Freedom Bound

LAW, LABOR, AND CIVIC IDENTITY IN COLONIZING ENGLISH AMERICA, 1580–1865

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Changing: Localities, Legalities

> The colonist will avail himself of his cultural heritage whether this has to do with religion, with law, or with methods of farming ... Instead of comparing the English common law with the legal monuments in the colonies, our task now becomes inevitably more complex. It is necessary for us to determine what was the cultural heritage of the first settlers, and in what form this heritage first expressed itself in the new land.
>
> Julius Goebel, "King's Law and Local Custom" (1931)

By now it should be clear that rather than planting a template of "English" law, the inside story of English colonizing is one of successive seedings of mainland North America with a plurality of legal cultures, each expressing the designs of projectors but also heavily influenced by migrants' regional English origins. In the case of the legal culture of work and labor, surveying and comparing local legal practices takes us beyond their distinctive regional origins to the question how the wide range of work practices and authority relationships routinely present in different mainland communities were accommodated and how disputes presented to their courts were adjudicated.

Examination of local legal practice confirms the hypothesis that the labor of colonizing was a highly variegated social activity, performed by highly segmented populations. When it comes to the performance of work and labor, however, historians have represented the role of colonial courts as one reflective more of uniformity than variety. The legal culture of work was primarily an exercise in the reinforcement of coercion. At bottom, all labor was legally unfree because all performances were coerced.[1] This representation is not justified. It is certainly true that the criminalization of resistance to work discipline (notably departure) was an essential feature of the mainland colonies' regimes of servitude. But servitude had its institutionalized protections as well as its disciplines, as the statutes of

[1] See Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relationship in English and American Law and Culture, 1350–1870* (Chapel Hill, 1991), 3–5. Farley Grubb also argues that "the common law governing labor relations was the same in England as in her American colonies, and was the same for the many forms of voluntary bound labour as for free labour (wage labour by the day)." See Farley Grubb, "Does Bound Labour Have to be Coerced Labour? The Case of Colonial Immigrant Servitude Versus Craft Apprenticeship and Life-Cycle Servitude-in-Husbandry," *Itinerario*, 21, 1 (1997), 29.

different regions have already shown, and courts played a significant role in protecting as well as in coercing. Second, and more important, as both actual numbers (Chapter 1) and the statutes themselves (Chapter 6) indicate, mainland labor was far from uniformly unfree. That is confirmed by this chapter's study of local practices. In numerous litigated disputes arising from work relationships, one finds civil not criminal procedures uppermost, the courts' role one more of mediation than coercion.

What the manuscript records of courts tend to reveal is not a generic legal regime of work discipline applicable across a basic categorical divide between people who worked and people for whom they worked. Instead they reveal the existence of a variety of legal statuses with differentiated characters and consequences. Most determinative of legal outcomes were local statutes: as one might expect, where they could, the courts of each mainland region relied closely on the guidance of the legislated statutory regime of that particular region. Where this proved inapplicable, however, they constructed rules. Their rules did not follow what historians have taken to be concurrent English law,[2] but rather paid considerable attention to nuances of local status and work practice. I can best demonstrate this by returning once more to the three regions of settlement on which I have been concentrating – New England, the Chesapeake, the Delaware Valley – this time to focus on a particular county within each of the three colonies that featured in the last chapter.[3]

I. The Chesapeake

York County, Virginia, stretches for some 40 miles along the southern bank of the York River, from north of the Jamestown settlement downstream beyond Yorktown to the river's Chesapeake Bay mouth. Approximately 100 square miles in extent, the county occupies roughly half the land area of the peninsula between the James and York Rivers, an area of rich soils entered by English migrants in the 1620s and 1630s as increasing European immigration pushed settlement beyond the James River basin. In 1634, when the county was created, some 510 persons were recorded living in the area. At the end of the century, the population was close to 2,000. Growth during the century proceeded on a cyclical pattern of peaks roughly every twenty years interspersed with declines. Particularly after 1660, persistent high levels of migrant mortality offset a rising Creole birthrate. Land distribution among freeholders was relatively even, but the population contained significant numbers of non-landowners. The out-migration of younger sons, no doubt in reaction to the growing difficulty of acquiring

[2] James P. Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill, 1994), 337; Steinfeld, *Invention of Free Labor*, 47.

[3] For a similar study of the law of work and labor as revealed in the records of one locality, and the intricate differentiation of status they display, see Simon Middleton, *From Privileges to Rights: Work and Politics in Colonial New York City* (Philadelphia, 2006), particularly 163–88.

land within the county, and low levels of indentured servant imports relative to other tidewater counties probably hastened York planters' resort to slave labor, which certainly was under way earlier in the county than elsewhere in tidewater Virginia. Among tithables (all white males and all slaves above the age of sixteen), free heads of household outnumbered bound laborers until the late 1670s. At about the same time, slaves began to outnumber indentured servants. In the eighteenth century, population growth was steadier, and marked by the consolidation of slavery. It was also marked by the development of two of the tidewater's principal urban areas, Yorktown and Williamsburg.[4]

Records from York County's courts exist in some form for most of the period from the county's founding, although prior to 1658 they are fragmentary and nonsequential.[5] Examination of the full run of available records nevertheless indicates that work relations were frequently a subject for juridical inquiry and determination. Most common are several classes of proceedings that arose in the course of the administration of unfree relations, but there are also others that deal with work relations between free persons. In most cases, disposal was routine and the record too abbreviated to offer significant qualitative information, but occasional proceedings offer opportunities to probe into the reasons for outcomes that diverge from the expected.

Among the categories of disputes arising from unfree relations, those that have tended to excite most interest among historians are disputes confirming courts' disciplinary role, notably the punishment of instances of flight or other indiscipline among indentured servants. And indeed, these are constants in York County records. Among the earliest entries in the court's records, for February 1645/6, for example, one finds the case of William Keaton, bound by indenture in February 1641 to serve W—— Hockaday the term of five years "& sd Keaton absenting himselfe [from] his sd master uppon pretence of being free from the sd Hockaday as alsoe that the sd Keaton did runn away from his sd [master] June last to his great hinderance and damage the Ct doth therefore order that the sd Wm Keaton shall serve the sd Hockaday til the 28 Feb next accord. to indenture and for his running away and peremtory answeare [to] the Ct in refuseing the performance of there ord herein the sherr shall forthwith cause the sd Keaton to be whippt at the whipping post and to rec 30 lashes on his bare shoulders."[6] One finds here no presentation of a claim of time lost, and thus no addition of "double the tyme of service soe neglected" as provided by the Assembly three years earlier for punishment of runaways.

[4] See generally Kevin P. Kelly, "A Demographic Description of Seventeenth-Century York County, Virginia," unpublished manuscript (Colonial Williamsburg Foundation).

[5] See generally York County Transcripts, *Deeds, Orders, Wills [DOW]*, I-XIX (1633–1746/7, with gaps); *Judgments & Orders [JO]*, I (1746/7–1765, with gaps); *Order Books [OB]*, I (1765–1768); *Judgments & Orders*, II (1768–1774); *Order Books*, II (1774–1783); all located at the Department of Historical Research, Colonial Williamsburg Foundation.

[6] 25 Feb 1645/6, in *DOW*, II, 101a.

Double time, however, was employed in the case of Benjamin Hallyard, servant to Thomas Curtis, who "hath divers tymes runn away and absented himselfe to the number of 30 days whereby the Ct doth therefore order that the sd Benjamin Hallyard shall make good the sd Damage by double the tyme of his being absent in such servis as he shalbe imployed in by his master according to Act & also shall [illeg.] receive 20 stripes on his bare shoulders [at the] whipping post."[7]

The early York entries are sufficiently ambiguous to accommodate speculation that in the 1640s the criminal enforcement of service in Virginia extended beyond the multiyear transoceanic migrant indentures that were the object of the Assembly's statutes to shorter-term local covenants more nearly resembling the annual hires characteristic of English agricultural service. Take, for example, Edmund Smith who "hath in Ct confessed that he hath divers Saturdayes absented himselfe from the servis of Mr John Chew being his covenant servant. It is therefore ord with the consent of the sd Smith that he shall serve the sd Chew twenty [day]es longer than by covenant hee is bound in consideration of his neglect afforesd."[8] Here time is added to compensate for time lost by the servant's neglect. At the same time, the proceeding stands apart from those involving multiyear indentures in two notable respects. First, in adding time in compensation for time lost, the court makes no mention of the 1642 Act or its double-time provision, nor of any corporal punishment. Second, the court's decision requires that Smith consent to the addition of time, which implies that other forms of compensation – monetary, for example – might have been acceptable alternatives in this instance. John Duncombe's indenture of 30th July 1646, for example, had bound him to serve Nicholas Brooke one year, or to compensate him in tobacco "to the value thereof." When he did not perform, the court ordered "with the consents of sd Brooke & Duncombe" that Duncombe arrange security "for the paymt of one thousand lbs tob on 20th Nov next in full consideration of the sd on yrs servis."[9] In the 1640s, then, York's county court can be found enforcing covenants of service and assessing penalties (or, more accurately, compensation) for their neglect.[10] At the same time the

[7] 25 Sept 1646, in *DOW*, II, 169. See also 30 Nov 1647 *DOW*, II, 297: "Whereas it appeareth to the Ct by suff. proof that James Pinor servt to Capt Willm Taylor several times absented himself from his masters servis by running away by wch meanes it appeared that sd Capt Taylor was damnified by the loss of many of his catle wch were comitted to the care of sd Pinor This Ct ord that sd Pinor shall accord. to Act of Ass. make sd Taylor satisfaction by serving him one complete yr after he is free by his indenture or other covenant."

[8] 20 Oct 1646, in *DOW*, II,185.

[9] 24 Jan 1647/8, in *DOW*, II, 322.

[10] See, in addition to cases cited, 16 Dec 1647, in *DOW*, II, 321: "Whereas John Weekes did by his owne confession agree with to serve Willm Light 2 months for wch he was to receive one cotton bed a boulster and one old blanket and a pair of pott Hookes the Ct doth therefore ord that sd Weekes make good the sd servis to the sd Light and that then sd Light pay to him the sd bed boulster & blanket & pott hookes otherwise execution."

court differentiates among categories of service according to their legal effects.[11]

The same intimation of conscious differentiation among distinct forms of work relation according to their distinct legal incidents can be detected in court proceedings during the second half of the seventeenth century, when the parameters of difference become somewhat easier to observe.[12] As in the earliest records, servants absconding from service to which they were bound by a multiyear indenture were routinely brought into court by masters to be punished for their departures by the addition of double-time penalties. In these proceedings the court would ritually cite the existence of a prior obligation to serve by dint of the existence of an indenture, or prior judicial determination arising from a "custom of the country" hearing, or prior court order. This in turn became the basis for invoking statutory authority and applying the legislated double-time penalty. The court's authority to act was unquestioned; there is no indication in the record of any such proceeding of any requirement that the court obtain a servant's consent to the addition of time. A number of proceedings, however, depart quite markedly from this pattern. Collectively, they suggest the clear emergence of a qualitative difference between the treatment of indentured migrants and Creole hirelings. Thus, in May 1674, Henry Jenkins sought recovery of a debt of 400 lbs tobacco and cask owed by one Richard Crane as wages for a year's service. Crane alleged that Jenkins had absented himself "a great part of his time." Had he been an imported indentured servant, Crane could have claimed double time for Jenkins's absences. Under contemporary English law, Crane could have had him imprisoned. Certainly Crane could have withheld Jenkins's wages. Instead, the court merely discounted the debt in proportion to Jenkins's actual absences, and ordered payment for the time he had actually spent in Crane's employ. "Ord that he be paid but 200 lbs tobo. & ca. & costs als exec."[13] Similarly, Michaell Robbarts successfully recovered payment of a debt of corn and tobacco owed him by Mr. David Condon for service as an overseer, despite evidence of frequent absences offered by Condon and others. "This Robbarts in the time he lived with Mr Condon as to the mannageing of his Crop was ever very neglective in the workeing of the hands ... he was either in to sleep or also gone from the hands they not seeing of

[11] For a similar pattern of outcomes in Accomack-Northampton, see Susie M. Ames, editor, *County Court Records of Accomack-Northampton, Virginia, 1632–40* (Millwood N.Y., 1975), and *County Court Records of Accomack-Northampton, Virginia, 1640–45* (Charlottesville, 1973), both as excerpted in Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (Cambridge and New York, 1993), 250–1, notes 85–7.

[12] Ibid., 250–1.

[13] 25 May 1674, in *DOW*, V, 68. See also Robert Newton agt. Thomas Spillman and Thomas Spillman agt. Robert Newton, both 6 May 1686, in *DOW*, VII, 163–4, 177–8 [Newton brought suit for payment owed for work done. Spillman countersued for neglect and departure from work. Testimony tended to show that Newton had left Spillman's employ in a dispute over diet. Spillman's suit was dismissed for want of cause and judgment entered for Newton in the amount of 350 lbs tobacco and cask.

him sometimes in three dayes time but his Generall Custome was every day and likewise away on a Saturday not seeing him againe whilst the Tuesday following." Testimony notwithstanding, the court ordered Condon to pay.[14] When, in February 1690/1, one David Jenkins sued Captain James Archer under similar circumstances, "itt evydently appearing in ct by the oathes of severall evydences that Jenkins did voluntarily leave his cropp before compleated, contrary to the condicons & w/out any occassions of sd Archer," the suit was dismissed.[15] But there is no indication that anyone thought Jenkins could be restrained from departing, or that he could be punished for it.[16] Nor, when George Glascock refused to complete a term as laborer for William Cheseley, did Cheseley do anything more than "aske the sd Glascock what he would allow him and he would finish the crop and discharge the sd Glascock of any further trouble." The parties agreed on a payment of 100 lb tobacco, which Glascock neglected to pay. Glascock's failure to pay brought Cheseley to court, but in a civil action for recovery of the debt, not a criminal complaint against an absconding servant. Moreover, when Cheseley failed to pursue the matter, the outcome was a nonsuit of 50 lb tobacco to Glascock.[17]

What such proceedings indicate, regrettably abbreviated as they are, is the existence of clear distinctions in the extent to which legal authority was made available to discipline the performance of work. These Creole laborers and overseers were subject to a distinct legal regime in the construction of their work relations compared with migrant servants imported under indenture, one that invoked no criminal sanctions to punish departures[18] but instead placed disputes in a civil realm of compensatory adjustments that did not even treat contracts for services as entire but instead apportioned wages owed according to actual time worked.

Further evidence supporting this hypothesis may be found in an additional genus of county court proceedings involving master-servant relations, those arising from attempts to legislate prohibitions on extramarital

[14] 26 Jan 1684/5, in *DOW*, VII, 6, 15–16.

[15] 24 Feb 1690/1, in *DOW*, IX, 1.

[16] On freedom to depart see also the deposition of Henry Shittle, 24 March 1684/5, at *DOW*, VII, 59.

[17] 24 April 1685, *DOW*, VII, 69.

[18] In addition to cases cited, see two proceedings involving James Lucas. In the first, of 24 June 1675, *DOW*, V, 116, "Whereas Francis Barnes in behalfe of James Lucas did promise to see Mr Joseph Ring satisfied 600 of tob. & ca. being a debt contracted by the sd Lucas & hee have deserted his cropp whereby the {sd} Barnes is likely to be damadged" it was ordered not that Lucas return to his work for Barnes but rather that "the sd Lucas give the sd Barnes counter security & pay costs als exec." In the second, of 24 August 1683, *DOW*, VI, 513, Lucas had become "an indented servt to Mr Jno Deane" but had "absented himself from his service." In this case the court ordered Lucas to return to Deane "that he may serve his sd time as in sd indenture is expressed." But no extra time penalty was added. Hired servants were treated differently from indented servants, these proceedings show, and the rare indentured Creole servant was treated differently from indentured migrants.

sexual relations in the population at large, and in particular – through prosecution and exemplary punishment – fornication and bastardy among servants. The legislature's statute of March 1661/2, *Against ffornication* (Act C), was particularly explicit. Any man or woman convicted of simple fornication, whatever their status, was liable to pay a fine of 500 lb tobacco. If a servant woman were convicted of bastardy, however, then "in regard of the losse and trouble her master doth sustaine by her haveing a bastard [she] shall serve two yeares after her time by indenture is expired or pay two thousand pounds of tobacco to her master besides the ffine or punishment for committing the offence."[19] The reasoning behind the Assembly's distinction is straightforward. Like absence, pregnancy, childbirth, and care for an infant all represented intrusions upon a master's command of a servant's covenanted time, and were therefore to be compensated by the addition of time. The court's record of conviction entered against Diana Jones in 1683 is typical:

> Whereas Diana Jones servt unto Major Otho Thorpe was this day presented to Ct for fornication & bastardy it is therefore ord that she serve her sd master 2 yrs after her time by indenture or custome is expired & for the filthy sin of fornication ord that the sher take her into his custodie & give her 30 lashes on the bare back well laid on Major Samll. Weldon having in open Court oblidged himself to pay 500 lbs tobo to the parish the infliction is remitted & she ord. to serve the sd Maj. Weldon half a yr for the same.[20]

In certain bastardy cases, however, persons described as servants but who were not indentured migrants were not required to serve compensatory time. If their 500 lb fornication fine were paid on their behalf by their master, or (as in Diana Jones's case) some other person, then the court would specify service as a means to repay the debt, as indeed it might specify service for any debtor without assets. But no exemplary punishment accompanied the transaction; rather, what accompanied it was an intimation of a felt necessity on the part of the justices to secure the defendant's consent to remit the debt with labor. Thus, Elizabeth Mullins "servant woman to Mrs Elish. Vaulx" and summonsed for bastardy was fined 500 lbs tobacco for fornication "and is willing to serve her sd Mrs Vaulx halfe a [year] Mrs Vaulx by her note to the Ct obligeing herselfe to pay" the fine. Vaulx testified that Mullins's child "was borne in her servitude," though Mullins was "free before I had her to Court."[21] Again, in May 1709 Rachel Wood, "English servant woman" to Mongo Ingles, was ordered to serve "one whole year after her time by indenture custom or former order is expired" for bastardy, but the order was later rescinded, for "on consideracon of the

[19] William Waller Hening, *The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature, in the Year 1619* (New York, 1823), II, 115, available at http://www.vagenweb.org/hening/ (accessed 22 August 2009).

[20] 24 April 1683, *DOW*, VI, 492. See also case of Katherine Higgins, 26 January 1684/5, *DOW*, VII, 7; case of Mary Baker, 24 March 1690/1, *DOW*, IX, 11.

[21] 24 Jan 1680/1, *DOW*, VI, 279, 288.

law in that case … [the Court] are of oppinion that (the sd Woods time by indenture being expired) there is no service due to her master." Wood's obligation was subsequently reinstated, Ingles demonstrating to the court's satisfaction that in fact her indenture had not expired. But this outcome only reinforces the lesson that local law treated indentured servitude as a distinct category of working relationship to which particular disciplines applied.[22]

Consider finally the evidence of disputes arising from the performance or nonperformance of promises to undertake work. In 1632, we have seen, the Virginia Assembly temporarily adopted most of Clause 10 of the Statute of Artificers by requiring artificers or laborers retained "in greate" to perform "uppon penaltie of one mounthes imprisonment" and a statutory penalty of £5 payable to the party aggrieved, in addition to damages and costs.[23] There is no indication that the statute remained in effect beyond the early 1640s, but York records in the 1660s and 1670s do furnish examples of orders to perform contracts. In April 1666, the court resolved a suit between Arthur Dickeson and John Babb by ordering that the latter "perform the condition between them by fencing the old field & payment a barrell of corn p. head for all the deft employed to plant on the sd Dickeson plantation & do also accomplish all things enjoyned to by the sd condition & pay costs of suit."[24] It is not clear whether Babb had been retained by Dickeson to undertake work on his behalf or whether the improvements had been specified as a condition of Babb's leasing Dickeson's plantation. One suspects the latter. Thus, as an example of a specific performance order, the proceeding is not without ambiguity. Clearly, however, the court was ordering work to be performed. Another 1666 proceeding is clearer, the court requiring William Belvin to honor his agreement with Captain Daniel Park – to erect a house or pay 2,000 lb tobacco in forfeit – by ordering the payment.[25] And in 1671, one Thomas Price was ordered "to perform a condition between him & Mr David Newell about the plaistering of his house to begin the work within 9 days."[26] None of these proceedings specified what sanction backed the order, and none invoked any criminal penalty, but none allowed an alternative to performance unless the parties had negotiated an alternative in their original agreement.

Within a few years, however, simple performance ceased to be the sole course of action offered. In 1686, in a suit brought by Mr. Thomas Ballard, Jr., Jeremiah Wing was ordered to undertake forthwith "and finish the glaseing work he was to doe & finish some considerable time hence" or instead pay damages of forty shillings and costs.[27] More interesting than this was a

[22] 24 May 1708, *DOW*, XIII, 137; 24 May 1709, *DOW*, XIII, 216; 24 Jan 1709/10, *DOW*, XIII, 263.

[23] See Chapter 6, n.108.

[24] 24 April 1666, *DOW*, IV, 59.

[25] 12 November 1666, *DOW*, IV, 111.

[26] 10 January 1670/1, *DOW*, IV, 306.

[27] 6 May 1686, *DOW*, VII, 163.

case that had arisen a few years earlier, in August 1679. Thomas Sloper, a sawyer, had been retained by Robert Spring to work "for halfes" with a servant of Spring's in sawing boards. Spring petitioned that "sd Sloper never came to worke ... accord. to agreemt." Spring did not try to compel performance, however, instead claiming damages in mitigation. Two witnesses confirmed both the bargain and Sloper's neglect. Once before a jury, however, the plaintiff's case was rejected and costs awarded the defendant.[28]

The law of artisan work relations was revisited on an altogether more complex scale in the early eighteenth century in a tangle of damage and debt suits brought to the York County court over a four-year period by Robert Hyde, a housewright, against James Morris, a carpenter, in a dispute over unfinished carpentry work. Hyde's first suit was filed early in March 1704/5 in an action on the case seeking 50/- damages. Simultaneously he began a second suit, this one in debt, claiming £40. A third suit, entered a few weeks later, claimed damages of £8. A fourth, filed in July, claimed damages of £20.[29]

All of Hyde's suits (and also two additional suits filed three years later, one by each party)[30] grew out of a dispute over unfinished carpentry work on the interior of a house in Hampton that Hyde had employed Morris to perform. The damage suits all alleged breach of agreement and neglect of work. The debt suit sought to punish Morris for his nonperformance and alleged departure from employment. It did so by invoking "the statute of Queen Eliz made in the fifth year of her reigne entitled an act containing divers orders for artificers," or in other words the Statute of Artificers (5. Eliz. c.4). "[T]he sd James contrary to his agreemt made w/the sd plt on the first day of Aug in the year of our Lord God 1703 in the Psh of Hampton in this cnty & the above recited act did depart and finally leave such carpenters work wch by the sd plt the sd deft was retained in before he had finished the same w/o lawfull cause to his the plt dam 40£ sterl."[31]

Details of the dispute are difficult to reconstruct, for they exist only in the fragments of writs, pleas, and arguments filed in Hyde's several suits, and can be recovered only to the extent these were in turn entered into the court's written record. What emerges, however, is that Hyde alleged he had retained Morris on August 1, 1703 "in order to finish the sd Hyde's inside work of his house so far as he the sd Hyde would have it done & to be payd therefore so much as it should be worth," that Morris had neglected Hyde's

[28] 24 August 1679, *DOW*, VI, 114, 116.

[29] See variously, 2 March 1704/5, *DOW*, XII, 295 (continued through XII, 348); 24 March 1704/5, *DOW*, XII, 322 (continued through XII, 332); 2 March 1704/5, *DOW*, XII, 295 (continued through XII, 374); 24 July 1705, *DOW*, XII, 346 (continued through XII, 448).

[30] 25 March 1708, *DOW*, XIII, 128 (continued through XIII, 198); 24 March 1708/9, DOW, XIII, 210 (continued through XIII, 221).

[31] 5 Eliz.c.4, §x, states that a laborer who should depart before completing work he had been retained to undertake should forfeit £5 to the party by whom he had been retained, "for the wch the sayd ptie may have his Action of Debt against him that shall so depte ... over and besides such ordinarye Costes and Damages as may or ought to be recovered."

work, "sometimes working but half a day & sometimes one hour or two & then absenting himself for the space of two days sometimes three & sometimes a week & sometimes a month & more," and that as a result "the work that the sd Morris did keep in hand by such his neglect," which "he the sd Morris or any other good workman might have done ... in three weeks" still remained unfinished sixteen months later.

Morris's response to all of Hyde's actions for damages was not to deny that the work about which Hyde was complaining was unfinished, but rather to bring in accounts in set-off, charging Hyde for thirty-five days of carpentry work at a rate of 5/- per day. In other words, Morris alleged that he should be paid for the work he had performed, rather than punished for the work he had failed to perform. Hyde vehemently protested Morris's claim to be credited for labor on a daily rate, stating that he "never agreed w/the sd Morris to work by the day." He also protested the form in which Morris's account of days worked was presented. "[I]t appears by the sd Morris's sd acct agt the sd Hyde that he the sd Morris while he was at work for the sd Hyde never intended or pretended to work for the sd Hyde by the day in doing the sd work for if he had intended to work by the day his acct ought to have been particularly wch [it] is not that is so many days from such a day of such a month to such a day of that month or some other and the sd hours & days added so that the ct might have adjudged of the time & not to have charged the sd Hyde thirty five days at five shill p day w/ out showing by his acct for what or when or any parte thereof." The account brought in discount was "impossible & unfair, untrue & unreasonable." No account "charged in the manner ought to be allowed" in court.

The court disagreed and allowed Morris's accounts in set-off. As a result, Hyde's 50/- suit netted him 9/6d, and his £8 suit was dismissed, "the deft bringing a greater sume in discount upon oath." Hyde continued to pursue his punitive debt action and also promptly filed his £20 damage suit. But in October the York court threw out his punitive suit. Hyde's remaining damage suit remained on the docket until May 1706, when it too was dismissed, "neither party appearing."

The dismissal of Hyde's third damage suit did not end matters, for two years later Morris filed suit alleging that Hyde had never paid him for the work that had been performed. After a full hearing a jury returned a verdict for Morris for £5.5.0, which Hyde accepted but to which he immediately offered a discount of £18.16.0. The latter was owed him by Morris for a bill of exchange used by Morris in March 1706 to settle the £20 dispute between them that had subsequently been protested. Hyde's discount was not allowed and he was only able finally to recover what he was owed by filing yet another suit against Morris. This, heard in May 1709, won him a judgment for £13.11.0 – his only success in the four-year fight.

The dispute between Robert Hyde and James Morris offers an opportunity to reflect on the intersection of law with work in early Virginia. First, their altercation is at one with other cases involving accusations against artisans, overseers, and wage laborers departing or neglecting

work in underscoring the absence of resort to criminal proceedings in cases involving unindentured labor. In situations where one might expect to encounter criminal sanctions – for which, in fact, statutory criminal sanctions were expressly designed in English law – one finds none. Hyde's attempt to invoke the Statute of Artificers in Virginia is the only such proceeding in 150 years of York County court records. His failure is good evidence for the irrelevance of the statute, and confirms that even the highly abbreviated form in which the Statute was adopted in 1632[32] had not survived the subsequent revisals of early Virginia law undertaken before mid-century.

Second, the outcome in this series of suits, as well as in earlier suits already cited, suggests the unpopularity in Virginia – certainly by the last quarter of the seventeenth century – of construing retainers of wage and artisan labor as "entire" contracts. Morris, after all, was able to recover for the work he had actually done, even though his thirty-five days of work were spread over sixteen months, were not accounted save as a lump sum, and had left the task he had undertaken unfinished. In general, the court's records show that as a matter of routine, disputes over the completion of artisan work (almost always in relation to the building or repair of houses) were dealt with precisely on a *quantum meruit* basis, with the net value of what had actually been accomplished determined by referees.[33] The only instances in the York records in which artisan labor was subjected to compulsion occur in instances subject to statutes that penalized indentured migrants for failing to exhibit craft skills they had professed.[34]

Together, the Virginia statutes examined in Chapter 6 and the York County court records examined here point to two related conclusions. First, insofar as large-scale reliance on servile plantation labor distinguishes the culture of work in early Virginia from that of more northerly areas of settlement, some of the roots of that distinction are to be found in the oligarchic legal cultures of arable southern England. Second, what developed out of this in Virginia was not a generic legal culture of labor unfreedom but a stratified legal culture which accommodated distinct regimes of work; significantly more oppressive than those supposed to be typical of England for some, significantly less oppressive for others. Third, the comparatively greater oppressions of indentured servitude were a condition of the existence of the comparatively greater freedoms of Creole artisan and hireling labor. By occupying the legal-cultural space of unfreedom, the largely adolescent migrants imported as plantation labor established a context – a baseline, in effect, constituted by explicit legal obligations and procedures applicable to both parties – for the relatively greater autonomy of "free" Creole labor that had no clear parallel in the arable legal cultures from

[32] See text accompanying n.23, this chapter.

[33] See, for example, the dispute between John Alford and Mr. Thomas Shelston over carpentry work done by Alford. 24 January 1667, *DOW*, IV, 163 (continued through IV, 185).

[34] See, for example, James Dixon agt Samuel Patterson, 17 May 1742, *DOW*, XIX, 99.

which Virginia's law of labor was drawn. In this way, migrant servitude performed a role in early Virginia's legal culture not dissimilar from that which Edmund Morgan has attributed to slavery in the region's later colonial years. By furnishing an "other," both materially and ideologically, it assisted forms of freedom to evolve.

II. New England

Essex County, Massachusetts, abuts Massachusetts Bay, north of Boston. English settlement of the north shore began in the late 1620s and the area's settler population grew substantially during the Great Migration: settlers established townships along the coast from Lynn in the south to Newbury in the north. Natural increase kept population growth alive and stimulated movement to the west. By 1700 the filling out of township lands had scattered the population over a rough rectangle of territory some 500 square miles in extent, bounded on its northeastern and its southeastern borders by the Atlantic, meeting at Cape Ann, and to the west by the borders of the townships of Andover and Haverhill. The county's most famous township, Salem, lies on the Atlantic coast south of Cape Ann. It has been suggested that the backdrop to Salem's notorious late seventeenth-century tensions was an economic and cultural collision between burgeoning seaborne commerce and back-country subsistence.[35] Whether true or not, the contention usefully summarizes the county's characteristic occupational traits. Faithful to its geography, in which it was a microcosm of the region, this was a county whose people were largely dependent either on farming or on the sea for their livelihoods.[36]

Whether landed or maritime, Essex county livelihoods were intensively laborious. They were also intensively social, requiring the ongoing concerted effort of several persons rather than the isolated labor of a single individual. As such, they could become intensively legal. We have already seen that Massachusetts statutes paid considerable attention to the performance of labor. Court records confirm that in early Massachusetts, "Authoritie" oversaw the day-to-day relations of work with no less attention than it applied to its supervision of other aspects of daily life. For, as Michael Walzer wrote over forty years ago, underlined more recently by both Daniel Vickers and Steven Innes, work, for Puritans, was "the primary and elemental form of social discipline, the key to order, and the foundation of all further morality."[37]

The records of Essex's county court are substantially complete for the period from the initial founding of quarterly courts in March 1635/6

[35] Paul S. Boyer and Stephen Nissenbaum, *Salem Possessed; the Social Origins of Witchcraft* (Cambridge, Mass., 1974).

[36] See generally Daniel Vickers, *Farmers & Fishermen: Two Centuries of Work in Essex County, Massachusetts, 1630–1850* (Chapel Hill, 1994).

[37] Michael Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (Cambridge, Mass., 1965), 211.

through the late seventeenth century.[38] The eighteenth-century record is less complete, but still informative. Overall, the record is comprehensive enough to permit a survey of the relation between legal authority and the performance of work throughout the colonial period. What emerges is considerable variety. As in Virginia, local legal records describe a legal culture of work that was overtly segmented – in Essex's case largely by age. Unlike Virginia, it was a culture in which continuous labor immigration did not play a significant role. Hence, explicit status distinctions between Creole and migrant labor had less salience in determining degrees of freedom.[39] As in Virginia, hired labor was significantly freer from restraint than in contemporary England, but distinctive practices developing out of maritime wage work add a layer of legal relations wholly absent from the Virginia record. Finally, the Essex and York records appear to grow more distinctive over time. From the beginning, the social relations of work that had developed in the two counties were different, but one encounters sufficient initial similarities to suggest that settlers enjoyed at least some points of common reference. By the end of the seventeenth century, however, the distinctive characters of the two regions' migrant populations, and of the local economies and local law they had produced, had resulted in very different legal cultures of work.

As in Virginia, certain of the work relations illustrated in the Essex record clearly belong in a category of unfree labor. Notwithstanding its demographic insignificance after the first decade of settlement, indentured servitude nevertheless furnished business for the court. Mostly this took the form of masters of servants seeking court-ordered punishments of servants for insubordination and court-ordered compensation for time lost to illegal departures from service. Jonathan Adams was ordered whipped for running from his master in September 1636; so was "William Dodg's boy" (unnamed), later that year; so was Jane Wheat a few months after that. All told, in the court's first three years nine servants were ordered whipped for absconding. Indeed, whipping was the response to most servant offenses, whether absconding, insubordination, or drunkenness. Few early proceedings mention any addition of compensatory time; William Poole, servant to Colonel John Endicot (a justice of the peace) was the first runaway to be required to make up time lost.[40] Massachusetts never adopted statutory time-on penalties for runaway servants (in itself a sign of their rarity) but left the matter to the courts. Court orders providing for compensatory service were at best occasional and had a discretionary quality quite distinct from the statute-guided routines of the Chesapeake.[41]

[38] Published as *Records and Files of the Quarterly Courts of Essex County, Massachusetts*, (*RFQE*) vol. 1–8, 1636–83 (Salem, 1911–21; repr. 1988), vol. 9, 1683–6 (Salem, 1975).

[39] However, see Vickers, *Farmers & Fishermen*, 58–9 (suggesting an important correlation between "servants" and "outsiders" in Essex).

[40] See *RFQE*, I, 3 (September 1636), 4 (December 1636), 5 (June 1637), 8 (June 1638), 9 (September 1638).

[41] The first statutory mention of compensatory service came in the "Act for Preventing of Men's Sons or Servants Absenting Themselves from their Parent's or Master's Service Without Leave" (*Province Laws*, ch. XXIII, 1695), which allowed at the discretion of the court the addition of up to one year's service in the specific case of "sons and servants" who deserted the service of parents or masters to enter on board any ship or vessel. A wider grant of discretion came in 1759 (Province Laws, ch. XVII), which permitted courts "to order satisfaction to be made" by runaways "by service or otherwise, as to them shall seem meet."

From the outset, Essex court records confirm the close association of service and youth that this book suggests was ubiquitous in mainland English America. William Dodge's runaway was a "boy." Richard Gell, before the court for stealing in 1640, was "an apprentice boy." Benjamin Hammon, who slandered his master in December 1640, was "yong, rash, unsetled & indiscreet."[42] As the record becomes more detailed over time, its descriptions of bound service yield increasing evidence of an explicit relationship between legitimacy of restraint in service, indentures or other written authority, and youth. In the Essex record, however, the relationship again has a discretionary quality that underlines both the exceptional nature of migrant servitude and the ambiguities imparted to the legalities of "restraint" in servitude by the region's greater reliance on long continuities in family labor.[43] Locally, "youth" meant roughly from age ten, when minors were considered able to earn their keep, until twenty-one, when they attained legal majority.[44] But legal majority in Essex did not necessarily signify independence. The ambiguities could breed controversy, particularly because Massachusetts had no statutory "custom-of-country" legislation defining "default" terms of service in the absence of indentures.

Some migrant servants tended to act as if majority conveyed a right to depart. Consider the case of Richard Coy, who in 1645 sued William Hubbard for wages owed. Coy had been brought to New England in 1638 by one Whittingham, with two elder siblings, Mathew (aged fifteen) and Mary, and several other juveniles – Haniell Bosworth, Robert Smith, John Annable. Coy, who was approximately thirteen at the time, became servant to Hubbard, but left him in 1645, claiming he was to serve only seven years and that he was owed wages for time spent in Hubbard's employ thereafter. "If hee had knowne," Hubbard allegedly had told Coy, "hee shod not akept him agaynst his will Butt if you will stay with me still i will giue you wagges as to other men." But in court Hubbard claimed Coy was to have served ten years, not seven, or until age twenty-four, not twenty-one. His brother, two years older, had served eight years, and their imported fellows all testified that Richard, like them, was to have served for ten, and Coy was ordered to return to Hubbard (although he left again, permanently, well before the ten years were up). Later litigation revealed that Hubbard's claim was based not on an indenture but on an amortization of his costs, which "cannot here be lesse worth than £15 or £16." Further, "for a boy of 13 yeares of

[42] *RFQE*, I, 18 (June 1640), 23 (December 1640), and see also 25 (March 1641), 27 (June 1641).

[43] One may hypothesize that the discretionary quality of the Essex record reflects the greater degree of trust accorded local courts in a more communal, solidaristic society.

[44] Vickers, *Farmers and Fishermen*, 58, 68.

age to be layd out here for 10 yeares service cannot ... seem injurious to ye servant or much advantageous to ye Master all wch considered it seemeth to mee the plaintiffe hath no cause to complaine." The court agreed.[45]

Similarities abound in the case of William Downing and Phillip Welch, arrested to court in 1661 for refusing to serve their master, Samuel Symonds. Both were "Irish youthes" who in 1654 had been "stollen in Ireland, by some of ye English soldiers, in ye night out of theyr beds" and sold into servitude. Now being "aboue 21 years of age" both refused to serve longer, "7 yeares seruice being so much as ye practise of old England, & thought meet in this place." Symonds claimed that both were to serve nine years (that is until approximately age 24). He had no indenture but produced a covenant of sale to that effect. He also sought damages for time and work lost to their refusal to serve. A jury held in a special verdict that if the covenant of sale were legal the terms should stand, and this outcome was confirmed by the court. But the court allowed Symonds no compensation, the servants' refusal and departure creating no independent grounds for recovery.[46] That is, it was the covenant of sale that was Symonds' sole authority to restrain Downing and Welch. It could not be implied from their position in Symonds' employ.[47]

Daniel Vickers has recently underlined the early New England farm economy's dependence upon the labor of children. Dependence was not modeled on arable England's service-in-husbandry – its circulation of youthful labor on a system of annual hires. Nor was it modeled on plantation-style indentured servitude. We know that after 1640, unlike the Chesapeake, migrant servitude was of minimal significance in furnishing labor to Essex's settlers. New England farms generated neither the demand for continuous labor imports that came from the plantation regions, nor the revenues to pay for them. Instead, close-knit patriarchal households retained their own male children in generational subordination over an extended period of household dependency from late infancy through adulthood and beyond.[48] Where the labor of offspring was insufficient the household might add an imported servant, but servants were supplemental, and their "careers" followed the dominant household-familial pattern, coming into households young and remaining over extended periods of time, rather than forming a distinct culture of work.[49]

[45] *RFQE*, I, 87 (September 1645), 381–2 (March 1655). See also Works Progress Administration *Transcripts* (Salem, Peabody-Essex Museum), vol. 3 (hereafter *WPAT*).

[46] In fact, Downing and Welch had offered to "Stay or goe on in their worke till their case was [before] the Court and if then they were freed he Should pay them for their time if otherwise it Sho [illeg. – torn] as part of their time," but Symonds had demanded security for this arrangement, which they had refused.

[47] *RFQE*, II, 294–7, 310–11 (June 1661). See also *WPAT*, vol. 6. See also *William Deane v. Mr Jonathan Wade*, "for prosecuting him after the manner of a runaway, the plaintiff being free," *RFQE*, II, 62–3 (March 1658), *WPAT*, vol. 4.

[48] This was an expression of the classic English pastoral model: partible inheritance and the retention of children.

[49] James Coleman, for example, testified during litigation over John Cogswell's will that he had joined his master William Cogswell's household in 1652, or approximately at age 9, and had remained there "15 yeares prentice and covenaunted servant." *RFQE*, VI, 68 (September 1675). In his dispute with Samuell Symonds, Philip Welch at one point offered to remain "if his master would give him as good a portion as any of his children." *RFQE*, II, 297 (June 1661).

The story of John Cogswell, of Ipswich, furnishes a partial case study. In 1653, widowed and with three young children to care for, Cogswell journeyed to England to seek a new wife, and to find servants. He retained five, all minors: William Thomsonn, aged about five; John Palmer and George Stimpson (each between seven and nine years old); Robert Powell (about fourteen); and Thomas Fowler (about fifteen). Thomsonn was the grandson (or nephew) of Cogswell's cousin Samuell, and Powell was the son of an acquaintance of Samuell's. Palmer had been sold to Cogswell in London for a term of twelve years, Fowler probably had relatives in New England. Stimpson's origins are unknown. (Needless to say, this pattern of personal recruitment emphasizing relationship or acquaintance is substantially different from that typical of the Chesapeake.) Whether relatives or not, none was bound above age twenty-one. Indentures for Thomsonn and Powell are both in the court record. In Thomsonn's case, Cogswell was to receive £31 to pay for his passage and maintenance until age ten, and from then to keep the child freely until age twenty-one, maintaining him in food and clothes, teaching him to read and write and to undertake the art of husbandry, "the child to be in all one obedience & subjection to him." In Powell's case the boy was to go as a servant for six years, to have his passage paid, to have "meat, drinke, & cloths in a fitting way & ten pounds in money after the expiration of his 6 years." Cogswell guaranteed him good treatment and undertook not to sell him to anyone else.

Cogswell's untimely death on the voyage home opened his estate, twenty years later, to litigation by his infant son, now come of age, against his uncle. The details of the litigation are unimportant, but the case itself provides us with an opportunity to view Cogswell's will, which made arrangements for his children in the event of his death. Cogswell indicated that each of his sons (John and Samuel) was "to be bound prentice at ten years old, to a godly honest man, where he may be well Brought up, and know how to order husbandry affaires." His daughter Elizabeth to "be bred at scoole, untill she is fourteene years old, and then to goe to Service, and earne her liveing, and not allowed anything toward there maytenance." Ten was a common age of male apprenticeship, court records show, although individuals as young as seven or as old as twenty might be found bound by apprenticeship indentures. Upon his sons attaining twenty-one, Cogswell's farm was to be divided between them.[50]

As the circumstances of John Cogswell's life and death illustrate, in Essex imported servants were strictly a supplementary, life-cyclical phenomenon. Cogswell needed servants because his household was in turmoil; a wife recently deceased and three children no more than infants. But the

[50] Elizabeth was to get a share of Cogswell's remaining possessions at age 21, or upon her marriage, if earlier.

servants he recruited were simply more children, the youngest little older than his own. The means he used to obtain them depended on exploiting old-country family connections, not on tapping into any commercial "servant trade." His plans for his own children bespeak his intent to mobilize their labor for household benefit (relief, at any rate of the costs of their sustenance) as soon as feasible.[51]

Migrant servitude was one exceptional form supplementary labor took in Essex; slavery was another, also numerically rare.[52] Adult Creole servitude was not unknown, but as elsewhere it became confined to the discharge of debts and as a means of restitution for criminal conviction.[53] Apprenticeship, as Cogswell's will indicates, was a more common means of mobilizing youthful labor, and by the eighteenth century had become the principal subject of Massachusetts' labor statutes and the predominant meaning of "servant."[54] Vickers has emphasized the absence of any systematic practice of putting children out to neighbors in rural Massachusetts, but insofar as households did, apprenticeship was the means they employed. Certainly it was not confined to trade education, but was used as a means to convey a child's or youth's labor to another for an extended period without mention of specific trade obligations.[55]

"Bound" labor, in Essex, thus meant the labor of children, debtors, and convicts: all could be compelled to perform at the behest of their respective masters.[56] But children, debtors, and convicts were not the sum of the Essex labor force. Farmers seeking additional assistance also had resort to adult hireling labor,[57] though more often to each other. The latter could

[51] *RFQE*, II, 307–8 (September 1653), VI, 68 (September 1675), 151–60 (June 1676). See also *WPAT*, vol. 23.

[52] Vickers, *Farmers and Fishermen*, 230–1.

[53] Occasionally adults would bind themselves to trade apprenticeships. Edmond Ashby, for example was 22 years old when he bound himself an apprentice hat maker to Samuel Graves. *RFQE*, II, 256 (June 1670), *WPAT*, vol. 16. See also *Perkins v. Cooke*, *RFQE*, VII, 259–61 (1679). As often, however, adult "apprenticeship" contracts were plainly another form of migrant indentured servitude. See, for example, *Petherick and Alley*, *RFQE*, IX, 62 (June 1683), *WPAT*, vol. 39.

[54] Tomlins, *Law, Labor, and Ideology*, 244–6.

[55] In August 1644, for example, Ezekiell Wathen, a boy of about eight years and a half, was committed to Thomas Abre as an apprentice until he was twenty years old, "if his master live so long" with no further ado. *RFQE*, II, 72.

[56] Courts by no means treated compulsion as a routine incident of bound labor, however. When Nathaniel Merrill refused to allow his son John to proceed in John Clements's service for five months because he doubted Clements's creditworthiness, he was found to have breached no undertaking, notwithstanding a genuine engagement and payment of an advance. "Ye said John Clements was Much Damnified for want of the said Merrills help which he had hired," his brother Abraham deposed, "for ye said John Clements was then About to build A house and was fourced to hire Another Man in his Roome." Nevertheless, neither service by the son nor damages by the father was found to be owed. *RFQE*, VIII, 265–7. See also *WPAT*, vols. 37, 38, 39.

[57] For an example of supplementary hiring, see "Articles of Agreement [for the lease of William Tyng's farm] … Betweene William Tyng of Boston in New England, merchant, of the one parte, and John Reade of Waymouth in New England Planter, of the other parte"(1639), in *Note-Book Kept by Thomas Lechford, Esq., Lawyer, in Boston, Massachusetts Bay, from June 27, 1638, to July 29, 1641* (Cambridge, 1885), 94–100, at 98, para. 26: "Itm, the sayd William Tyng shall and will from time to time during the sayd term pay halfe the charges for hire and maintenance of workmen or women, when any shall be hired and employed over and above the sayd servants, as need shall require for planting, reaping, mowing and making of hay." See generally Vickers, *Farmers and Fishermen*, 53–5.

comprise no more than a "swapp[ing of] chores."[58] Or it could comprise paid task work, as in the hiring of an artisan to undertake construction or repair of a house or a boat. Both forms of relation generated disputes, but these show little evidence of any resort to criminal law to underwrite employment commitments.

Hireling relations gave rise to several different kinds of dispute. Occasionally employers complained about excessive rates of pay. Only four such complaints were filed during the first forty years of court sessions in Essex, however, and only the first resulted in any material penalty – a fine.[59] The issue did not arise again. Complaints against employers for nonpayment of wages were more frequent, arising both in agricultural and in maritime employment. Better than half of the seventeenth-century suits prosecuted by hirelings to recover wages were successful. Wage recovery suits continued to appear in the eighteenth-century record, characterized by a noticeable rising incidence of resort to *quantum meruit* claims, usually presented in tandem with an *indebitatus assumpsit* count. *Quantum meruit* was little found in seventeenth-century wage recoveries, which (when spelled out) alleged a debt on the basis that the task or term agreed was complete but the sum agreed was unpaid. Whereas debt implied entirety and recovery after completion, *quantum meruit* implied valuation of what had actually been done. Unsurprisingly, in this light, eighteenth-century wage suits also give increasing prominence to *rates* of pay agreed between the parties, rather than actual lump obligations accumulated.[60]

[58] Vickers, *Farmers and Fishermen*, 61. See also 55, 60–1. For a contemporary account of regional farm labor practices, see *Diary of Joshua Hempstead of New London, Connecticut … From September, 1711, to November, 1758* (New London, 1901).

[59] See *RFQE*, I, 3 (June 1636), 49 (December 1642); II, 152 (March 1659); V, 37 (May 1672) (also *WPAT*, vol. 18). The second case resulted in a partial abatement, in the third the defendant was admonished, and in the fourth the complaint was dismissed.

[60] See, for example, *Follet v. Morrill*, Ipswich Common Pleas, NE#92 (March 1756); *Lufkin v. Ellery*, Ipswich Common Pleas, NE#55 (March 1757). It is worth noting Benjamin Wadsworth's advice early in the century that "as to *hired Servants*, their *Wages* should be duely honestly and seasonably paid them … If we keep back the *Wages of Hirelings*, or defraud them of their due; their cries will enter into the ears of the Lord of Sabbaoth (the Lord of hosts) and great will our guilt and danger be." Wadsworth quoted Deuteronomy 24:15 ("*At his day thou shalt give him his hire … lest he cry against thee to the Lord, and it be Sin unto thee*") and Leviticus 19:13 ("*The wages of him that is hired shall not abide with thee all night, until the Morning*") (AV). These injunctions, he continued, seemed "to refer to *Day Labourers*; but the law in proportion, may extend to Servants hired for some longer time." See Benjamin Wadsworth, *The Well-Ordered Family: Or Relative Duties* (Boston, 1712), 107–9 (emphases in original). On the forms of action in work and labor cases, see also Middleton, *From Privileges to Rights*, 163–79.

Most interesting among the complaints arising from hireling relations, however, were breach of contract, nonperformance, or departure complaints. As in Virginia, punitive strictures on hirelings are rare from early on. In 1655, for example, Richard Jacob complained against Mordecai Larkum (a married adult) for neglecting his service. The complaint was proven, but Larkum was neither required to perform nor imprisoned, but instead ordered to pay damages of 25/- in lieu (10–14 days' wages).[61] This tells us only that there were alternatives to court orders to perform. Two actions brought by Francis Urselton against John Godfrey in September 1659, in which the record is more complete, tell us more. Urselton's first suit was in case, "for not pforming of a somers work, which he promised to doe, for the plt: (for the wch he receiued pt of his pay in hand) the want of which worke pformed is to the pltfs great damage," to the amount of £20. Witnesses testified that in the spring of that year Godfrey "did ingadge himselfe to helpe the Sayd Usseltone from the 15th or 20th of Aprill last, until Micharlmase then ffollowing," that Urselton "was to giue him eight shillings ye weeke dureing the sayd time," and that on his retainer, "in Consideration of the sayd ... Service," Godfrey had received four pounds fourteen shillings, or one half of the total payable for such a period. After Godfrey abandoned his service, Urselton called witnesses to inspect his corn (about 6 acres in all), who deposed that it "was spoilled for want of tending with the hoe" and that Urselton "was Damnified for lacke of an end fence." Urselton waited for the end of the period agreed upon, then sued Godfrey to recover the whole value of his crop. The court returned a verdict for Urselton (although there is no record of the amount of damages awarded). But Urselton's second and parallel suit, which was in debt and attempted to recover a penalty of £5 to be levied on Godfrey for his departure, was nonsuited. The debt action can only be explained as an attempt (analogous to the Hyde-Morris dispute in York County) to invoke the Statute of Artificers' penalty on laborers leaving work unfinished. The nonsuit indicates the statute was considered inapplicable.[62] No other attempt to invoke it can be identified from Essex court records during the entire colonial period.

Some years later, in March 1670, Thomas Knowlton sued William Knowlton for breach of a covenant to be his journeyman, for which William had received an advance of 50/-. The court, however, merely required that William return the advance and pay 5/- damages for the breach.[63] From the other side of the hiring relation, when Thomas Rumerye sued John Norman for wages for sawing timbers, Norman defended himself by showing that he had paid in full, excepting only an amount withheld "Bee Cause Rumery Carried away the saw to saw a logg ffor Jeremiah Neal and

[61] *RFQE*, I, 404 (September 1655). For Larkum's marital status, see 416.

[62] *RFQE*, II, 175 (September 1659), 185 (November 1659); *WPAT*, vol. 5. And see n.31, this chapter.

[63] *RFQE*, II, 223 (March 1670); *WPAT*, vol. 15.

Left his work." The defendant had not pursued the plaintiff for his premature departure, nor withheld all his wages, but had simply refused to pay in full for incomplete performance. Apparently in approval of this 'practical' *quantum meruit* outcome, the court found the defendant had no cause to answer.[64]

Damages, too, were the order of the day in actions brought against artisans for failure to complete work. In June 1661, Georg Emory recovered £5 from John Norman, Sr. "for not finishing a house according to agreement." The court did not order completion but provided for further damages to become due in two months if the house remained incomplete.[65] This represented a change of tack from some years before, September 1648, when in an action brought by Henry Archer against John Fullar and Samuell Heiford the court appeared to order performance of the defendants' covenant to set up a fence without considering damages in lieu.[66] Yet the report in this case may simply register the court's acknowledgment of an arrangement already worked out by the parties in dispute. Indeed, several years earlier still (1641) the court had implied in another dispute over completion of a house, between William Fisk and Mathew Waler, that damages in lieu of completion was an acceptable remedy. And in 1662, in settling Zarubbabell Endecott's action against John Norton "for non-performance of covenant in building a house" for which he had already been paid, the verdict for the plaintiff was purely for damages, with performance simply left up to the defendant as an alternative means of compliance.[67]

Essex County's fishing and maritime economy adds further dimensions to the legal culture of work on display in the court record. Seeming to share much in common in distinction from landed agricultural labor, the respective legal cultures of fishing and maritime work were actually less similar than one might assume.

Fishing contrasted with the land-bound economy in any number of respects. Organized from the beginning as a capitalized commercialized institution, the New England fishery appeared in a succession of productive forms. It originated as a transatlantic merchant-financed enterprise using a workforce recruited in the West of England on seasonal retainers. After permanent European settlement of New England, the transatlantic fishery began to experience endemic instability as superior wage rates resulting from labor shortages on land constantly tempted crew members to abandon their retainers and pursue landed occupations. Adaptation eventually

[64] *RFQE*, VIII, 108–9 (June 1681), *WPAT*, vol. 35. See also *Clements v. Merrill* (March 1682).

[65] *RFQE*, II, 282–3 (June 1661), *WPAT*, vol. 6. In a counter-suit (at 283), Norman attempted to recover payment for the work that *had* been completed, but this was denied by the court. [Given the amount of damages granted (£5), one might suspect this was another attempt, this time successful, to invoke the penalty clause of the Statute of Artificers (5 Eliz c.4, x). But this would be incorrect, for the statute specified that an action for the penalty should be in debt.]

[66] *RFQE*, I, 147 (1648).

[67] *RFQE*, I, 26 (June 1641); II, 388–9 (June 1662), *WPAT*, vol. 7.

resulted in a reorganized, locally based fishery drawing upon a largely transient North Atlantic maritime workforce who labored not for wages but on their own behalf on shares. Independent "companies" of fishermen (crews of men and boys) contracted with local merchants for advances of supplies and boat hire, secured by a commitment of exclusive rights to purchase the catch on their return.

From the outset, the maritime workforce remained largely distinct in origins and culture from the landed population. Distinctions remained even after it began to put down roots in coastal communities like Gloucester and Marblehead. These communities exhibited greater poverty, poorer life expectancy, greater social turbulence, and none of the household interdependencies that characterized the rural interior. "Fishing families were generally not working units."[68] The culture of shipboard work was quite unlike the paternal authority and gendered or age-demarcated dependence of the landed household.[69] Members of a fishing company were partners working on agreed shares rather than a crew under a master's authority. The transience of the workforce and resultant instability of crew composition across successive fishing seasons always brought friction within crews, but neither the merchant-company relationship nor the company's internal relations depended structurally on legitimated compulsion. Manifestly, the system could become oppressive if creditors chose – as they commonly did – to use debt as a means to trap their clients.[70] Usually, their goal was to guarantee that the indebted supplier always return to the same merchant-creditor, thus assuring the latter of a continuing supply of fish. Where, however, the merchant himself became active as an owner and operator of boats, debt often became directly the means to obtain crews and then control their labors.

Dr. Richard Knott, who operated a fleet of shallops, appears to have been particularly adept at preying on indebted itinerant seamen, first assuming their debts and then converting that control into an obligation of the seaman to labor for him. William Jarmin, "not learned nor edicated in Reeding or writing," had come to Marblehead in the mid-1670s "and meeting with bad voyages Run himselfe into Mr. Brown his debt." Crewing for Knott, but enjoying no more success, Jarmin also fell into debt to Knott. Knott prevailed upon Jarmin to allow Knott to assume the debts owed

[68] Vickers, *Farmers and Fishermen*, 138.

[69] Indeed, when Samuell and Hezekiah Dutch recruited John Meager to go with them fishing for pollock and mackerel in 1665 and 1666, they assured him "wee are all three young men and can goe when wee will and com when wee will and our father shall have nothinge to dow with us." *RFQE*, III, 328 (1666), *WPAT*, vol. 11; *RFQE*, III, 350 (1666), *WPAT*, vol. 12.

[70] Developed "to deal with the problems of risk and the scarcities of capital and labor," Daniel Vickers has called this "clientage" system a "maritime equivalent" of the landed economy's patriarchal work culture. Frequently it trapped fishermen in such "massive indebtedness" that, unlike children who eventually outgrew and outlived their fathers, they remained entangled in financial dependence for life. Vickers, *Farmers and Fishermen*, 141.

Brown, but Knott then demanded payment and in lieu obtained execution of Jarmin as a debt servant for three years. Jarmin later found himself once more entangled in new debts owed to Knott, and when he tried to make arrangements to crew for others to pay them off, Knott attempted to repeat the sequence. The second time around, however, the court threw out his suit and Jarmin escaped, though likely only as far as the next helpful patron.

Job Tookey's relations with Knott two years later tell a similar tale. Tookey was another itinerant seaman (though not an illiterate one, claiming to be the son, grandson, and great-grandson of ministers and a sometime matriculant – admittedly short-lived – of Emmanuel College, Cambridge). Like Jarmin he became indebted through misfortune, in his case by reason of six months' lameness caused by a severe injury to his hand; and like Jarmin, Knott offered to pay off his debts. In exchange, Tookey was to agree to perform a seven-month fishing voyage, for 40/- per month and outfit. Early in 1682, Tookey worked a month preparing the voyage but then refused to work further for Knott, claiming that the vessel in question was short-manned and that he himself was ill with gout. Knott offered evidence that Tookey was ill with drink, not gout, and also that he had rejected an alternative voyage that Knott had offered. Tookey meanwhile claimed that Knott had agreed to pay him for his month and had also agreed to allow him to seek a voyage with another boat, but that Knott had then reneged and instead obtained a warrant ordering Tookey attached to answer his complaint "in an action of the case about nine pounds silver or ffish as silver for denying and disobeying the said Knotts commands, Contrary to an agreement which is made betweene the said Knott and said Tookey." Tookey spent the next ten weeks in gaol awaiting the county court's June 1682 session. Then, once before the court in June, Knott withdrew the action.

Knott's maneuvers illustrate the merchant-proprietor's power in the fisheries. They do not, however, indicate that this was power that derived from the legitimated authority of a master. Indeed, neither case confirms Knott's magisterial power over a "servant." Knott lost the first action and withdrew the second. What both illustrate, rather, is the formidable persuasive power inherent in debtor-creditor relations and in the coercive procedural sanctions (incarceration pending hearing was the inevitable fate of anyone with no assets to attach sufficient to cover the size of the suit) that applied in such cases.[71]

Two other cases arising from shipboard relations in the fishery in the early 1680s suggest, however, that issues of hierarchical authority were beginning to impinge directly on the fishery in ways that suggest an important transformation in its organization was under way. Before the 1680s,

[71] On the history of the Essex County fishery, see, generally, Vickers, *Farmers and Fishermen*, 85–203. On William Jarmin, see *RFQE*, VII, 333–6 (March 1680); on Job Tookey, see VIII, 330–8 (June 1682), *WPAT*, vol. 37.

the fishery had been a small-boat fishery employing shallops. Shallop fishery crews came together and worked on a collaborative basis. When Samuell and Hezekiah Dutch proposed to John Meager that he accompany them on a voyage for polock and mackerel in 1665 and 1666, they promised him "you shall goe with us winter and sumer and wee will goe out and cach the polock scoole then wee will hall a shore our boat and sett her for to goe doune to maneymoy and thare wee will mack our fish … wee will goe as lovinge as three brothers and please god noe other shall goe with us … and wee will macke but three sheares and all a licke." Meager and the Dutch brothers were to have an epic falling-out, but neither they nor, subsequently, the Essex county court conceived of the crew of their shallop as one divided into masters and man. Following their winter voyage the Dutch brothers tried to break off their arrangement with Meager because, they claimed, he had spoiled fish. But when Meager sued them for nonperformance he was treated as a wronged partner, not as an incompetent hired hand.[72]

By the 1680s, however, the introduction of ketches and schooners was changing the collaborative, shallop-based fishery in structure and scale. Voyages were lengthening, crews becoming larger, work for the merchant for a proportion of the catch, or wholly on wages, was replacing the sharing of earnings, shipmasters were being appointed to oversee, coordinate, and command an increasingly complex and dangerous process.[73] Violent arguments between ketch masters and crew became common. In June 1682, for example, complaint was made against William Russell for his "abusive carriages" toward Thomas Jeggles, master of the ketch *Prosperous*. Russell had first argued with and sworn at Jeggles, then absented himself, only to return to attack Jeggles and other members of the crew with a knife, threatened them, and thrown part of the catch overboard. He was sentenced "to be severely whipped." The following year another ketch master, Peter Hinderson, complained against two members of his crew, Robert Bray and Richard Bale, for their abusive carriage and willful disobedience in refusing to do their duty in hauling up the anchor and otherwise obstructing the departure of the vessel from harbor, and assaulting him. At issue in both cases – implicitly in the first, explicitly in the second – was the ketch

[72] *John Meager v. Samuell Dutch*, *RFQE*, III, 328 (1666), *WPAT*, vol. 11. See also *Samuell Dutch v. John Meager* (plaintiff not prosecuting), *RFQE*, III, 350 (1666), *WPAT*, vol. 12.

[73] See generally Vickers, *Farmers and Fishermen*, 143–203. Richard Knott, it is worth noting, was in the forefront of this process, adding a ketch in 1681 to his fleet of shallops. Indeed, the very argument that led to Knott's dispute with Job Tookey began over Tookey's refusal to join the crew of Knott's new ketch, the *Endeavour*. When asked why he refused, he reportedly responded that the vessel was too large for the crew contemplated, that "he had worked enough already," that he "would not goe noe longer with that Master," and that he would go instead in one of Knott's shallops. Tookey, that is, contrasted the size and discipline of the ketch with the relatively greater freedom of the small-boat shallop fishery: when Knott asked him whether he would go in any of his boats [shallops], Tookey reportedly replied he was willing to go where "the men weare willing to [accept] him." *RFQE*, VIII, 331.

master's legal authority to command. The growing scale and complexity of fishery operations, these incidents suggest, was putting increasing pressure on the legal culture of "men in partnership" and its functional, cooperative expression in the performance of work.[74]

As the scale of the fishery continued to increase during the eighteenth century, clientage withered: merchants increasingly invested in larger boats and longer voyages, and the direct employment of crews. Before the end of the century, fishing clearly was characterized by capitalist employment relations – employers controlling the means of production and directly employing a property-less labor force dependent on wage labor for survival. As changes in capitalization brought larger work units and less collaborative work relations, the fishery's legal culture of work tended to move in a direction quite distinct from that suggested by Essex's household-centered farms, toward the established hierarchical work law of the Atlantic maritime industry, which routinely pitted masters against men in fights over wages and discipline and prescribed rules that reinforced norms of shipboard authority.[75]

Examining the application of maritime work and labor law in Essex in occasional seventeenth-century and more frequent eighteenth-century cases, one detects some local variations tending to moderate commanders' authority. Ironically, Dr. Richard Knott features once again as an early illustration, this time on the receiving end. In 1677, as surgeon on board the ship *John & Ann*, Knott departed the ship in Lisbon without permission and demanded his wages. According to the captain's shipping articles, the voyage was from Boston to the Isle of Madeira "and what other ports, which shall present" with payment of wages due at every third port of discharge, leaving three months' pay in hand. Lisbon was the first port of call after Madeira: wages were not due until the next port of discharge. But Knott refused to proceed further and demanded payment. The captain complained to the consul, who offered to secure him, in the normal fashion, "tell the ship was redey to sayle" but the captain eventually decided "to Clere himm, and pay him his waeges; which I did rather than to be troubled with him." Once back in Essex, the resourceful Knott brought suit against the Captain for abusing him, and won.[76] Also successful the same year was Thomas Hewson, bosun and gunner on the *John Bonadventure*. Hewson had joined the ship at Gravesend in February and signed articles for a voyage to Massachusetts Bay, thence to the Iberian Peninsula and a return to London for discharge. According to testimony of the captain, confirmed by the mate and other crew members, Hewson had gone absent at Boston and again at Marblehead, where he "uniustly left and absented ye shipp and searvice instructed on him." Hewson had refused to rejoin the ship even though warned he would not subsequently be allowed back aboard,

[74] *RFQE*, VIII, 348 (November 1683), IX, 145 (November 1683), *WPAT*, vol. 40.

[75] On which see Marcus Rediker, *Between the Devil and the Deep Blue Sea: Merchant Seamen, Pirates, and the Anglo-American Maritime World, 1700–1750* (New York, 1987).

[76] *RFQE*, VI, 328–30 (September 1677), *WPAT*, vol. 27.

and the ship had left for Salem one man short. Hewson sued for recovery of his effects (detained on board) and for wages for the six months from signing on at Gravesend until his departure at Marblehead. Notwithstanding the terms of the voyage, the court granted his suit, in effect applying a *quantum meruit* rule to an entire agreement.[77]

Less fortunate, six years later, was the crew of the *James*. In 1683 Captain Samuel Cole, of the *James* of London, entered a complaint before Justice Bartholomew Gedney against eight of the ship's eleven crew members for neglecting their service and failing to perform their agreed voyages. According to the articles, offered in evidence, the signatories had agreed a voyage from Gravesend to the Île de May, thence to New England and thence to the West Indies, "Soe Recll [receivable] ye full propotion of our wages in Every Libering Cort [port of discharge] according to ye Customs of ye Country for aible semen 25s a month onely too months pay keept in ye Mrs hands as an obligation to performe ye voye to this place againe if God permit & those persons yt doth nott performe ye voye shall loose there too months pay & suffer ye Law." Once in Salem, the eight defendants had departed en masse. Before Gedney, the defendants argued "that theire agrement was to be clear from the ship Losing 2 months wages." Gedney, however, ruled that their refusal to proceed further with their voyage was sufficient warrant to commit them for a hearing before a full bench of the county court, where they were ordered to return on board and attend to their duty, those refusing to be taken on board by the constable.[78]

The indulgence shown Thomas Hewson compared with the crew of the *James* – whose terms of voyage were certainly ambiguous enough to allow the interpretation they had offered to be taken seriously – may have reflected preference accorded a single local man returning home, as against the concerted departure of a group of absconding strangers, or perhaps reflected the court's conclusion that Hewson had been given insufficient opportunity to recant his initial refusal and rejoin his vessel. Too, the *James*'s crew members were defendants not plaintiffs, and were trying to avoid a criminal penalty for desertion, not pursuing a civil action for wages owed. Hence, the difference in outcome may have signified nothing more than the difference between a case in which local legal practice amenable to the apportionment of wages took precedence over transatlantic maritime law disciplining seamen, and one in which the opposite prevailed. At the same time, the return to duty enforced upon the crew of the *James* suggested that the more integrated Massachusetts' maritime economy became with that of the Atlantic as a whole, the less distinctive its legal culture of maritime work would become. In the fishery in contrast, and to some extent in the coasting trade, generic maritime rules remained of limited influence. Local practice continued to be influential.[79]

[77] *RFQE*, VI, 331 (September 1677), *WPAT*, vol. 27.

[78] *RFQE*, IX, 59 (June 1683), *WPAT*, vol. 39.

[79] For examples of continuity in established practices attending wage payment and contracting in the fishery and coasting trades, see *Lufkin v. Ellery*, Ipswich Common Pleas (March 1757), NE#55; *Emerson v. Foster*, Ipswich Common Pleas (March 1768), NE#33; *Noyes v. Boardman*, Ipswich Common Pleas (March 1768), NE#75; *Gage v. Vickre*, Ipswich Common Pleas (April 1790), NE#117. As the scale of the fishery continued to increase during the eighteenth century, its productive organization conformed more and more closely to capitalist employment relations: employers controlling the means of production and directly employing a property-less labor force dependent on wage labor for survival. On this see generally Vickers, *Farmers and Fishermen*, 143–203. Vickers infers that into the nineteenth century this transformation was *not* accompanied by any major changes in the legal culture of fishery work, but in fact the legal context of the fishery did change somewhat before then. Thus, see *An Act concerning certain fisheries of the United States and for the regulation and government of the Fishermen employed therein* 1792 c.6 (2nd Congress, 1st session), *United States Statutes at Large* 1, 229–32, which at §4 explicitly declared the applicability of maritime employment law, with all its severe hierarchies and criminal penalties, to the crews of all fishery vessels of twenty tons or more – precisely the size of vessel (ketches and schooners) that, earlier in the century, had become commonplace in the Massachusetts fishery.

The legal culture of work – landed and maritime – on display in the Essex court records was in important respects quite different from that of the early Chesapeake. Statutory legal disciplines structuring hierarchical work relations were substantially less in evidence, courts were left with greater discretion, the household was a more active locale of authority. In part, one can attribute these differences to the regions' contrasting economic and demographic environments, but in part, one can also credit variations in the legal cultures from which the most influential portions of the regions' original migrant populations came. Relatively free of the manorial influences of strong local and regional lordship and its hierarchical impulses, New England's legal culture initially reproduced the influence of communities of solidaristic households more oriented toward local self-government than government by strong regional elites. That culture was sustained by demographic and environmental conditions that favored strong families organized in extended households that exhibited considerable generational continuity, produced substantial numbers of children who furnished their primary labor supply, practiced partible inheritance and were, geographically, relatively stable. Just as Virginia was in important respects "arable" in its cultural heritage, so, demographically, sociologically, and legally, New England was pastoral.

In both regions, however, the existence of unfree – legally subordinated – working populations permitted the development of exceptional degrees of legal freedom in work relations for white male, and to a lesser extent female,[80] adults. In New England the subordinated populations were essentially life-cyclical; that is, they were defined principally by age. Their legal subordination was temporary. In the Chesapeake, the fact of a practice of temporary legal subordination in the form of juvenile servitude paved the way for the more permanent and extreme subordinations of race

[80] The relativities of adult gender inequality in seventeenth- and eighteenth-century New England are well expressed in Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650–1750* (New York, 1982), 8.

enslavement, with its concomitant effect of more fully underwriting the freedoms of the white.

III. The Delaware Valley

Chester County, Pennsylvania, lies on the western bank of the Delaware River, more or less due west of the city of Philadelphia. Founded in 1682/3, the county stretches in a rough wedge some thirty miles to its northern and western borders, 500,000 acres (some 760 square miles) largely of dispersed family farms engaged in a mixed grain and livestock husbandry. To the southeast, across the river, lay West Jersey and the Delaware Bay. To the southwest was Cecil County, Maryland's northern edge.[81]

Regular influxes of transatlantic migrants, and the contiguity of the Delaware and Chesapeake Bays and the waterways that fed them, all encouraged constant population dispersal and mobility throughout the Delaware Valley region. Many migrants entering through Philadelphia stayed in Pennsylvania, but others headed north toward New York and the Hudson Valley, or south to the Chesapeake, or west into Appalachia and beyond. Indenture records show that servants landing in Philadelphia moved into the city's craft shops and the surrounding farming regions, but also went south to the Chesapeake, particularly Maryland, or to the Jerseys, and a few to New York.[82] Runaways were pursued into Pennsylvania from the Chesapeake, runaways from Pennsylvania headed in all directions. Geography, then, gave the Delaware Valley labor force more opportunity for movement than perhaps any other locale of settlement. Indeed, prosecutions of absconding apprentices and servants were sometimes joined in the Delaware Valley courts by prosecutions of absconding *masters*, abandoning failing businesses and their dependent apprentices and fleeing south or west to begin anew.[83]

[81] James T. Lemon, *The Best Poor Man's Country: A Geographical Study of Early Southeastern Pennsylvania* (Baltimore, 1972), 98–183.

[82] Samuel McKee argues that there were few indentured servants in New York at any time during the later seventeenth and eighteenth centuries. Most eighteenth-century migrant servants went to Pennsylvania and Maryland. He bases his argument in part on analysis of the Earl of Bellomont's 1698 census, in part on the general "infrequency of court cases which dealt with indentured servants," and in part on "remarks of government officials," like Governor Robert Hunter's recommendation (1712) that the legislature enact bounties to encourage the importation of white servants, or James De Lancey's call in 1757 for a poll tax on slaves the better to encourage a turn to white servants. McKee is undoubtedly correct in his argument, but his analysis of Bellomont's census is quite wrong in its assumption that indentured servants had to be adults. See Samuel McKee, *Labor in Colonial New York, 1664–1776* (New York, 1935), 93–4. See also Middleton, *From Privileges to Rights*, 131–62, and Chapter 9.

[83] See, for example, Chester County General and Quarter Sessions (*CCGQ*), February 1728/9 (petition of Joseph Wade); November 1742 (petition of William Grimer); Philadelphia Mayor's Court, July 1763 (petition of Ephraim Hyatt); Philadelphia County General and Quarter Sessions, March 1774 (petition of John Davis).

James T. Lemon has observed that Pennsylvania's "relatively open society" meant that people in motion encountered few hindrances.[84] To this one might add that Pennsylvania's "relatively open society" existed as such on the basis of quite sharply defined distinctions between freedom and restraint. Mobility complemented the cultural habits of English upland settlers in rendering Penn's original ambitions for orderly inhabitation under manorial supervision unworkable; the dispersed farm household became the locus of social order, not the nucleated village. Nevertheless, the proprietor's impulse to control movement remained. Pennsylvania's pass law required all persons traveling beyond their counties of residence to carry official certification of their place of residence, on pain of apprehension and return, or incarceration as a presumptive runaway. When drafted as one of the *Duke's Laws*, the pass law had been offered, like Virginia's, in response to the "frequent Complaints [that] have been made of Servants who runn away." Penn's law stretched further, potentially rendering all travelers vulnerable to challenge.[85]

In practice, control of mobility did focus on bound servants, and the county courts were instrumental in its implementation. During the period 1715–75, restraint of runaways accounted for 80 percent of all proceedings against servants initiated by masters in the Chester County court. Virtually all were found in favor of the master. The severity of the penalty – five additional days' service for each day absent – made runaway time a valuable resource, and masters recorded absences diligently, often presenting them for balancing at the end of a term of service, rather like book debt. At the same time absconding appears quite exceptional; the average number of proceedings was but three per annum. It has been estimated that 95 percent of all servants under indenture quietly completed their terms without incident. Penalties may have discouraged absconding, but on the Chester evidence the principal predictor of the incidence of runaway proceedings (as in the related matter of detentions under the pass laws) was change in the overall flow of migration into the area.[86]

Servants also petitioned the courts, though less frequently than masters and with more ambiguous results.[87] Servants petitioned primarily for

[84] Lemon, *Best Poor Man's Country*, 96, and generally 71–97.

[85] "Orders Made and Confirmed at the Generall Court of Assizes held in New Yorke" (October 1672), 3, in *Charter to William Penn*, 72, and compare Statutes at Large of Pennsylvania 1, 156 ("Laws made Att an Assembly Held att Philadelphia in the Province of Pennsilvania the 10th day of 1st Month March 1683"), Ch. 134 "That Unknown persons shall not presume to travel or go without the limits of the county wherein they reside, without a pass."

[86] Christopher Tomlins, "Early British America, 1585–1830," in Douglas Hay and Paul Craven, editors, *Masters, Servants and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill, 2004), 144–5 and table 3.1. See also Grubb, "Does Bound Labour Have To Be Coerced Labour?" 31; Alfred L. Brophy, "Law and Indentured Servitude in Mid-Eighteenth Century Pennsylvania," *Willamette Law Review*, 28, 1 (Winter 1991), 104, 108.

[87] Masters were plaintiffs in 63% of master-servant disputes presented to Chester County General and Quarter Sessions between 1715 and 1774, servants (including in this

enforcement of their right to freedom dues. But they also petitioned for enforcement of masters' other contractual obligations: to provide promised instruction, or to furnish appropriate food, clothing, and accommodation. Less often servants sought dissolution of indentures allegedly obtained deceptively or unfairly,[88] or simply presented courts with accounts of situations they felt were intolerable and sought relief.[89]

Servant petitioners might be thought vulnerable to intimidation, or at least to pressure to accede to disadvantageous accommodations. Fragments in the record indicate, however, that servants could be quite forthright in asserting their claims, or at least that the legal discourse of intermediaries could function as an equalizer. Thus, Margaret Moffett informed James Gill "to take notice that I intend to apply to the next Court of General Quarter Sessions ... in order to be relieved from the indenture of servitude which you have wrongfully obtained from me at which time and place you may attend if you think fit and shew cause if any you have why I should not be discharged from your service." Moses Line's notification to Robert Smith of his intent to petition for redress desired that he take notice "that I intend to ... compel you to comply with the terms of a certain indenture of servitude entered into between us."[90] Nor do the petitions themselves reveal any especial hesitancy in their authors' invocation of legal intervention, written by and large in plain language that straightforwardly catalogues grievance. Where servants were publicly obsequious it was toward the court, not the master. George Brandon, seeking dues and a formal release after seven years' service to Edward Richards, approached the court "most Humbly," praying that "your Honours will be so good as to see that

category filings by parents of minors), 37%. These proportions coincide exactly with those reported by Brophy in "Law and Indentured Servitude," 104, for the subperiod 1745–51. Masters had a vastly superior win:loss ratio, although this disproportion is almost entirely a consequence of results in runaway cases, which appear in the record as administrative determinations based mechanically on indentures proven and accounts presented. Excluding runaway cases, masters lost one case in every ten filed and their actual win:loss ratio in cases with determinable outcomes was 7:1. Servants lost roughly one case in every twelve filed, but at 4.5:1 their actual win:loss ratio was still substantially lower than that of masters because over 50% of servants' cases filed had no determinable outcome. The latter suggests frequent resort to informal accommodation, although the organization of the Chester County file papers somewhat inhibits the tracing of actions on servant petitions, so the absence of evidence of formal closure is not entirely conclusive. It is unlikely that the court was simply ignoring servant petitions because over the years the share of servant-initiated cases in total master-servant filings increased steadily. In the decade 1715–24, for example, servants' filings accounted for less than 19% of total master-servant filings. By 1765–74, servant filings were accounting for over 45% of total filings. The increase suggests that servant petitioners were encouraged by the court's reaction, not dissuaded by indifference.

[88] See, for example, *CCGQ*, May 1747 (Petition of Bartholomew McGregor).

[89] See, for example, *CCGQ* (at a Court of Private Sessions), December 1724 (Petition of Henry Hawkins).

[90] *CCGQ*, November 1731 (Petition of Margaret Moffett), February 1775 (Petition of Moses Line).

Justice is Dun me," continuing "for I have no other Fathers in this Strange Land but your honours too whome [to look] for Reliefe." But respectful language did not divert Brandon from pursuit of what was due him, and when Richards' promise to pay "in 2 or 3 weeks time" proved unreliable, Brandon returned for an order to compel performance. The same blend of supplication and consciousness of right was on display three years later when John Jacob Nies came to seek payment of his freedom dues. Though "a Foreignerr," Nies was still "one of his majesties Subjects." Though humble in his desire for "the Clemency of the English nation," he pointedly reminded the "Honourable Bench" that "by the Laws of this Province" it was "the sole Gaurdian of the Oppressed and Seeing them Righted." The court issued the order he sought.[91]

Servants thus did not yield the jural space of the county court to their masters, but instead tried when they could to invoke the court's statutory authority to supervise master-servant relationships as a means to blunt the asymmetries of power inherent in their situation. That the court may have chosen to mediate settlements in the majority of disputes meant that petitioners could be vulnerable if justices were capricious in composing settlements. Still, servant-petitioners were willing to press complaints even against members of the bench itself when they felt disserved.[92] Nor should one assume that masters were confident of the courts' favor. In 1751, for example, after losing a dispute over possession of a minor servant, David John complained bitterly to the quarterly court that "if your nobel honors letts any of your m[e]mbers serve us so we may expect to keep not a sarvant amongst us."[93]

The policing of disputes between masters and indentured servants, therefore, was no more crudely one-sided in Pennsylvania than elsewhere.[94] It is clear, nevertheless, that the courts pursued their role within the compass of a general understanding that, both socially and legally, the relationship of master and indentured servant was legitimately one of authority and subordination. The master's authority was to be overseen, but its lawful exercise protected. Emblematic of this was the courts' almost mechanical processing of runaways, which nicely exemplified the key characteristic of servitude, namely the legality of restraint.

As elsewhere, however, indenture was the condition of legitimate restraint. This is made abundantly clear in local proceedings. In May 1732, for example, Jonathan Strange sought redress against one Humphrey Reynolds, who had neglected his promise to "faithfully and truly serve him the sd Jonathan" three months in consideration of £2.1.8d advanced by the plaintiff. But Strange's action was a civil suit seeking damages for

[91] *CCGQ*, February 1747/8 (Petition of George Brandon); February 1751 (Petition of John Jacob Nies).

[92] See, for example, *CCGQ*, August 1766 (Petition of Daniel Blare).

[93] *CCGQ*, November 1751 (Petition of David John).

[94] See Chapter 6, n.124, on servant petitions in Maryland and Virginia.

Reynolds' failure to perform, not an invocation of the criminal penalties so routinely applied to indentured runaways. And, unlike the summary disposal of those runaways, Strange's suit (like most civil suits in Chester, and elsewhere) simply languished on the docket (in this case for three years) before being composed, privately, by the parties themselves.[95]

As elsewhere, in short, "servants" were a distinctive legal subset of the Delaware Valley's working population, distinguished by an indenture and rendered subject to a singular legal regime. The tenor of that distinctiveness emerges in Joanna Long's 1763 petition for relief from the ill-treatment accorded her by her master, Richard Hall, of Springfield. About four months before, Long told the court, she had gone to work for Hall "as a hireling" and had "tarried with him a considerable time on wages." With "fair speeches and specious promises," Hall and his wife prevailed upon Long to bind herself to them for a term of two years. Her situation then changed quite abruptly. "Ever since your petitioner signed the said Indenture, she hath been very ill used by them," and the previous week had been "beat and abused ... in a barbarous manner," causing her to abscond. Long's complaint was referred to two justices for a hearing, and settled, though the settlement was not recorded. But clearly, by binding herself she had brought about a drastic change in her social and legal circumstances. In the same way, it was the *absence* of an indenture that allowed Martha Liggett to depart the service of James Caldwell without penalty, "it not being satisfactorily made out to this Court that the said Martha Liggett is legally bound." It was also what made Brigett Cochran, who "hired with" John Walters of Concord Township in October 1773 but departed after two weeks and was later accused of stealing from him, a "singlewoman" in court proceedings, unlike her alleged accomplice, James Hannell, who was his indentured "servant." And it was what saved Mary Broom, brought into court for "disobedience to the orders" of her master Daniel Humphreys, from punishment, she having nothing to answer for, "it not appearing that she was Bound by Indenture."[96]

Whether workers on wages remained liable to the less exacting but still serious sanction of loss of earnings in the event they broke agreements to serve – as observers alleged[97] – cannot so easily be determined from the

[95] Chester County Common Pleas (*CCCP*), May 1732 (Jonathan Strange agt Humphrey Reynolds). Strange's complaint described Reynolds as a "yeoman." See also *CCCP*, February 1740/1 (Thomas Bissett agt William Morrison); Chester County Quarter Sessions (*CCQS*), February 1740/1 (Petition of John Cartwright). See also *CCCP*, May 1726 (Foster agt Stringer); *CCGQ*, February 1729/30 (Petition of Samuel Chance).

[96] *CCGQ*, February 1763 (Petition of Joanna Long); November 1768 (Petition of William Buffington); February 1774 (Examinations of Brigett Cochran, James Hannell); August 1774 (Discharge of Mary Broom).

[97] Adolph B. Benson, *Peter Kalm's Travels in North America: The English Version of 1770* (New York, 1937), I, 204. See also Peter Karsten, "'Bottomed on Justice': A Reappraisal of Critical Legal Studies Scholarship Concerning Breaches of Labor Contracts by Quitting or Firing in Britain and the U.S., 1630–1880," *American Journal of Legal History*, 34, 3 (July 1990), 220–1.

Chester court record. Civil suits seeking payment for work invariably allege prior performance, but supplied few details. The form of wage work tran actions suggests the predominance of casual day work in which work deb were either paid immediately at the conclusion of a task or cumulated ov time to be presented in periodic mutual accountings in the normal fas ion of book debt.[98] Neither pattern is likely to generate disputes over th "entirety" of a contract. Moreover, the amounts in dispute were genera small enough to be settled by a hearing before an individual justice rath than in the county court, and records of hearings before individual justic are very sparse indeed prior to the late eighteenth century.

Nevertheless, the cases that can be traced suggest that wage labore in breach of employment contracts did *not* face loss of unpaid earnings colonial Pennsylvania. In July 1767, for example, Eneas Foulk appear before Richard Riley, JP, of Chichester township to seek payment for wo undertaken on behalf of Isaac Pyle. Pyle replied that Foulk had not be paid because he "had not compleated his work according to Bargai Nevertheless, Riley's decision was for payment for what had been co pleted – "that the value of the work done & due to the plantiff is but 1 and no more."[99] Part payment was also judged appropriate some years la by Isaac Hicks, a Bucks County JP, in William Force's suit against Jam Moon seeking payment "for four months service of the six he hired fo Moon contended that "as the Plff did not stay out the time agreable contract he owes nothing particularly as he suffered by his going away," h Hicks gave the plaintiff judgment "for the Bal[ance]."[100] Balancing work

[98] See, for example, *The Diary of Benjamin Hawley, 1769–1782* (transcribed by The Bisho Mill Historical Institute), Chester County Historical Society.

[99] Richard Riley, "A Record of all My Proceedings Relating to the Office of a Justice the Peace" (June 1765–February 1776), in 2 vols. (Historical Society of Pennsylvan entry for 25 July 1767 (Eneas Foulk agt Isaac Pyle). See also Wadsworth, *The Well-Ord Family*, n.60, this chapter. In Chapter 1, n.89, I noted Winifred Rothenberg's proposit that "an agricultural labor force, unconstrained and free to move, may well be a N England innovation." See her *From Market-Places to a Market Economy: The Transforma of Rural Massachusetts, 1750–1850* (Chicago, 1992), 181. Just as Massachusetts evide suggests the phenomenon had rather earlier manifestations than Rothenberg allo Pennsylvania evidence suggests it was not confined to New England. Equally import as I argued in *Law, Labor, and Ideology*, 272–8, the real "innovation" is the attempt in early nineteenth century to constrain the mobility of those formerly unconstrained imposing wage penalties on early departure that had not previously been in evidence

[100] Isaac Hicks, Docket, 1794–1831, in 2 vols. (Historical Society of Pennsylvania), e for 26 January 1795 (*William Force v. James Moon*). See also John Graves JP, West Che Township, Civil Dockets A-Q (1795–1832), Chester County Historical Society, where following entries all record proportional settlements of disputes over wages or work ments due: 17 October 1805 (*John Bell v. Jesse Mattock*); 5 September 1815 (*John We v. Abner Few*); 4 May 1818 (*Joseph Mattock v. Samuel Stark*); 23 April 1821 (parties recorded); 14 May 1825 (*Daniel Massey v. Daniel Hastead*); 17 July 1828 (*Paul McClosk John Felty*). See also Charles Neimeyer, *America Goes to War: A Social History of the Contine Army* (New York, 1996), 126, for details of agricultural labor agreements from the 17 specifying part payment for work performed in the event of noncompletion. I indebted to Peter Karsten for this reference.

both ways. In May 1797, again before Hicks, John Butler demanded payment for thirty days' work, which he had been hired to perform by John Bulgar at 3/9d (three shillings and nine pence) per day. Bulgar contended "that he hired the Plff to assist him in gitting his Indian Corn & Buckwheat for which he agreed to pay him 3/9 and that the gitting lasted but 12 days." He acknowledged that Butler had remained with him for the remainder of the period alleged, but employed only on "trifling matters." Hicks allowed the plaintiff judgment, but at a rate reduced by 40 percent, to 2/3d per day, for the final eighteen days.[101]

In the Delaware Valley as elsewhere, then, the indenture established a crucial line of legal status in the culture of work – a line of demarcation between enforceable and unenforceable obligation. The indenture signified when and when not the assertion of capacity to control or restrain another was legally allowable, of what labor was not "free" and what was. There, as elsewhere, it existed in an environment crosscut by numerous other and intersecting lines of social demarcation – of age and gender, of race – to which the culture of work was also closely related. Occasionally, lines became tangled. In Essex County we encountered juvenile migrants arguing that terms of service could be overridden by the servant's attainment of majority; they claimed a right to disown any obligation to remain with a master once they had reached the age of twenty-one. The same was true in Pennsylvania. In February 1741–2, Joseph Helm, previously bound to Thomas Treese for a term of six years, absented himself from Treese's service, alleging that to stay would mean he would be bound beyond the age of twenty-one, and that the remainder of his term was therefore voided. Instead of treating Helm as a runaway, the court decided he should work at his trade on wages "either with his Master or if the sd Apprentice shall chuse it with some other person by his said Master's Appointment," disposition of the wages to remain subject to the direction of the court "when the Cause receives a full Determination."[102] The matter did not continue, apparently accommodated between Helm and Treese, but in 1737 the court had treated presentation of evidence of the attainment of majority as sufficient to end a term of indentured service, and it did so again some years later, notwithstanding the existence of an indenture for a longer period.[103]

Most often, however, lines of demarcation complemented each other in practice. Collectively, they sustained in the Delaware Valley a substantively differentiated culture of work that, as elsewhere, was more plural than singular, that shared no generic legal regimen of authority and subordination lending people at work a common identity as "servants" and their employers common advantages as "masters," but instead ascribed different

[101] Hicks, Docket, 1 May 1797 (*John Butler v. John Bulgar*).

[102] *CCGQ*, February 1741/2 (Complaint of Joseph Helm).

[103] *CCGQ*, August 1737 (Petition of Mathias Lambert); August 1770 (Complaint of Robert Potts). But see also November 1775 (Petition of George Reab).

legal identities according to the different kinds of people – youth or adult, migrant or Creole – involved. As elsewhere, too, that culture of work was itself a hierarchy, one in which the legal freedoms of adult white Creole males stood out against, and were buttressed by, enforceable obligations of service visited more weightily upon others. We have observed the same hierarchy in the Chesapeake and in New England, so to encounter it in the Delaware Valley is no surprise. As in Essex County, however, the subordinations encountered in Chester were essentially temporary and life-cyclical. Not until the widening spread of African enslavement had established race as the cardinal measure of servility does one find a segment of the early American population designated as a permanent underclass of workers. It is in racial slavery, in eighteenth-century America, that one encounters "master and servant" not as a temporary and essentially delimited legal hierarchy, but as an expansive polarity of freedom and its absence.

Conclusion

"None but *negers* are *sarvants*."[104] For working white Americans in the early nineteenth century, this was the transcendent principle of the legal culture of work that they inherited from the eighteenth century. With due allowance for the slow atrophy of early America's statutory categories of temporary youthful and migrant servants, it was also an accurate claim. The workings of the household meant that it was a claim made far more realistically by men than by women, but that per se does not make it exclusively a male claim.[105] Nor was it a claim created in a recent revolutionary departure from an oppressive ancien regime, but one we have seen sedimented over many years of labor importation, during which the legal incidents of servitude on the mainland had become identified with specific categories of European migrant labor and with the absolute servitude of slavery.

[104] Quoted in Charles William Janson, *The Stranger in America* (London, 1807), 88 (emphasis in original).

[105] The particular language in fact is that of a "servant-maid" quoted "word for word" by an English visitor (Janson) to illustrate "the arrogance of domestics in this land of republican liberty and equality." Ibid., 88. The locale is not identified, but in adjoining passages Janson is describing an early phase of his visit, spent in the vicinity of Middletown, Connecticut, en route from Boston to New York. For commentary and additional illustrations, see David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class*, 3rd ed. (London and Brooklyn, N.Y., 2007), 47–50.

On women's work in New England at the time of Janson's visit, see Nancy F. Cott, *The Bonds of Womanhood: "Women's Sphere" in New England, 1780–1835* (New Haven, 1977), 19–62. The late Jeanne M. Boydston's outstanding *Home and Work: Housework, Wages and the Ideology of Labor in the Early Republic* (New York, 1990), 1–55, charts both the gendered division of labor during the seventeenth and eighteenth centuries, and the gathering expression in the culture of the new republic of a loss of status (amounting to a loss of presence) for women engaged in household work resulting from secular transformation in the definition of work in general. This matter is taken up at greater length in Chapter 8.

During the first half of the nineteenth century, the claim began to sound increasingly hollow. The ambit of master and servant law steadily widened until it had absorbed the employment contract as a whole, underwriting "an employer's right and capacity, *simply as an employer contracting for the performance of services*, to exert the magisterial power of management, discipline and control over others."[106] To be sure, this generalization of master and servant doctrine beyond its formerly specific categories into nineteenth-century employment law at large was – at least at first – a generalization of a conceptual structure and language of legitimate authority in work relations, not of specific criminal disciplines. "Free labor" was not a meaningless designation. But the generalization was nevertheless deeply significant, for what distinguished the nineteenth-century version from what had gone before was its all-encompassing quality, finding disciplinary authority to inhere in the contract of employment itself rather than in the particular socio-legal statuses characteristic of particular workers – youthful, indentured, imported, and so forth – by whom duties of obedience were owed. "We understand by the relation of master and servant nothing more or less than that of the *employer* and the *employed*."[107] This had its consequences. In the first half of the nineteenth century, wage labor throughout the Eastern states found itself challenged for the first time by legal strictures that tightened the slacker economic disciplines of the previous century.[108] In the antebellum South, the status of "free labor" remained qualitatively distinct from slave, but white workers found the claims to legal privilege and civic status that they had historically founded on their absolute difference from slaves increasingly vulnerable. Indeed, what crept into their language and behavior were intimations of their willingness to work *as hard as* slaves if that were the price to be paid to keep their share of racial privilege within their grasp.[109]

Ironically, given the intervening Revolution, English influence bulked large in this nineteenth-century restatement of the law of master and servant in America. This was not a matter of specific statutory example; indeed, as the thesis-writer Timothy Walker put it, "what a contrast is here presented to the laws of England, which leave hardly any thing to the discretion of

[106] Tomlins, *Law, Labor, and Ideology*, 230–1(emphasis in original).

[107] Timothy Walker, *Introduction to American Law* (Philadelphia, 1837), 243. "The legal relation of master and servant" wrote Walker, "must exist … wherever civilization furnishes work to be done." Compare argument in *State v. Higgins*, 1 N.C. [Supreme Court of North Carolina] 36 (1792), 39: "the mechanic to whom we send a job, is not our servant … There is no authority on one side, no subjection on the other. The mechanic is employed, not directed. His time is his own, not ours. He may postpone our work to make room for another's. The relationship between him and us supposes no superiority on our side, and therefore it is not the relation which exists between master and servant."

[108] Tomlins, *Law, Labor, and Ideology*, 223–92.

[109] Christopher L. Tomlins, "In Nat Turner's Shadow: Reflections on the Norfolk Dry Dock Affair of 1830–31," *Labor History*, 33, 4 (Fall 1992), 511–12, 516–17. For a graphic depiction of the material economy of labor in the early republic, see Seth Rockman, *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore, 2009).

the employer and the employed."[110] Rather, it was a matter of the influence of authoritative English common-law reports and treatises – the product of common-law judging and reconceived common-law doctrine – all of which encouraged American legal culture in a rejection of earlier delimited and localized approaches to master and servant in favor of more expansive conceptions. During the seventeenth and eighteenth centuries, I have argued here, English America's colonial legal cultures had severally felt the original influence of English laws but had simultaneously refracted them through dissimilar regional cultures of origin and settlement that, in combination with distinctive local environments and distinct statutory regimes, had produced differentiated legal cultures of work. The impulse of the nineteenth century was different. Legal elites reached beyond that earlier localized history to champion a new legal culture not of provincial differences but of widely applicable principles.[111]

Once upon a time, Horace Wood noted – curtly – in his 1877 *Treatise on the Law of Master and Servant*, "servant" had indeed been a term of discrete legal application and consequence. "Others, as clerks, farm hands, etc. were denominated laborers or workmen, and were in many respects subject to different rules." But "no practical end" would be served by dwelling on the matter. "Those who have any curiosity upon those points can consult nearly any of the old writers upon legal subjects, and have their curiosity fully gratified." What mattered was "how the relation *now* exists" in America. And how did it now exist? Wood's answer was succinct. "All who are in the employ of another, in whatever capacity, are regarded in law as servants."[112] A decade after the Civil War's erasure of slavery, a year after the end of Reconstruction, all of America's working people had been sent out on the lonely sea of industrialization in the same legal-conceptual boat.

[110] Walker, *Introduction*, 250.

[111] On which, see Laura F. Edwards, *The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, 2009). Examining North and South Carolina, Edwards finds in the venerable local tradition of "the peace" (a concept with clear early-modern English resonance) the embodiment of a particularized social order, patriarchal and hierarchical in appearance, in which all situated within the compass of the locality enjoyed some quantum of capacity to act, irrespective of whether they could be considered bearers of civic rights (for example, white men) or not (the poor, women, even in some cases the enslaved). Although hierarchical locality persisted deep into the nineteenth century, the workings of the peace were rendered increasingly invisible, and the ambit of its authority increasingly tenuous, as state-wide elites – who conceived themselves members of a national political and legal culture – undertook the creation of a liberal, rights-based, legal order that had the effect of excluding from recognition all those who could not make definitive claims to be bearers of rights. On the strength of localism and elite transcendence see also, generally, Kenneth A. Lockridge, *Settlement and Unsettlement in Early America: The Crisis of Political Legitimacy before the Revolution* (Cambridge and New York, 1981). For a distinct example of the same kind of transition from particularist, non–rights based civic order to universalist rights-based order, see Middleton, *From Privileges to Rights*. See also Chapter 8. For the eventual collision of incompatible universal claims (slavery and freedom), see Chapter 10.

[112] Horace Gay Wood, *Treatise on the Law of Master and Servant* (Albany, 1877), 2, 3, 3–4.