Introduction

Free Wage Labor in the History of the West

This is a book about the history of free wage labor. It argues that that history needs to be radically revised. We think of wage labor as having always been free and take for granted that in the eighteenth and nineteenth centuries, as today, wage workers enjoyed rights to work for whom they wished and to leave a job whenever they wished. Their lot may not always have been an easy one economically, but they could not be physically forced to perform labor as unfree workers could.

This picture of free wage labor was first developed as part of a larger rethinking of European history undertaken during the Scottish Enlightenment. The new history sought to depict change as unfolding in stages, with the latest stage representing a decisive rupture with the past. Each historical stage possessed its own distinctive form of social and economic organization that included a distinctive labor type. The feudalism of the Middle Ages, for example, was defined in part by the use of a particular form of labor, serfdom. When feudalism began to give way to a mercantilist version of market society, new forms of labor began to replace serfdom. In mercantilism, markets were heavily regulated, as was the wage labor used in these markets. Over time, however, state regulation was relaxed, and by the nineteenth century, free market society, with its characteristic labor type, free wage labor, had triumphed almost completely. In general, the movement from feudalism to free market society brought greater and greater freedoms to more and more people. Unfree serf labor gave way to regulated wage labor and finally to free wage labor as part of this larger historical process.

This narrative, which hardly anyone accepts in this form any longer, has nevertheless left its stamp on what we think wage labor must have been like in the eighteenth and nineteenth centuries. At its core this understanding harbors a set of assumptions about labor contracts. What was crucial in making free wage labor *free* was that wage workers were never forced to perform their labor agreements. If their agreements had been enforced against them wage work would have looked a lot more like unfree contract labor. There were at least two different reasons that wage labor agreements were not enforced against workers according to this story. First, wage workers normally served under agreements that were

terminable at will. Agreements terminable at will left workers free to come and go without fear that an employer could resort to law to try to coerce them into staying. Indeed, for some commentators, serving at will has become part of the very definition of wage work. If one does not serve at will but is entangled in an enforceable labor contract, that person is by definition not a wage worker.[1]

But even when workers served under agreements not terminable at will, employers did not enforce these agreements against them because they did not possess an effective legal remedy for doing so. The only remedy employers are generally thought to have enjoyed for breach of contract was money damages. As a practical matter this remedy was useless against wage workers. A contract suit for damages was often more costly than the sum at stake and could never be expected to yield a satisfactory payoff to an employer. Damage judgments secured against people who were propertyless and presumed to be mobile were not worth the paper they were written on. Even worse, damage judgments normally did not include consequential damages, such as the value of lost production, which might be the most important part of the actual damages suffered by an employer when a worker suddenly left. For most employers in most wage labor cases, a contract suit was not even worth thinking about. In effect, then, even where wage workers served under contracts the legal system failed to provide employers with an effective remedy to enforce those agreements.

Ironically, according to the conventional wisdom, the freedom from strict contract enforcement, which was the core freedom of wage workers, was perfectly acceptable to employers. They didn't need to enforce labor contracts against workers and didn't want to. They could rely on the dull compulsion of economic relations to secure all the labor they needed at prices they were willing to pay. Only in places where labor was in chronically short supply and land was abundant would employers even have been interested in trying to compel the performance of labor.[2] By the nineteenth century, this kind of labor scarcity was only a problem in the colonial agricultural periphery of an expanding capitalist universe. There, un-

[1] For an example of this viewpoint, see Robert Miles, *Capitalism and Unfree Labour, Anomaly or Necessity?* (London, 1987), 28–33.

[2] Evsey D. Domar, "The Causes of Slavery or Serfdom: A Hypothesis," *Journal of Economic History* 30 (March 1970). Domar's theory has been very influential since the 1970s. At the turn of the twentieth century Herman Nieboer, in *Slavery as an Industrial System* (The Hague, 1910), presented a similar though cruder version of the same theory. Domar's argument is less mechanical than the short description in the text implies. He explicitly acknowledged, for example, that the existence of unfree labor also depended on political variables and that it could occur even where labor was abundant relative to available land. But the short statement in the text accurately portrays the main proposition for which Domar's argument is normally taken to stand.

free slaves and contract workers *were* indeed used. In the metropolis, where labor was abundant, employers simply had no need to resort to legal compulsion. In fact, legal compulsion would have been counterproductive. Where labor was abundant employers found that free wage labor was cheaper to use than slave or indentured labor. In these situations, the movement from unfree to free labor was a natural part of the development of market relations between employers and employed. Employers were only too eager to drop compulsion and to replace unfree workers with free wage workers whenever the opportunity presented itself.[3] The absence of an effective legal means of enforcing labor agreements and the prevalence of employment at will, it is thought, served the interests of employers in fully developed free markets. They would not have wanted or needed strict contract enforcement because the dull compulsion of economic relations represented a far better means for extracting labor services.[4]

By contrast, in the agricultural periphery where labor markets were thin or nonexistent, employers needed to be able to enforce labor agreements and naturally were able to do so. There, contract workers were entangled in enforceable labor agreements in ways that the free wage workers of the metropolis were not. Employers of contract labor were able to

[3] Gary Nash and Sharon Salinger make arguments of this kind in explaining why indentured servants and slaves came to make up a smaller and smaller percentage of the labor force in Pennsylvania after the American Revolution. Gary Nash, *The Urban Crucible: Social Change, Political Consciousness, and the Origins of the American Revolution* (Cambridge, Mass., 1979), 320; Sharon Salinger, *"To Serve Well and Faithfully," Labor and Indentured Servants in Pennsylvania, 1682–1800* (Cambridge, Mass., 1987), 149–52. Christopher Whatley makes a similar argument to explain employer support for the abolition of serfdom among Scottish coal miners in the last quarter of the eighteenth century. Christopher Whatley, "'The Fettering Bonds of Brotherhood': Combination and Labour Relations in the Scottish Coal-Mining Industry, c. 1690–1775," *Social History* 12 (May 1987). Arguments like these, about the economic superiority of free labor for employers, date back at least to the eighteenth century. See, for example, Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations,* ed. Edwin Cannan (Chicago, Ill., 1976), I:90, 411–12.

[4] For an early version of this argument, see Joseph Townsend, "A Dissertation on the Poor Laws" in *A Select Collection of Scarce and Valuable Economical Tracts,* ed. J. R. McCulloch (London, 1859), 404, quoted in David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca, N.Y., 1975), 358–59, and in Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston, 1957), 113–14. Townsend wrote: "Legal constraint is attended with much trouble, violence and noise; creates ill will, and never can be productive of good and acceptable service: whereas hunger is not only peaceable, silent, unremitting pressure, but, as the most natural motive to industry and labor, it calls forth the most powerful exertions; and, when satisfied by the free bounty of another, lays lasting and sure foundations for good will and gratitude. The slave must be compelled to work but the free man should be left to his own judgment, and discretion; should be protected in the full enjoyment of his own, be it much or little; and punished when he invades his neighbor's property."

enforce labor agreements because they had available various nonpecuniary remedies, such as incarceration and corporal punishment, to compel workers to perform those agreements. It is precisely the use of these nonpecuniary pressures to compel work (those that involve physical violence or deprivation of bodily liberty) that define for us what makes a form of labor unfree.[5] Because such nonpecuniary pressures were also used in slavery, today we frequently link slavery and contract labor as forms of "unfree labor." By contrast, the freedom of free wage workers lay first of all in a freedom from nonpecuniary imposition. Wage workers were exposed at times to severe pecuniary pressures (those that involve deprivation of income or property), but never to nonpecuniary pressures to work. If they had been exposed to the latter we would not consider them free workers. These basic assumptions about the history of labor are inscribed in the modern diagram of the historical forms of labor we carry around in our heads:[6]

free	unfree
wage labor	slave
artisanal	serf
free tenantry	indentured labor
	contract labor
	peonage

It is widely believed that the contract practices of free wage labor represented the norm in the Anglo-American and European worlds. The strict enforcement of contract labor agreements through nonpecuniary pressures represented a clear deviation from this norm, made necessary by the extraordinary labor shortages of the agricultural periphery. In part the contractual practices of wage labor are viewed as the norm because the *normal* mode of enforcing contracts in Anglo-American law is thought to have been money damages. Anglo-American law never permitted the specific enforcement of personal service agreements. It is also widely believed among historians and lawyers, at least in the United States, that it also

[5] Anthony Kronman, "Paternalism and the Law of Contracts," *Yale Law Journal* 92 (April 1983): 778–79.

[6] This diagram is based on one presented in Jan Lucassen, "Free and Unfree Labour before the Twentieth Century: A Brief Overview," in *Free and Unfree Labour: The Debate Continues*, ed. Tom Brass and Marcel van der Linden (Berne, Switz., 1997), 46. Lucassen's diagram further divides labor into *independent* and *dependent*. Although I would describe the assumptions underlying this diagram as being dominant, it is certainly the case that not everyone subscribes to them. Several historians have begun to question this binary opposition. See in particular Paul Craven and Douglas Hay, "The Criminalization of 'Free' Labour: Master and Servant in Comparative Perspective," *Slavery and Abolition* 15 (August 1994): 72; and David Eltis, "Labour and Coercion in the English Atlantic World from the Seventeenth to the Early Twentieth Century," *Slavery and Abolition* 14 (April 1993): 207.

never authorized criminal penalties to enforce labor agreements.[7] The differing contract practices of wage labor and contract labor are viewed as having been inseparable from the forms of labor themselves, in effect timeless features of two distinct species of labor. Wherever contract labor was used one set of contract practices is thought to have been in effect. Wherever wage labor was used the other set was.

It is a little surprising that these conceptions about historical wage labor have survived to the present. For one thing, there is now a small literature showing that English wage workers had been punished criminally during the nineteenth century for breaking their labor agreements. Until recently, however, that handful of historians who had written about the English Master and Servant acts tended to treat them as anomalous. Rather than use the existence of criminal sanctions to reassess the traditional wisdom about wage labor, these historians tended to use the traditional wisdom to assess the historical significance of criminal sanctions. Of the more than 700 pages the Webbs devoted to *The History of Trade Unionism*, they devoted fewer than ten pages to a discussion of the Master and Servant acts. Indeed, they dismissed as "somewhat exaggerated" the view of one nineteenth-century writer that the Master and Servant acts played a more important role in oppressing working people than the Combination acts.[8] In the 1950s, Daphne Simon wrote the modern classic on the Master and Servant acts, but her main argument was that by the nineteenth century these acts embodied practices that were outdated. In effect penal sanctions were a relic of feudalism, reflecting the primitive labor practices of an earlier stage of historical development that had inexplicably survived into the nineteenth century; they were really no part of modern wage labor. Genuinely modern business, as represented by the large cotton mills, had no need for this kind of compulsion and did not use it.[9] More recently a number of historians have written short pieces on the Master and Servant

[7] The American South following the Civil War is normally thought to have been the one major exception and a striking anomaly in the Anglo-American legal universe. See Benno C. Schmidt, Jr., "Principle and Prejudice: The Supreme Court and Race in the Progressive Era. Part 2: The Peonage Cases," *Columbia Law Review* 82 (1982): 705.

[8] Sidney Webb and Beatrice Webb, *The History of Trade Unionism* (London, 1956), 250 n. 2. Douglas Hay and Paul Craven have recently collected evidence that tends to support the view that the Master and Servant acts were indeed more important in oppressing working people than the Combination acts. "Master and Servant in England and the Empire: A Comparative Study," *Labour/Le Travail* 31 (Spring 1993): 176. ("There is a very large literature on the statutes against 'combination' in England during this period, but contemporary argument that employers used master and servant more often is amply borne out by our preliminary findings: in one English county, 130 men and women were imprisoned under master and servant for every one imprisoned for combination.")

[9] Daphne Simon, "Master and Servant," in *Democracy and the Labour Movement: Essays in Honour of Dona Torr*, ed. John Saville (London, 1954), 191–95.

acts,[10] some of them flatly rejecting Simon's contention that penal sanctions were a feudal relic by the nineteenth century. They have shown just how central criminal sanctions were to the practice of English wage labor of the period.[11] For the most part, however, these writers have failed to use the fact of criminal sanctions to try to begin to rethink the larger narrative of free wage labor.[12] As a result, the history of criminal sanctions has remained a particular history, an interesting sidelight that has not become part of any larger account of the history of wage labor. Meanwhile, the traditional view of free wage labor as a natural feature of free markets has continued to shape our understanding of the fundamental nature of wage labor in the nineteenth century.

There is a second reason that it is a little surprising that the narrative of free wage labor has survived. In the 1970s, two economic historians, Robert Fogel and Stanley Engerman, produced a devastating critique of its underlying economic logic. In their study of antebellum slavery, *Time on the Cross*,[13] they showed, in effect, that nonpecuniary compulsion was not economically inferior to pecuniary pressure as a means for extracting labor services efficiently and at low cost. They demonstrated that slaves in the antebellum South produced certain agricultural crops more efficiently than free northern agricultural workers, but perhaps more important, they also demonstrated that slaves performed artisanal and industrial work in urban settings at least as efficiently as northern free labor. Com-

[10] See, for example, D. C. Woods, "The Operation of the Master and Servants Act in the Black Country, 1858–1875," *Midland History* 7 (1982); M. R. Freedland, *The Contract of Employment* (Oxford, 1976); John Orth, *Combination and Conspiracy: A Legal History of Trade Unionism, 1721–1906* (Oxford, 1991); and David Galenson, "The Rise of Free Labor: Economic Change and the Enforcement of Service Contracts in England, 1351–1875," in *Capitalism in Context: Essays on Economic Development and Cultural Change in Honor of R. M. Hartwell*, ed. John A. James and Mark Thomas (Chicago, Ill., 1994), 114–37.

[11] See, for example, Woods in "Operation of the Master and Servants Act in the Black Country," 109–13; and Douglas Hay, "Penal Sanctions, Masters, and Servants" (Unpublished manuscript, 1990), 3–5, and "Masters, Servants, Justices and Judges" (Unpublished manuscript, 1988). Paul Craven and Adrian Merritt have taken similar positions with regard to nineteenth-century master/servant law in Canada and Australia. Paul Craven, "The Law of Master and Servant in Mid-Nineteenth-Century Ontario," in *Essays in the History of Canadian Law*, ed. David Flaherty (Toronto, 1981), I:175–211, especially 204; and Adrian Merritt, "The Historical Role of Law in the Regulation of Employment – Abstentionist or Interventionist?" *Australian Journal of Law & Society* 1 (1982).

[12] Douglas Hay is an exception. In "Penal Sanctions, Masters, and Servants," 3–5, and in "Masters, Servants, Justices and Judges," he began to reassess the larger significance of penal sanctions for nineteenth-century wage labor, arguing that criminal prosecutions for contract breaches became more common with the onset of the Industrial Revolution. See also Craven and Hay, "Criminalization of 'Free' Labour,"; and Eltis, "Labour and Coercion in the English Atlantic."

[13] Robert Fogel and Stanley Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston, 1974).

pulsion worked well, seemingly, not only in primitive agriculture but also in skilled urban crafts. Indeed it seemed pretty clear as a result of their work that nonpecuniary pressures could be used as an effective substitute for pecuniary pressures in extracting labor, even skilled urban artisanal and industrial labor.

Fogel and Engerman also found that southern slave masters felt perfectly comfortable using both kinds of pressure together. They whipped their slaves but also often offered them pecuniary inducements. Their aim was to create an optimum mix of incentives to drive slaves to work harder. Slavery was a form of coerced labor, but that did not preclude masters from using both pecuniary and nonpecuniary pressures to push slave workers toward greater productivity. Fogel and Engerman's work discredited the notion that pecuniary and nonpecuniary pressures could not be effectively substituted for one another. They showed that nonpecuniary pressures could be used to extract skilled work efficiently. Beyond that they also demonstrated that it had not been necessary to choose one kind of pressure to the exclusion of the other. The two types of pressure could be used in tandem in any combination employers found advantageous. The obvious question raised by these insights is that if it was economically rational for slave masters to use nonpecuniary pressures to improve the efficiency of slave labor, might it not also have been economically rational for employers of wage labor to use nonpecuniary pressures for similar purposes? Might not the nonpecuniary penal sanctions actually used by employers of wage labor in nineteenth-century England have constituted an important part of their economic strategy for making wage labor more efficient?

We tend not to make these kinds of connections because we shrink from making direct comparisons between wage labor and slavery. Yet since the 1970s our picture of slavery has changed. The dynamics of slavery have begun to look a little more like the dynamics of wage labor. For one thing, historians now tend to see slavery as a negotiated relationship.[14] One of the sources of power slaves possessed came from their ability to withdraw labor at crucial moments in the production process. In numerous instances individual slaves ran away for short periods just when their labor was desperately needed. In other cases they ran away at times when masters were making excessive demands on them. In some cases slaves were even known to withdraw their labor collectively, to strike, as it were.[15] Although slaves often paid dearly for withdrawing their labor, the continued willingness of some slaves to do so presented a cautionary tale

[14] Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, Mass., 1998).

[15] See Mary Turner, ed., *From Chattel Slaves to Wage Slaves: The Dynamics of Labour Bargaining in the Americas* (Bloomington, Ind., 1995).

for masters. To keep to a minimum the value of lost production as well as replacement costs, masters could make concessions to slaves, increase punishments, or both. Slaves also possessed other sources of power. They could work more slowly than they were capable of, perform work badly, or both. Masters could respond to the effort problem by increasing supervision, but that was always imperfect and costly. To reduce agency costs (the combined costs of shirking and supervision) as much as possible, masters again could make concessions to slaves, try to intensify punishments, or both.

This changed picture of slavery reveals that slavery shared certain basic dynamics with wage labor. Both were negotiated relationships in which labor's ultimate sources of power were similar: the power to withdraw labor and the power to work less hard or well than was possible. The other side of this coin is that employers of labor in both relationships faced certain similar basic problems. In both situations, a sudden loss of labor could result in costly lost production. More frequently, employers had to develop strategies to deal with effort problems.

Our picture of wage labor has changed much less than our picture of slavery. Might the nonpecuniary criminal sanctions used against wage workers in nineteenth-century England indicate not only that slavery shared certain characteristics with wage labor but also that wage labor shared certain characteristics with slavery? In particular, both slavery and wage labor seem to have shared the use of nonpecuniary pressure in certain situations to address certain basic labor problems.

I do not want to be misunderstood. This is not an argument that wage labor was a form of slavery. It was not. I am arguing rather that it is necessary to begin thinking about the different forms of the labor relationship differently. We have to give up the idea that so-called free and coerced labor inhabited completely separate universes and try to understand both in terms of a common framework. We should recognize that employers of all forms of labor confronted certain basic problems that derived from the ability of workers to thwart their economic objectives and that employers of all forms of labor, *including wage labor,* found nonpecuniary pressures useful in trying to deal with these problems. What was different about the different forms of labor was the harshness and comprehensiveness of the pressures that the state permitted employers to bring to bear. Also different were the measures the state permitted workers to take for self-protection and the political power that was given them to participate in the formulation of the basic rules that were to govern these relationships. As vast as these differences undoubtedly were, they should be understood as establishing the terms of labor along a very broad continuum rather than as a binary opposition.

The following history of wage labor in England and the United States focuses on the enforcement of labor contracts. In England, which pos-

sessed one of the most advanced economies of the nineteenth century, wage work did not conform to its image as employment at will. Wage workers commonly served under agreements that could *not* be terminated at will, and employers commonly sought to have those agreements enforced against them. They could do so because English law gave employers effective remedies for breach of contract. English wage workers could be imprisoned at hard labor for failing or refusing to perform their labor agreements. Strict labor contract enforcement through nonpecuniary pressure of this kind was an integral feature of English wage labor in the nineteenth century. The strict enforcement of labor contracts turns out to have been the norm not only in areas of the empire using contract labor but also in the English metropolis. Wage and contract labor were merely variations on a common regime of contract.

Employers of wage labor resorted to this kind of strict contract enforcement to address some of the same problems that employers of contract labor and slavery also attempted to address by using nonpecuniary pressure. In the fully developed wage labor markets of nineteenth-century England, employers had sound economic reasons for wanting to hire wage workers under enforceable agreements and for enforcing those agreements against them. Nonpecuniary pressure served as a useful supplement to the dull compulsion of economic relations in helping employers reduce the cost of and improve the efficiency of wage labor.

Wage labor markets in England came increasingly to be organized around the principle of contract during the nineteenth century. Employers and workers became freer to set the terms of their relationship with one another through agreements. However, many employers of the time believed that for these reforms to work it was essential for them to be able to hold wage workers to their promises, and penal sanctions made it possible for employers to do so. In this respect the criminal enforcement of labor agreements was an integral aspect of the first blossoming of free contract in labor markets. Freedom of contract implied that workers should not be constrained to enter only revocable agreements but should be free to bind their labor irrevocably as well.

The account presented in this book turns the traditional narrative of free labor on its head. It shows that the introduction of free contract and free markets in labor in the nineteenth century did not produce what we in the twentieth century consider free wage labor. It produced a regime that employed nonpecuniary pressures to extract labor from workers, pressures that by twentieth-century standards make the wage work a form of coerced contractual labor. Penal sanctions for labor contract breaches were eliminated in England only as a result of the efforts of organized labor to change state rules governing labor contracts. They did not disappear because employers finally discovered that the dull compulsion of economic relations made them unnecessary. Labor agitated for more than a

decade to have the law of labor contracts changed. In 1875, as a result of this campaign, penal sanctions for contract breaches were largely eliminated. Their elimination must be seen as part of the wider campaign mounted in the late nineteenth and early twentieth centuries to pass pro-labor legislation to place restraints on freedom of the market. The 1875 legislation was one of the ways in which freedom of contract was restricted. This legislation, along with other legislative restrictions on freedom of contract such as maximum hours and minimum wages laws, was meant to bolster the position of labor. The origins of modern free wage labor are not to be found in the free contracts in free markets of the first half of the nineteenth century but in the restrictions placed on freedom of contract by the social and economic legislation adopted during the final quarter of the century.

Although the history of wage labor in other countries such as France and Germany was quite different in detail, it followed a surprisingly similar general pattern, beginning with the strict enforcement of wage labor agreements in the nineteenth century. A similar pattern, moreover, is even to be found in the United States, where employers did not normally have available penal sanctions or specific performance to enforce labor agreements. In the nineteenth century, wage workers in the United States, like their English counterparts, commonly did *not* serve under agreements terminable at will. The labor agreements under which they did serve were often enforced against them. Employers could enforce these agreements in the United States because the common law of contract gave them an effective remedy for breach, in this case, a pecuniary remedy. American workers in most states were subject to wage forfeiture for violating their labor agreements during the nineteenth century. A few states changed this rule before 1860 as a result of judicial opinions. Significant numbers of states, however, did not begin to reject it until the 1870s. After 1875, the pace of change accelerated as more and more states passed periodic wage payment laws that required employers to pay wages at regular and increasingly shorter intervals. Over time, changed judicial sentiment, but more importantly this new legislation, gradually eroded the ability of employers to use wage forfeiture legally to enforce labor agreements. As in England, it is primarily to restrictive labor legislation, not to free contract in free markets, that we should trace the origins of modern free wage labor in the United States.

RETHINKING FREE/UNFREE LABOR

One of the basic assumptions underlying the traditional narrative of free labor is that there are two fundamentally different kinds of labor, free and coerced. The two are thought to be opposites of one another, not different in degree but different in kind. The line that naturally divides the two is