



Cornell University  
ILR School

**ILR Review**

---

Volume 57 | Number 3

Article 94

---

April 2004

# Coercion, Contract, and Free Labor in the Nineteenth Century

Robert J. Steinfeld

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/ilrreview>

---

---

## Coercion, Contract, and Free Labor in the Nineteenth Century

federal labor agencies began to interfere with the freedom that employers had previously enjoyed in defining their labor relations policies. During the war Pullman shop workers, like railway shopmen around the country, took advantage of the government's protection and the favorable labor markets to flock into unions. But the Pullman shop workers' organization, System Federation #122, was defeated in the epic 1922 national railway shopmen's strike. This defeat did not restore a *status quo ante bellum*, as Hirsch points out. Rather, the World War I upheavals changed labor relations at Pullman by prompting its managers to hire larger numbers of black workers and move them into skilled positions in its shops even as it developed more sophisticated welfare and bureaucratic labor control policies.

Hirsch's available evidence indicates that unions might have been kept at bay for decades more had it not been for the combined impact of the Great Depression, the amended Railway Labor Act of 1926, and World War II. The Depression undermined the company's ability to keep its promises to its workers; federal legislation gave workers the power to challenge managerial power; and the war produced changes in the labor market and levels of government intervention that further weakened the company's ability to control its labor force. Even so, divisions of race, skill level, craft, and ideology frustrated efforts by Pullman workers to develop a unified labor movement during the 1930s and 1940s. So too did divisions within the house of labor, as the AFL's BSCP competed with the CIO's United Transport Service Employees of America. Through it all, Pullman's company unions, which were generally seen by employees as racially progressive, retained the loyalty of a significant portion of the company's work force. Such factors help explain why the entire blue-collar Pullman work force was not finally organized until 1950. It was at precisely this moment, however, that the Pullman Company and passenger rail service in general began to decline. This is just one of many ironies that emerge from Hirsch's narrative.

Several features distinguish this book. One is Hirsch's special attention to race and gender dynamics within the Pullman work force. While the book does not shed much new light on the role of gender (as female workers remained confined to a narrow range of jobs for most of Pullman's history), it does tell us a good deal about the important role that race played at Pullman. Racial divisions in the company's labor force helped structure Pullman's non-

union environment over decades. These divisions were so profound that they complicate Hirsch's effort to integrate the stories of sleeping car porters, dining car employees, car builders, and repairers into one cohesive narrative. To her credit, Hirsch succeeds quite well at this task.

Hirsch's account is similarly alive to the power of state intervention in shaping Pullman's labor relations at critical junctures and attentive to changes on the shop floors of Pullman's car-building facilities and in the composition and cohesiveness of their surrounding communities. All of these features help make this an uncommonly informative case study of changing labor relations at a trend-setting U.S. company. Historians of U.S. labor or business history will profit from reading it and pondering its many insights.

*Joseph A. McCartin*

Associate Professor of History  
Georgetown University

*Coercion, Contract, and Free Labor in the Nineteenth Century.* By Robert J. Steinfeld. Cambridge: Cambridge University Press, 2001. xi, 329 pp. ISBN 0-521-77360-1, \$59.95 (cloth); 0-521-77400-4, \$22.95 (paper).

Historian Robert Steinfeld has set himself a daunting task. He proposes to "radically" revise the history of "free labor" by arguing that the traditional distinction between free and unfree labor is incoherent. "One of the basic assumptions underlying the traditional narrative of free labor," the author argues, "is that there are two fundamentally different kinds of labor, free and coerced. The two are thought to be opposites of one another, not different in degree but different in kind. The line that naturally divides the two is thought to fall at the point where physical violence or bodily confinement is used to extract labor" (pp. 10–11). In place of an either/or distinction, Steinfeld proposes a continuum on which the location of employment relations at any time is the product of "political, legal, social, or economic conditions" (319) as employers seek to control employees. In the course of making his larger point, Steinfeld reviews a great deal of evidence about the legal structure of employment relations in nineteenth-century Britain and America. Even for readers like me who are unconvinced by Steinfeld's basic thesis, the book serves as a valuable ac-

count of the development of modern employment law. Steinfeld's generally clear and focused writing is another significant strength, and it raises the book above the usual academic monograph. Although the academic jargon gets a bit thick when the book is explicating its grand thesis, the substantive descriptions are a model of clarity.

The main strength of the book is its careful analysis of the legal environment of employment contracts in both countries. Steinfeld has done an impressive amount of research on the details of nineteenth-century contract law, for example, and anyone working on nineteenth-century labor issues needs to consult the book. Most important, Steinfeld rescues from historical obscurity the Master and Servant Acts, critically important English statutes that provided for criminal enforcement of employment contracts.

The major weakness of the book is its heavy reliance on concepts from the Critical Legal Studies (or "crit") movement. Steinfeld builds his larger analytical framework on the work of Harvard Law Professor and leading crit Duncan Kennedy, together with a smattering of citations to crit-favorite Michel Foucault. This results in prose like the following:

There are numerous possible ways in which free market bargaining relationships can be legally constructed, all of them placing different positions to coerce one another. When we take a close look at economic and legal coercion, the sharp distinction that is normally drawn between the two dissolves into a complex account of the numerous ways in which economic as well as legal pressure is constituted by law. (p. 25)

The two main problems with a crit-based account of law as the basis of history are that the legal academy as a whole no longer takes crit scholarship seriously and that the movement itself has fragmented into separate strands emphasizing race, gender, and sexual orientation. The general crit project failed because its post-modern critique was hollow at the core, leaving it with little constructive to say about law. Unfortunately, the same is true of the crit rhetoric employed by Steinfeld. It does not move the analysis forward, and the jargon tends to obscure rather than clarify the insights Steinfeld has to offer. This is a relatively minor criticism, however, because Steinfeld's insights often manage to break free of the crit rhetoric.

There is a great deal of interesting material in this book, but the most exciting concerns Steinfeld's analysis of the English Master and Servant Acts. Largely ignored by both legal and

economic historians, these statutes gave English employers the ability to enforce employment contracts through summary criminal actions before magistrates. Because of the rule then in force in England that criminal defendants could not testify in their own behalf (as they were presumed to lie), this often left employees unable to offer any evidence. Sometimes carried off in the middle of the night to appear before a magistrate who was also a major employer, employees would find themselves with the unappetizing choice between (a) finishing their contracts or (b) finishing their contracts and putting in six months at hard labor. More than 100,000 English workers were convicted of violating these laws between 1860 (when statistics began to be kept) and 1875, when the criminal provisions were repealed. Steinfeld's book should prompt renewed scholarly interest in these statutes.

The Master and Servant Acts analysis provides a good example of how the strengths and weaknesses play out in the book. Despite the criminal sanctions under the Master and Servant Acts, Steinfeld notes, both British employees and employers seemed to view wage labor as free labor. Steinfeld argues that since the "crucial" characteristic of free labor is that "wage workers were never forced to perform their labor agreements," enforcement mechanisms made these employees' wage labor look "a lot more like unfree contract labor" (1). This is part of the reason Steinfeld argues for a reconceptualization of the distinction. For example, he notes that in arguing for elimination of the criminal penalties, British employees based their case on the unfairness of treating employee breaches as criminal while not criminalizing employer breaches, rather than on claims that criminal enforcement reduced employees to the status of slaves (12). British employees did label some sorts of employment "unfree," but it was long-term contracts that they so labeled (13). For Steinfeld, this is a contradiction, requiring resort to his overarching "law as social construct" framework.

Steinfeld argues that the line between free and unfree labor is "not natural, but conventional" (14). For example, he argues that there is no real distinction between economic and legal pressures, because law underlies economic pressure. Put crudely, it is only because law defines private property that a hungry individual must choose between a contract to work to earn wages with which to buy food, on the one hand, and the potential for punishment for theft if he simply takes food without paying for

it, on the other. English employees were thus mistaken to view themselves as “free” since in fact they were merely being controlled by employers through one of the many possible sets of sanctions.

An alternative explanation for the law’s development consistent with the existence of a real distinction between free and unfree labor is that the paradox of the Master and Servant Acts is that they crossed that line in their treatment of employees’ contract breaches. It is not that the Acts made employment contracts enforceable that is problematic, but that they criminalized breaches. Indeed, English employees developed their own contractual response to the Acts: formal “minute contracts” lasting only a minute. This freed employees from breach of contract actions, a development that has implications for understanding the nineteenth-century development of at-will employment in the United States.

In time the British legal system recognized the contradictions between the Acts and the common law notions of contract and resolved them by abandoning the contradictory aspects of the Acts. This suggests, I think, that the alternative explanation I have offered has some power. If one views the common law as an evolutionary system, the interesting question becomes working out how the common law institutions felt their way to vindicating contract principles. The English employees’ arguments for equal treatment as a matter of contract law thus are both more understandable and freed from contradiction.

Despite my quarrels with the larger theoretical framework, however, the book is a major accomplishment, offering much even for readers unpersuaded of its macro hypothesis. It is an important work that belongs in the library of anyone studying labor history, the economic history of the nineteenth century, or modern employment and labor law in either the United States or the United Kingdom.

Andrew P. Morriss

Galen J. Roush Professor of  
Business Law & Regulation  
Case Western Reserve University

*Civil Rights Unionism: Tobacco Workers and the Struggle for Democracy in the Mid-Twentieth-Century South.* By Robert Rodgers Korstad. Chapel Hill: University of North Carolina Press, 2003. 576 pp. ISBN 0-8078-

2781-9, \$55.00 (cloth); 0-8078-5454-9, \$24.95 (paper).

Robert Korstad’s *Civil Rights Unionism* follows the story of black laborers in the Tobacco Workers International Union, and unearths the tale of their city (Winston-Salem), their company (R.J. Reynolds), and, ultimately, the origins of a national movement for civil rights. Korstad’s book succeeds where case studies sometimes founder, for it links local stories to larger national narratives. *Civil Rights Unionism* makes ambitious promises in the opening chapter and, extraordinarily, fulfills many of them.

Workers in TWIU Local 22 not only struggled for rights in the Winston-Salem factory, but “tried to change the arc of American history in the years surrounding World War II,” Korstad argues (p. 1). This is no small claim, especially for a union struggle rarely cited by historians, a city often overlooked in favor of Montgomery, Greensboro, or other supposed birthplaces of the civil rights movement, and a decade (the 1940s) frequently considered mere prelude to the civil rights revolution. “Local 22 . . . stood at the nexus of at least half a dozen interrelated democratic projects,” Korstad writes (p. 4). It struck not just at racism and poor workplace conditions, but also at a social formation defined by “the interpenetration of gender, race, and class hierarchies” (p. 5). The CIO, Cold War, Communist Party, New Deal, and Red Scare all figure in this story of Local 22. Korstad focuses on one city but tells a tale of America at mid-century; he leaves few themes in the scholarship on post-World War II labor relations and civil rights untouched.

Korstad weaves all these arguments into a textured narrative based primarily on oral histories that he conducted. He locates the civil rights movement’s beginnings in the struggles of working-class southern blacks during the 1940s—not in *Brown v. Board of Education*, the Montgomery bus boycott, or even A. Philip Randolph’s 1941 fight against wartime segregation. *Civil Rights Unionism* shines the spotlight on Reynolds workers like Robert Black, Theodosia Simpson, and Velma Hopkins, who, by the end of the war, found themselves “speaking for a national labor-based civil rights movement” (p. 253). They wielded the vote, capitalized on New Deal labor legislation, and wrestled with anti-communist hysteria. Poor blacks demanded rights and confronted the prejudices and paternalism of their bosses. A way of life hung in the balance. “They mounted a challenge that struck at the core of a social system