote. Hence, one cannot distinguish between federal courts' power to enjoin private lawlessness and their power to enjoin presidential lawlessness. A presumption of Executive Branch *lawfulness* may be an appropriate form of judicial deference to a coordinate political branch, but it cannot bear the weight of an alternative constitutional or statutory interpretive frame.[174] If anything, judicial interference in local affairs between employers on the one

170. Eskridge, *supra* note 140, at *8.

171. U.S. CONST. art. II, § 3.

172. U.S. CONST. art. II, § 1.

173. Trump v. CASA, Inc., 606 U.S. 831, 879 (2025) (Sotomayor, J., dissenting) ("Every court to evaluate the Order has deemed it patently unconstitutional."). The President's executive order purported to cancel birthright citizenship despite its clear enshrinement in the Fourteenth Amendment. U.S. CONST. amend. XIV, § 1; *see* Trump v. Barbara, 146 S. Ct 2438, 2458 (2026) (holding the executive order unconstitutional on the merits).

174. For an overview of courts' treatment of the presumption of regularity during the second Trump Administration, see Ryan Goodman, Siven Watt, Audrey Balliette, Maggie Lin, Michael Pusic & Jeremy Venook, *The "Presumption of Regularity" in Trump Administration Litigation*, JUST SEC. (Sept. 18, 2025), https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/#post-120547-_Toc208770526 [https://perma.cc/6VFZ-P8NV].

hand and employees and their communities on the other represents a more extreme disregard of democratic principles than the invalidation of an obviously unlawful presidential initiative, especially when you remember that early twentieth-century courts routinely struck down or applied limiting constructions to democratically enacted state and federal legislation to reach these results.[175]

Put it all together, and the conceptual relevance of government by injunction in the universal-remedies debate becomes clear. The light that sweeping turn-of-the-century labor injunctions shed on the modern universal-remedy debate remains to be explored.

C. Of Timing and Twins in *CASA*

Before digging into the meaning of government by injunction in the modern remedies debate, notes on the Court's search for historical analogues are in order. Justice Barrett's majority opinion in *CASA* would allow federal courts to issue only those equitable remedies with analogues that date to the ratification of the Constitution and enactment of the first Judiciary Act in 1789.[176] Barrett finds that purported analogues from this period lack sufficient similarity to justify universal injunctions[177] and that, at the very least, "universal injunctions postdated the founding by more than a century."[178] For Barrett, this timing is dispositive: The "absence" of universal injunctions "from 18th- and 19th-century equity practice settles the question of judicial authority."[179] The following syllogism captures this logic:

- Major premise—Congress has only authorized federal courts to issue equitable remedies that date to or have analogues from 1789 or thereabouts.
- Minor premise—Universal injunctions do not date to 1789 and are not closely related to equitable remedies that date to 1789.
- Conclusion—Congress has not authorized federal courts to issue universal injunctions.

175. *See supra* notes 114-115 and accompanying text.

176. *CASA*, 606 U.S. at 841-42 (majority opinion).

177. *Id.* at 847-50.

178. *Id.* at 845 n.7.

179. *Id.* at 845 n.8.

The syllogism's major premise requires a myopic focus on the late 1700s and early 1800s that *CASA* justifies only doctrinally[180]—not as a matter of the first principles of equity. This evades a reasoned analysis about the nature and development of the equity power. I concede that if a majority of the Court would require the unearthing of a heretofore unknown nationwide injunction issued in 1789[181] to revisit its position, the history of government by injunction, beginning in earnest in 1895, will not get litigants arguing before the Justices very far. Nevertheless, if—as I intend to show—government by injunction helps establish that judges near the turn of the twentieth century accepted a view of the equity power which supports the modern practice of universal injunctions, the Court and commentators must engage the weight of judicial authority stretching back much earlier than the 1960s, as Justice Barrett would have it.[182] They must not only explain why federal judges during the heyday of the legal process tradition endorsed a broad equity power,[183] but must also abrogate the

180. Justice Barrett relies principally on *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999)—a case involving a private suit for an injunction to freeze a Mexican holding company's assets in order to prevent it from discriminating against American creditors pending a trial on the merits—to explain her timing requirement. *CASA*, 606 U.S. at 841-42.

181. Or 1795, 1805, 1815, 1825, 1835, 1845, 1855, 1865, 1875, 1885, or perhaps all of the above in order to demonstrate a robust and "longstanding equity practice." *CASA*, 606 U.S. at 842.

182. *Id.* at 844 (contending that "the first universal injunction" was issued in 1963).

183. Henry M. Hart Jr. and Albert M. Sacks pioneered the legal process tradition in the late 1950s, just prior to the earliest purported universal injunctions, according to Justice Barrett's account. *See* William N. Eskridge Jr., *Nino's Nightmare: Legal Process Theory as a Jurisprudence of Toggling Between Facts and Norms*, 57 ST. LOUIS UNIV. L.J. 865, 865 (2013) (citing HENRY M. HART, JR. & ALBERT M. SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW (tent. ed. 1958) (subsequently edited and published by William N. Eskridge, Jr. & Philip P. Frickey, 1994)). Modern textualists, especially conservatives following Justice Scalia, have eschewed the legal process approach. John F. Manning, *Justice Scalia and the Legislative Process*, 62 NYU ANN. SURVEY OF AM. L. 33, 34-37 (2006) (explaining that "[f]or two generations, the *Legal Process*" tradition "supplied the dominant framework for understanding statutory interpretation," allowing "judges to impose desirable coherence upon often chaotic legislative outcomes," but that Scalia "has done much to disrupt this calm consensus," focusing on rigid adherence to enacted text). Barrett could presumably downplay the recent history of universal injunctions by arguing that, informed by the legal process tradition's

judgments of jurists during the "decades that the power of judicial review took on its modern form."[184]

Consistent with Professor Keith Whittington's insights, should we be surprised that early Republic courts lacked occasion to issue universal injunctions against a nascent federal government that played a minimal role in regulating the daily lives of Americans and which regularly deployed private enforcement mechanisms rather than centralized bureaucratic schemes in the realms it did control?[185] Or instead, would the coextensiveness of federal judicial, legislative, and executive power suggested by Professor Akhil Reed Amar lead us to expect more dramatic judicial decrees to match more extensive legislative and executive assertions under the Reconstruction Amendments and an expanded interpretation of the Commerce Clause, both of which came into force in the late nineteenth century?[186] If the latter, government by injunction no longer appears inconsistent with prior practice, but rather seems a natural corollary of a more powerful federal government overall. After all, the Court in *In re Debs* upheld the Executive Branch's *inherent authority* to seek an injunction against the Pullman strike to protect interstate commerce, regardless of whether the Sherman Act authorized such action.[187]

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approach to statutory interpretation, courts entering universal injunctions took too lenient an approach to constitutional interpretation.

184. KEITH WHITTINGTON, THE POLITICAL FOUNDATIONS OF JUDICIAL SUPREMACY 256 (2007); *see also id.* at 257 (citing *Debs* as a decision that helped to establish the "broad power of the federal courts to issue injunctions").

185. *See generally* NICHOLAS R. PARRILLO, AGAINST THE PROFIT MOTIVE: THE SALARY REVOLUTION IN AMERICAN GOVERNMENT, 1780-1940 (2013) (documenting the use of bounties and facilitative payments (from individuals to government officers in exchange for services rendered) in funding government services in the early Republic); *see also* Nicholas Parrillo, *The De-Privatization of American Warfare: How the U.S. Government Used, Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century*, 19 YALE J. L. & HUMANS. 1, 74-76 (2007) (associating the military's abandonment of the privateer model in the 1890s with the project of capacity building and the need for "centralized public provision").

186. *See* Akhil Reed Amar, *A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction*, 65 B.U. L. REV. 205, 231-34, 250-52 (1985); Akhil Reed Amar, *The Two-Tiered Structure of the Judiciary Act of 1789*, 138 U. PA. L. REV. 1499, 1511-12 (1989).

187. WHITTINGTON, *supra* note 184, at 205-06 ("The Supreme Court declined to pursue the question of whether the Sherman Antitrust Act might apply to this situation . . . . instead focus[ing] on the 'broader ground,' including the

In sum, Justice Barrett's focus on the end of the 1700s and start of the 1800s is misplaced. Equity's power lies in its ability to adapt to changing circumstances.[188] Arguing from negative inference and ignoring important changes to the policy landscape the judiciary confronted over the course of the 1800s and American history writ large deprives the equity power of its fundamental nature.

So too does the *CASA* syllogism's minor premise falter. As Justice Sotomayor points out in dissent, the majority erroneously requires a "near exact match" between contemporary practice and historical analogue, when the fundamental purpose of equity—securing complete justice—militates against so rigid an inquiry.[189] Consider Justice Barrett's discussion of English bills of peace. While granting that bills of peace allowed equity courts "to adjudicate the rights of members of dispersed groups without formally joining them to a lawsuit through the usual procedures"—a seemingly conclusive concession of similarity—Barrett posits four allegedly relevant distinctions.[190]

First, Justice Barrett argues that bills of peace were used only in "limited circumstances."[191] Yet infrequency of use does not the power of the equity courts deny. Remember that, despite their increasing prevalence in recent years,[192] federal courts have never granted universal injunctions in more than a minor fraction of cases.[193]

Second, Justice Barrett claims that bills of peace reached "small and cohesive" remedial beneficiaries, while universal injunctions reach "*anyone*

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fundamental responsibility of the federal courts to assist in keeping the 'highways of interstate commerce free from obstruction.'").

188. *CASA*, 606 U.S. 831, 906-07 (2025) (Sotomayor, J., dissenting); *see also id.* at 908 (explaining that "constitutional and procedural limitations on judicial power, not equitable ones," explain the "relative absence of universal injunctions against the United States before the late 20th century").

189. *Id.* at 907 (citing United States v. Rahimi, 602 U.S. 680, 692 (2024) ("The law must comport with the *principles* underlying the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin.'") (emphasis added)).

190. *Id.* at 848 (majority opinion).

191. *Id.*

192. *See, e.g.*, *supra* notes 156-162 and accompanying text.

193. The *Harvard Law Review* found only 127 nationwide injunctions over 60 years, from 1963 to 2023. *District Court Reform: Nationwide Injunctions*, *supra* note 143, at 1705.

affected."[194] But again, she fails to establish the principled distinction behind this technical difference. The universe of "*anyone* affected" by an unlawful federal policy need not be large. Consider a law denying equal protection to 5 (or 50, or 500, or 5,000) individuals who suffer from a rare medical condition. That a universal injunction of the law could *hypothetically* benefit hundreds of millions of Americans does not defeat the fact that such an injunction would *actually* benefit only a handful of people. Barrett does not even attempt to—for she *cannot*—meaningfully distinguish between the number of nonparties that historically benefitted from bills of peace and the indeterminate number that could benefit from a modern universal injunction. If a federal court *universally* enjoins a local ordinance unconstitutionally targeting a fringe religious minority community in a small township—that is, it enjoins enforcement of the ordinance against "*anyone* affected"—is the minority community sufficiently "small and cohesive" to render the injunction lawful, or must members of the minority community file a series of individual lawsuits or file for class certification to escape persecution? What about an injunction against a similar state law? If these local and statewide minority communities are sufficiently small and cohesive, what makes a discriminatory federal law any different? Barrett provides no indication.

Third, Justice Barrett suggests that universal injunctions are unique in that they "resolve a question of legal interpretation for the entire realm."[195] But does it make sense to distinguish between an injunction that grants relief to all 5 members of a suspect class that exist nationwide (a universal injunction) and an injunction that grants relief to only 5 local members of a suspect class with 50 nationwide members (which Barrett would appear to view as properly analogous to bills of peace)? I would argue not.

Fourth, and most forcefully, Justice Barrett contends that while suits for universal injunctions bind only the named parties, bills of peace "would bind all members of the group, whether they were present in the action or not," and are thus more closely analogous to modern class actions.[196] To explain why *this* difference matters, she goes on to argue that it is unfair to the government that if one individual plaintiff unsuccessfully sues for a universal injunction in federal court, another individual plaintiff could request the same universal relief uninhibited by res judicata, whereas

194. *CASA*, 606 U.S. at 833 (quoting Bray, *supra* note 143, at 426).

195. *Id.* (quoting Bray, *supra* note 143, at 426).

196. *Id.* at 833-34 (quoting 7A CHARLES ALAN WRIGHT & ARTHUR R. MILLER ET AL., FEDERAL PRACTICE AND PROCEDURE § 1751 (4th ed. 2021)) (noting that the bill of peace eventually developed into the class action).

individual plaintiffs would be barred from relitigating the issue after an initial class-wide defeat.[197]

I see three independent issues with this argument. One, "[t]hat bills of peace bear some resemblance to modern day Federal Rule of Civil Procedure 23 class actions does not mean they cannot also be a historical analogue to the universal injunction."[198] Justice Barrett "provides absolutely no reason to conclude [English Chancellors] would think the former permissible and not the latter."[199]

Two, class actions for injunctive relief similar in scope to a universal injunction would proceed under Rule 23(b)(2) of the Federal Rules of Civil Procedure.[200] Rule 23(b)(2) provides for mandatory class certification, meaning that prospective class members have no opportunity to opt out and that a postcertification judgment binds every member of the class, whether they were aware of the action or not.[201] As a result, Justice Barrett's class action analogue directly conflicts with the third supposed distinction she draws between universal injunctions and bills of peace—that the former decide an issue for the entire realm, while the latter did not! This also means that universal injunctions might actually allow for more percolation than the mandatory Rule 23(b)(2) class action alternative.[202] Either Rule 23(b)(2) class actions are also suspect under Barrett's view, or neither device is.

Three, Justice Barrett's class action distraction presumes that, in a world of repeat, high-stakes universal-injunction litigation, at least one federal district court will *erroneously* enter a universal injunction, at least

197. *Id.* at 848-50; *see also id.* at 855 ("A plaintiff must win just one suit to secure sweeping relief. But to fend off such an injunction, the Government must win everywhere.").

198. *Id.* at 903 (Sotomayor, J., dissenting).

199. *Id.* at 903-04.

200. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 361-62 (2011) (noting that a Rule 23(b)(2) class action is appropriate when "the relief sought must perforce affect the entire class at once"); *see also* CASA, Inc. v. Trump, 793 F. Supp. 3d 703, 732 (D. Md. 2025) (certifying a 23(b)(2) class on remand).

201. *Wal-Mart*, 564 U.S. at 362.

202. *See CASA*, 606 U.S. at 939 n.9 (Jackson, J., dissenting) ("[W]hile many accuse universal injunctions of preventing percolation, the facts of this very suit demonstrate otherwise: Three different District Courts each considered the merits of Executive Order No. 14160, and appeals are now pending in three Courts of Appeals.").

temporarily halting enforcement of a lawful policy.[203] Setting aside the problem that federal district and appellate courts had still *universally* held the birthright citizenship order unconstitutional at the time *CASA* was decided[204] and that Barrett sided with the majority when the Court reached the merits of that order[205]—both of which suggest that Barrett's presumption is incorrect—judicial error in the opposite direction seems *just as likely*. In a world of even-higher-stakes, one-shot, Rule 23(b)(2) class action litigation, judicial error in favor of the government would effectively *sanction unlawful enforcement* of the policy, barring future litigation and locking in the errant initial ruling should it become final. To the extent that avoiding the cost of duplicate unsuccessful individual suits for a universal injunction is an advantage of the class action procedure, the risk of ongoing, challenge-proof, unlawful infringement upon individual rights seems much more concerning.[206]

Instead of parsing the bill of peace analogue so closely, perhaps Justice Barrett should have let her initial admission rest: "[B]ills of peace allowed [courts of equity] to adjudicate the rights of members of dispersed groups without formally joining them to a lawsuit through the usual procedures."[207] Universal injunctions, like labor injunctions before them, allow for the same equitable relaxation of typical party rules. As such, they are sufficiently analogous to bills of peace to have been authorized by the Judiciary Act of 1789.[208] And as demonstrated above, viewing the list of remedial technologies developed in chancery by 1789 as exhaustive and exclusive elides the fundamental nature of equity: adaptation to the emerging needs of justice.

203. While the additional costs to the government and to the courts of repeat universal-injunction litigation might also be a concern, they do not weigh nearly as heavily in Justice Barrett's analysis as the enforcement disruption. *Id.* at 855-56 (majority opinion).

204. *Id.* at 879 (Sotomayor, J., dissenting) ("Every court to evaluate the Order has deemed it patently unconstitutional.").

205. Trump v. Barbara, 146 S. Ct 2438, 2458 (2026) (holding the executive order unconstitutional on the merits).

206. *See infra* note 233 and accompanying text.

207. *CASA*, 606 U.S. at 848 (majority opinion) (quoting Arizona v. Biden, 40 F.4th 375, 397 (6th Cir. 2022)).

208. *Id.* at 904-06 (Sotomayor, J., dissenting).

D. Lessons from the Labor Injunction Experience

Finally, we reach the crux of the matter: What does government by injunction and the routine early twentieth-century practice of issuing non-*defendant*-confined injunctions to break strikes tell us about the use of non-*plaintiff*-confined injunctions to block unlawful executive actions today? Principally, I argue, the expansiveness of federal labor injunctions and the pragmatic considerations which justified their issuance provide additional historical support for a broad understanding of the federal equity power.[209] Fascinatingly, Professor Sohoni gets close to the same conclusion—locating her main historical precedents for the universal injunction in the 1890s, the exact decade that government by injunction commenced. She points to *Reagan v. Farmers' Loan & Trust Co.*[210] and *Smyth v. Ames*,[211] decided by the Supreme Court in 1894 and 1898, respectively, as examples of "the Court's understanding of judicial review and the corresponding exercise of remedial power" during this period.[212] The understanding of courts' remedial powers Sohoni finds in these cases bears a marked similarity to the understanding that prevailed among strike-breaking federal courts at the height of government by injunction.

In *Reagan*, the Court upheld an injunction remarkably similar to those that would soon rain down over labor disputes—the *Reagan* injunction, too, applied beyond the defendants to "all other individuals, persons, or corporations."[213] Aghast, Professor Sohoni remarks: "Now *this* is a decree that truly deserves the label 'universal,'" since it "not only enjoined the . . . defendants . . . but also enjoined *all other persons—persons that were not even parties to this suit*."[214] Similarly, Sohoni argues that language in *Smyth* suggests that the "principles which in the Federal system distinguish cases in law from those in equity" effectively "authoriz[ed] a 'court of equity' to give what amounted to a supercharged bill of peace: a 'comprehensive

209. *See supra* notes 150-152 and accompanying text.

210. 154 U.S. 362 (1894).

211. 169 U.S. 466 (1898).

212. Sohoni, *supra* note 152, at 936.

213. 154 U.S. at 370; *cf. supra* note 1 and accompanying text.

214. Sohoni, *supra* note 152, at 937-38. While the Court affirmed the injunction "so far only as it restrains the defendants," 154 U.S. at 413, Sohoni says that "[t]he most sensible reading of that language in the context of this case is that the Court had affirmed the portion of the decree restraining even nonparties." Sohoni, *supra* note 152, at 939.

decree covering the whole ground of controversy' that would 'determine[] once for all' the 'interests of the entire community involved.'"[215]

The injunctions involved in *Debs* and other labor cases substantially accord with the idea latent in *Reagan* and *Smyth* that federal courts possess a "broad reservoir of equitable power,"[216] yet in looking only at subsequent injunctions aimed at federal laws,[217] state laws,[218] and federal agency actions,[219] and not at injunctions aimed at unions in the same period, Professor Sohoni misses an extremely consequential detail.[220] In context, government by injunction further reveals federal courts' striking willingness to fashion remedies that extended well beyond the parties to the controversy around the turn of the century when their view of justice demanded it.[221]

Two interpretations of this history seem most plausible. Consistent with Professor Sohoni's view, we could, on the one hand, interpret government by injunction as a prior generation of federal judges (who, remember, remained steeped in the division between law and equity) tacitly endorsing, through their practice, a relatively unbounded view of the "judicial Power."[222] We might even grant special weight to the presumptive views of these judges, on the logic that "[i]t is surely no coincidence that the pedigree of the injunction reaching beyond the parties extends back to the

215. *Id.* at 940 (quoting *Smyth*, 169 U.S. at 517-18). On bills of peace, see Frost, *supra* note 143, at 1080-81. Justice Sotomayor relied on both Sohoni's discussion of *Smyth* and the history of English bills of peace in *Trump v. CASA, Inc.*, 606 U.S. 831, 895-908 (2025) (Sotomayor, J., dissenting).

216. Sohoni, *supra* note 152, at 943.

217. *Id.* at 943-58.

218. *Id.* at 958-73.

219. *Id.* at 982-93.

220. So, too, does Justice Sotomayor.

221. As recent experience demonstrates, courts remain willing to exceed what Bray, Wasserman, and Justice Thomas argue are the constitutional limits on equitable remedies. *See supra* notes 156-162 and accompanying text.

222. "[T]here is no particular reason to think that Justice Thomas—rather than these earlier Justices, who were rendering decisions much earlier in this country's history and who were far more familiar with the workings of equity in practice—is today correct in his estimation of the outer scope of the equitable power." Sohoni, *supra* note 152, at 1000.

same period as when constitutional judicial review first matured into the regime recognizable as the one we today live under."[223]

On the other hand, we could interpret government by injunction as a kind of remedial "anticanon,"[224] as so self-evidently unconstitutional and abhorrent that its widespread practice actually negates its own authority. After all, government by injunction was widely reviled in its day, so much so that it motivated not one, but two major pieces of federal legislation, not to mention dozens of similar state enactments.[225] To support this view, we might appeal to the words of Allen, Dunbar, and other vociferous critics who protested the *Debs* injunction as an unprecedented extension of the strong arm of equity.[226] They rightly feared that government by injunction would

223. *Id.* at 1006 (citing WHITTINGTON, *supra* note 184, at 256).

224. *See* Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379 (2011).

225. *See supra* Section II.A.

226. *See supra* notes 60-62 and accompanying text. Allen compared the *Debs* injunction to the first-ever reported labor injunction, issued in the English case *Springhead Spinning Co. v. Riley* (1865) 6 L.R. Eq. 551, saying:

> [B]etween the Springhead Spinning Company case and the [Pullman] "omnibus bill" there has been an immense change in the application of injunction to large bodies of men, as well as in the grounds upon which the courts assume jurisdiction.
>
> The Springhead Spinning Co. case applied to comparatively few individuals, all of whom were probably known to the complainants in the bill, and enjoined their interference with the property of a single proprietor.
>
> The Chicago "omnibus bill" was filed to prevent interference with twenty-three great railroad systems, and the injunction issued against several members of the American Railway Union, by name, as well as many thousand unnamed; and, to prevent a possible confusion of identity in the defendants, it was further directed to "all other persons whomsoever."
>
> Whatever may be thought of the explanation given for this great change, it is surely within the bounds of safety to assert that the history of equity jurisprudence furnishes no precedent in which the chancellor has called out the military in aid of an injunction writ.

Allen, *supra* note 60, at 315-16. For his part, Dunbar said the following:

> The Supreme Court of the United States has given its great authority in support of the course pursued in the Debs case. Other courts have unhesitatingly followed the doctrines thus laid down. The weight of authority in America appears at present to be overwhelmingly in favour of this extreme exercise of the power of equity. . . . But such a departure from principle cannot properly be permitted to pass

allow the federal judiciary to usurp the power of the democratic branches of government.[227] Yet, in stating their cases, neither Allen nor Dunbar ever suggested that non-defendant-confined injunctions, such as the *Debs* order, were *unconstitutional* in the way modern opponents of the universal injunction claim. Sure, they argued that sweeping labor injunctions were then unknown to the courts of equity and that they—as a prudential

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> unchallenged. . . . Courts of equity can in no event be made to replace permanently an able and honest administration of its duties by the executive department of the government. The attempt to do so may seem to achieve a temporary success, but ultimately will result either in a lowering of the standard of the judiciary or a disregard of its decrees. To those who recall the lawlessness prevailing in Chicago during the strikes in 1894, the conception of a court of equity guarding by power of injunction the vast railroad properties in the city will seem almost grotesque and not far removed from the parallel suggested by counsel for Debs of reading an injunction to stop the advance of an invading army during the civil war. The fear of proceedings for contempt did not prevent the burning of over a thousand freight cars and the loss of many lives. But if the practical utility of the course pursued could be demonstrated it would still, it is submitted, remain true that a procedure involving the issue by a court of equity of an edict binding upon all persons, enjoining acts already forbidden by statute or by common law, designed for the purpose of punishing all persons who should violate those prohibitions, thus reinforced by the decree of the court, would be an innovation upon the established course of equity procedure and jurisprudence such as legislative authority alone could justify.

Dunbar, *supra* note 62, at 367.

227. Allen concludes:

> The question at issue is deeper than any mere conflict of classes. The fundamental constitutional right of civil liberty is at stake, and every American is affected by any violation of that right. Upon the bench and bar, as the interpreters of the law, devolves the serious responsibility of applying those constitutional principles to the intricate warp and woof of social and political conditions.
>
> In the discharge of this solemn obligation . . . it is for those who follow the noble profession of the law to determine, whether violations of the criminal law shall be prevented and punished through criminal or civil process, and whether the court of equity shall be so used as shall tend to make its decree of injunction on the one hand an instrument of tyranny, or, on the other hand, a mere *brutum fulmen*.

Allen, *supra* note 60, at 325.

matter—risked imperiling the legitimacy of the judiciary. But neither questioned the fundamental constitutional power of equity.

Therefore, despite its potentially anticanonical valence, I contend that government by injunction ultimately suggests that the equitable power of the federal courts embraces the authority to issue non-plaintiff-confined injunctions.[228] If non-defendant-confined labor injunctions—*socio-*

228. A related alternative conclusion would hold that sweeping labor injunctions were issued to afford "complete relief" to the plaintiff employers and so exemplify a "complete-relief principle" the *CASA* majority admitted "has deep roots in equity." Trump v. CASA, Inc*.,* 606 U.S. 831, 851 (2025). The *CASA* majority was less than clear on this point, however. When discussing the relief requested by the state plaintiffs, the Court conceded that "the District of Massachusetts decided that a universal injunction was necessary to provide the States *themselves* with complete relief." *Id.* at 853. Indeed, the District of Massachusetts's opinion granting a universal injunction carefully explained that, while universal relief was neither necessary nor appropriate with respect to the individual plaintiffs' claims, it was both necessary and appropriate for the state plaintiffs. Doe v. Trump, 766 F. Supp. 3d 266, 287-88 (D. Mass. 2025), *aff'd sub nom.* New Jersey v. Trump, No. 25-1200, 2025 WL 2495232 (1st Cir. Apr. 23, 2025). Accordingly, that court issued two preliminary injunctions: one preventing the Administration from enforcing its birthright citizenship order against the individual plaintiffs and the other preventing the Administration from enforcing its order nationwide. *Id.* at 289-90. Nevertheless, the *CASA* majority stayed the various injunctions, including the District of Massachusetts's, "but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue." *CASA*, 606 U.S. at 861.

Justice Sotomayor rightly calls out the majority's treatment of the complete-relief question, questioning the need to stay the orders and remand when "the lower courts issued the challenged injunctions consistent with an equitable principle that even the majority embraces" and after finding that universal relief was necessary under this principle. *Id.* at 909-10 (Sotomayor, J., dissenting).

Two responses. First, expansive labor injunctions went further than the complete-relief principle would authorize. The Court distinguished between (acceptable) complete relief and (unacceptable) universal remedies by explaining that the former allows courts to "administer complete relief *between the parties*." *Id.* at 851 (majority opinion) (emphasis in *CASA*) (quoting Kinney-Coastal Oil Co. v. Kieffer, 277 U.S. 488, 507 (1928)). Labor injunctions could reach "all persons whosoever," *see supra* note 1 and accompanying text, including persons not joined as named defendants and so not "parties" to the suit. These injunctions sit on the wrong side of the line drawn by the *CASA* majority, and therefore call into question the historical

politically controversial as they were—were not considered *constitutionally* controversial, surely the power implied by *Debs* extends across the *v*. That federal courts more aggressively deployed their injunctive powers in the private law context of industrial strife just before asserting their injunctive powers in the public law context to prohibit unconstitutional actions by government officials[229]—and just after Congress gave them authority to entertain suits for damages and injunctive relief against state officers who violate federal rights[230]—only bolsters this conclusion.[231]

Of course, the forceful criticisms levied by the likes of Dunbar and Allen provide reason to proceed with caution; we should be hesitant to endorse a technique of dispute resolution which has, in the past, displaced local democratic authority and substituted it with plutocratic control by social and economic elites. However, the equities involved with modern universal injunctions appear meaningfully different. Government by injunction skeptics found it significant that expansive labor injunctions took aim at the more diffuse, less powerful combatant in industrial strife: disempowered wage workers. Labor injunctions directly harmed these (non)parties,

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justifications for that line. Second, to the extent that government by injunction validates the complete-relief principle, it proves my point: that federal judicial interference in labor disputes supports an appropriately cabined universal-remedy power.

229. *Ex parte* Young, 209 U.S. 123, 153-56 (1908) (citing Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362 (1894), Smyth v. Ames, 169 U.S. 466 (1898), and related precedents as "furnish[ing] ample justification for the assertion that" state officials "who threaten and are about to commence proceedings . . . to enforce . . . an unconstitutional act . . . may be enjoined by a Federal court of equity from such action"); *see also CASA*, 606 U.S. at 907 (Sotomayor, J., dissenting) (noting that *Young* "finds no analogue in the relief exercised in the English Court of Chancery, which could not enjoin the Crown or English officers," yet offers a remedy unquestioned by the *CASA* majority).

230. 42 U.S.C. § 1983 (2024) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

Section 1983 was enacted as part of the Civil Rights Act of 1871, ch. 22, 17 Stat. 13.

231. *See also supra* notes 212, 222, 223 and accompanying text.

subjecting them to summary contempt of court proceedings, rather than the usual robust procedural protections of the criminal law,[232] without first having had their day in court. Modern universal remedies in administrative law, on the other hand, usually protect the more diffuse, less powerful targets of administrative action against perhaps the most powerful legal actor in the United States: the Executive Branch and its Department of Justice. In other words, though both sides levy prudential arguments, the balance of the equities appears *much more* heavily in favor of universal injunctions issued against the government to protect vulnerable aggrieved parties from unlawful and arbitrary executive actions than it ever was in favor of community-wide labor injunctions issued to protect capital against community and worker demands for better wages, hours, and working conditions.[233]

Scholars of administrative law who support the use of universal remedies would therefore do well to note this additional historical tether, which helps to justify the modern judicial practice of granting non-plaintiff-confined remedies in appropriate circumstances. At the same time, they should also learn from the troubled history of government by injunction that extending remedies beyond the named parties must be done

232. Dunbar, *supra* note 62, at 360-61.

> When analyzed the sole inadequacy in the remedy at law as compared with the remedy in equity in these cases will be found in the fact that trials in the former are by jury. It is the existence of those safeguards which have been thought essential to individual liberty that renders punishment of an act as a crime less certain and less swift than punishment of the same act as a contempt. . . .
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> . . . If proceedings for contempt were tried before a jury the injunction issued would be recognized as futile; such efficacy as they have in preventing acts of violence arises solely from the greater probability of a conviction for contempt in a trial by a judge alone, without right of appeal, than of conviction by a jury likely to sympathize in some degree with the offender. A criminal prosecution of Debs founded upon the same acts for which he was punished by a court of equity resulted in a failure to convict.

233. Eskridge, *supra* note 140, at *18 ("Judicial passivity is least defensible when it 'align[s] the interpretive acts of judges with the acts and interests of those who control the means of violence. The more that judges use their interpretive acts to oppose the violence of the governors, the more nearly do they approximate a "least dangerous branch" with neither sword nor purse, and the less clearly are they bound up in the violent suppression of law.'" (quoting Robert M. Cover, *Foreword:* Nomos *and Narrative*, 97 HARV. L. REV. 4, 57 (1983))).

conscientiously and with great regard for the proper separation of powers.[234] Nevertheless, particularly with an administration so willing to flout previously settled administrative law and imperil the rights of millions of Americans, universal injunctions are too powerful, and indeed, too necessary, to cast aside entirely.[235] Although government by injunction served undoubtedly as "a conservative tool,"[236] dashing Progressives' and labor activists' dreams for decades, universal injunctions in our current political climate need not be so destructive. Instead, and perhaps especially during the current administration, we can hope that they might be used for good.[237]

CONCLUSION

As the nineteenth century gave way to the twentieth, the federal courts expanded party-capacity rules and extended the strong arm of equity to meet what they viewed as the great exigency of their era: large-scale labor unrest. Their liberal use of the sweeping labor injunction in the decades between *Debs* and Norris-LaGuardia suggests the accuracy of Justice Barrett's premise in *CASA* that "[h]ad federal courts believed themselves to possess the tool, surely they would not have let it lie idle."[238] Federal judges *did not* let the strike-breaking tool of the omnibus injunction lie idle, instead

234. For scholarly treatments arguing for non-plaintiff-confined remedies but recognizing the necessity of limits on their use, see *supra* note 163. *See also* Bresgal v. Brock, 843 F.2d 1163, 1169-72 (9th Cir. 1987) (similar); City of Chicago v. Barr, 961 F.3d 882, 909-31 (7th Cir. 2020) (similar).

235. *See* Glicksman & Hammond, *supra* note 143, at 1701-07 (arguing that "issuance of a nationwide injunction has the capacity to promote rule-of-law values, especially if an agency has flouted established principles of administrative law when taking actions such as the issuance (or repeal) of regulations with the capacity to inflict widespread injury"); Rendleman, *supra* note 143, at 911 ("Trump's threat to the Constitution and basic liberties needs to be curbed. The nationwide national government injunction is one part of that effort. As King Henry cried in Shakespeare's *Henry V*: 'Once more unto the breach, dear friends, once more.'").

236. Rendleman, *supra* note 143, at 926.

237. *See, e.g.*, Washington v. Trump, 145 F.4th 1013 (9th Cir. 2025) (affirming the universal injunction issued on remand from *CASA* after finding that only nationwide relief would give complete relief to the state plaintiffs).

238. Trump v. CASA, Inc., 606 U.S. 831, 846 (2025).

issuing thousands[239] of searching decrees that could reach "all persons generally."[240] Yet somehow, Barrett misses the mark by concluding that federal courts did not, at least until the 1960s,[241] routinely exercise their power to grant relief to and against parties not present before them. To the contrary, the labor injunction represents yet another historical analogue, in addition to those listed by Justice Sotomayor, Professor Sohoni, and others, grounding the modern deployment of universal injunctions to stem unlawful executive action.

In the decades since the death of government by injunction, much has changed, yet much has remained the same.[242] Today, litigants routinely ask courts to meet modern crises of a fundamentally different type, though arguably of a similar scale, to those invoked by Chief Justice Taft in *Coronado* and by federal strike-breaking courts nationwide during the early twentieth century. In a polity deeply divided and beset by a legislature unable or unwilling to perform its duties, disputes over policy are increasingly waged by Executive Branch lawyers on one side and interest groups on the other, mediated by unelected, lifetime-appointed judges. The merits and demerits of this system of governance, if one can even call it that, extend well beyond the historical exposition this paper has attempted. Government by injunction does tell us, however, that federal courts *have played* a similar role before. Do we accept the wisdom inherited from a prior epoch of jurists that certain legal battles require a universal, dispositive judicial resolution—in Justice Barrett's words, the "historical pedigree" that Taft and others bequeathed[243]—or is the potential for abuse of this power too great? That is the question.

APPENDIX

[A] writ of injunction was duly issued, whereby the defendants, and all persons combining and conspiring with them, and all persons whosoever, were commanded and enjoined 'to desist and refrain'—

239. *See supra* note 56 and accompanying text.

240. *See supra* note 64.

241. "The D. C. Circuit issued what *some regard* as the first universal injunction in 1963." *CASA*, 606 U.S. at 844 (emphasis added) (citing Wirtz v. Baldor Elec. Co., 337 F.2d 518, 535 (D.C. Cir. 1963)).

242. *Cf.* Allen, *supra* note 60, at 301 (reflecting on "the biblical assertion that 'there is no new thing under the sun'").

243. *CASA*, 606 U.S. at 846.

(1) From in any way or manner interfering with, hindering, obstructing, or stopping any of the business of any of the following named railroads: Atchison, Topeka & Santa Fe Railroad; Baltimore & Ohio Railroad; Chicago & Alton Railroad; Chicago & Eastern Illinois Railroad; Chicago & Erie Railroad; Chicago & Grand Trunk Railway; Chicago & Northwestern Railway; Chicago & Western Indiana Railroad; Chicago, Burlington & Quincy Railroad; Chicago Great Western Railway; Chicago, Milwaukee & St. Paul Railway; Chicago, Rock Island & Pacific Railway; Cleveland, Cincinnati, Chicago & St. Louis Railway; Illinois Central Railroad; Lake Shore & Michigan Southern Railway; Louisville, New Albany & Chicago Railway; Michigan Central Railroad; New York, Chicago & St. Louis Railroad; Pennsylvania Company; Wisconsin Central lines; Wabash Railroad; Union Stock-Yard & Transit Company,— as common carriers of passengers and freight between or among any states of the United States;

(2) From in any way interfering with, hindering, obstructing, or stopping any mail trains, express trains, or other trains, whether freight or passenger, engaged in interstate commerce, or carrying passengers or freight between or among the states;

(3) From in any manner interfering with, hindering, or stopping any trains carrying the mail, and from in any manner interfering with, hindering, obstructing, or stopping any engines, cars, or rolling stock of any of said companies engaged in interstate commerce, or in connection with the carriage of passengers or freight between or among the states;

(4) From in any manner interfering with, injuring, or destroying any of the property of any of said railroads engaged in or for the purpose of, or in connection with, interstate commerce, or the carriage of the mails of the United States, or the transportation of passengers or freight between or among the states;

(5) From entering upon the grounds or premises of any of said railroads for the purpose of interfering with, hindering, obstructing, or stopping any of said mail trains, passenger or freight trains engaged in interstate commerce, or in the transportation of passengers or freight between or among the states, or for the purpose of interfering with, injuring, or destroying any of said property so engaged in or used in connection with interstate commerce, or the transportation of passengers or property between or among the states;

(6) From injuring or destroying any part of the tracks, roadbed, or road, or permanent structures of said railroads, and from injuring, destroying, or in any way interfering with any of the signals or switches of any of said railroads, and from displacing or extinguishing any of the signals of any of said railroads, and from spiking, locking, or in any manner fastening any of the switches of any of said railroads, and from uncoupling or in any way

hampering or obstructing the control by any of said railroads of any of the cars, engines, or parts of trains of any of said railroads engaged in interstate commerce, or in the transportation of passengers or freight between or among the states, or engaged in carrying any of the mails of the United States;

(7) From compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force or violence, any of the employees of any of said railroads to refuse or fail to perform any of their duties as employees of any of said railroads in connection with the interstate business or commerce of said railroads, or the carriage of the United States mail by such railroads, or the transportation of passengers or property between or among the states;

(8) From compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence, any of the employees of any of said railroads who are employed by such railroad and engaged in its service in the conduct of interstate business, or in the operation of any of its trains carrying the mail of the United States, or doing interstate business, or the transportation of passengers and freight between and among the states, to leave the service of such railroads;

(9) From preventing any persons whatever, by threats, intimidation, force, or violence, from entering the service of any of said railroads, and doing the work thereof, in the carrying of the mails of the United States, or the transportation of passengers and freight between or among the states;

(10) From doing any act whatever in furtherance of any conspiracy or combination to restrain either of said railroad companies or receivers in the free and unhindered control and handling of interstate commerce over the lines of said railroads, and of transportation of persons and freight between and among the states; and

(11) From ordering, directing, aiding, assisting, or abetting, in any manner whatever, any person or persons to commit any or either of the acts aforesaid.

United States v. Debs, 64 F. 724, 726 (C.C.N.D. Ill. 1894)