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978-0-521-15505-2 - Industrial Violence and the Legal Origins of Child Labor

James D. Schmidt

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Industrial Violence and the Legal Origins of Child Labor

Industrial Violence and the Legal Origins of Child Labor disturbs settled understandings of child labor by tracing how law altered the meanings of work for young people in the United States between the Revolution and the Great Depression. Rather than locating these shifts in statutory reform or economic development, it finds the origin in litigations that occurred in the wake of industrial accidents incurred by young workers. Drawing on archival case records from the Appalachian South between the 1880s and the 1920s, the book argues that young workers and their families envisioned an industrial childhood that rested on negotiating safe workplaces, a vision at odds with child labor reform. Local court battles over industrial violence confronted working people with a legal language of childhood incapacity and slowly moved them to accept the lexicon of child labor. In this way, the law fashioned the broad social relations of modern industrial childhood.

James D. Schmidt is associate professor of history at Northern Illinois University. His first book, *Free to Work* (1998), examined the relationship between labor law and the meanings of freedom during the age of emancipation. He teaches courses on the history of law, capitalism, childhood, and the United States in the long nineteenth century.

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*for Ted, Bruce, and the rest
and
for Andrea, who listened*

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Prologue

The Job

Around four in the afternoon on March 31, 1969, a welder's spark touched off a grain dust explosion at Circle E Ranch, a large-scale cattle feeding company near the town of Potwin in south-central Kansas. The force of the blast lifted the concrete roof on the lot's grain elevator and twisted the steel buildings that housed the feed mill at the heart of the operation. The accident injured four workers, three of them moderately. The fourth, Ted Pope, worked in the elevator that had borne the brunt. Fire shot up the lift that raised employees to the top of the structure, engulfing Pope in flames and leaving him with third-degree burns over 80 percent of his body. The only places not burned were those protected by leather: his hands, his feet, and his waistline. Twenty-one years old at the time, Ted lay in an El Dorado, Kansas, hospital for months, undergoing repeated surgeries to reconstruct his body, especially the facial features that had been removed by the conflagration. After he recovered from his injuries, Pope returned to the feedlot, working a few years before crashing his motorcycle on a curve near town, a final accident that ended his short life.¹

I had not known Ted before the explosion. I met him in the summer of 1972, when I worked at Circle E, as I would most summers growing up on the Kansas plains. Ted sat across the table from me at lunch, and his disfigured face provided my most vivid introduction to the violence of modern industry. That summer, I spent most of my time at Circle E,

¹ I have reconstructed this story from my own memory and that of my father, Dean Schmidt. The only public records are newspaper accounts, which are not wholly accurate. See "Three Injured in Blast," *El Dorado Times* April 1, 1969. For Ted Pope's obituary, see *El Dorado Times*, May 31, 1973.

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helping my dad and the others lay the groundwork for a quarter-mile-long confinement barn on the property. I was eleven at the time. Oblivious to the state's child labor laws, I was happy to make the five dollars a day my dad paid me to be an all-purpose helper. No one at the feedlot seemed to care that I was there, so long as I stayed out of the way. In any case, since the company had not hired me directly, I was not technically illegal.

By the time I returned to the place as a law-abiding laborer at sixteen, work at the feedlot dominated my three months away from school. At fifty-four hours a week with time-and-a-half for the last fourteen, "the job" supplied ready cash for college and a source of worry for my mother. An amalgam of industry and agriculture, a modern cattle feeding operation offers a multitude of dangers. I had been warned. Growing up, I listened to my dad's stories of men ground up in hay mills or sliced in half by dump trucks, and I had seen him and others endure countless minor and not-so-minor injuries. Still, I had my share of mishaps and close calls. In the record-breaking heat of July 1980, we pulled long shifts refitting the mill. Stumbling across the top of the plant one night, my leg suddenly dropped. Someone had left the cover off of a processed grain bin. Had I been unlucky enough to fall in, I would have plunged thirty feet onto a spiked breaker bar. I was more careful after that, but paying attention only goes so far. For working people, death and injury are part of daily life. That lesson came home to my family in December 1983 when the counterweights of an oil field pump crushed one of my older cousins to death.

A career in the academic realm removed me from the world of industrial violence until I ran into Bruce Holt. I met Bruce at the North Carolina State Archives in Raleigh. As I listened to him and his mother, Cora, talk about Bruce's accident, their experiences sounded familiar. Bruce was hurt at Oval Oak Furniture in Siler City on July 5, 1917, when a wood-working machine slammed a board into his midsection. Unconscious for four weeks after the accident, the young worker endured months of agonizing treatment and rehabilitation, efforts that saved his life but left him debilitated. One of the millions hurt during the grand era of U.S. industrialization, Bruce's calamity did not make headlines in his own time. Its only record lies in the neatly organized archives of the Supreme Court of North Carolina. Bruce's story has survived because he, like many of his fellow young workers, took the company to court.

I had looked up Bruce in the first place because I intended to write a book about young workers and the law during the nineteenth century. I thought that following the archival trail of high court cases, as historians

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were beginning to do, might provide some good details to liven up a potentially lifeless tale. The more I encountered people like Bruce, the more I realized that the history of their encounters with the violence of modern industry deserved to be told on its own terms. This book is theirs, but it is still the story of how law changed the meaning of work for young people in the United States between the Revolution and the Great Depression. As such, it is a book about what people nowadays call “child labor.” Unknown at the turn of the nineteenth century, that moniker for the labors of young people arose after the U.S. Civil War and came to dominate public discussion of youthful labor during the era that historians used to call Progressive. By the mid-twentieth century, child labor had become a symbol for childhood lost, its practice considered a violation of human rights. Knowing what I did about working people in the nineteenth century, I wondered how that momentous change came about. I think part of the answer to that question can be found in the stories of young people such as Bruce Holt, particularly in the ways their industrial accidents brought them and their families into contact with new definitions of childhood via the avenue of the courts.²

The main characters that populate my recounting of that story hail from the Appalachian South. I chose to center on Appalachia in order to situate the narrative in a social context that would keep some specificity in view, a valuable part of historical inquiry that gets lost in “national” histories. Too often, the history of the United States has been told from the viewpoint of its northeastern corridor and its other urban centers. The recent rush to transnational storytelling, while a laudable effort to combat American exceptionalism, has further diminished the attention to time and place that should undergird our efforts to read the past. Beyond these general motivations, I have focused much of the story on Appalachia

² Barbara Young Welke’s work first showed me how the archival trail of appellate cases offered a middle ground between the top-down view of doctrinal analysis and the usually time-consuming and ultimately less-than-fruitful approach initiated entirely from below by using local records. While studies based in local records can have great potential, they are confined by the nature of record-keeping in a particular place, and they often lead to an overemphasis on large, urban centers. Using state high court records provides a much broader source base, supplying examples from cities to hamlets. More importantly, by the late nineteenth century, the appeals process guaranteed that some sort of transcript would be generated from the court stenographer’s notes, creating a record that (if it survived) is simply not available in other places on such a consistent basis. See *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865–1920* (New York, 2001). On the potential difficulties of local sources, see Stephen Robertson “What’s Law Got to Do with It?: Legal Records and Sexual Histories,” *Journal of the History of Sexuality* 14 (2005): 161–185.

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for reasons arising from the historical record itself. Unlike the long transition to industrial capitalism that occurred in the so-called North, the transformation of the Southern countryside was quick and intensive. The very rapidity of the region's industrialization between 1880 and 1920 means that the changes I seek to illuminate are somewhat easier to see there than in locales where the same process took longer. Looking at that relatively condensed process over about a forty-year period allows us to witness the encounter between young people and industrial life within one or two generations, offering the opportunity for careful investigation while avoiding the pitfalls of supposedly "local" studies. More important, the eastern parts of the South became a center of child labor reform activity in the Progressive period. In the late nineteenth and early twentieth centuries, child labor reformers focused much of their attention on the southeast and its seemingly "backwards" expansion of youthful labor. For this reason as well, it is a social context where the workings of law in culture can be seen more clearly. For many reform-minded people, the mills, mines, and workshops of Appalachia were *the* battleground, for in their estimation, matters in the "North" were well in hand. The South, however, represented a locale squarely in the sights of the Progressive era reformers who fashioned the language of child labor. Hence, Appalachia provides the best place to examine the central questions that prompted my curiosity about young workers and the law.³

Attention to place is vital to any meaningful account of the past, but I do not intend to tell a strictly Southern story. Rather, this book is an

³ As historical geographer D.W. Meinig famously remarked, "history takes place." For a recent reflection on Meinig's views, see Graeme Wynn, "D.W. Meinig and the Shaping of America," *Journal of Historical Geography* 31 (2005): 610–633. Place has always mattered to those who study the U.S. South, but the struggle to get others to see its importance continues. For recent statements, see Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from the 1790s Through the Civil War* (New York, 2004), esp. 14–15; and Erskine Clarke, *Dwelling Place: A Plantation Epic* (New Haven, 2005), ix–xi and *passim*. For an excellent example of a legal study that pays attention to local context while not losing sight of the so-called big picture, see Karl Jacoby, *Crimes against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation* (Berkeley, 2001).

Most recently, Laura Edwards has made a powerful case for the centrality of the southern story to U.S. legal history. See *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, 2009), 10–16, 223–227. Additionally, she argues convincingly that law and society studies must pay attention to the divergences between what she terms "localized law" and "state law." *The People and Their Peace*, esp. 3–10, 26–53. While *The People and Their Peace* appeared too late for full incorporation into what follows, my account confirms and extends Edwards's suggestion that localized law persisted after the rise of state-centered legal systems. *The People and Their Peace*, 287–289.

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American story with a Southern accent. While events south of the Mason-Dixon Line figure prominently, the history of young workers, industrial violence, and the law is not confined to the South. Over the course of the nineteenth century, legal developments dramatically altered the way people understood youthful labor. As we shall see, these changes took place as often in Massachusetts or Minnesota as they did in North Carolina. Certainly, those northern and western locales generated their own dialects, but those tongues are no more or less normal and national than the ones spoken in warmer climes.

On a wider scale, the transformation of youthful wage work into a social injustice is something that occurred across the whole of the industrializing world. My discussion of the broader changes in law and the language of child labor is framed as a conceptual question that concerns a long transition in modern life: from childhood as a time of preparation for economic production to a stage of life that centers on play and formal schooling, a form of socialization more fitted for the “consumer society” of advanced capitalism. My account illuminates a part of that transformation, one bounded by historical circumstance yet crucial to the larger linguistic reformulation necessary to imagine child labor. Anchoring this tale in other places would no doubt alter the circumstantial evidence, but it likely would not fundamentally reshape the outcome. As a variety of peoples came into the industrial world, they found themselves forced to confront the conundrums about young people and work generated by industrial capitalism. Whether in Appalachia, the Midlands of England, northern Germany, or places farther away from the industrial core, the quandaries of young workers came to the fore in the late nineteenth and early twentieth centuries. In the early twenty-first, we are still trying to sort out the consequences of the fundamental shifts these changes produced.⁴

At the core of my story, then, is a large shift in the cultural imagination of youthful labor that occurred between the late nineteenth and early twentieth centuries. That shift originated in a conflict over how young people would fit into the increasingly dangerous nature of work in modern societies. On one side stood young workers and their families who sought an industrial childhood, one that found a safe place for young people in the world of work. Against this outlook, reformers conjured

⁴ I have hence followed the insight of Richard White that there is no “right” scale for historical study. Rather, the scale must fit the questions being posed. Richard White, “The Nationalization of Nature” *Journal of American History* 86 (1999): 976–986.

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a different vision, one that resolved the dilemmas of modern capitalism and youth by excluding younger people from productive life. The legal system – from high courts to local law offices – provided a central arena for this conflict to play out.

The timing of this long transition in youthful labor cannot be easily attached to a particularly dramatic reform tract or a signal piece of legislation. No particular high court decision can be said to have significantly altered the lives of young workers in its own right. Still, much had changed by the second decade of the twentieth century. By that time, young workers and their families had spent more than four decades bringing their stories of death and disfigurement to local courthouses. Over that same period, the nation's legal system had resolved the necessary paradoxes that youthful labor presented to a capitalist legal culture based on the fiction of autonomous adulthood. The interaction between these two ends of the legal process, and all the parts in between, encouraged young workers and their families to speak the language of modern childhood. This process slowly edged working people toward a revised understanding of growing up, one that shifted value away from work and toward school and play.

At the end of the American Revolution, a very different understanding of young workers prevailed. Slavery expanded; indentured servitude and apprenticeship, though under stress, remained normal. Young people worked, and many toiled away from their parents. These social arrangements continued into the late nineteenth century as industrialization proceeded at a more intensive pace. Given this long and uneven process of change, this book is organized topically rather than chronologically. I start by outlining the ways through which working people sought to integrate the young into industrial production. They did so not merely because of economic necessity or because they lacked feeling for the younger members of the household. Rather, they had their own vision about the place of young people in industrial society. Shared by young and old alike, that outlook expected people to contribute to their own livelihoods as soon as they possessed the physical capacity to do so. Those abilities could be measured by size and experience much easier than they could by calendar age. Learning to work was a slow process, one not distinctly removed from play. Shop floor antics introduced young workers, especially boys, to the world of production.

By the turn of the twentieth century, this view was under siege as reform writers took up the cause of “child labor.” Their efforts produced a genre of “protective legislation” that prohibited work under certain

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ages and regulated it for others. In doing so, they imagined the source of “the child labor problem” inside working households, particularly in the dereliction of “lazy fathers.” In their efforts to remedy this social ill, they articulated a new definition of childhood itself, one that located young people’s legitimate activities in the schoolroom and at the playground, not on the shop floor. In the gaze of reformers, young workers lost their capacities to produce and to influence their own futures. They became instead “little sufferers” who needed to be protected from their employers, their parents, and the world’s work. Silenced by this literary amelioration, young people obtained “the divine right to do nothing.”

Resolution of this conflict over the meaning of youthful labor turned on a number of broad changes in Western society, changes that altered schooling, socialization, and sexuality – almost every conceivable corner of growing up. As with other areas of modern life, violence propelled the pace of change. In the middle chapters, I consider how working people encountered that violence and how jurists who heard claims for redress outlined a legal language of childhood and youth.

Certainly, machine production is inherently dangerous, yet the industrial violence of mines and factories originated in social conflict as much as it did in technological improvement. Young workers and their families hoped to enter the industrial world with producer-oriented values intact, but they did not do so haphazardly. Instead, they struggled to control the terms of labor for young people, aiming to make bargains that would ensure safety at work. The daily cupidity of specific employers and the systemic hierarchies of industrial capitalism undermined the pains they took to protect the young. In the place of a relatively safe workplace that eased young people into their laboring lives, they got injury and death. The horrors of those experiences and the wrenching dislocations of extended recoveries motivated young workers and their families to seek redress.

Violence by itself did not force working people to relinquish their desire for a different industrial childhood, for the understandings people assign to pain, injury, and death change over time. What these events meant to young workers and their families originated in how they viewed labor, youth, and the connection between the two, but they also came from sources outside working households: the language of child labor created by reformers, and especially, the definition of childhood authored by the nineteenth-century legal system. While much of the discussion about youth in nineteenth-century courts revolved around the “best interests of the child” in domestic law, judges around the country also talked about

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young workers and their families. Early in the century, they sealed off apprenticeship as a bound relationship, ensuring the split between work and education that would become the hallmark of Western growing-up. At the same time, they released young people from strict parental control, authorizing the work arrangements that these laborers made on their own initiative.

Having conceived of young workers as independent agents, judicial minds initially wrote them into the legal regime for adults who incurred workplace accidents. As the nineteenth century wore on, however, the courts slowly crafted a new understanding of young people and industrial violence, one that placed them outside the law for older workers. This new vision incorporated ideas about childhood that developed as a result of mishaps in nonindustrial settings. In thinking about those deaths and injuries, judges concluded that the causes lay in the natural instincts of children. By the late nineteenth century, they incorporated these notions of incapacity into their thinking about youthful labor, stamping it as illegitimate. By the turn of the twentieth century, courts began to interpret child labor statutes through this lens, often reaching the proposition that illegal employment of young people was automatic grounds for compensation. These changes opened the courthouse doors to working families, turning a sprinkling of suits into a deluge.

These shifts in the judicial imagination of youth provided the backdrop against which Progressive era families would seek to deal with industrial violence. The book's final chapters take up this part of the tale to illuminate how the commonplace legal interactions of young people and industrial violence contributed to the foundations of modern childhood. These interactions of law and society occurred because coming to court compelled young workers and their families to confront the growing challenge presented by reformers. Statutory prohibition of child labor threatened to end once and for all the quest for an industrial childhood. Those enactments sought to replace a dynamic process of learning governed by natural markers of capacity and with a simplified legislative assertion of incapacity. Often uncertain about calendar age, young workers and their families reacted to these new rules in a variety of ways, sometimes complying, sometimes breaking the law outright, sometimes evading it or using it to their benefit.

If uncertain about the law as proclaimed from the statehouses, working people possessed more confidence about their chances in the courts. There, they hoped to make employers pay for their broken promises. In these fights, they were not alone. Kinfolk, neighbors, fellow workers, and

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of course, employers encamped on court days to talk about young people, work, and violence. Less dramatic than the street battles of the union movement, legal confrontations involved no less vital issues for laboring people. In these struggles for power, workers often won the battles, even if they lost the war in the end.

These courtroom conversations brought laboring people into contact with ideas about childhood and work that diverged from their own. Looking to enforce their own ideas that the job could be organized to protect youth, they retold their tales of violence and reenacted their injuries. Talking about family tragedies in the witness box, however, was not like stories relayed on the porch, at the general store, or in church. In court, the language of the law channeled the ways working people could make their claims. With childish impulse as its leitmotif, the law's script encouraged the assembled court to fill in the pictures sketched by reform writers. Playing at work became a sign not of industrial learning but of the natural incapacity to coexist with hazardous equipment. School marked the proper place for youngsters. Completing more than a century of contestation, the courtroom encounter between industrial violence and the law prompted laboring people to re-vision young workers as child labor.