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978-0-521-76139-0 - Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865

Christopher Tomlins

Excerpt

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PROLOGUE

Beginning: "As much freedome in reason as may be ..."

This is the ware wherein consists my wealth;
 And thus methinks should men of judgment frame
 Their means of traffic from the vulgar trade,
 And as their wealth increaseth, so enclose
 Infinite riches in a little room.

Richard Marlowe, *The Jew of Malta* (c. 1589)

In the year 1616, with England's first attempts at colonizing the American mainland mired in uncertain infancy, the Elizabethan-Jacobean adventurer Captain John Smith presented to the "Right Honourable and worthy Lords, Knights, and Gentlemen, of his Majesties Councell, for all Plantations and discoveries" and as well to "the Right Worshipfull Adventurers for the Countrey of New England, in the Cities of London, Bristow, Exceter, Plimouth ... and in all other Cities and Ports, in the Kingdome of England" what he was pleased to call a "rude discourse," entitled *A Description of New England: Or the Observations, and discoveries, of Captain Iohn Smith (Admirall of that Country) in the North of America, in the year of our Lord 1614*. His purpose was to put beyond doubt "the present benefit this Countrey affoord[s]."¹

By 1616, Smith had already proven himself an adept chronicler of early English colonizing. His *True Relation of such occurrences and accidents of noate, as hath hapned in Virginia, since the first planting of that Collony*, published in 1608, had set down the original narrative of the first chaotic months of the Jamestown expedition.² In 1612, he had embellished greatly upon the *True Relation* in his more extensive *A Map of Virginia* and his *Proceedings of the English Colonie in Virginia*.³ Later works would gather all Smith's North American narratives into a *Generall Historie* (1624), and add an account of his early life and adventures as a soldier of fortune in Europe, Asia, and

¹ John Smith, *A Description of New England*, in Philip L. Barbour, editor, *The Complete Works of Captain John Smith* (Chapel Hill, 1986), I, 305–70, at 305, 310, 311. This book's study of English colonizing is confined geographically to the North American mainland.

² John Smith, *A True Relation*, in Barbour, ed., *Complete Works*, I, 23–117.

³ John Smith, *A Map of Virginia. With a Description of the Countrey, the Commodities, People, Government and Religion. Written by Captaine Smith, sometimes Governour of the Countrey, and The Proceedings of the English Colonie in Virginia since their first beginning from England in the yeare of our Lord 1606*, both in Barbour, ed., *Complete Works*, I, 131–90, 199–289.

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North Africa – *The True Travels, Adventures and Observations of Captain Iohn Smith* (1630).⁴

The *Description of New England*, however, was different in its essentials from Smith's travel narratives and histories; less a work of reportage and self-justification than of advocacy. As its dedications indicate, the *Description* addressed the political and commercial elites of the nascent English imperial state, to whom Smith spoke as a man of action; rough and "ignorant" to be sure, and likely (for his accounts of the first Virginia colony had not been without their critics) to be "diversly traduced by variable judgements of the Times opinionists," but possessing many years' first-hand experience of fighting and planting and oceanic travel – more than enough, in fact, to convince himself, and hopefully his interlocutors, that in this second Virginia colony, which Smith now dubbed New England, would be found the "sure foundation" upon which the struggling English colonizing enterprise begun thirty years before might finally begin to prosper.⁵

Smith did not try to make his case with the persuasion of great riches easily won – the gold, precious stones, and rare spices that Crown patentees had coveted since the resumption of English North Atlantic voyaging in the 1570s. "Had I returned rich, I could not have erred," he remarked, a shade wistfully. All New England had to offer was "a mean and a base commodity" – fish. Still, fish were "well worth the labour," and Smith entreated his readers "to adventure their purses as I, purse, life, and all I have" in their pursuit. For fish were but the beginning. "Now having onely such fish as came to my net, I must be taxed," he wrote, with good humor. "But because I speake so much of fishing, if any take mee for such a devote fisher, as I dreame of nought else, they mistake mee. I know a ring of golde from a graine of barley, aswell as a goldsmith: and nothing is there to bee had which fishing doth hinder, but further us to obtaine."⁶ Here was a place fit for fishing in the first instance and more thereafter; a place to plant and possess, to "obtaine."⁷

What made John Smith so passionate in his advocacy? What benefit did he dream of, besides fish? Smith's alpha and omega was always the New

⁴ John Smith, *The Generall Historie of Virginia, New England, and the Summer Isles*, in Barbour, ed., *Complete Works*, II, 33–488; John Smith, *The True Travels*, in Barbour, ed., *Complete Works*, III, 137–251.

⁵ *Description of New England*, 310. Smith's reference here is Isaiah 28:16 (Authorized [King James] Version; hereinafter AV). "Therefore thus saith the Lord GOD, Behold, I lay in Zion for a foundation a stone, a tried stone, a precious corner stone, a sure foundation: he that believeth shall not make haste." For verse 16 in context, see the third epigraph to [Chapter 9](#).

⁶ *Description of New England*, 311–12, 330.

⁷ Note that the etymology of "obtaine" in early modern English usage includes "To come into the possession of" and specifically "to gain (territory, a kingdom, etc.) by conquest, to conquer." See OED at <http://dictionary.oed.com/> (accessed 22 August 2009). For a more comprehensive survey of this usage focused on the late sixteenth and early seventeenth centuries, see the Lexicons of Early Modern English database at <http://leme.library.utoronto.ca/> (accessed 22 August 2009).

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World's sheer material abundance; it bred in him a fierce belief in the possibility of widespread prosperity. "And here in Florida, Virginia, New-England, and Cannada, is more land than all the people in Christendome can manure, and yet more to spare than all the natives of those Countries can use and culturate."⁸ The observation itself was hardly novel: discovery of the northern mainland's abundance of land was not original to Smith (any more than his fish would have been news in Bristol). What's more, the Jamestown experience had already borne witness to the difficulty of turning apparent abundance into actual wealth. In 1616, Jamestown remained a place of intrigue, conflict, oppression, privation, death.

But the present benefit that Smith saw in colonizing New England was not simply a matter of material opportunity. His "sure foundation" had social, political, and legal ramifications.

Over the years, as he returned again and again to reflect on Jamestown's extremities, Smith found their origin less in the physical difficulties of settling a strange land than in the impracticalities and pretensions of the colony's promoters.⁹ The lives of Virginia's planters had been made the playthings of "some few here in London who were never there, that consumed all in Arguments, Projects, and their owne conceits, every yeere trying new conclusions, altering every thing yearly as they altered opinions." The Londoners had written "tedious Letters, directions and instructions" for the development and production of commodities, full of "strange absurdities and impossibilities." They had created "many great and stately officers and offices ... as doth belong to a great Kingdome," along with "privileges for Cities, Charters for Corporations, Universities, Free-schools, and Glebe-land," all to be put in place "before there were either people, students, or schollers to build or use them, or provision or victuall to feed them were then there." And they had sent to the colony "Masters, Gentlemen, Gentlewomen, and children" whose "idle charge" was "very troublesome, and the effects dangerous." One hundred good laborers would have been worth more "than a thousand such Gallants as were sent me, that could doe nothing but complaine, curse, and despaire."¹⁰

A withering contempt for "drones [that] steals their labour," whether they were ignorant company officers in London or idle gallants in the first colony, steered Smith's plans for New England.¹¹ The "lamentable experience" of Jamestown had taught that although America's "commodities,

⁸ John Smith, *Advertisements For the unexperienced Planters of New-England, or any where. Or The Path-way to experience to erect a Plantation*, in Barbour, ed., *Complete Works*, III, 259–307, at 276. Compare these sentiments from his last published work (1631), with the *True Relation*, his first, at 81: "most excellent fertill ground, so sweete, so pleasant, so beautiful, and so strong a prospect, for an invincible strong Citty, with so many commodities, that I know as yet I have not seene."

⁹ The first words of Isaiah 28, to which verse 16's "sure foundation" is counterpoint, proclaim, "Woe to the crown of pride, to the drunkards of Ephraim."

¹⁰ Smith, *Advertisements for the unexperienced*, 270, 272.

¹¹ Smith, *Description of New England*, 311.

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pleasures, and conditions” were the equal or more of any to be found throughout the known world, they would have to be physically wrestled out of the landscape. America’s commodities could be won only by “industrious people” willing to pledge “long labour and diligence.”¹²

Because planting was hard work, its fruits should properly fall to those who did the work. “A servant that will labour, within foure or five yeares may live as well there as his master did here.” But Smith contemplated more than an enhanced material well-being within an unaltered social and political structure. Hard work should earn the laborer all the advantages of a free proprietor. “Let every man so it bee by order allotted him, plant freely without limitation so much as hee can, bee it by the halfes or otherways. And at the end of five or six yeares, or when you make a division, for every acre he hath planted, let him have twenty, thirty, forty, or an hundred; or as you finde hee hath extraordinarily deserved, by it selfe to him and his heires for ever.” In its determined counterpoint to Jamestown, Smith’s *Description* imagined a New England of unprecedented freedom from others’ coercive hierarchies. “No hard Landlords to racke us with high rents, or extorted fines to consume us; no tedious pleas in law to consume us with their many years disputations for Justice. No multitudes to occasion such impediments to good orders, as in popular states. So freely hath God and his Majesty bestowed those blessings on them that will attempt to obtaine them, as here every man may be master and owner of his owne labour and land; or the greatest part in a small time.”¹³

Freedom was good policy. Free English proprietors in American colonies would “increase our shipping and sailers, and so employ and encourage a great part of our idlers and others that want employments fitting their qualities at home, where they shame to doe that they would doe abroad.” Could these “but once taste the sweet fruites of their owne labours, doubtlesse many thousands would be advised by good discipline, to take more pleasure in honest industrie, then in their humours of dissolute idlenesse.”¹⁴ Who could “desire more content, that hath small meanes; or but only his merit to advance his fortune, then to tread, and plant that ground hee hath purchased by the hazard of his life?” Though at the outset “hee have nothing but his hands,” nevertheless “he may set up this trade; and by industrie quickly grow rich.” Industriousness and free proprietorship went hand in hand in the creation of wealth. “Let all men have as much freedome in reason as may be, and true dealing” was Smith’s ultimate retort to the miseries of Jamestown. “For it is the greatest comfort you can give them, where the very name of servitude will breed much ill bloud, and become odious to God and man.”¹⁵

¹² Ibid., 310, 333.

¹³ Smith, *Advertisements for the unexperienced*, 287; *Description of New England*, 332.

¹⁴ Smith, *Description of New England*, 338.

¹⁵ Ibid., 332, 343; *Advertisements for the unexperienced*, 287.

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John Smith's dream of what migrating Englishmen might make of themselves in America has been represented as a foundational statement of colonial New England's economic culture.¹⁶ It was that, and much more besides. Smith had a shrewd grasp of the process of English colonizing, of its desires and difficulties, its greed and grandiosity, its will to destroy and to create. His writings display a canny realization of the absolute centrality of work and labor to success in colonizing. And, though he had no means of knowing how things would unfold, he clearly understood that colonizing's effect on the social and civic identities of all those it touched might well be transformative. This book takes as its subject all three aspects of John Smith's dream.

The intimacies of colonizing, work, and civic identity, and their transformative interrelationships, are pronounced. Their common connective tissue, I argue here, the bridge from one to the next, is law.

Richard Hakluyt the elder – a lawyer – sets our scene when, a quarter century before Jamestown was settled, he situated the problematic of colonizing at the intersection of three related processes: “manning” new territories (recruiting migrant populations); “planting” them (transporting population and mixing it with land and other resources); and “keeping” them – claiming sovereignty (*imperium*), securing occupancy, and realizing jurisdiction (*dominium*, or in other words possession or rule).¹⁷ To address and manage the problematic, colonizers required means to “frame” their enterprise; that is, to define its terms and mobilize human and material resources to give those terms effect. Law would be their means. As a technology, a means of doing and making do, law could furnish the institutional capacities to establish migration and settlement overseas as legitimate, organized processes. As a discourse, a means of knowing and making known, law would supply the arguments that enabled colonizers to justify – to themselves, to their rivals, to those they displaced – taking what they could keep and keeping what they had taken. And as a modality of rule, the expression of sovereignty, law was integral to the creation and implementation of governance – the concrete realization of jurisdiction,

¹⁶ See in particular Stephen Innes, “Fulfilling John Smith's Vision: Work and Labor in Early America,” in Stephen Innes, editor, *Work and Labor in Early America* (Chapel Hill, 1988), 3–47; Stephen Innes, *Creating the Commonwealth: The Economic Culture of Puritan New England* (New York, 1995), 64–5, 74–83.

¹⁷ Richard Hakluyt (the elder), *Pamphlet for the Virginia Enterprise* (1585), in E.G.R. Taylor, editor, *The Original Writings and Correspondence of the Two Richard Hakluyts* (London: for the Hakluyt Society, 1935), II, 333–4. “People” stated Robert Johnson in *Nova Britannia* (London, 1609), sig. dr, were “especially required ... to make the plantation.” See also Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labor in America 1607–1776* (Chapel Hill, 1947), 4 (According to the Council of Foreign Plantations, c. 1664, “people were the foundation for the improvement of all Plantations ‘and ... increased principally by sending of Servants’”); David Galenson, “The Settlement and Growth of the Colonies: Population, Labor and Economic Development,” in Stanley L. Engerman and Robert E. Gallman, editors, *The Cambridge Economic History of the United States* (Cambridge and New York, 1996), I, 153.

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which is to say the recreation of existing territories as well-ordered “new commonwealths” and the installation of both once and future inhabitants in transformed identities (the indigenous alienated, the newcomers domesticated).¹⁸ All this was what obtaining entailed.

In none of these aspects was the “law” of colonizing the common-law monolith “time out of minde of man” beloved of its protectors and inheritors. Given the growing turmoil in the high politics of the English constitution, common-law immemoriality and supremacy might be ever more heatedly claimed; nevertheless, the law of colonizing was a construct from many sources.¹⁹ The Roman law “received” by later medieval Europe was the *ius commune* of the sixteenth century, the point of legal reference for England’s continental rivals in the colonizing exploits on the edge of which the English hovered.²⁰ English discourses of keeping created claims to sovereign possession by drawing on ideologies of right and habitation embedded in that law – in *ius gentium* (nations) and *naturale* (nature), in expositions of just war and conquest – no less than the vernacular arcana of common-law tenures, and English ideologies of waste and improvement.²¹ Actual English designs for transatlantic jurisdictions drew on a plethora of organizational models – crown-licensed adventures and conquests,

¹⁸ On English colonizing as the creation of new commonwealths, see Andrew Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation, 1500–1625* (Cambridge, 2003), 1–19.

¹⁹ See Sir Edward Coke, “To the Reader,” preface to *Le Tierce Part des Reportes del Eduuward Coke Lattourney General le Roigne* (London, 1610), sig. c₄r.; Peter S. Du Ponceau, *Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States* (Philadelphia, 1824), ix, 91–2. John Pocock writes that “by Coke’s time the increasing activity of a nearly sovereign monarchy had made it seem to most common lawyers that if a right was to be rooted in custom and rendered independent of the sovereign’s interference it must be shown to be immemorial in the full sense of ‘traceable to no original act of foundation’.” The idea of the immemorial therefore took on an absolute colouring, which is one of the key facts in Stuart historico-political thought.” J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (New York, 1967), 37. On Coke, see Daniel J. Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World* (Chapel Hill, 2005), 22–32. Though his understanding of common-law diffusion is sophisticated (see [Chapter 2](#), Section III), Hulsebosch nevertheless accepts that “English common law” was “imperial fundamental law” (28–41). On the diversity of legal rationales for English Tudor-Stuart expansion, see Brian C. Lockety, *Law and Empire in English Renaissance Literature* (Cambridge and New York, 2006), 1–13, and in particular 160–86. On the place of civil lawyers close to the Crown and its enterprises, see Brian P. Levack, *The Civil Lawyers in England, 1603–1641: A Political Study* (Oxford, 1973).

²⁰ The English, of course, had undertaken their own reception of the same Roman law through Bracton. See *Bracton: De Legibus et Consuetudinibus Angliæ* (*Bracton on the Laws and Customs of England*) attributed to Henry de Bratton c. 1210–1268, Samuel E. Thorne, trans. (Cambridge, Mass., 1968–77).

²¹ Ken MacMillan, *Sovereignty and Possession in the English New World* (Cambridge, 2006); Jess Edwards, “Between ‘Plain Wilderness’ and ‘Goodly Cornfields’: Representing Land Use in Early Virginia,” in Robert Appelbaum and John Wood Sweet, editors, *Envisioning an English Empire: Jamestown and the Making of the North Atlantic World* (Philadelphia, 2005), 222–35. See generally [Chapters 3](#) and [4](#).

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chartered corporate enterprises seeking commodities and "trafficke," direct crown rule, delegated seigneurial privilege. And on the ground, where the business at hand went forward – that is, the actual performance of work, the hard graft of creating commodities, constructing colonies, building empire – law proved not only protean but plural in the extreme, refracting New World circumstance through the multiple regional cultures of early-modern England from which migrants came, creating distinctive legal cultures of work and labor that, for some, would sustain degrees of civic freedom unknown in England.

New civic lives are always a possibility when you create new commonwealths. Colonizing meant the kind of quotidian piecemeal transformations that can add up to profound change: transformations realized in the daily acts of taking possession, and in the manner of working the fields once possession was secured; transformations in the status of those who worked; transformations in the way rule was exercised over them, and by them.²² These were transformations of which, by the end of the seventeenth century, even the metropolis had become aware.²³ By then, for some at least, Captain John Smith's dream was coming true.

Free ...? Bound ...?

To most historians of colonial labor, Smith's anticipation that the migrating everyman might quickly become his own master will appear at best naïve, if not downright misleading, as a depiction of the reality of England's American colonizing. Historians assume that most of the work in the early colonies was done by servants immured by indenture in wretched lives of bondage.²⁴ Indeed, servitude, not freedom, has long been identified as the foundational reality of the life awaiting the vast majority of transatlantic migrants, voluntary and involuntary, on the mainland. The classic statement is Abbot Emerson Smith's: "Labor was one of the few European importations which even the earliest colonists would sacrifice much to procure, and the system of indentured servitude was the most convenient system next to slavery by which labor became a commodity to be bought and sold."²⁵ Over the course of the seventeenth and eighteenth centuries, the proportion of Europeans arriving in the mainland colonies bound to service, hence "unfree," has been estimated to range at different

²² John Wood Sweet, "Introduction: Sea Changes," in Appelbaum and Sweet, eds., *Envisioning an English Empire*, 17–18; Michael Zuckerman, "Identity in British America: Unease in Eden," in Nicholas Canny and Anthony Pagden, editors, *Colonial Identity in the Atlantic World, 1500–1800* (Princeton, N.J., 1987), 115–57.

²³ Peter C. Herman, "'We All Smoke Here': Behn's *The Widow Ranter* and the Invention of American Identity," in Appelbaum and Sweet, eds., *Envisioning an English Empire*, 254–74.

²⁴ Sweet, "Sea Changes," 19–20. See generally Jacqueline Jones, *American Work: Four Centuries of Black and White Labor* (New York, 1998), 31–2, 62–4.

²⁵ Smith, *Colonists in Bondage*, 4.

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moments from 50 to 90 percent, comprising overall at least two-thirds of all migrants across the two centuries.²⁶ From the late seventeenth century these numbers were supplemented by rapidly rising rates of importation, and subsequent natural increase, of enslaved Africans, who would become the cardinal exemplification of coerced labor in the eighteenth-century colonies. Although it has been recognized that work in early America took a profusion of forms – wage work, independent production, and household production as well as servitude and slavery – it has been argued that all performers of labor were alike in one transcendent essential: all were subject in their different ways to generic forms of criminalized discipline. Coerced unfreedom, that is, was the default characteristic of *all* early American work relations.²⁷

Migrant indentured servitude *was* an important component in mainland English America's original work regimes; over the course of the seventeenth and eighteenth centuries, a majority of European migrants to mainland America *did* arrive as indentured servants. But too ready an acceptance of indentured servitude's ubiquity has allowed it to narrow our field of vision. First, migrant indentured servitude was a temporary not a permanent condition. Indentured servants ceased to be servants when their indentures expired. Second, the aggregate numbers that have convinced historians (two-thirds of all migrants across two centuries) are misleading: once disaggregated by time and place, migrant servitude becomes a far less ubiquitous phenomenon than aggregates imply. Third, lack of servant persistence in population on the one hand and rising rates of natural increase in the white Creole (native-born) population on the other left migrant indentured labor of diminished significance in total working population well before the end of the seventeenth century. Fourth, in most areas of settlement "most of the labor available ... was family labor," and the household was the institutional locus of production.²⁸ Once all this is taken into account, one may question whether migrant servitude should be granted the distinctive influence on early American labor systems that it has heretofore been accorded.²⁹

The claim that the legal culture of work in general was a default culture of generic unfreedom must also be reexamined. Alongside the statutory

²⁶ McCusker and Menard, *The Economy of British America*, 242, 238–57.

²⁷ On servitude as the normal state of migrant labor, see Smith, *Colonists in Bondage*, 3, 4; on legal unfreedom as the default status of all labor, see Robert Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350–1870* (Chapel Hill, 1991), 3–5; Farley Grubb, "Does Bound Labour Have to be Coerced Labour? The Case of Colonial Immigrant Servitude versus Craft Apprenticeship and Life-Cycle Servitude-in-Husbandry," *Itinerario*, 21, 1 (1997), 29; Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (Cambridge and New York, 1991), 4.

²⁸ McCusker and Menard, *The Economy of British America*, 246.

²⁹ My analysis of indentured servitude is developed in detail in [Chapter 1](#). The significance of the household as a site of legal relations, both as to work and to politics, is considered in [Chapter 8](#).

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regimes defining indentured servitude and later slavery, one encounters law that recognized other, voluntary, work relations. Legalized coercion was not ubiquitous, rendering all labor "unfree." Work's legal culture was not uniform but highly differentiated.³⁰

Reconceptualization of free and unfree labor in early America can be assisted by the vigorous discussion of free and unfree labor in general that has been ongoing since the mid-1980s, an outgrowth of efforts by scholars of development studies to reexamine the assumptions of varieties of modernization theory, and also of varieties of revisionist Marxist analysis concentrating on the "transition to capitalism" question. Modernization theory accepted labor unfreedom as an historical reality but maintained that the spread of capitalism had been accompanied by the decline of labor unfreedom in all its forms and the rise of free workforces: emancipation from unfreedom hence was a progressive effect of capitalist development. Orthodox Marxist theory, meanwhile, took the existence of unfree labor, particularly in rural economies, as crucial evidence for the persistence of pre-capitalist or non-capitalist modes of production, and its disappearance as a sign of the transformation of the mode of production. Both bodies of theory, then, privileged free labor and associated it with capitalism and progress, though each arrived at quite distinct conclusions as to the historical lesson the emergence of free labor taught. Liberal modernizers saw free labor as an *individual* condition of self-proprietorship whose achievement vindicated capitalism's emancipatory promise. Marxists located substantive freedom in *collective* action, its ultimate vindication the collective decision to transcend the formal freedoms of capitalist relations (formal self-proprietorship, legal personality) and undertake the further transition to a fully socialized mode of production. Both, however, drew clear distinctions between unfreedom and freedom and associated those differences with distinct modes of production. And, fundamentally, both associated the linear succession of modes of production with history, history with progress, and progress with the widening of freedom.³¹

Critics have collapsed the classic distinction between unfree and free labor. They have done so, roughly, in two distinct ways; either by noting the persistence of objective conditions of unfreedom in the capitalist mode, or by finding a persistent ambiguity in the conditions and definition of both unfreedom and freedom, whenever and wherever historically situated. The former critique finds a capitalist mode of production quite compatible with unfreedom and hence relaxes the causal "relations of production" assumptions shared by both liberal modernizer and orthodox Marxist. But it maintains a clear distinction between unfreedom and freedom.³²

³⁰ This argument is developed at length in [Chapters 5, 6, and 7](#).

³¹ For a critique of this approach as exemplified by the work of E. P. Thompson, see [Chapter 8](#), introduction and section I.

³² Tom Brass, "Free and Unfree Labour: The Debate Continues," in Tom Brass and Marcel van der Linden, editors, *Free and Unfree Labour: The Debate Continues* (Bern, 1997), 18–24.

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The latter finds few bright lines in history, either in qualitative distinctions between modes of production, or between the forms of social relation associated with them. Jan Lucassen, for one, points out that historically, unfree dependent labor (slavery, indentured servitude) has existed quite easily alongside free dependent labor (that is, “free to current legal standards”) and free independent labor (small farming, cottage industry), and that their coexistence is generally marked by considerable shifting back and forth from category to category, all within the same general mode of production.³³

In a distinct approach, Robert Steinfeld and Stanley Engerman have argued that not only are the boundaries between categories permeable but that the categories themselves tend to collapse into each other. Historians are accustomed to classify different forms of labor as free (waged) or unfree (apprenticeship, indentured servitude, contract labor, peonage, serfdom, slavery), but “‘types’ of labor, like ‘wage labor’ and ‘contract labor’ [or peonage or indeed slavery] never did possess a set of fixed, natural characteristics, but were defined by a range of characteristics ... depending upon the precise characteristics they possessed in any particular place, such types might be considered either ‘free’ or ‘unfree’.” The observation leads Steinfeld and Engerman to conclude that the “different ‘types’ of labor were, in certain respects, not nearly as discrete and discontinuous as the standard picture implies. At the boundaries the ‘types’ of labor frequently blur and merge.”³⁴ Steinfeld in particular has tended to interpret this fluidity as significant in one direction only, arguing that ubiquitous legalized coercion blurs all forms of differentiation, draining freedom into unfreedom.³⁵ But their conclusion has attracted strong criticism. Tom Brass, for example, holds that Steinfeld and Engerman’s “difference-dissolving claim that no distinction exists between free and slave labour in terms of a requirement to work overlooks abundant evidence to the contrary.”³⁶

³³ Jan Lucassen, “Free and Unfree Labour before the Twentieth Century: A Brief Overview,” in Brass and van der Linden, eds., *Free and Unfree Labour*, 45–56.

³⁴ Robert J. Steinfeld and Stanley L. Engerman, “Labor – Free or Coerced? A Historical Reassessment of Differences and Similarities,” in Brass and van der Linden, eds., *Free and Unfree Labour*, 107–8. And see 113–15, 120–2, 125. Unfortunately, Steinfeld and Engerman do not address independent labor – a major failing from the point of view of this study, given independent labor’s considerable importance in the mainland colonies (see [Chapters 5, 6, and 7](#)). See, however, Stanley L. Engerman, “Introduction,” and Leon Fink, “From Autonomy to Abundance: Changing Beliefs about the Free Labor System in Nineteenth-Century America,” both in Stanley L. Engerman, editor, *Terms of Labor: Slavery, Serfdom and Free Labor* (Stanford, Calif., 1999), 9–11 and 116–36; Stanley L. Engerman, “Servants to Slaves to Servants: Contract Labour and European Expansion,” in P. C. Emmer, editor, *Colonialism and Migration: Indentured Labor before and after Slavery* (Dordrecht, 1986), 263–94.

³⁵ Steinfeld, *Invention of Free Labor*. For a refinement of *Invention*’s account, see Robert J. Steinfeld, “Changing Legal Conceptions of Free Labor,” in Engerman, ed., *Terms of Labor*, 137–67. Engerman’s position is elaborated in his Introduction to *Terms of Labor*, 1–23.

³⁶ Brass, “Free and Unfree Labour,” 21, and generally, 12–13, 20–2.