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BOOK REVIEW

Contracting Coercion? Rethinking the Origins of Free Labor in Great Britain and the United States

GUNTHER PECK†

When President George W. Bush recently invoked the Taft-Hartley Act to order more than 10,500 west coast dockworkers back to work for an eighty day cooling off period, he stirred up old controversies about the landmark antiunion labor law. One of the most heated and interesting claims included a description of Taft-Hartley as a "slave labor law," so named because of its power to compel strikers back to work or risk criminal prosecution should they continue striking.[1] While the comparison between slavery and one of the foundations of modern labor law may

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1. When the Taft-Hartley Act was passed in 1947, CIO labor leader Phillip Murray called it the "slave labor act." *See* NELSON LICHTENSTEIN, THE MOST DANGEROUS MAN IN DETROIT: WALTER REUTHER AND THE FATE OF AMERICAN LABOR 260-67 (1994). More recently, Taft-Hartley has again been connected to slavery by organized labor and their allies. *See, e.g.*, literature of the San Francisco based Port Workers' Solidarity Committee of the International Longshoreman's Union, which recently condemned Taft-Hartley as a "slave labor law." Port Workers' Solidarity Committee, ILWU Local 10, *A Call for Action! National Labor Conference against Taft-Hartley and Union-Busting* (Dec. 7, 2002), *at* http://www.portsolidarity2002.org/pages/docpage/call.html (last visited, Mar. 16, 2003).

seem hyperbolic to some, the language used by workers in assessing the Taft-Hartley law highlights how the idea of slavery remains a potent way of explaining coercive features of modern wage labor relations and the legal system that defines the rules of engagement between employers and employees.

Assessing the coercive content and significance of those rules is a challenging endeavor. Invoking the history of slavery to describe wage labor relations, after all, can obscure rather than clarify precisely how and when contracts and the law become coercive. A great place to begin any investigation into the topic of contracts and coercion is Robert J. Steinfeld's new book *Coercion, Contract, and Free Labor in the Nineteenth Century*, in which the author explores many of the surprising forms of economic, contractual, and criminal coercion that haunted the history of wage labor relations in Great Britain and the United States throughout the nineteenth and early twentieth centuries.[2] For lawyers and historians, Steinfeld's new book proposes a fundamental rethinking of the historical relationships between contract and freedom, one that illuminates not only neglected dimensions of the past but also the unstable terrain of freedom and coercion in the present. Steinfeld's success in that endeavor stems less from his historiographical claims than from his detailed and impressive examination of the rules that governed the making and unmaking of labor contracts among workers and their employers in the nineteenth century. In the first half of the essay I explore Steinfeld's accomplishments, while in the second I consider the book's shortcomings, focusing on how Steinfeld might have better utilized recent historical scholarship to justify important omissions in his narrative and to extend key claims about the relationship between contracts, coercion, and free labor.

Steinfeld focuses the bulk of his book on the complex rules that governed how and with what consequences British workers breached their labor contracts in the 19th century. He argues that the origins of what people today deem free labor–the right to quit a job without criminal penalties or other forms of non-pecuniary pressure such as physical restraint or criminal punishment–did not emerge

2. ROBERT J. STEINFELD, COERCION, CONTRACT, AND FREE LABOR IN THE NINETEENTH CENTURY (2001).

from market forces and the expansion of contractual social relations in the early nineteenth century. Rather, the roots of free wage labor relations reside, as Steinfeld writes, "in the restrictions placed on freedom of contract by the social and economic legislation adopted during the final quarter of the century."[3]

Steinfeld uses court records, judicial opinions, parliamentary debates, and data about criminal and civil prosecutions of labor contract breaches between 1857 and 1873 to demonstrate that by modern definitions of free labor, British workers were not "free" throughout much of the 19th century. If they left their employers before the completion of their stated contracts, they faced a variety of "non-pecuniary" punishments including prison terms at hard labor, large fines, and even whipping. In 1860, for example, 11,938 British workers were prosecuted for contract breach, many of them coal miners and iron workers central to the nation's rapidly growing industrialization. Not all of these workers ended up in jail, but a large majority received criminal convictions. "Of the 7,000-odd convicted" in 1860, Steinfeld writes, "1,699 served a sentence in the house of correction, 1,971 were fined, 3,380 received other punishments (wages abated and costs assessed, in all likelihood), and one person was ordered whipped."[4]

Steinfeld judiciously notes that such numbers do not indicate how far the shadow of penal sanctions fell among British workers. "For each actual prosecution," he writes, "how many times did an employer threaten a worker with prosecution should he quit or refuse to comply with orders?"[5] But Steinfeld persuasively suggests that penal sanctions were used as one means of labor discipline by a large cross-section of British employers, as prosecutions dramatically spiked upward during flush moments in Britain's trade cycle. When unemployment was high, by contrast, prosecutions tailed off, though they never fell below seven thousand a year between 1857 and 1873, suggesting penal sanctions' endemic utility to a great many employer-employee negotiations. Indeed, penal sanctions were frequently used to punish strikers. As a result of the

3. *Id.* at 10.
4. *Id.* at 75.
5. *Id.* at 82.

1825 Anti-combination act, if British workers did not give their employers one month notice of their intention to strike and struck on short notice, they frequently faced penal sanctions. Relying on the work of British historian D.C. Woods, Steinfeld notes that fully thirty-eight percent of criminal prosecutions in coal mining districts between 1858 and 1875 were for unlawful strike actions rather than for unlawful quitting.[6]

Steinfeld is not the first scholar to note the prevalence of these penal sanctions in British labor and legal history. As Steinfeld's footnotes attest, his picture of British penal sanctions rests squarely on the shoulders of D.C. Woods and especially of historian Daphne Simon, who was the first to spotlight the role of British workers in resisting and changing the rules that governed how workers and employers made and broke labor contracts.[7] But Steinfeld's originality rests on a broader revisionist assessment of free labor ideology and of the many intrinsic connections between market-driven changes in British society and state-sanctioned forms of coercion. The emerging market of "free contracts" in Britain did not inevitably or naturally create free labor, Steinfeld contends, because "in important respects free contract is an empty idea. A regime of free contract only receives its content from a detailed set of contract rules, and these rules cannot be deduced from any abstract idea of contract."[8]

To prove that point, Steinfeld explores the remarkably regressive story of Britain's allegedly free labor contract rules, which expanded rather than limited the scope and range of penal sanctions between 1823 and the 1860s. The ability of magistrates to penalize growing numbers of British workers derived from revisions of the Master and Servant Acts, which ostensibly sought to create and enforce a mutuality of interests between employers–the "masters"–and their employees–"the servants." If an employer signed a contract with a worker and then fired that person, technically the worker could still collect wages on a "minimum" number of days of employment. Such long-term

6. *Id* at 66 (citing D.C. Woods, *The Operation of the Master and Servant Acts in the Black Country, 1858-1875*, 7 MIDLAND HIST. 102 (1982)).

7. *See* Daphne Simon, *Master and Servant*, *in* DEMOCRACY AND THE LABOUR MOVEMENT: ESSAYS IN HONOR OF DONA TORR 160-63, 191 (John Saville ed., 1954).

8. STEINFELD, *supra* note 2 , at 39.

labor contracts could at least potentially function as a kind of minimum wage provision for workers, a guaranteed salary even in the downside of a trade cycle. Yet such protections were rarely enforced against employers, as judges became increasingly reluctant to obligate employers to keep businesses running or to hire certain employees when trade was slack.[9] The result was that employers "[had] it both ways, criminally enforcing long agreements while at the same time disclaiming any responsibility for finding work during the term of the contract" if fired or not hired.[10] These growing coercive powers were in no way incompatible with market-generated contract freedoms, according to Steinfeld, but were, to the contrary, expressions of it. "[O]ne of the inevitable consequences of liberal readings" of the Master and Servant Acts, according to Steinfeld, "was to extend criminal liability."[11]

If Steinfeld destabilizes traditional narratives of nineteenth century legal and economic history, his story is likewise filled with unanticipated consequences and contingencies. British Parliament and the British Judiciary constantly fought each other throughout the nineteenth century over how to accommodate or stymie workers' growing demands for reform. "Who could have foreseen," Steinfeld writes, "that common law courts and Parliament would become adversaries with respect to the Master and Servant Acts" or that "the courts would have authored a pro-labor reading of the acts" in the 1840s, a short-lived response to the Chartist movement's demands for reform.[12] The picture of the British state that emerges here is hardly monolithic, but internally divided and open to competing pressures from both workers and their employers, even though most workers did not yet possess the vote before the 1860s. Perhaps more striking is Steinfeld's claim that penal sanctions and lengthy contracts were not considered controversial by many British workers until the 1860s. "Lengthy contracts, per se, and the enforcement of such contracts under master and servant laws, do not appear to have been regarded by working people as the main problem" during the 1850s and before. To the contrary,

9. *Id.* at 165.
10. *Id.* at 107 n.17.
11. *Id.* at 146.
12. *Id.* at 165.

"[w]orkers often viewed such contracts as beneficial."[13] Coal miners in Durham, for example, continued demanding annual contracts into the 1860s, even as Scottish miners protested them and received much shorter "minute" contracts in the late 1850s: a closer approximation to current "free" wage labor rules. It would only be in the 1870s, when a group of Scottish miners and newly enfranchised British workers succeeded in pressuring a conservative government to reform the Master and Servant Act, that long contracts and penal sanctions became synonymous with unfair labor treatment and coercion to British workers. As Liberal Party politician Robert Lowe stated in 1875, annual work contracts "would be introducing a principle of slavery utterly inconsistent with the genius of our laws and institutions" and "for which no precedent or parallel could be found in the law of England."[14] But as Steinfeld noted, "Lowe was rewriting English legal history, placing the final touches on the modern myth of free labor" by distorting or simply ignoring the recent past.[15]

By locating the origins of "modern" free labor in the labor movement that successfully restricted employers' contract freedoms and conveniently ignored its own recent support of long contracts, Steinfeld seeks to raise questions about how secure and natural our modern notions of free labor are in the present. There are, Steinfeld claims, no fixed distinctions or essential differences between pecuniary and nonpecuniary means of enforcing labor contracts, despite their importance in defining the perceived differences between free and unfree labor. Rather than perceiving a binary distinction between "free" wage labor and slavery, Steinfeld calls for historians and lawyers alike to see that "the various kinds of pressures used in labor relations are commensurable, differing mainly in degree, and that economic pressures and nonpecuniary legal pressures can be substituted for one another in many cases and used interchangeably to accomplish similar goals."[16] Steinfeld seeks to exemplify those claims with his

13. *Id.* at 123.
14. *Id.* at 215 (quoting HANSARD, PARL. DEB. CCXXV:col.659 (June 28, 1875)).
15. *Id.* at 215.
16. *Id.* at 25.

comparative exploration of wage contract rules in the United States during the nineteenth century. In sharp contrast to British workers in the same period, American workers after 1830 experienced no civil or criminal penalties for breaching a labor contract. This was due, Steinfeld claims, to the existence of chattel slavery in the United States and the vigorous efforts of northern wage earners to abolish slavery–and any penal sanctions that evoked it–in northern states where wage earning proliferated after 1820. The lack of criminal or civil penalties for contract breach even applied to the contract laborers who had signed long work contracts in order to come to the United States. The comparative freedom of American workers did not reflect natural market forces or the individual bargaining power of contract workers in a labor scarce economy, according to Steinfeld, but was due instead to political and moral forces: the strong movement for abolition in northern states and the strength of a revolutionary inheritance among working-class plebian radicals who strenuously opposed any penal sanctions for quitting.[17]

But if American workers were freer from penal sanctions than their British counterparts, they were nonetheless coerced by the practice of wage forfeiture. If a worker left his or her job before its full and absolute completion, all unpaid wages were typically ceded to the employer. Even while British courts strengthened civil penalties for contract breaches in the 1820s, they also passed laws outlawing wage forfeiture. In the United States, by contrast, employers used wage forfeiture as their primary means of labor discipline and control. Many American employers would like to have imposed stiffer penalties for contract breach, Steinfeld maintains, particularly those that imported workers under contract before the practice became illegal in 1885.[18] But labor discipline did not depend on such contract remedies among wage earners in the United States, even among African-

17. *Id.* at 35. On the emergence and power of working-class radicals during the 1830s, see SEAN WILENTZ, CHANTS DEMOCRATIC: NEW YORK CITY AND THE RISE OF THE AMERICAN WORKING CLASS (1985). For a critique of the relevance of a republican inheritence to American workers, see PETER WAY, COMMON LABOUR: WORKERS AND THE DIGGING OF NORTH AMERICAN CANALS, 1780-1860 (1993).

18. *Id.* at 31-32.

American indentured servants in the North whose contracts had originally sanctioned legal punishments for contract breach. For these "free" black workers, many of them female according to the court cases cited, wage forfeiture rather than civil or criminal penalties sufficed to maintain labor discipline.[19]

While Steinfeld acknowledges that criminal penalties for contract breach could be more coercive than economic ones, he does not conclude that all wage laborers in the United States were somehow freer than their British counterparts. Indeed, as Steinfeld asserts, not all wage earners in the United States were necessarily free from penal sanctions after 1830. Rather than explore precisely how wage forfeiture worked to coerce American workers, Steinfeld instead examines groups of workers who continued to face penal sanctions after 1830: sailors who served jail time if they quit before completing a particular voyage;[20] sharecroppers in the U.S. south who faced a range of nonpecuniary punishments if they did not fulfill their work contracts;[21] contract laborers in Hawaii who faced legalized penal sanctions for contract breach after the 1890s;[22] and even loggers who violated local laws passed in Maine, Minnesota, and Michigan in the early twentieth century, known as false pretence statutes. When lumberjacks in Maine quit their jobs in 1907 and walked back to town, for example, "[r]ural justices of the peace committed numerous men to jail or sent them back to the woods to work out their contracts in the years following passage of the act."[23] Steinfeld uses these examples to suggest that even in the comparatively "free" labor context of the United States, workers' actual freedoms were frequently at risk, dependent in large part on the rulings of particular justices and their interpretations of the Thirteenth Amendment which outlawed involuntary servitude but not forms of "voluntary" servitude, however onerous.

19. *Id.* at 262. For a more thorough examination of the evolution of labor contract rules in the United States, see ROBERT J. STEINFELD, THE INVENTION OF FREE LABOR: THE EMPLOYMENT RELATION IN ENGLISH AND AMERICAN LAW AND CULTURE, 1350-1870 (1991).

20. STEINFELD, *supra* note 2 , at 270-71.

21. *Id.* at 275.

22. *Id.* at 269.

23. *Id.* at 279.

In linking labor and legal history, Steinfeld seeks to revise how both lawyers and historians view the history–and the present–of "free" wage labor relations. Indeed, he frequently critiques lawyers and historians' failure to identify the true origins of free wage labor in the labor movement rather than in the marketplace. But many of Steinfeld's critiques are not fully persuasive because of his uneven engagement with a growing body of historical scholarship that also challenges or qualifies conventional narratives of free labor's origins and evolution in the nineteenth century. The main U.S. historian that Steinfeld discusses is Benno Schmidt, whose article on U.S. peonage concluded, wrongly as Steinfeld shows, that criminal prosecution for contract breach was unheard of in Britain and that American peonage was a "stark and dubious deviation from tradition."[24] But Benno Schmidt's arguments are hardly typical of U.S. historians currently working on intersections between law and the labor movement. Unmentioned and largely ignored in Steinfeld's oft-repeated polemics are the works of critical legal studies scholars like Christopher Tomlins, William Forbath, and Amy Dru Stanley, or labor historians like myself, whose work intersects with and amplifies Steinfeld's ideas about contract, coercion, and free labor in the nineteenth century.[25]

Steinfeld's narrative would have been more persuasive and provocative, for example, had he explicitly considered Amy Dru Stanley's analysis of the persistence of coercion within nominally "free" wage labor relations in the United States after the Civil War. Instead of focusing exclusively on the penalties associated with labor contract breaches,

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24. *Id.* at 235 (quoting Benno C. Schmidt, Jr., *Principle and Prejudice: The Supreme Court and Race in the Progressive Era. Part 2: The Peonage Cases*, 82 COLUM. L. REV. 705 (1982)).

25. *See* CHRISTOPHER TOMLINS, LAW, LABOR, AND IDEOLOGY IN THE EARLY AMERICAN REPUBLIC (1993); LABOR LAW IN AMERICA: HISTORICAL AND CRITICAL ESSAYS (Christopher Tomlins ed., 1992); William Forbath, *The Ambiguities of Free labor: Labor and the Law in the Gilded Age*, WIS. L. REV. 787-809 (1985); WILLIAM FORBATH, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (1991); Amy Dru Stanley, *'Beggars Can't Be Choosers': Compulsion and Contract in Postbellum America*, 78:4 J. AM. HIST. 1265-93 (March 1992); AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION (1998); GUNTHER PECK, REINVENTING FREE LABOR: PADRONES AND IMMIGRANT WORKERS IN THE NORTH AMERICAN WEST, 1880-1930 (2000).

Stanley considers how a host of new local laws against paupers and vagrants worked to coerce transient men and women into employment through legal means, even after the Thirteenth Amendment abolished slavery. Stanley links these developments affecting wage earning to changes in marriage contracts and sexual relations in the same period, illuminating the particular legal dilemmas faced by female wage earners.[26] In so doing, Stanley raises topics and questions that might have benefited Steinfeld's narrative and analysis. Were women wage earners in Britain, for example, more or less likely to receive criminal punishments for contract breach? How did marital status, for male and female wage earners respectively, affect the application of the Master and Servant Acts? How did the contractual options of British female and male wage earners differ and how did their divergent experiences with contracts shape their respective acceptance or rejection of free labor ideology? What were the gendered dimensions of the British labor movement's critique of the Master and Servant Acts from the 1830s through the 1870s? In asking such questions, Steinfeld need not have made marriage contracts or gender relations central to his study. But he could have used feminist legal history to make better use of his evidence, while simultaneously strengthening his claim that free labor was created out of political and social conflict rather than from the "natural" workings of market transactions.[27]

Steinfeld might likewise have located his examination of the rules governing labor contract breach within a broader context of labor mobility and labor market transformation in the nineteenth century. The basic plot line of Steinfeld's British case study considers how workers acquired the right to quit, yet we get little sense of how British workers actually exercised that right: how they traveled between jobs and regions or were connected to international labor markets in the nineteenth century. To that end, Steinfeld might have made better use of the insights and findings of my recent book, *Reinventing Free*

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26. *See* Amy Dru Stanley, *Conjugal Bonds and Wage Labor: Rights of Contract in the Age of Emancipation*, 75 J. AM. HIST. 471-500 (1988); and STANLEY, FROM BONDAGE TO CONTRACT, *supra* note 25.

27. For excellent feminist analyses of British legal and political history in the 1850s and 1860s, see DEFINING THE VICTORIAN NATION: CLASS, RACE, GENDER, AND THE REFORM ACT OF 1867 (Catherine Hall et al., eds., 2000).

Labor. Like Steinfeld, I explore how and why coercion survived and even proliferated among wage laborers in the nineteenth and early twentieth century. But instead of focusing on the legal precedents that defined and constrained immigrant workers' freedom to quit, I consider how geographic context and kinship ties shaped their patterns of mobility and what the right to quit meant in social practice. Wage forfeiture may have established labor discipline among many workers in North American cities, as Steinfeld claims, but for workers on the move in isolated regions of the continent, the right to quit was hampered by the practical difficulties of finding work after quitting a job hundreds of miles from the nearest alternative.[28] Labor market entrepreneurs, whether padrones in the late 19th and early 20th century, or "coyotes" in the present, gained coercive power over migrant workers not so much from legal statutes as from their ability to mediate legal and geographic boundaries, capitalizing upon and commodifying workers' right to quit.[29] Steinfeld's brief mention of lumberjacks compelled to return to their jobs in Maine and Michigan under false pretense statutes is fascinating, but a very incomplete picture of the ways most rural workers experienced and understood labor market coercion in the early twentieth century. Steinfeld need not have made vagrancy statutes, marriage law, or padrones the focus of his study to have benefited from these recent scholarly findings: discussing such work would have helped Steinfeld locate his narrative of labor contract rules within its broader geographic context.

Rather than frequently repeating his claim that historians have failed to understand the correct origins of free labor relations, Steinfeld might have asked how pecuniary and nonpecuniary penalties actually did create a continuum "of coercive pressures running from severe to mild."[30] How, precisely, are forms of economic coercion–the threat of unemployment, low wages, and the like–interchangeable with criminal penalties such as imprisonment or whipping for contract breach? How should one compare punishments that, while equally effective in creating labor discipline, have radically different signifi-

28. *See* PECK, *supra* note 25, at 16.
29. *See id.* at 46-8.
30. STEINFELD, *supra* note 2, at 25.

cance to workers? Steinfeld's claim that employers have used pecuniary and nonpecuniary forms of coercion simultaneously is an important insight into the histories of labor discipline and workers' control.[31] But he provides few examples of just how one might "grade," as it were, the variety of coercive pressures that comprise a continuum of coercion. Which risks to worker's health and bodies, for example, are more coercive–having to sell one's body for sex or having to sell one's labor power and future health as a coal miner?[32] While Steinfeld provides a definition of coercive labor–any situation when "[o]ne person is placed in a position to force another person to choose between labor and other alternatives that are more disagreeable than the labor itself"–it remains unclear as to what, if anything, might be excluded from that definition.[33] Would a corporate executive who feels "compelled" by the Chairman of the Board to give up his stock options or take a pay cut because of disappointing earnings' estimates really be a victim of economic coercion?

As Steinfeld correctly realizes, defining economic coercion in absolute terms is a tricky task, as coercion and freedom remain laden with conflicting ideological assumptions and particular historical meanings.[34] Key to Steinfeld's argument is the role of ideology in framing the creation and application of labor contract law. By emphasizing the British labor movement's role in the repeal of penal sanctions, Steinfeld demonstrates the importance of political and ideological debate in the functioning and transformation of labor market rules over time. And yet Steinfeld provides surprisingly little ideological and social context for British or American workers' campaigns to secure free labor on their own terms. If specific references to the scholarship of fellow labor and legal historians are

31. On the history of workers' struggles to exercise control over production processes, see DAVID MONTGOMERY, WORKERS' CONTROL IN AMERICA: STUDIES IN THE HISTORY OF WORK, TECHNOLOGY, AND LABOR STRUGGLES (1979).

32. On the historical connections between wage labor and sexual labor, see PAMELA HAAG, CONSENT: SEXUAL RIGHTS AND THE TRANSFORMATION OF AMERICA LIBERALISM 68-82 (1999); LAWRENCE GLICKMAN, A LIVING WAGE: AMERICAN WORKERS AND THE MAKING OF CONSUMER SOCIETY 36-9 (1997); CHRISTINE STANSELL, CITY OF WOMEN: SEX AND CLASS IN NEW YORK, 1789-1860 (1986); and SARAH DEUTSCH, WOMEN AND THE CITY: GENDER, SPACE, AND POWER IN BOSTON, 1870-1940 (2000).

33. STEINFELD, *supra* note 2, at 16.

34. *Id.* at 20-1.

rare in his book, so too are the words of workers themselves. Wage earners emerge in Steinfeld's book as occasional plaintiffs against the Master and Servant Acts or as strikers, but his portrayal of their actions and motivations rarely come into sharp or compelling focus. How did struggles over the rules, and under the rules, spark the creation and transformation of class consciousness in Britain? Steinfeld gives us glimpses of a very complex and interesting dialogue among workers, including an account of different responses by British and Scottish miners to the Master and Servant Acts and to long contracts in the late 1850s and early 1860s.[35] But Steinfeld resorts to game theory rather than the workers' own testimonies to explain their differing motives.[36] Were workers' differences reflective of fundamental ambivalence toward the changing contract regimes available to them, as both employers and some workers shifted from longer to shorter contracts? Or were workers' differing demands part of a more unified strategy, in which they sought advantage in two quite distinct contract rule scenarios? Despite the stated importance of British and American workers to his larger argument, Steinfeld provides few insights into their broader political motivations and affinities.

One consequence of Steinfeld's neglect of workers' articulations about contract and free labor is that some of his most important interpretive claims–that physical and economic coercions have been historically interchangeable–appear unsubstantiated. Steinfeld does not, for example, demonstrate that physical and economic coercions were interchangeable in the minds of workers, whether slave or nominally "free" wage earners. While some British employers in the 1850s may indeed have viewed long contracts with criminal penalties and shorter "minute" contracts without jail time as equivalent forms of labor discipline, most British workers did not conflate the two. Indeed, a great variety of wage workers in Great Britain frequently described their working conditions as "wage slavery" or "white slavery" in levying attacks against their new bosses. Most of these rhetorical campaigns used the language of slavery metaphorically, sometimes to privilege the economic frustrations of white wage earners over black

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35. *Id.* at 167-76.
36. *Id.* at 182.

chattel slaves and at other times to find common ground against all slavery, black and white.[37] Steinfeld notes these complexities among wage workers in his introduction, but insists that "even so, 'wage slavery' was considered 'free labor' by nearly everyone," citing no workers in his footnote but only Karl Marx's discussions of slavery in Capital.[38] In so doing, Steinfeld ironically condescends to the central protagonists of his story: British workers whose activism in the labor movement and aversion to forms of corporal punishment from the 1830s onward helped establish the foundations of modern forms of free labor.

One reason workers do not appear more prominently in Steinfeld's narrative, perhaps, is that in adopting a comparative national framework he has less time or space for detailed examinations of the messy and complex world views of workers' communities, the traditional terrain of social and labor history.[39] Steinfeld uses his comparative framework to challenge time-honored assumptions about the shape of American and British legal systems and labor movements, arguing that the conventional wisdom about labor relations in the world labor market–that of increasing labor coercion in labor scarce peripheries–is overstated and inaccurate. Labor coercion was far more prevalent in the metropolis, Steinfeld contends, while labor on the periphery, where a frontier of free land created labor scarcity, made labor less bound by legal and criminal

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37. *See* RICHARD OASTLER, WHITE SLAVERY, TO THE HONORABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND, IN PARLIAMENT ASSEMBLED, THE HUMBLE PETITION OF HIS MAJESTY'S DUTIFUL SUBJECTS THE UNDERSIGNED INHABITANTS OF THE CITY OF NORWICH (1833). For a discussion of white slavery, wage slavery, and their relationship to emerging working-class radicalism in the United States, see DAVID R. ROEDIGER, THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS 66-71 (1991).

38. STEINFELD, *supra* note 2, at 13 n.25 (citing 1 KARL MARX, CAPITAL 272-73, 874-5, 908-9 (Harmondsworth, Eng., 1976)).

39. On historical studies that do adopt a transnational or comparative approach within a case study framework, see PECK, *supra* note 25; JEFFERSON R. COWIE, CAPITAL MOVES: RCA'S SEVENTY-YEAR QUEST FOR CHEAP LABOR (1999); DONNA R. GABACCIA, MILITANTS AND MIGRANTS: RURAL SICILIANS BECOME AMERICAN WORKERS (1988); SARAH DEUTSCH, NO SEPARATE REFUGE: CULTURE, CLASS, AND GENDER ON AN ALGO-HISPANIC FRONTIER IN THE AMERICAN SOUTHWEST, 1880-1940 (1986); and DAVID G. GUTIERREZ, WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS, AND THE POLITICS OF ETHNICITY (1995).

punishments.[40] But in using the existence of "free" land in the American West to explain the lack of penal sanctions in the United States, Steinfeld unwittingly exhumed the ghost of historian Frederick Jackson Turner, whose frontier thesis explained why the United States was an exceptional nation, one not racked by class conflict.[41] Surely this was not Steinfeld's intention, but the comparative method he uses makes it difficult for him to explore distinctions between and within each nation's working class.

Steinfeld's comparisons between England and the United States would have been more effective had he examined the transnational exchange and dialogue between American and British jurists, politicians, and workers in the nineteenth century, many of whom commented on each other's laws and social relations.[42] Had Steinfeld done so, he might have revised some of his explanations for why American labor contract breaches were not subject to penal sanctions. If abolitionism in America played the key role in eliminating penal sanctions, for example, why did no such pressure emerge in Britain, where abolitionists were in fact better organized in the 1820s and 1830s?[43] Moreover, what

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40. STEINFELD, *supra* note 2, at 38.

41. *See* FREDERICK JACKSON TURNER, THE FRONTIER IN AMERICAN HISTORY (1920). On the burdens and enduring shadow of Turner's ideas in Western history, see PATRICIA NELSON LIMERICK & RICHARD WHITE, THE FRONTIER IN AMERICAN CULTURE: AN EXHIBITION AT THE NEW JERSEY LIBRARY, AUG. 26, 1994-JAN. 7, 1995 (1994); and PATRICIA LIMERICK, THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST (1987). For a discussion of the relationship between Turner's ideas and American labor history, see Gunther Peck, *In Search of an American Working Class: National Fictions in the Making of Western Labor History*, MITTEILUNGSBLATT DES INSTITUTS FUR SOZIALE BEWEGUNGEN 29-46 (June 2001).

42. White slavery discourse was a particularly rich arena of transatlantic exchange and commentary. Many of the exposes of white slavery that appeared in both the United States and Great Britain between 1830 and 1860 assumed the form of a cross-national commentary. Consider, for example, the writer John C. Cobden, who condemned not only the atrocities of British industrialists, but compared them to southern U.S. slaveholders. *See* JOHN C. COBDEN, THE WHITE SLAVES OF ENGLAND: COMPILED FROM OFFICIAL DOCUMENTS, WITH TWELVE SPIRITED ILLUSTRATIONS (1853). For a fine model of a transnational approach to political, legal, and social history in the United States and Europe in the late nineteenth and early twentieth centuries, see DANIEL T. RODGERS, ATLANTIC CROSSINGS: SOCIAL POLITICS IN A PROGRESSIVE AGE (1998).

43. *See* OASTLER, *supra* note 37, at 1. As Oastler's popular broadsides and speech-making indicate, Steinfeld erred in asserting there was no substantial critique of coercive wage contracts and penal sanctions by workers in Great Britain until the 1860s. The question becomes not whether a critique of contract

influences did the United States' own emancipation of black slaves have upon British debates about penal sanctions in the early 1860s? The coincident timing of black emancipation in the United States and white workers' "emancipation" in Britain between 1863 and 1865 may have been accidental, but one wonders how British workers were influenced by the American Civil War and the emancipation of three million African-American slaves. Did African Americans' successful efforts to transform the Civil War into a war for their own liberation embolden British and Scottish workers to demand their own freedoms and rights? An exploration of the rich transnational dialogue between workers and their political representatives in both countries would have enriched and complicated Steinfeld's argument about the role of ideology in shaping the forms and functions of wage contract law on both sides of the Atlantic.

As Steinfeld correctly realizes, the extent to which any wage earner is coerced depends on a great variety of interlocking factors in specific historical contexts, including not simply the particular workplace rules governing quitting, but also how much money a worker may have saved, how far away from home he or she might be, his or her relations/obligations to family members, their ability to speak the native language and the like. Much of the "freedom" and coercion that illegal immigrants to and from North America have historically confronted do indeed hinge on the contract rules that Steinfeld historicizes here. But many of the modern labor relationships described as slavery today–debt peons working in isolated rural labor camps, immigrants transported in windowless and unheated ship cargo containers, or prostitutes forcibly transported across national boundaries–hinge not on legal labor contracts but on the constraints that isolation, gender ideologies, racial prejudice, and transnational mobility impose on migrant workers.[44] For Steinfeld, the political

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freedom existed before 1860 in Britain, but why was it unsuccessful in changing the Master and Servant Acts prior to the 1860s? And second, what happened to the radical critique of contract that men like Oastler and others articulated thirty years before British legislators enacted a liberal revision of the Master and Servant law? On Oastler's campaigns in the 1830s and subsequent prominence as a Chartist, see EDWARD P. THOMPSON, THE MAKING OF THE ENGLISH WORKING CLASS 146-47 (1963).

44. *See* SASHA G. LEWIS, SLAVE TRADE TODAY: AMERICAN EXPLOITATION OF

battles surrounding the right to quit have been primarily constituted by struggles over and under the legal rules that govern formal wage contracts. But Steinfeld devotes little analytical or narrative space to the shadows of those rules or to the broader topic of workers' mobility, whether between jobs or between regions, that shaped the practice, meaning, and legal expression of wage labor relations in both nations. Steinfeld's deficiency here is not, as some critics of critical legal studies have suggested, having gone too far in locating the law and its history in its social context, thereby ignoring legal precedent and judge made law.[45] To the contrary, Steinfeld has not gone far enough in locating the laws of labor contract breach within their broader social, geographic, and cultural contexts.

Had Steinfeld linked the story of workers' right to quit to the broader political struggles created by transnational labor mobility, he might have had more to say about the origins and proliferation of contemporary forms of bondage that hinge on transnational migrations.[46] That said, the growing proliferation of coercive labor relationships associated with globalization highlight why Steinfeld's history of labor contract rules in the 19th century is timely and important. By demonstrating that political and moral discourse rather than market driven "freedoms" were central to the invention of modern practices of free labor, Steinfeld has persuasively challenged conventional assumptions about contract and freedom that still pervade our perceptions of the history of "free" wage labor relations. Indeed, although labor and legal historians may find Steinfeld's historiographical claims less than startling, a

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ILLEGAL ALIENS (1979); *Breaking the Yoke of 1990s Slavery*, THE RALEIGH NEWS & OBS., Mar. 13, 1994, at 1, 3; Deborah Sontag, *Deaf Mexicans are Found Enslaved in New York*, N.Y. TIMES, July 20, 1997, at 1,19; Oksana Havrylenko, *The Problem of White Slavery at the End of the Second Millennium*, BRAMA: SOCIAL ISSUES IN UKRAINE Oct. 4, 2001, *available at* www.brama.com/issues/havrylenko.html (last visited, Mar. 16, 2003).

45. *See* Peter Karsten, *'Bottomed on Justice': A Reappraisal of Critical Legal Studies Scholarship Concerning Breaches of Labor Contracts by Quitting and Firing in Britain and the U.S., 1630-1880*, 34 J. AM. L. HIST. 213-261 (1990).

46. On the importance of race and geography in the functioning of the American labor markets, see ALEJANDRO PORTES & ROBERT L. BACH, LATIN JOURNEY: CUBAN AND MEXICAN IMMIGRANTS IN THE UNITED STATES (1985); DAVID M. GORDON ET AL., SEGMENTED WORK, DIVIDED WORKERS: THE HISTORICAL TRANSFORMATION OF LABOR IN THE UNITED STATES (1982); and TOM SUGRUE, THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT (1996).

great many lawyers, law students, and historians will no doubt find his revisionist narrative dramatically new and provocative. If Steinfeld's history of wage contract rules is any guide, future freedoms for wage workers will be won not through the marketplace, but by expanding the power of the state to limit employers' contract freedoms with their employees. As Steinfeld's narrative suggests, some of those rules will be written by employers and state actors, but many others will be challenged and rewritten by workers, who understand better than most how contracts and freedom can be mutually supportive and mutually exclusive in social practice. Whether laws in Britain and the United States make wage contracts more liberatory or more coercive will depend on the ability of workers and their allies to shape the content and practice of wage contract rules and the larger meanings of free labor and coercion that govern their interpretations.