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Suffrage and the Terms of Labor

Robert J. Steinfeld

Great books often harbor deep tensions, which are one source of their enduring power. *Time on the Cross* by Robert Fogel and Stanley Engerman is a good example (Fogel and Engerman 1974). On the one hand, *Time on the Cross* argued that the economic science of Cliometrics was indispensable for a proper understanding of the past. Human beings have always been primarily motivated by the desire for gain, and to understand their behavior it is essential to reconstruct the economic contexts in which they acted. Somewhat surprisingly, therefore, in light of the rigorous quantitative economic methodology the book adopted, the enormous labors the authors devoted to counting, measuring, and precisely assessing the profitability of slavery were all devoted, in the end, to demonstrating that economic factors *did not* explain why slavery had disappeared in the United States. Slavery had not perished because it was unprofitable. It had disappeared as the result of war and because the nation had come to a political (and moral) decision to end it, despite its continuing profitability.

And so ironically one of the principal messages of *Time on the Cross* turned out to be that economic factors could not always be invoked to explain why one set of economic practices had succeeded and another failed. Non-economic political and moral factors and the legal rules they generated often played determinative roles in the fate of economic institutions, including the fate of labor systems.

At about the same time that *Time on the Cross* appeared, another group of economic historians began to disseminate a similar message. Legal (and customary) rules were crucial for understanding why economic institutions had evolved in the ways they had (North 1981). The new institutional economists took their inspiration from the ground breaking work of Ronald Coase, who had shown that, in an economic universe without transaction costs, legal (and customary rules) would *not* have mattered. But in the world in which we actually lived, a world full of transaction costs, rules did matter, because they operated to reduce or increase the costs of transacting, and in

that way either facilitated, impeded, or distorted the course of economic activity (Coase 1960). In a world with transaction costs, property and contract rules were an important component of markets, and the performance of any particular market could not be completely understood apart from the detailed rules that structured it.

It was clear to the new institutional economists, just as it was clear to the authors of *Time on the Cross*, that the legal (and customary) rules that governed economic life were not always put into place to promote efficiency. Rules were adopted for a variety of reasons, often having little to do with their capacity to reduce transaction costs. Indeed, in many cases, rules adopted for other reasons had the effect of increasing the costs of transacting and in the process reducing or choking off otherwise profitable activity.

The focus on transaction costs and on rules led institutional economists to undertake at least two kinds of inquiries. In the first kind, they sought to identify the types of transaction costs that might arise in particular types of economic exchange. What kinds of transaction costs, for example, typically arise in the course of exchange in labor markets, and what kinds of rules might serve to reduce those transaction costs in order to facilitate exchange at lower cost? Do existing rules minimize transaction costs or do they promote inefficiently high transaction costs? In a second kind of investigation, they sought to develop a deeper understanding of the processes by which rules came to be adopted or changed in the first place.

The following essay attempts to utilize the insights of *Time on the Cross* and the new institutionalism in an effort to critique and begin to revise the traditional master historical narrative of the rise of free wage labor in Anglo-America. *Time on the Cross* definitively changed the way most historians saw the history of slavery. They no longer imagined slavery to have been an economically outmoded practice that was doomed to extinction in the competition with vastly more efficient free labor. But there was another side to the argument of *Time on the Cross*, a side which had implications for the history of free labor itself. In the United States, Southern employers had not spontaneously embraced free labor because they found it more profitable than slavery. Free labor was imposed on the South following a bloody civil war. Southern employers did not abandon labor coercion because they no longer found it to be economically advantageous. They were compelled to give it up by the Federal Government. Indeed, long after slavery had been abolished, Southern states continued to rely on penal sanctions to coerce the performance of labor (Novak 1978; Schmidt 1982).

Time on the Cross largely succeeded in rewriting the master historical narrative of slavery. It did not, however, have much of an impact on the master narrative of the rise of free wage labor. And this is a little surprising given that that narrative continues to rely so heavily on the assumption that wage labor has been free simply because employers found coercion unprofitable.

The economic logic that underlies the free labor narrative is the same logic that *Time on the Cross* discredited as a basis for understanding the history of slavery. Slavery did not disappear because coercion proved unprofitable in extracting labor services. Slavery disappeared because the nation compelled slave employers to give it up. Yet while the slavery narrative has been transformed, the traditional free labor narrative endures.

Most historians, I think, continue to subscribe to the view that wage labor has been free in England and America simply because the market, rather than other more direct means of coercion, satisfied the economic needs of employers. Depending upon one's political perspective, market incentives or market pressures are thought to have worked perfectly well to supply employers with cheap, efficient wage labor. Indeed, direct compulsion is assumed to have been costly and to have produced sullen, inefficient workers. The free labor narrative with its underlying assumption about the economic inefficiency of bodily coercion has a long history dating back in its modern form to the eighteenth century (Coats 1958). During the last decade of that century, for example, Joseph Townsend wrote that

> 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; . . . 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. (quoted in Davis 1975, 358–59)

Adam Smith offered a more positive version of the free labor argument during the same period. Coercion gave workers little incentive to produce efficiently. "Whatever work [a slave does] can be squeezed out of him by violence only, and not by any interest of his own" (A. Smith 1976, 411–12). By contrast free workers have "a plain interest that the whole produce should be as great as possible, in order that their own proportion may be so" (A. Smith 1976, 413). Even today such views carry great weight. Recently, for example, one survey of economic literature observed that "Elementary economic reasoning suggests that in the long run the institution of slavery is inviable economically. . . . As a slave receives only a fraction of his marginal product, enough to cover productive consumption, he has fewer incentives to work hard than if he were to internalize his entire marginal product as free workers do." (Eggertsson 1990, 205).

Modern historians have produced additional arguments to show that for centuries un-coerced labor has been economically superior to coerced labor. A number of American historians, for example, have argued that American employers spontaneously turned away from indentured servitude and toward free wage labor during the late eighteenth century because they found indentured labor more costly than free labor, given that it committed

them to support their indentured workers during increasingly common economic downturns (Salinger 1987, 149–52; Nash 1979, 320). Another historian has argued that serfdom was abolished in the Scottish coal mines during the last quarter of the eighteenth century because powerful mine owners wished to gain unimpeded access to the labor pool and agitated for the abolition of serfdom in order to do so (Whatley 1987).

The dominance of this kind of reasoning has left historians with little motive to look for examples of the use of bodily coercion in the history of wage labor. And by and large historians have not found what they did not go looking for. The historical picture of free wage labor today takes for granted for the most part that wage work has not traditionally been subject to direct forms of coercion, indeed it is almost considered a contradiction in terms to think that it could have been.

What is a little strange about the enduring power of the traditional free labor narrative is that historians of slavery no longer accept the proposition, by and large, that bodily coercion cannot produce highly productive labor. On the contrary, thanks in large part to Fogel and Engerman, historians of slavery are now widely agreed that direct coercion, or direct coercion combined with incentives, did produce labor that was even more productive than free labor in certain settings, and in other settings, urban artisanal work for example, at least as productive as free labor. In the United States, Southern employers clung tenaciously to coercive practices precisely because coercion was profitable.

To be certain, over the last 25 years there has been a general reassessment of the efficacy of coercion in labor relations and historians have discovered much more coerced labor in the world than they had previously thought was there. That direct coercion cannot produce highly productive, profitable labor is no longer accepted as a universal principle. But historians have been reluctant to embrace the opposite proposition, that bodily coercion might have been economically advantageous for employers in a wide variety of labor market settings. Instead, they have strained to define precisely those market conditions under which bodily coercion could prove economically advantageous and to distinguish those from the more *typical* market conditions under which employers would not have found bodily coercion beneficial. (See, for example, Domar 1970.) This is a complicated story but in general a tacit consensus has emerged that in places where labor was relatively abundant, as in the fully developed wage labor markets of metropolitan England and the United States, bodily coercion was economically unnecessary, indeed even counterproductive. As a result coerced labor has come to be viewed mainly as a phenomenon of the periphery (where labor markets were thin), or of certain forms of agricultural production (in which working conditions were particularly onerous). For all the progress that has been made in understanding how extensive the use of coerced labor has been in the world, Fogel and Engerman's principle that bodily coercion

can be of great benefit in extracting labor services has generally not been seen to apply to the free wage labor of the metropolis.

This remains true, by and large, despite the fact that as long ago as 1954 Daphne Simon made clear that penal pressure was in fact used quite widely against wage workers in nineteenth England (Simon 1954). One would have thought that the discovery that wage workers could be imprisoned at hard labor for up to three months for violations of their labor agreements under English Master and Servant law in the nation that stood at the forefront of free market industrialization would have led to some rethinking of the master historical narrative of free labor. (See, for example, Statute 4 Geo. IV, c. 34, 1823.) But it did not. One important reason was that Simon herself was steeped in a Marxist version of the traditional free labor narrative. Modern capitalism relied on the dull compulsion of economic relations to extract labor services. Other forms of coercion like those authorized by the Master and Servant acts were relics of feudalism and doomed to extinction because they did not serve the economic interests of modern employers in an advanced capitalist economy. The Master and Servant acts might have been of some help to small, backward employers, but as the economy modernized the acts became less and less useful. As soon as labor began to object, the employing classes abandoned the acts, putting up only symbolic resistance. Thus Simon, who was the first to rediscover how extensive the use of penal pressure had been in English wage labor down to 1875, dismissed its economic importance, relegating it to a marginal role in the history of wage labor.

A second important reason her discovery had practically no impact on the larger narrative of free labor was that no one seemed able to say precisely what economic benefits employers derived by using penal coercion against wage workers. And without such an understanding there was no basis for attacking the long-standing economic logic of the traditional story, that wage labor had been free simply because employers found coercion unprofitable. Yet the stubborn fact remained that in the years between 1857 and 1875 English employers resorted to penal pressure against their wage workers on a regular basis. About 10,000 English workers each year on average were prosecuted for misbehavior at work or for leaving work before they were contractually free to do so (Judicial Statistics 1857–1875; Simon 1954). Until 1867, about 1,500 workers a year were imprisoned, but a large percentage of those prosecuted who were not imprisoned were ordered back to work under threat of imprisonment should they fail to work out their agreements (Judicial Statistics 1857–1875).

Recently, historians have devoted more attention to the Master and Servant acts. A number of new studies of the acts have now been published and among them a consensus has emerged that Simon's view that the acts were economically anachronistic is simply wrong (Woods 1982; Hay 1988; 1990). But none of these studies has managed to identify precisely what

economic benefits employers might have derived by using penal pressure against wage workers. As a result, even though the widespread use of penal pressure in wage labor is now well documented, there has been no direct challenge to the economic logic that underlies the free labor narrative. Historians continue to subscribe to two master historical narratives of labor based on contradictory views about the economic efficacy of bodily coercion. The newer one, the slavery narrative, derived in part from *Time on the Cross*, is based on the idea that bodily coercion of labor has been of great economic benefit to employers and that they relinquished it only when the state, for political and moral reasons, compelled them to. The other older narrative holds just the opposite, that bodily coercion of labor produced sullen, inefficient workers and that smart employers avoided using it at all costs. Hence, free wage labor was the spontaneous result of the operation of employer interests in free markets rather than a product of political intervention.

But the traditional narrative does not fit very well with what we now know about the widespread use of penal pressure, a form of bodily coercion, in nineteenth century English wage labor. If it can be shown that employers used penal pressure in nineteenth century metropolitan wage labor markets because of the economic benefits they could derive, then the traditional economic logic underlying the free labor narrative would have to be completely revised. Free labor could not be understood to have been the natural outcome of the operation of employer interests in free markets. And we would be faced with the task of constructing a historical narrative of wage labor based on the idea that employers found bodily coercion of economic benefit in a variety of market settings, and relinquished non-pecuniary coercive power only when the state compelled them to. But *was* penal pressure of economic benefit to employers in metropolitan wage labor markets?

It is on this question that the institutional economists with their transaction costs perspective can be of help. Some years ago Yoram Barzel pointed out that neither hourly wages nor piece work wages completely eliminate the need for supervision (and hence supervision costs) in waged labor. He also pointed out that employers of waged labor faced supervision problems that were not completely unlike those faced by slave owners. "Owners had the choice," he wrote, "between supervising their slaves' output [as to quality], which is comparable to what employers have to do when the free workers they employ work by the piece, and supervising their effort, which is comparable to what employers have to do when they employ free workers by the hour" (Barzel 1989, 80). Because the interests of waged workers cannot be perfectly aligned with the interests of their employers, agency costs (a type of transaction cost) inevitably arise in the course of production.

These agency costs are of two kinds, costs of supervision to enforce effort or to guarantee quality and residual costs of reduced output or low quality that cannot be eliminated through cost effective supervision. Threats of dismissal can certainly raise the costs of shirking to workers and may help

to control supervision costs, but dismissal is not always a good option for employers. If the waged labor is skilled and labor markets are tight then the threat of dismissal loses a good deal of its power.

Unemployment among skilled workers in England has been estimated to have been below 4% in 11 of the 15 years between 1860 and 1875 (Beveridge 1960, Appendix A; Pigou 1929, Appendix Table 1). Suppose now that sloppiness or loafing at work can bring a prison term at hard labor, and that the law makes an inexpensive, summary process available to enforce that penalty. The prospect of prison at hard labor would seem to increase the expected costs of shirking to workers at little additional cost to employers, yielding less shirking with lower supervision costs overall. At a time when supervision strategies in many industries were not well developed, these advantages could have been substantial. This is a difficult proposition to prove definitively, but there are numerous examples in nineteenth century England of employers prosecuting workers who failed to work as hard or continuously as was expected. "George Heywood of West Bromwich," for example,

> was a bundler at the furnace of an iron works with both puddlers and millmen dependent upon him. Because he left his labour for a few hours, "the work was very much in arrears and other men were idle." He was given the option of paying £5 damages or having two months in prison and remarked that "he would have to have the two months." (Woods 1982, 105)

A puddler working the night shift at an iron works in Walsall, Staffordshire left iron in the furnace overnight where it spoiled, causing his employer substantial damage. He was given a twenty-one day sentence (Woods 1982, 105). George Odger, a shoemaker in the putting out system, testified during the 1860s that

> Any decent man . . . is apt to be terrified with the thought that his employer would feel disposed to have him before a magistrate for [a] breach of contract. . . . I think it would be about two months ago . . . I went over the time [for returning finished work], the first time I ever did in my life; [my employer] called at my house when I was out and threatened that if he had not the work in a given time he would proceed against me in the ordinary way for breach of contract. I went home and then went to the workshop and worked nearly all night to get the work to him the next day, which embarrassed me a good deal because I had been at work all the day before. I do not know whether he would have carried out his threat or not, but I was within his clutches if I did not make the boots. (Parliamentary Papers 1866, XIII, Q 1813)

A summary criminal penalty for contract breach might have helped employers lower other types of transaction costs as well. Turnover costs are the costs an employer bears when a worker departs. One of the most significant elements of turnover costs is often the cost of lost output between the departure of a worker and his subsequent replacement. But an employer must also frequently bear search costs and training costs. Turnover is far

from costless in the case of skilled labor, even in thick labor markets, and may be especially high when markets are tight. In England in the years between 1857 and 1875, employers prosecuted workers under the Master and Servant acts much more frequently when unemployment was low than when it was high, and as noted it was often very low in this period (Steinfeld 2001, 75–77). There is abundant evidence from the period that employers commonly used contracts of a fortnight or a month to regulate turnover, to prevent workers from leaving suddenly, possibly disrupting production, and to give themselves time to locate replacement workers. If a worker was not free to leave immediately but was required to give two weeks' or a month's notice, by the time he *was* free to leave, other offers of employment might no longer remain open and in those cases turnover costs might be avoided altogether.

In addition, a well-timed policy of signing skilled workers to criminally enforceable labor contracts of a year or several years, which employers commonly did in this period, might have helped to lower labor costs in another way, by slowing the rate of wage increases during periods of low unemployment. Workers bound by a criminally enforceable contract were obligated to work for the wages they had originally agreed upon even if a tight labor market began to drive wages up. Unemployment was extremely low, for example, in 1864 and 1865, and employers in the pottery trade began to try to impose annual contracts on their workmen. One potter complained that "seeing that trade is now in a prosperous state, that long period of agreement takes from the workman the power of raising the price of his labour" (Parliamentary Papers 1866, XIII, Q. 1410). In June, 1865 a skilled artisan named Clarke signed a two-year contract to work for a cutlery manufacturer. In November, Clarke left and Unwin, his employer, prosecuted him for contract breach. Clarke answered that "he had applied to [his employer] to make an advance in his wages in the same manner that the large majority of the cutlery manufacturers in Sheffield had recently done to their hired workmen, which the appellants had refused to do, and in consequence thereof he had felt himself justified in refusing to work for them at the low rate of wages" (Parliamentary Papers 1866, 1 L.R. 417, 418). In 1865 unemployment among skilled workers hovered around 2% (Beveridge 1960, Appendix A; Pigou 1929, Appendix Table 1). The magistrates warned Clarke that the contract prices could not be raised except by mutual consent, that Unwin was unwilling to agree to an increase, and that Clarke must return to work at the old prices or be imprisoned. Clarke answered that he would rather go to prison than return to work at the original prices. The justices obliged, sentencing Clarke to 21 days at hard labor. When he was released, he returned to Unwin to retrieve his tools, but Unwin insisted that Clarke must still work out his contract at the original prices. Clarke refused and was prosecuted again. The court ruled that he could be imprisoned a second time, and at this point Clarke had had enough, deciding to return

to work on the original terms (Parliamentary Papers 1866, XIII, Q. 864, 1 L.R. 417, 418–19).

It is true that this system of criminally enforceable labor contracts held disadvantages as well as advantages for employers. In tight labor markets this system might make it more difficult for an employer to obtain skilled labor. In slack labor markets s/he might have to worry about contractual obligations to workers s/he had undertaken in more prosperous times. But taken all together employers derived considerable economic benefits from their power criminally to enforce the performance of the labor agreements of various lengths under which almost all skilled English workers were employed.

These economic benefits explain why employers continued to prosecute workers under the Master and Servant acts with great enthusiasm up until almost the moment the acts were repealed. In 1871 unemployment among skilled workers fell to 1.6%, in 1872 to 0.9%. In 1873 it rose slightly to 1.2% and in 1874 to 1.7% (Beveridge 1960, Appendix A; Pigou 1929, Appendix Table 1). During the year 1870, employers prosecuted 8,670 workers in England and Wales for offences under the Master and Servant acts. But in 1871 as unemployment plunged, they prosecuted 10,810 workers and in 1872 prosecutions soared to 17,082 and then came down slightly in 1873 to 16,230. But in 1875, the very year the Master and Servant acts were repealed, prosecutions were still at a level of 14,353 (Judicial Statistics 1857–1875).

These are large numbers, but they represent only a small percentage of the laboring population and it is impossible definitively to answer the question of whether prosecutions were actually effective in accomplishing employers' goals. (For a discussion of this problem see Steinfeld 2001, 72–82.) But we do have some evidence bearing on the issue. One justice of the peace who was an employer testified that he had not brought very many prosecutions under the Master and Servant acts because "the moral effect of having the power is often sufficient" (Parliamentary Papers 1866, XIII, Q. 1441). We also know that local newspapers throughout the country reported these prosecutions in their daily and weekly crime columns bringing them to the attention of local workmen. At the very least, the acts loomed large enough in the lives of working people to induce them to persevere in a decade and a half long campaign to have the acts reformed.

Taken all together the economic benefits employers likely derived by using coercive pressures also help to explain why ruling elites did not give up the Master and Servant Acts without a long struggle. It took organized British labor almost 15 years of campaigning before the acts were repealed, and over this period the system of penal coercion was defended tenaciously in Parliament. Concessions were made only grudgingly and a great deal of effort was expended to preserve the core practices of the old system for as long as possible. (For an extended discussion of these Parliamentary

battles see Steinfeld 2001, Ch. 6.) English employers clearly believed that they profited by the use of penal pressure in wage labor, used such pressure regularly in their dealings with wage workers, and resisted efforts to deprive them of the power. A transaction costs perspective, focusing on the ways in which penal coercion could lower supervision and turnover costs, and keep wages in check while labor markets were tight, clarifies why employers would have acted in this way. A compelling economic logic existed for the continued use of non-pecuniary pressure in wage labor long after the advent of industrial capitalism.

In the traditional narrative of free labor, employer interests provide the driving force behind the rejection of coercion. But if employer interests actually pointed toward the retention of forms of bodily coercion in wage labor, the driving force behind the rejection of coercion must be sought somewhere else, given that bodily coercion *was* ultimately eliminated. In the first instance, it was an act of political intervention that ended, for all intents and purposes, the use of penal pressure in English wage labor. Parliament repealed the Master and Servant acts in 1875, compelling employers to relinquish this form of coercive power that they had continued to use against wage workers with great enthusiasm almost until the last moment. This act of political intervention, however, itself requires an explanation. How was it possible for such a fundamental ground rule of labor relations to have been changed in opposition to employer interests? The answer is a complicated one but it is to be sought in the realm of political struggle.

In 1867 Parliament passed the Second Reform Act, which greatly expanded the suffrage. In the United Kingdom as a whole the number of people enfranchised nearly doubled, from about 1.3 million to about 2.4 million (F. B. Smith 1966, 236). In many towns the new suffrage gave artisans and laborers a majority of the vote (Webb 1970, 326; F. B. Smith 1966, 225).

> Whatever meaning is attached to the phrase 'working-class,' the potential working-class electorate in English and Welsh boroughs in the period immediately after 1867 was probably about *five times* the size of the working-class electorate in these boroughs before, and over a half their total electorate. (Cowling 1967, 46)

There is a strong case to be made that the expanded suffrage played a critical role in bringing about the end of the old Master and Servant regime in 1875, eliminating the right of employers to seek penal sanctions to pressure their workers into performing labor. But before we discuss the role of the suffrage in this fundamental change in the terms of waged labor, it is necessary to say something about why ruling elites would have expanded the suffrage in the first place.

The best modern authorities reject the Whig interpretation of the passage of suffrage reform. Neither free market industrialization nor liberal ideas made an enlarged suffrage inevitable in England.

> [Whig historians] see mid-Victorian parliamentary politics as Liberal politics. They see Liberalism as a doctrine rather than a political party, and Radicalism as truth rather than ideology. They see industrial change on the one hand and political change on the other, and assume a simple, one-way relationship between them. They by-pass, ignore or explain away both the hostility to change and the power to resist it which analysis of society at large suggests might be found, not just on one side of the House of Commons but in most parts of both.
>
> They assume, moreover, a straight progression from the reforms of the 1830s to the reforms of the 1870s, neglecting the recession in progressive feeling. . . . The death of Chartism, the mid-Victorian boom and the hints given, alongside a militant trade unionism, of a contented, loyal and royalist working class in some of the larger cities, produced a sense of political stability and distrust of Radical motion which impregnated the social attitude of a great part of the House of Commons. If the Reform bill of 1867 symbolized the beginning of a period of rapid political change, it did so in a parliament which not only thought of itself as the ruling assembly of a highly stable society but was also in strong reaction against any suggestion that it should be otherwise. (Cowling 1967, 1–2)

During the 1850s and early 1860s a number of attempts to pass suffrage reform failed to make any headway in Parliament. Indeed, in 1866, just a year before the Second Reform Bill passed, a much less radical reform bill brought to the floor by Gladstone and the Liberal Party went down to defeat in Parliament (F. B. Smith 1966, 110). Ultimately a combination of factors led to electoral reform in 1867, the most important of which seems to have been the widespread desire among ruling elites to reach a limited political settlement with the increasingly well organized and restive working classes, and a political competition between Gladstone and Disraeli and the Liberal and Conservative Parties for electoral advantage in the near term future (F. B. Smith 1966, 229). The Reform Bill of 1867 was brought forward and passed by a Conservative government. While it cannot be claimed that the working classes "compelled" Parliament to enact the Reform Bill, it is nevertheless the case that as a result of the defeat of the Liberal suffrage reform bill in 1866, trade unionists and middle class radicals launched and sustained an out-of-doors agitation for suffrage reform that lasted nearly a year until "the borough suffrage provisions of the Conservative Bill were transformed and safe" (F. B. Smith 1966, 229). During this long period, mass demonstrations were held in nearly every major English city sometimes drawing as many as 150,000 people (F. B. Smith 1966, 139–40).

The expanded suffrage played a critical role in determining the ultimate fate of bodily coercion in English wage labor. It is possible to assess the impact of suffrage reform by comparing the very different results of two efforts to reform the Master and Servant acts that were undertaken within a few years of each other, the first before suffrage reform and the second after. During the early 1860s, trade unionists launched a campaign to reform the Master and Servant acts. In 1867, almost at the same time that the Second

Reform Bill was making its way through Parliament, Parliament was also considering reform of the Master and Servant acts. In August of that year Parliament did pass a Master and Servant reform act. But this first reform act was passed by a Parliament that had been elected under the old, unreformed suffrage and it did not free working people from the penal pressures to which they had long been subject in their work.

Lord Elcho, a conservative Whig, introduced the bill which ultimately became the first Master and Servant reform act. In 1866 Elcho had voted against Gladstone's suffrage bill because he thought that it did not go far enough to secure a durable political and economic settlement with the working classes. Thinking that the Tories would reward him for his role in defeating Gladstone's bill the previous year, he pressed the new Tory government in 1867 to bring forward a Master and Servant act reform bill. But the government refused and Elcho, thinking that reform was necessary immediately if social peace was to be maintained, introduced his own member's bill.

During the previous session, Elcho had been appointed chairman of the parliamentary committee established to study the problem of the Master and Servant acts. Elcho had been chosen in part because of his relationship to trade unionists. As an old-fashioned paternalist he hoped to introduce just enough reform to stabilize old hierarchies. The trade unionist agitation of the previous years had convinced him that the Master and Servant acts had to be reformed and his bill went some distance toward meeting unionist complaints. The chief complaint was that criminal compulsion violated the principle of equal treatment under law. Employers were not subject to similar criminal penalties for breaches of their side of labor agreements. Moreover, trade unionists contended, criminal penalties to enforce private agreements represented a complete anomaly in contract law. Breaches of contract ordinarily gave rise to civil actions for damages not to criminal prosecutions. The Master and Servant acts were intolerable examples of class legislation.

Elcho's bill attempted to meet some of these objections by making proceedings under the Master and Servant law as nearly civil in nature as seemed politically possible under the circumstances. In an apparent effort to preserve the civil nature of proceedings under a new Master and Servant act, Elcho's bill established an entirely separate procedure for criminal prosecutions and indicated that such prosecutions should be based only on acts that were already criminal under the general criminal law. Nevertheless, from a modern perspective, Elcho's bill was far from ideal. It continued to give employers the power to seek specific performance of labor agreements (a civil remedy), and it by no means entirely abolished the continued possibility of criminal prosecution for contract breach.

When the Elcho bill was introduced into parliament, nevertheless, it ran into stiff opposition. Most of the members who spoke thought that reform

of Master and Servant law was necessary but that Elcho's bill simply went too far. Mr. Alderman Salomons, for example, said that

> he must express his approval of the Bill. It was founded on reciprocity of principle between master and servant. By the present law, the master was responsible civilly – the servant criminally. [Nevertheless] [i]n all cases where, by the Act of the servant, any injury was inflicted upon the master which could not be compensated by fine, an option of imprisonment . . . ought still to be left. (Debate over Lord Elcho's bill, Hansard's Parliamentary Debates 1867, CLXXXVII, col. 1607, June 4)

A smaller group in parliament spoke out against even the principle of reform. Mr. Liddell said that he

> could not agree that the House would do well to adopt the whole principle of the present Bill. That principle was the abandonment of the punitive process against the workmen and the doing away with the deterrent effect of the present law. (Hansard's Parliamentary Debates 1867, col. 1606, June 4)

Mr. Jackson added,

> Was a man, having charge of an engine at a pit's mouth, who got drunk and ran away to be dealt with merely as a debtor, though he might leave 400 or 500 fellow workmen below in enforced idleness and in cruel uncertainty for six or seven hours? It was the knowledge that under the existing law he would be dealt with very differently which kept such a man from getting drunk and running away. (Hansard's Parliamentary Debates 1867, col. 1611, June 4)

The weight of opinion in Parliament seems to have been that the principle that masters and men should stand on a plane of equality had to be conceded, but that the details of any new legislation should preserve as much of the old penal system as possible. Lord Elcho's bill was heavily amended in the course of parliamentary deliberations. When it emerged from committee and was enacted into law as the 1867 Master and Servant Reform Act, the new act retained much more of the traditional law than had Lord Elcho's original bill. Employers could still seek immediate imprisonment for "aggravated" breaches of contract however those might be defined by the magistrates, and for "ordinary" breaches of contract they could now seek an order requiring a worker to perform his agreement. Given that employers had traditionally used the Master and Servant acts to force workers back to work more often than to imprison them, this was not a large concession.

Just eight years later, in 1875, a Tory government introduced a new bill to reform Master and Servant law and in a Parliament elected under the reformed suffrage the bill received an entirely different reception than had Lord Elcho's bill in 1867. Following suffrage reform, labor had begun to take a more active role in electoral politics. For a number of reasons trade unionists had grown deeply disaffected with the Liberal government by the time the general election of 1874 was called. During the election campaign many Tory candidates played to this antipathy in an effort to win over

newly enfranchised workers (Webb and Webb 1920, 287). The results of the election of 1874 were somewhat of a surprise: the Tories won by a wide margin and one factor in their victory seems to have been the active hostility of organized labor toward the Liberal Party (Webb and Webb 1920, 286; Blake 1967, 536). To redeem its electoral pledges the Tory government introduced in 1875 a bill to further reform Master and Servant law.

The Tory bill was similar in its terms to the one that Lord Elcho had introduced in 1867 but that had been rejected by Parliament as too radical. In 1875, however, the dominant reaction in Parliament was that the government bill failed to go far enough. Apparently, once the Conservative government made the decision to place reform on the agenda, it set in motion a process that carried the bill further and further along in the direction of abolishing penal sanctions for labor contract breaches altogether. Liberal members competed with Tory members to outdo one another in currying favor with newly enfranchised working class voters. The Liberal member Robert Lowe, who in 1866 had played a large role in the defeat of Gladstone's bill to reform the suffrage, now objected that the government bill unjustifiably preserved a number of penal features of the old law. And he was joined in these objections by Lord Montagu. If an act is a crime, they argued, it should be a crime whether or not the person is under contract and regardless of his status in life. Criminal law should impose broad legal duties. Making breach of a labor contract an element of a crime smacked of class legislation, singling workers out for degrading treatment just as in the past. Lord Montagu observed that

> to break a civil contract was a civil act, and we had no right to inquire into intention. In the case of a minute contract [employment at will], a man at the pumping engine of a mine might walk away without notice, immense damage might be done to property, and yet the act would not be a criminal one. But if there was a contract for a week, the man who should do the same act would commit a crime . . . [If an act is a crime it should be a crime regardless of whether the person is serving under a labor contract]. (Hansard's Parliamentary Debates 1875, CCXXV, col. 656, June 28)

In the course of parliamentary deliberations the government bill was heavily amended pushing the legislation further and further in the direction of completely eliminating the penal aspects of the old Master and Servant law. The Employers and Workmen Act of 1875 profoundly changed the basic terms of English waged labor.

A broadened suffrage, of course, was not the only factor in the passage of the 1875 act. The state of labor's trade union organization and its increasingly active role in electoral politics were also factors. Other factors also played roles. Certain members of parliament had become increasingly concerned that labor would refuse to enter into any labor contract other than a contract determinable at will unless Master and Servant law was changed.

But an expanded suffrage was the critical factor in this alteration of the basic ground rules of English wage labor, ground rules that henceforth eliminated, for all practical purposes, the use of penal pressure in wage labor.

This change in basic rules was the result of almost 15 years of political struggle by organized labor, a struggle that until almost the last moment was met with great resistance. English ruling elites did not spontaneously abandon the use of penal pressure because it was proving unprofitable. In 1875 employers prosecuted 14,353 workers for various offences under the old Master and Servant law just as the new law was about to take effect (Judicial Statistics, England and Wales, 1875). Employers did not abandon bodily coercion because it had proved unprofitable. Parliament eliminated them as the result of a complicated set of political circumstances. The logic of the rejection of bodily coercion in English wage labor was a political not an economic logic. If the English case is generalizable, it may well turn out that the story of the abolition of slavery and the story of the emergence of modern free labor are not based on such different logics after all.

To test the hypothesis that political factors – the scope of the suffrage in particular – were often important determinants of whether waged laborers would be subject to forms of penal coercion in a particular state, we might begin by comparing wage labor regimes in England and in the United States. By contrast to England, in America by the eighteenth century, wage workers were not in general subject to having their labor agreements enforced through penal sanctions (Tomlins 2004). Might political factors account for these fundamental differences between the terms on which English and American wage workers served?

Differences in the scope of the suffrage in the two countries, I would argue, account for much of the divergence between wage labor regimes in the two countries. It has been estimated that during the eighteenth century only between 15% and 20% of English male heads of household were qualified to vote for members of the one house of Parliament that was elected (Dinkin 1977, 49; Lindert 2004, 72). These percentages did not increase significantly until the First Reform Bill was enacted in 1832. Even then, until the Second Reform Act was passed in 1867 the overwhelming majority of working people continued to be excluded from the British suffrage. It was within a relative handful of years after a significant number of English working people had been admitted to the suffrage that we find penal sanctions, which had endured for centuries, being eliminated from English wage labor.

Even before the American Revolution the suffrage in America was already much broader than in England. By the middle of the eighteenth century, a majority of adult men were entitled to vote for members of their popular assemblies in the American colonies; in a number of colonies the suffrage was even wider (Dinkin 1977, 49). During the years following the American Revolution, the right to vote was extended further. By 1790, depending upon the state, between 60% and 90% of adult white males were entitled to

vote (Dinkin 1982, 39). Representatives elected under this suffrage regime never attempted to pass legislation that would have imposed penal sanctions on ordinary white wage workers.

The scope of the suffrage turns out to be a quite reliable predictor of which categories of workers were and were not subject to penal enforcement of their labor obligations in colonial and post-colonial America. By the eighteenth century, only native born minors serving apprenticeships and imported indentured servants were subject, by and large, to having their labor agreements enforced through penal sanctions, and neither minors nor foreigners enjoyed full membership in the American polity. Neither would have been entitled to vote. By the 1830s white indentured servitude had largely disappeared in the United States, as a result in part of the solidarity white American workers began to show in the 1820s with their foreign counterparts, who had been imported into the country under indenture (Montgomery 1993, 13–39).

After the 1830s and until the Civil War, only free African Americans and sailors appear to have had their labor obligations enforced through penal sanctions and then only in small numbers in a few states (Morris 1948; Harris 1904, 50–55). Here again, it would seem, the scope of the suffrage helps to explain this state of affairs. During the Antebellum period, and as late as 1860, the overwhelming majority of states either did not permit free African Americans to vote or did not permit them to vote on the same terms as white Americans. Only in New England were equal suffrage rights extended to free African Americans (Litwack 1961, 91).

After the Civil War, the Southern States began to pass laws that empowered employers to enforce the labor obligations of their now free African American workers through penal sanctions. In the main, these laws were passed only after African Americans had been stripped of their voting rights as the result of the adoption of literacy tests and poll taxes, and the intensification of white violence against the African American population. Despite the sporadic efforts of the federal government and the federal courts to eliminate these laws and to bring an end to these practices, this coercive Southern labor regime, aimed at disfranchised African Americans, continued to operate until World War II. It was finally eliminated only as a result of the Civil Rights movement of the 1950s and 60s and the voting rights revolution that followed.

We must be grateful to Fogel and Engerman (1974) for their compelling demonstration that bodily coercion in American slavery served the economic interests of masters in extracting labor services cheaply and efficiently, and that slavery in the United States was finally abolished only as a result of political and moral developments. The argument advanced in this chapter is that Fogel and Engerman's insight is generalizable beyond the case of slavery: that the development of free wage labor must also be understood to have been the result of political and moral developments rather than an inevitable by-product of the free play of market forces.

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