Introduction

Most work in early modern England occurred under contracts entered by masters and mistresses with servants, apprentices, and seasonal, casual, or occasional day laborers. These were not the contracts of employment that came to exist in the nineteenth century, but they were legally enforceable agreements.[1] Importantly, contracts were vague and the contracting process did not include the negotiation of bespoke terms but rather the comprehensive acceptance of a generally understood social arrangement, such as apprenticeship or servitude.[2]

Contracts then and now had to be entered voluntarily, as a general rule in law.[3] One can trace the beginnings of a modern will theory of contract, in which contracts must be based on mutual willingness of the parties, to the seventeenth century. The idea appears in the works of Thomas Hobbes, for instance, though it would only be full elaborated much later. The will theory rested on a notion of contractual consent that, from the seventeenth century, increasingly concerned

[1] D. J. Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford: Oxford University Press, 1999), 203.

[2] Neither written nor verbal labor contracts detailed precise hours, tasks, or locations of work, for instance. The parties would separately determine their own specific expectations in the course of recruitment and then while living together. James Gordley, *The Philosophical Origins of Modern Contract Doctrine* (Oxford: Oxford University Press, 2011 [1991]), 16, 86. See also William Cornish, "Labour Law," in *The Oxford History of the Laws of England*, ed. William Cornish et al., vol. 13: 1820–1914: Fields of Development (Oxford: Oxford University Press, 2010), 621–720 at 634.

[3] Ibbetson, *Law of Obligations*, 71–76, 208.

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people as they established labor relationships. This is interesting to keep in mind in comparison to the later purported operations of the principle of the freedom of contract, where a contract was broadly taken to be an equalizer: Two parties, each possessed of a free will, could form a binding contract with one another, without the regulation of the law. That means that when freedom of contract operated, the law neither required nor excluded certain people from entering certain contracts. At least in the moment of contract formation, parties were theoretically equal under the law and exercised dignified, independent choice.[4]

While the voluntariness of contract is ancient, the approach to human relations as all essentially contractual and based on consent might be new to the early modern era. In any case, the full concept of freedom of contract is a modern invention, and so has generally been seen as incompatible with seventeenth-century labor, which occurred within relationships of dependency and under the shadow of extensive regulation in statute law. Recent social and economic history has sharpened our knowledge of early modern labor, notably drawing out the importance of women's and children's work to the economy.[5] The rise in wages from the 1650s failed to produce an improved standard of living for many laborers as prices also went up and access to resources for subsistence declined.[6] Early modern England has long

[4] Michael Lobban, "Introduction to Part Two: Contract," in *The Oxford History of the Laws of England*, ed. William Cornish et al., vol. 12: 1820–1914: Private Law (Oxford: Oxford University Press, 2010), 297–328, esp. 297–300.

[5] Jane Whittle, *The Development of Agrarian Capitalism: Land and Labour in Norfolk, 1440–1580* (Oxford: Oxford University Press, 2000); Craig Muldrew, *Food, Energy and the Creation of Industriousness: Work and Material Culture in Agrarian England, 1550–1780* (Cambridge: Cambridge University Press, 2011); Jane Whittle, ed., *Servants in Rural Europe, 1400–1900* (Woodbridge: The Boydell Press, 2017); Maarten Roy Prak and Patrick Wallis, eds., *Apprenticeship in Early Modern Europe* (Cambridge: Cambridge University Press, 2020); Laura Gowing, *Ingenious Trade: Women and Work in Seventeenth-Century London* (Cambridge: Cambridge University Press, 2021); Steve Hindle, *The Social Topography of a Rural Community: Scenes of Labouring Life in Seventeenth Century England* (Oxford: Oxford University Press, 2023); Catriona Macleod, Alexandra Shepard, and Maria Ågren, eds., *The Whole Economy: Work and Gender in Early Modern Europe* (Cambridge: Cambridge University Press, 2023); Charmian Mansell, *Female Servants in Early Modern England* (Oxford: Oxford University Press, 2024).

[6] Keith Wrightson, *English Society, 1580–1680* (London: Routledge, 2003 [1982]), 148–56.

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functioned as a baseline against which historians interpret the conditions of labor in contemporaneous societies, especially in colonial British America.[7] This era has also furnished an origin point for narratives of industrialization.[8] Few scholars, however, have tried to reconcile the legal framework of voluntariness with the practical unfreedom of early modern work, or to understand the implications of unfree labor taking place under free contracts.[9]

This omission results largely from a previous generation's belief that freedom of contract in its Anglo-American form began in the late eighteenth century at the earliest.[10] Accordingly, modernists have attended to the tensions between freedom in law and freedom in practice more readily than early modern historians have. Indeed, Otto Kahn-Freund argued that freedom of contract within industrial

[7] Edmund S. Morgan, "The Labor Problem at Jamestown, 1607–18," *The American Historical Review* 76, no. 3 (1971): 595–611 at 600–6; James Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1994), ch. 6; Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2006), 44; Barry Levy, *Town Born: The Political Economy of New England from Its Founding to the Revolution* (Philadelphia: University of Pennsylvania Press, 2009), ch. 1; Simon P. Newman, *A New World of Labor: The Development of Plantation Slavery in the British Atlantic* (Philadelphia: University of Pennsylvania Press, 2013), ch. 1.

[8] Donald Woodward, *Men at Work: Labourers and Building Craftsmen in the Towns of Northern England, 1450–1750* (Cambridge: Cambridge University Press, 1995); S. N. Broadberry et al., *British Economic Growth, 1270–1870* (Cambridge: Cambridge University Press, 2015); Sara Horrell, Jane Humphries, and Jacob Weisdorf, "Family Standards of Living over the Long Run, England 1280–1850," *Past & Present* 250, no. 1 (February 2021): 87–134.

[9] Key works are Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350–1870* (Chapel Hill: University of North Carolina Press, 1991); Douglas Hay and Paul Craven, eds., *Masters, Servants, and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill: University of North Carolina Press, 2004), introduction and ch. 1; and Jane Whittle and Thijs Lambrecht, eds., *Labour Laws in Preindustrial Europe: The Coercion and Regulation of Wage Labour, c. 1350–1850* (Woodbridge: The Boydell Press, 2023), introduction, chs. 1 and 8.

[10] Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge, MA: Harvard University Press, 1977), ch. 6; Steinfeld, *The Invention of Free Labor*, esp. ch. 6; Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998), ch. 1.

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relations was essentially fictional, it so disadvantaged workers through overexposure to oppressive terms and conditions in employment.[11] In terms of periodization, Michael Lobban has convincingly identified the early eighteenth century as the first moment in which Anglo-American jurists exhibited a developed will theory of contract.[12] Yet some historians and lawyers continue to classify freedom of contract as particular to the modern age, starting in the late eighteenth century.[13]

These latter scholars assumed that there was something specific to modernity that enabled the rise of freedom of contract. They would be less comfortable to acknowledge, however, that the notion of freedom of contract as a modern phenomenon owes much to the now widely disregarded narratives of liberal progress. Indeed, an early articulation of the history of modern freedom of contract came from the liberal-imperial jurist Henry Sumner Maine, who in 1861 proposed that "the movement of all progressive societies has hitherto been a movement from Status to Contract."[14] The possessive individualism of liberal modernity, it is said, made the legal egalitarianism of actually exploitative labor contracts possible, in a way that earlier eras could not have sustained.

And so, the puzzle of the tension between free contracts and early modern labor inequality remains unsolved. What did early modern people mean by free consent to labor procured with coercion? Without

[11] Otto Kahn-Freund, P. L. Davies, and M. R. Freedland, *Kahn-Freund's Labour and the Law*, 3rd ed., Hamlyn Lecture Series (London: Stevens, 1983), 24–25. See also Maria Luisa Pesante, "Slaves, Servants and Wage Earners: Free and Unfree Labour, from Grotius to Blackstone," *History of European Ideas* 35, no. 3 (2009): 289–320.

[12] Michael Lobban, "Introduction," in *Jeffrey Gilbert on Property and Contract*, ed. Michael Lobban, vols. 134–35, Publications of the Selden Society (London: Selden Society, 2019), clxix–clxxv.

[13] Simon F. Deakin and Frank Wilkinson, *The Law of the Labour Market: Industrialization, Employment, and Legal Evolution* (Oxford: Oxford University Press, 2005), ch. 2, esp. 51; Carolyn Steedman, *Labours Lost: Domestic Service and the Making of Modern England* (Cambridge: Cambridge University Press, 2009), 44; Catherine Hall et al., *Legacies of British Slave-Ownership: Colonial Slavery and the Formation of Victorian Britain* (Cambridge: Cambridge University Press, 2014), 19; Lisa Lowe, *The Intimacies of Four Continents* (Durham, NC: Duke University Press, 2015), 6, 24; William H. Sewell Jr., *Capitalism and the Emergence of Civic Equality in Eighteenth-Century France* (Chicago: University of Chicago Press, 2021), 79–80.

[14] Henry Sumner Maine, *Ancient Law, Its Connection with the Early History of Society and Its Relation to Modern Ideas* (London: John Murray, 1920 [1861]), 174.

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doubt, seventeenth-century English people considered a range of coerced labor relationships to be based on free and willing consent.[15] They witnessed written contracts that made young children into unpaid servants with no chance to refuse. The contracts sometimes included clauses such as the following from 1638: "William Wheeler … of his owne mere & voluntarye will & assent & with the consent of his said father covenanteth to abide & dwell with the said William Browne as his servant or apprentice."[16] There was no universal age of consent.[17] Young people could enter contracts to work at ages when they could not have legally consented to sex (age ten or twelve for girls, fourteen for boys) or marriage (without parental consent, age twenty-one was preferred but not required by the canons of 1604).[18] Nor were coerced contracts limited to children who lacked

[15] Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350–1870* (Chapel Hill: University of North Carolina Press, 1991), esp. 99–100; Holly Brewer, "Age of Reason? Children, Testimony, and Consent in Early America," in *The Many Legalities of Early America*, ed. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, VA, by the University of North Carolina Press, 2001), 293–332; Timothy J. Shannon, "A 'Wicked Commerce': Consent, Coercion, and Kidnapping in Aberdeen's Servant Trade," *The William and Mary Quarterly* 74, no. 3 (July 2017): 437–66; Kristen McCabe Lashua, *Children at the Birth of Empire: British Law, Liberty, and the Global Migration of Destitute Children, c. 1607–1760* (London: Routledge, 2023), chs. 5 and 6. For a Spanish American comparator, see Bianca Premo, *Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima* (Chapel Hill: University of North Carolina Press, 2005), esp. 58.

[16] Wiltshire and Swindon History Centre, A1/110/1642E, p. 157 (October 14, 1638), with thanks to Talya Housman.

[17] David Harris Sacks, *The Widening Gate: Bristol and the Atlantic Economy, 1450–1700* (Berkeley: University of California Press, 1991), 254; Holly Brewer, "Age of Reason? Children, Testimony, and Consent in Early America," in *The Many Legalities of Early America*, ed. Tomlins and Mann, 318; Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005), 243, 271–81; Bianca Premo, "Meticulous Imprecision: Calculating Age in Colonial Spanish American Law," *The American Historical Review* 125, no. 2 (April 2020): 396–406 at 399; Lashua, *Children at the Birth of Empire*, ch. 2.

[18] Antony E. Simpson, "Vulnerability and the Age of Female Consent: Legal Innovation and Its Effect on Prosecutions for Rape in Eighteenth-Century London," in *Sexual Underworlds of the Enlightenment*, ed. G. S. Rousseau and Roy Porter (Manchester: Manchester University Press, 1987), 181–205 at 182–85; Julia Rudolph, "Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought," *Journal of British Studies* 39, no. 2 (April 2000): 157–84 at 178 n.64;

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the capacity to understand their actions. Adults were also said to consent to loathsome work, in the context of illegal violence and threats, or legal compulsion. On one extreme, the outlawed trade of bawdry and organized prostitution produced court testimony that described young women migrants in London as having "consented" to sex work.[19] In aboveboard arrangements, men conscripted into armies publicly accepted advance pay from their captains and swore oaths of allegiance to their sovereign. Entrepreneurs procured workers from among prisoners of war, who they judged to be "willinge & accustomed to labour."[20] Aspects of freedom of contract did indeed emerge in unexpected places in the early modern period.

Forced contracts inspired authors and artists across genres as they produced the texts and art of seventeenth-century England and its colonies.[21] Perhaps best known, in *Leviathan* (first published in 1651), Thomas Hobbes argued that "fear and liberty are consistent."[22] On the point that "a forced will is still a will" he was simply following a maxim that jurists had heeded since antiquity.[23] But Hobbes was doing more than repeating an old acorn; he was drawing on the world around him, too. He pointed to the predicaments of conscripted soldiers, prisoners of war, and servants to demonstrate what he saw as the clear truth of this maxim.[24] Hobbes was hardly

Martin Ingram, "Child Sexual Abuse in Early Modern England," in *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland*, ed. Michael J. Braddick and John Walter (Cambridge: Cambridge University Press, 2001) 63–84 at 64–66; Martin Ingram, *Carnal Knowledge: Regulating Sex in England, 1470–1600* (Cambridge: Cambridge University Press, 2017), 419–21.

[19] Bethlem Museum of the Mind, BCB 1, f. 4–5, 5v, 16 [May 20, 1559].

[20] Cambridgeshire Archives, R59/31/9/5, f. 117^{v}, October 16, 1651.

[21] Victoria Kahn, *Wayward Contracts: The Crisis of Political Obligation in England, 1640–1674* (Princeton, NJ: Princeton University Press, 2009); Amanda Bailey, *Of Bondage: Debt, Property, and Personhood in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2013); Elisabeth R. Anker, *Ugly Freedoms* (Durham, NC: Duke University Press, 2021), ch. 1; Sal Nicolazzo, *Vagrant Figures: Law, Literature, and the Origins of the Police* (New Haven, CT: Yale University Press, 2021), 53–64; Urvashi Chakravarty, *Fictions of Consent: Slavery, Servitude, and Free Service in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2022).

[22] Thomas Hobbes, *Leviathan*, ed. J. C. A. Gaskin (Oxford: Oxford University Press, 1998), ch. 21, section 3.

[23] Aristotle, *Nicomachean Ethics*, 2nd ed., trans. Terence Irwin (Cambridge: Hackett, 1999), bk. 3, ch. 1, p. 30–33.

[24] Hobbes, *Leviathan*, chs. 10, 13, 15, 20, 21, 28, 30, 45.

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representative of the political philosophy of his age, but on this point on the social theory of labor, readers in this time understood the scenarios Hobbes invoked to be not only realistic but also common, even mundane. People who entered into work contracts against their choice would nonetheless have been understood to have consented.

How did this extraordinary transformation of ideas happen? I argue that the foundations of freedom of contract and the sanctity of an individual's consent developed in the sixteenth to seventeenth centuries, in part, from profoundly unfair labor systems with notoriously poor conditions. The intensification of the long-term, long-distance, and high-risk nature of some work led certain masters, officers, and brokers to reach for consent as a tool to legitimize and control labor relationships, when recruited laborers and their families notably objected to their ill treatment. The historical method applied to the field of labor here results in a reperiodization and reassessment of the ideal of freedom of contract. The most coercive contract labor systems were economically marginal, but they are essential to solving the puzzle: They first generated the protestations of free and willing consent. More mainstream servitude did not produce these ideas although it did incorporate them. One of the places in which the notion of contractual consent – a key component of what later became freedom of contract – emerged was on the awkward edges of the labor market.[25]

Charity, colonization, and war were the key factors that drove masters and middlemen to reach for consent as a tool to bind people into labor. First, a post-Reformation move to replace private and monastic charitable care for poor children led to a welfare program known as parish apprenticeship. In this system, poor boys and girls moved into the households of their wealthier neighbors, where they usually worked as unpaid servants in housewifery and husbandry. Second, the establishment of lasting English American colonies, from Virginia in 1607 on, led to a demand for colonists who would work. Colonization at first depended on a transatlantic trade in indentured servants from England and Ireland. Finally, wars produced a need to muster and mobilize large forces quickly in an age of no standing

[25] I extend back into the early modern period the insight of Radhika Mongia, *Indian Migration and Empire: A Colonial Genealogy of the Modern State* (Durham, NC: Duke University Press, 2018), 42.

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armies. The system of impressment, a form of conscription, met this need by requiring certain men to serve in armies and navies. The English Civil Wars and the Wars of the Three Kingdoms (1639–53) raised new ideas about how individuals should relate to the greater good of the Commonwealth. In that context and the Anglo-Dutch Wars that overlapped and followed, people debated who should go through the motions of agreeing to serve despite their conscription, and conversely who had special exempt status that protected them from having to consent to serve.

Coercion could constitute valid consent to work for those who fit the profile of natural laborers. The best means by which laboring people could avoid or legally terminate forced contracts was to show that they already had contracted obligations to another master and were not free to work for someone new.[26] When this was not the case, masters applied a presumption that unattached or "free" people were available and willing to work as a fulfillment of their status-based duty. By extension, those in positions of relative authority considered it to be a virtue in themselves to force the lower sort to work.[27]

This way of thinking did not make consent meaningless or reflect an "indifference to how things really are" among contemporaries.[28] Rather, moments of consenting or presuming consent were intentional moments of building meaning. Specifically, they reinforced and informed everyone involved of their positions relative to one another. Labor contracts thus reinscribed social hierarchy in their very formation as well as while they were carried out. For many of the lower-status people examined in this book, to consent to burdensome or opaque labor contracts was a form of acceptance, deference, or submission. In the much rarer cases where masters were forced to take poor children into their households as parish apprentices, the masters'

[26] Judith M. Bennett, "Compulsory Service in Late Medieval England," *Past & Present* 209, no. 1 (November 2010): 7–51 at 24.

[27] C. S. L. Davies, "Slavery and Protector Somerset: The Vagrancy Act of 1547," *Economic History Review* 19, no. 3 (1966): 533–49 at 539–40; John Hatcher, "Labour, Leisure and Economic Thought before the Nineteenth Century," *Past & Present* 160, no. 1 (August 1998): 64–115; Keith Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain* (New Haven, CT: Yale University Press, 2000), 320–25.

[28] For the quote, see Harry G. Frankfurt, *On Bullshit* (Princeton, NJ: Princeton University Press, 2005), 34.

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coerced consent actually signaled their relative wealth and showed all parishioners that the churchwardens and overseers of the poor believed the masters to be able to feed additional children. When people with relatively higher status or with ambitions to improve their status publicly refused to become servants in coerced contracts, they too communicated their resources and privilege, if they pulled it off. Finally, labor brokers also gained status and often money through their engagement with coerced contract labor systems, as long as they walked the line and avoided being prosecuted as enticers.

There is a purist logic in which coercion ought to vitiate consent, but in fact this pairing is fairly comfortable to us today as well. We often consent to things without really wanting to do them. We too learn about our power relations through those experiences. The unfortunate neologism, "voluntold," indicates the ongoing existence of coerced consent in the armed forces, the office, and local associations, for example.[29] Walking – or clicking – past a chunk of boilerplate text is a mindless and unavoidable form of consent that can result in the severe restriction of customers' rights.[30] In advice books, psychologists emphasize the importance of giving the appearance of choice for fostering "compliance" in others, especially in our children.[31] Research on commonsense notions of consent has found widespread comfort with the compatibility of consent and fraud in sexual relations, elective surgery, participation in scientific research, warrantless police searches, and contracts.[32]

When it comes to method, this book shows that archives often thought of as strictly the concern of domestic or even provincial English history allow historians to reconstruct changing contractual practices and ideas in labor relationships not only in England but also around the early Atlantic world. Records from city corporations,

[29] Rachel Feintzeig, "It's Optional, Except It's Not: You've Been Voluntold," *Wall Street Journal*, April 24, 2023, sec. Life, www.wsj.com/articles/voluntold-volunteling-work-tips-1aadced1.

[30] Margaret Jane Radin, *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law* (Princeton, NJ: Princeton University Press, 2013).

[31] Alan E. Kazdin and Carlo Rotella, *The Kazdin Method for Parenting the Defiant Child: With No Pills, No Therapy, No Contest of Wills* (Boston: Houghton Mifflin, 2009).

[32] Roseanna Sommers, "Commonsense Consent," *The Yale Law Journal* 129, no. 8 (2020): 2232–324.

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parishes, companies, and the lower courts all prove essential to access the shared context in which slavery and contract labor expanded. Colonial difference has sometimes been overdrawn. The history of labor coercion rewards study within a coherent world with shared problems, responses, and ramifications.[33]

Coerced Labor and the Law

The law provided multiple mechanisms to initiate and maintain contractual labor relationships with coercion. Statute law was influential.[34] Crucially, the Statute of Artificers (1563) renewed and expanded the post-Black Death Ordinance of Laborers (1349) and the Statute of Laborers (1351).[35] This Elizabethan statute set rules that would oblige individuals to work and sanction them if they refused. Unmarried artificers, trained in the "arts, crafts, or sciences," under thirty years old, and without incomes above forty shillings per year or land, were to be bound into work contracts "upon request" from their higher-status neighbors. The only acceptable response to these requests was agreement, for they "shall not refuse to serve."[36] It was especially

[33] Examples of this approach include James Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1994); Susan Dwyer Amussen, *Caribbean Exchanges: Slavery and the Transformation of English Society, 1640–1700* (Chapel Hill: University of North Carolina Press, 2007); Steve Hindle and Ruth Wallis Herndon, "Recreating Proper Families in England and North America: Pauper Apprenticeship in Transatlantic Context," in *Children Bound to Labor: The Pauper Apprentice System in Early America*, ed. Ruth Wallis Herndon and John E. Murray (Ithaca, NY: Cornell University Press, 2009), 19–36; Evan Haefeli, *Accidental Pluralism: America and the Religious Politics of English Expansion, 1497–1662* (Chicago: University of Chicago Press, 2021); Misha Ewen, *The Virginia Venture* (Philadelphia: University of Pennsylvania Press, 2022).

[34] Thijs Lambrecht and Jane Whittle, "Introduction: Towards a Comparative History of Europe's Labour Laws c.1350–1850," 1–29, esp. 13–14 and Whittle, "Attitudes to Wage Labour in English Legislation, 1349–1601," in *Labour Laws in Preindustrial Europe*, ed. Whittle and Lambrecht, 33–54.

[35] On the seminal nature of the fourteenth-century laws, see Mark Bailey, *After the Black Death: Economy, Society, and the Law in Fourteenth-Century England* (Oxford: Oxford University Press, 2021), 300.

[36] 23 Ed. III, c. 1–8 [1349]; 25 Ed. III stat. 2 c. 2 [1351]; "An Acte towching dyvers Orders for Artificers Laborers Servantes of Husbandrye and Apprentises" (5 Eliz. c. 4 [1562/63]) accessible in *The Statutes of the Realm, 1547–1624*, vol. 4, part 1 (London: Printed at the Command of His Majesty King George III, 1819), 414–22

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important that during the harvest of corn, grain, and hay, artificers and "persons as be meete to labour" must agree to do so.[37] The statute took the identity of such persons as self-evident. Beyond harvest time, laborers in nonexempt occupations or trades were to "be compelled to be reteyned to serve in Husbandrye by the yere."[38] Unmarried women between twelve to forty years old were to be made to serve by year, week, or day for regulated wages or be held in jail until they agreed.[39] Anyone under the age of twenty-one who entered apprenticeship contracts was to be held to the terms agreed upon, "as yf the same Apprentice were of full Age" or in his or her legal majority.[40]

Once bound, these subordinates were all obliged to work for the full length of the contracted time, at an annually set wage rate in the case of those working in husbandry. Local officials were supposed to formally discharge these laborers, and only then could they legally move on. If the targeted people did not want to work as requested, the statute anticipated that they would act in one of two ways. They would refuse to enter a contract point blank. Or they would leave the locale in which the contract had been offered, thereby dodging the issue. To the first possibility the statute offered a strong disincentive: Those refusing appropriate contracts would be imprisoned until they agreed.[41] To the second, the statute reinstituted a piece of late fourteenth-century legislation for a bureaucracy that controlled labor mobility. Servants who completed their terms were supposed to carry licenses from their former masters, which identified them as free to

via HeinOnline. Hereafter, "5 Eliz. c. 4." Quotes from clause 3. See also Margaret Gay Davies, *The Enforcement of English Apprenticeship: A Study in Applied Mercantilism, 1563–1642* (Cambridge, MA: Harvard University Press, 1956); Donald Woodward, "The Background of the Statute of Artificers: The Genesis of Labour Policy, 1558–63," *Economic History Review* 33, no. 1 (February 1980): 32–44.

[37] 5 Eliz. c. 4, Clause 15. [38] 5 Eliz. c. 4, Clause 5. [39] 5 Eliz. c. 4, Clause 17.

[40] 5 Eliz. c. 4, Clause 35.

[41] 5 Eliz. c. 4, Clauses 3, 5, 15, 17, 28, and 35 all list the types of people whose labor could be "compelled." Clause 28 dictated that a person required to serve as apprentice in husbandry or trade, and judged to be appropriate for the service by a local official, must serve or be imprisoned until he or she agreed to serve. Those who refused to work during the harvest were to be put in the stocks for two days and one night. Justice of the peace manuals reiterated the appropriateness of imprisonment for the unwilling: For example, William Sheppard, *The Whole Office of the Country Justice of Peace* (London: W. Lee, D. Pateman, G. Beadell, 1650), 92.

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move and seek new positions elsewhere.[42] Additional clauses allowed that a contracted servant who left service prematurely might be seized, imprisoned, and fined.[43] Various systems of European law, including English common law, considered the use of private imprisonment solely to make people enter contracts to be a form of duress. Resulting contracts would be invalid.[44] But inmates who were legally imprisoned on remand or criminal conviction could and did make valid contracts that effected their release.[45]

While the implementation of the Statute of Artificers was considerably narrower than its prescription, justices of the peace applied it to runaway servants throughout the early modern period.[46] Magistrates and local officeholders did not consistently enforce the prescribed licensing system, wage regulations, or broader compulsory service requirements of the Statute of Artificers. They mostly enforced these requirements when contracts already existed but rarely bothered to

[42] 5 Eliz. c. 4, Clauses 7 and 8; 12 Ric II c. 3 (1388). See Donald Woodward, "The Background of the Statute of Artificers: The Genesis of Labour Policy, 1558–63," *Economic History Review* 33, no. 1 (February 1980): 34 nn. 2–3.

[43] 5 Eliz. c. 4, Clauses 6, 10, and 39. For general assessments, see Douglas Hay and Paul Craven, eds., *Masters, Servants, and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill: University of North Carolina Press, 2004), esp. 1–2 and 56–58; Carolyn Steedman, *Labours Lost: Domestic Service and the Making of Modern England* (Cambridge: Cambridge University Press, 2009), 30–33; Jane Whittle, "Attitudes to Wage Labour in English Legislation, 1349–1601," in *Labour Laws in Preindustrial Europe*, ed. Whittle and Lambrecht, 33–54.

[44] A. W. Brian Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Oxford: Clarendon Press, 1987), 99; Wim Decock, *Theologians and Contract Law: The Moral Transformation of the Ius Commune (ca. 1500–1650)* (Leiden: M. Nijhoff Publishers, 2012), 215–74.

[45] Jeffrey Gilbert, *Jeffrey Gilbert on Property and Contract*, ed. Michael Lobban, vols. 134–35 (London: Selden Society, 2019), 441–42.

[46] R. Keith Kelsall, "Wage Regulation under the Statute of Artificers," in *Wage Regulation in Pre-Industrial England*, by Walter E. Minchinton et al. (Newton Abbot: David & Charles, 1972), 124–39; Taylor Aucoin, "Levels of Labour Law Enforcement in Early Modern England," *Forms of Labour* (blog), 2022, https://formsoflabour.exeter.ac.uk/conference/levels-of-labour-law-enforcement-in-early-modern-england/. Relevant presentments in Yorkshire (1605–8) are collected in R. H. Tawney and Eileen Power, eds., *Tudor Economic Documents: Being Select Documents Illustrating the Economic and Social History of Tudor England*, vol. 1: Agriculture and Industry, 3 vols. (London: Longmans, Green and Co., 1924), 376–78. The Statute of Laborers in the fourteenth century was also put into practice: Elaine Clark, "Medieval Labor Law and English Local Courts," *American Journal of Legal History* 27, no. 4 (1983): 330–53 at 338.

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compel potential workers to enter fresh contractual relations.[47] Even so, the statute was an influential text that helped to maintain and legitimize the very concept of compulsory yet contractual service.[48]

Beyond the statute, landowners, tenant farmers, planters, craftsmen, merchants, captains, and larger householders reached for additional mechanisms to coerce others to work under contract in England and the English colonies. Poor law statutes (discussed in more detail in Chapter 1) prescribed parish apprenticeships for poor children. The bureaucracy of the local parish church communities created these long-term, unpaid service positions. The magistracy enforced them. Prisoners of war became servants to private masters based on the logic lifted from these same poor laws. Royal prerogative undergirded military and naval impressment. In the late seventeenth century, English merchants sometimes transported convicts into indentured servitude, as a form of pardon from capital punishment.[49]

Some forms of labor also relied on coerced contracts without the enforcement of law: In cities, organized prostitution drew on the perceived willingness of women to do sex work on terms that allowed protections and obligations. But simultaneously, bawds and pimps used captivity, violence, and fear of legal punishment to coerce that work. Organized prostitution had much in common with the underground trade in transatlantic indentured servants in this way.

Drivers of Change

This story of free consent in English labor begins with Part I on "Written Consent." In the sixteenth century, the new system of parish apprenticeship adopted written contracts from guild apprenticeship

[47] Whittle, *The Development of Agrarian Capitalism*, ch. 5; Charmian Mansell, "Female Service and the Village Community in South-West England 1550–1650: The Labour Laws Reconsidered," in *Servants in Rural Europe, 1400–1900*, ed. Jane Whittle (Woodbridge: The Boydell Press, 2017), 77–94.

[48] Hay and Craven, eds., *Masters, Servants, and Magistrates*, chs. 1 and 3.

[49] Joanna Innes, "The Role of Transportation in Seventeenth- and Eighteenth-Century English Penal Practice," in *New Perspective in Australian History*, ed. Carl Bridge (London: Sir Robert Menzies Centre for Australian Studies, Institute of Commonwealth Studies, University of London, 1990), 12–14; Cynthia B. Herrup, "Punishing Pardon: Some Thoughts on the Origins of Penal Transportation," in *Penal Practice and Culture, 1500–1900: Punishing the English*, ed. Simon Devereaux and Paul Griffiths (Houndmills: Palgrave Macmillan, 2004), 131–33.

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(Chapter 1). Since the late medieval period, apprentices had created indentures with their masters. Masters and apprentices kept their counterparts of these documents as records of their agreements. Upon the completion of the terms, apprentices produced the document when they applied for privileged membership of a guild and town. People quite reasonably assumed that the young men and the very small number of young women who became craft and guild apprentices had wanted to do so, and that their families supported them in this choice. Consent was not a preoccupation in their written contracts. In the livery companies, masters and apprentices generally signed indentures alone, without parents or guardians as co-signatories, indicating minimal anxiety about their children's consent to these arrangements.

As that link between written contracts and apprentices' access to resources weakened in the charitable system of parish or pauper apprenticeship, consent received much more attention. Indentures had far more signatories in this newer system. They included local witnesses, parish churchwardens and overseers of the poor, and county-level justices of the peace who signed to indicate their supervision of the contract formation process. The result was that children became parish apprentices while surrounded by esteemed figures within their local community and under considerable pressure to oblige. The attention officers gave to contract formation did not focus on protecting poor children from labor exploitation. They focused instead on collecting written evidence that the masters had consented and would carry out their duties to the parish.

Nevertheless, occasionally from the early seventeenth century onwards, parish apprenticeship contracts included clauses attesting that the apprentice had agreed freely and willingly. Such a free will clause, as I term it, had not been thought necessary for craft or guild apprentices because there was little doubt about their desire to enter contracts that promised them future privileges in the guilds. Parish officeholders added this clause because it addressed a question that lingered over these more fraught apprenticeships: Were children in fact deciding to become apprentices in expectation of some real benefits, as a dimmer version of apprenticeship in the livery companies, or were they rather being torn away from their families to serve as drudges? Adding this clause asserted the former but made no difference to the

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contract in terms of law. The notion of consent helped the parishes idealize how they treated their poorest young inhabitants.

Early English colonization in North America and the Caribbean drove the further expansion of techniques for capturing consent with indentures (Chapter 2). From the 1610s, servant brokers, merchants, and eventually justices of the peace recorded consent with heightened attention in transatlantic colonial indentured servitude. In doing so, they were responding to the vastness of the distances to be crossed, compounded with the multiyear length of contractual terms, and the unlikeliness of the servants returning home. Transatlantic indentures more often specified the voluntary nature of servants' agreement with a free will clause precisely because their willingness seemed implausible. Such unwilling recruits could sometimes secure their release before the ships departed England. Sealed indentures made escape far less achievable.

Consent also mattered greatly in labor relationships where no written evidence existed, the subject of Part II, "Presumed Consent." The most provocative example of this at the time were the thousands of people whom brokers and ship captains sent from the British Isles to work in the English American colonies *without* indentures. These immigrants only entered written contracts after their arrival. Here – and in other labor arrangements in England – the concept of "enticement" was crucial (Chapter 3). Their transportation and subsequent contract formation was imagined to be the result of campaigns of temptation to which they had succumbed. Previous scholarship on enticement in early modern England has been limited to sexual seduction. But in the law of the time, "enticement" referred more to servant poaching. While colonial promoters presumed that enticed people implicitly consented to their transportation and indenture in a colonial society where they would have the opportunity to improve their lives, many other observers of labor recruitment argued that enticement was incompatible with free and willing consent. In all cases, claims of enticement emphasized the power of personal interactions in servant procurement and downplayed the structural conditions that made a segment of society disproportionately vulnerable to mistreatment.

The London courts treated alleged victims of "spiriting" (contemporaries' term for illicit procurement into transatlantic servitude) differently from the colonial courts: The comparison reveals further instances of

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presumptions of consent to work where no documents recorded written consent (Chapter 4). People who successfully evaded spiriting attempts and stayed in London did bring suits to the courts there. Their suits focused on their lack of consent to become servants. By contrast, in the colonial courts victims very rarely brought complaints of spiriting. They struggled to produce evidence of their coercion into servitude, and the courts could not effectively prosecute the broker an ocean away. Precisely those who avoided transportation and stayed in London were best able to convince courts that they had not agreed to go. They thereby defended their own reputations from suspicions of desertion of their preexisting masters in London and gullible susceptibility to offers of better employment abroad. However, the colonial magistrates presumed instead that newly arrived servants had been complicit in their own transportation and oversaw the belated drawing up of servants' indentures without regard to experiences of trafficking.

Consent was often enforced in parish or colonial indentured labor, despite magistrates' or masters' claims to the contrary. Two further labor systems, specific to war – military impressment and the labor of war captives – pushed the concept of consent to labor to its limits. Part III on "The Edge of Consent" considers these limits, where the potentially deadly consequences of recruitment, the politics of the conflicts, the unsettled issue of which laws operated, and debates over who held sovereignty over whom all pushed participants to reveal when and why they thought coerced consent could be valid. Military impressment was a form of early modern conscription in which the Crown required men to serve if they did not support war efforts otherwise through paying levies (Chapter 5). The administrative system of the lieutenancy assigned quotas of men to be raised by each region. Local officers filled their quota by selecting men in their communities whom they deemed eligible and dispensable. Royal prerogative obliged these men to serve. But some pressed men – particularly those from a well-documented Gloucestershire press in 1640 for the Second Bishops' War against the Scottish Covenanters – argued that they ought to have a choice.

As in parish apprenticeship and colonial indentured service, social and economic status distinguished those whose consent to military service could be presumed or pressured from those who could secure a discharge easily by paying for a substitute to go in their place. Impressment was inherently coercive and yet even here people

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expected certain men to get options while others had none. Yet military service was not made fairer by the insertion of contractual ideas into the mobilization process. Rather, the association of consent with military service showed people that consent was compatible with coercion for men whose honor could be disregarded.

War captives' treatment offered a similar lesson (Chapter 6). Mid seventeenth-century warfare generated large numbers of prisoners of war. While many of these prisoners suffered and died from hunger and exposure in captivity, some received "offers" of employment, either to fight for their captors or to serve private masters. These scenarios allow for a further test of how early modern people thought about free choice in coercive contract labor. In the 1650s, Scottish, English, and Dutch prisoners of war held by the Interregnum governments protested their work. An extraordinary archive of an East Anglian fen drainage project shows that the Dutch prisoners in particular insisted that, as Christians and under the laws of war, they should be protected from hard labor. But companies and masters instead operated under the logic of the English Poor Law, in which the indigent could meaningfully consent to serve a master even while under duress. They presumed prisoners' willingness to work as a way to survive. The broader arena of transatlantic and intra-European coercion of prisoner of war labor throughout the seventeenth and eighteenth centuries further reveals how the discourse of consent permeated even those more convoluted labor relationships.

Subordinates from English parishes to American plantations to international battlegrounds noticed these changes. They, too, shaped the standards of consent in their labor contracts. Coerced workers faced alienation from kin, long-distance transportation, commodification, or highly dangerous conditions. They made choices within the limited range of options readily available to them, including finding ways to live with their arrangements, asking for protection, changing masters, defying orders, suing for freedom, and departing to try their luck elsewhere. For all that, most laboring people seem to have shared key notions of consent with their masters. In the records I have examined, they tended to object to coercion on the grounds of their particular circumstances. They did not attack the principle that some people could be rightly coerced to agree but instead left it intact and indeed strengthened as a hegemonic concept.

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Broader rejections of coerced consent appeared only rarely in the surviving archive. The most radical early modern response to the construction of consent through coercion was not to insist on the sanctity of free choice, which could place a burden on targeted individuals to defend themselves and prove that they had lacked such freedom. Instead, some imagined the elimination of expropriative practices such as impressment altogether. The radical constitutional proposal *An Agreement of the People* was written by Levellers and members of the Parliamentarian New Model Army in 1647. This text rejected military impressment as "against our freedom."[50] In an individual complaint to a lower court, one man argued that spiriting was simply a form of "darkness" or evil, and it was not worth debating whether he might have consented to such horrors.[51] But these generalized objections to the coercive and fraudulent procurement of service did not cause lasting change.

However, when contracted subordinates resisted any aspect of their individual forced contracts, their actions contributed to the shaping of notions of consent. They pushed masters and magistrates to think about what made labor contracts durable and what made laborers disciplined. Captured consent came to be seen as more useful than no consent at all, in certain labor systems in early modern England and the Atlantic world. This was not because justices, masters, and brokers were simply self-interested but because they believed that standards for consent to work rightly varied by social position. In holding this belief, they certainly were opportunistic, but they were not deceptive, nor purely instrumental.

The Christian Context of Coerced Consent to Work

Coerced consent resonated between various realms of early modern life, from the banal to the sublime.[52] Women's consent to sex was frequently presumed instead of remedying rape.[53] Many people

[50] Arthur Sutherland Pigott Woodhouse, ed., *Puritanism and Liberty, Being the Army Debates (1647–9) from the Clarke Manuscripts with Supplementary Documents* (Chicago: University of Chicago Press, 1951), 443. See also Chapter 5.

[51] Samuel Eliot Morison, ed., *Records of the Suffolk County Court, 1671–1680: Part I*, vol. 29, Publications of the Colonial Society of Massachusetts (Boston: Colonial Society of Massachusetts, 1933), 18–20. See also Chapter 4.

[52] For a broad view, see Muldrew, *The Economy of Obligation*, ch. 10.

[53] See Chapter 3.

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affiliated with one another through oaths and covenants that were often hard to avoid taking, and yet said to be voluntary.[54] Coerced religious conversions were often understood to be based on consent.[55] All consent to labor in early modern England drew on and reinforced contemporary thinking about how good Christians should be willing to work hard within a cosmological framework of deeply unequal contracts.

Contemporaries noticed that the practices in indentured labor were analogous to new theological ideas about the covenant of the faithful with God.[56] For instance, one sermon (printed in 1629) by a Puritan minister and master of Emmanuel College, John Preston, represented God entering indentures with his people. Preston celebrated the covenant of grace, which held that God offered salvation to believers for faith alone, rather than for works or obedience. He posed this covenant as similar to a labor contract: "a man is not haled to it, he comes not to it as a bond-slave, to do his worke, but he comes willingly, he finds he hath some ability to doe it, he finds a delight in it."[57] The relationship of the saved to his salvation was like that of a willing laborer to his work – both delighted in fulfilling the role that they had the ability to fulfill.

[54] Rachel Judith Weil, *A Plague of Informers: Conspiracy and Political Trust in William III's England* (New Haven, CT: Yale University Press, 2013), 36–42; Laura A. M. Stewart, *Rethinking the Scottish Revolution: Covenanted Scotland 1637–1651* (Oxford: Oxford University Press, 2016); John Walter, *Covenanting Citizens: The Protestation Oath and Popular Political Culture in the English Revolution* (Oxford: Oxford University Press, 2017).

[55] Joel F. Harrington, "Early Modern Child Abduction in the Name of Religion," in *Childhood, Youth and Religious Minorities in Early Modern Europe*, ed. Tali Miriam Berner and Lucy Underwood (Cham: Palgrave Macmillan, 2019), 257–74; Tamar Herzig, *A Convert's Tale: Art, Crime, and Jewish Apostasy in Renaissance Italy* (Cambridge, MA: Harvard University Press, 2019), ch. 7; Joan Redmond, "Religion, Ethnicity and 'Conversion' in the 1641 Irish Rebellion," *The Seventeenth Century* 35, no. 6 (November 2020): 715–39; Mercedes García-Arenal and Yonatan Glazer-Eytan, eds., *Forced Conversion in Christianity, Judaism and Islam: Coercion and Faith in Premodern Iberia and Beyond* (Leiden: Brill, 2020).

[56] Naomi Tadmor, *The Social Universe of the English Bible: Scripture, Society, and Culture in Early Modern England* (Cambridge: Cambridge University Press, 2010), ch. 3.

[57] John Preston, "The Tenth Sermon: Gen. 17.1.2" in *The New Covenant, or, The Saints Portion* . . . 2nd ed. (London: Printed by I. D. for Nicolas Bourne, and are to be sold at the south entrance of the Royall Exchange, 1629), 325. This was printed a year after Preston's death.

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In thinking of the covenant of grace like an indenture, Preston showed that free contracts – with their many apparent paradoxes – were a wonder rather than an incoherence. He exclaimed: "How great a mercie it is, that the glorious God of Heaven and Earth should be willing to enter into Covenant, that he should be willing to indent with us, as it were, that he should be willing to make himself a debtor to us." Preston further enjoined his listeners to marvel at this mercy because God was glorious while people were earthly, mortal, and carnal, "and yet he is wil[l]ing to enter into Covenant, which implies a kinde of equality between us."[58] Preston understood the relationship between God and humanity to be unequal except in this one regard. Service and apprenticeship indentures, whether in the Kentish parishes or Virginia tidewater, also drew potency from the equality-within-hierarchy that they affirmed.[59] Pauper children taken apprentice by their wealthier neighbors particularly embodied this kind of patronizing benevolence. The implicit meaning – however farfetched – that all parties to a labor indenture had equality under the law helped to legitimize a range of tense relationships in the face of resistance and disapproval from procured workers and their families.

If, as Preston sermonized, work became delightful when the worker was willing, able, and under contract instead of slavery, then of course service indentures and informal labor contracts were widely used: They had potentially enormous power to help people imagine that contracted workers would set to their tasks without further discipline. As much is evident in the Puritan rector William Gouge's household manual *Of Domesticall Duties*, adopted from sermons and first published in 1622. Gouge noted a proverb: "Nothing is hard to a willing minde." Therefore, he instructed: "Let there be cherefulnesse in a servant[']s minde, and he is as free as his master: for such a servant is the Lord[']s freeman (1 Cor. 7.22.) and when he cannot be made free of his master, he doth after a manner make his service free." By contrast, God did not accept their work as fulfilling their duty if it was done "lowringly, grudgingly, by compulsion (as Beares are

[58] Preston, *The New Covenant*, 330–31 as cited in Perry Miller, "The Marrow of Puritan Divinity," in *Errand into the Wilderness* (Cambridge, MA: The Belknap Press of Harvard University Press, 1964), 48–98 at 64, with thanks to Daniel K. Richter.

[59] For a similar point on puritan approaches to gender roles, see Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Columbia University Press, 1988), 46.

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brought to a stake) and of necessity, as slaves in a Galley."[60] The power of contract to make working people discipline themselves helped to illustrate the challenging concept of the covenant of grace. Reciprocally, the covenant of grace and the broader understanding of work as a Christian duty lent at least some gravity to the contract formation practices of people absorbed with the mundane running of households, workshops, and plantations.

Another element of Christian discourse linked religious understanding of the creation of the world and the nature of labor, although with rather different implications. The parable of Adam taking the forbidden fruit in the Garden of Eden offered one explanation for why most humans had to work so hard for their livelihoods. According to the Book of Genesis, the first man and woman, Adam and Eve, originally did not have to work in order to live in the garden, on the one condition that they never eat the fruit from the tree of knowledge. When Adam took fruit from this tree from Eve, they subsequently both had to work to grow food. Early modern English authors returned to this parable repeatedly.[61] In a book about manual gestures, *Chirologia: Or the Naturall Language of the Hand* (1644), John Bulwer, a medical practitioner, royalist, and author of books on communication, represented the gesture of taking an object by the hand as a sign of acceptance of broader terms. According to Bulwer, "when hee [Adam] accepted of that forbidden fruit [...] hee tooke a curse that filled his Hand with labour, and forced it often to advance to wipe his sweating browes."[62] Adam's choice was then punished with the necessity of labor, which would be inherited by all humankind. The gesture of acceptance – of food, coins, or clothing – confirmed recruitment into labor contracts through the common law legal doctrine of consideration. Its further resonance with the parable of Adam and the forbidden fruit endowed all contractual labor recruitment with a sense of the timeless inevitableness of labor. In this line of thinking, labor was a kind of punishment and duty which even still required acceptance.

[60] William Gouge, *Of Domesticall Duties, Eight Treatises ... The Third Edition, Etc.* (London: G. Miller for E. Brewster, 1634), 628–29. On cheerfulness in service, see also Chakravarty, *Fictions of Consent*. Gouge's reference to compulsion likely contained an implicit reference to Catholicism as well as an explicit reference to forced labor; with thanks to Kirsten Macfarlane.

[61] Thomas, *The Ends of Life*, 79; Chakravarty, *Fictions of Consent*, 155–58.

[62] John Bulwer, *Chirologia: Or the Naturall Language of the Hand* (London: Printed by Tho. Harper; sold by Henry Twyford, 1644), 72. My thanks to Kelly McCay.

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Historicizing Consent

Historicizing consent is the main approach of this book. It avoids the static typologizing of freedom and unfreedom. Free labor is typically defined as relations in which the laborers knowingly choose their employment, receive remuneration often (but not always) in the form of a wage, negotiate conditions, work without punishment for poor performance, and depart from their jobs without penalty.[63] Unfree labor is exemplified by slavery. This book joins other labor historians who emphasize that freedom and unfreedom were socially constructed concepts that changed over time. Scholars now often rely on the metaphor of the spectrum of unfreedom in their writing on the status and conditions of enslaved people, servants, child laborers, and conscripted sailors, soldiers, and convicts.[64] They have prioritized the comparative analysis of the legal and material conditions of bound laborers.

However, the spectrum of unfreedom does not exhaust the analytical challenge posed by labor. To understand so-called free contracts

[63] Steinfeld, *The Invention of Free Labor*, 3 and *passim*.

[64] Hilary McD. Beckles, "The Concept of 'White Slavery' in the English Caribbean during the Early Seventeenth Century," in *Early Modern Conceptions of Property*, ed. John Brewer and Susan Staves (London: Routledge, 1995), 572–84; Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon Press, 2000); Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press, 2001), esp. 8–25; Michal J. Rozbicki, "To Save Them from Themselves: Proposals to Enslave the British Poor, 1698–1755," *Slavery & Abolition* 22, no. 2 (August 2001): 29–50; John Donoghue, "Unfree Labor, Imperialism, and Radical Republicanism in the Atlantic World, 1630–1661," *Labor* 1, no. 4 (December 2004): 47–68; Donoghue, "'Out of the Land of Bondage': The English Revolution and the Atlantic Origins of Abolition," *The American Historical Review* 115, no. 4 (October 2010): 943–74; Newman, *A New World of Labor*; Newman, "'In Great Slavery and Bondage': White Labor and the Development of Plantation Slavery in British America," in *Anglicizing America: Empire, Revolution, Republic*, ed. Ignacio Gallup-Diaz, Andrew Shankman, and David J. Silverman (Philadelphia: University of Pennsylvania Press, 2015), 59–82. These works return to the concerns and content set out by Richard B. Morris, *Government and Labor in Early America* (New York: Columbia University Press, 1946) and Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labor in America, 1607–1776* (Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg, Virginia by the University of North Carolina Press, 1947). For a different criticism of the limits of the "spectrum of unfreedom," see Marcel van der Linden, "Dissecting Coerced Labor," in *On Coerced Labor: Work and Compulsion after Chattel Slavery*, ed. Marcel van der Linden and Magaly Rodriguez Garcia (Leiden: Brill, 2016), 293–322 at 322.

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for early modern labor requires an investigation of the concepts that underpinned the notion of freedom at the time. Consent was key among them. Free contract and coerced labor were not always at different points on a spectrum of labor experience; they could occur in a single instance when masters used free consent as an instrument of coercion. Masters and brokers looked to selectively interpret or even to truly change the *will* of lower-status people to work, such that their consent could be known as freely given. Investigating the meaning of consent in contract labor allows for a deeper understanding of the strategies of labor coercion and the responses and resistance that these strategies predicted and provoked.

Placing Contract Labor and Slavery in a Shared Context

The legal formalities and apparent verifications of consent marked master–servant and master–apprentice relationships – mostly among European and European-descended people – as mutual and legitimate whether in England or the English colonies. The subordinates' consent to work was a potent sign that their labor was undertaken within a "civil," Christian society. Their consent assuaged masters' consciences.[65] Meanwhile, the English enslaved African and Indigenous American people with no reference to their consent. Enslavers viewed their victims as outsiders who need not be treated civilly.[66] Historians have explained why Europeans in the Atlantic world increasingly enslaved African captives during the very centuries in which they exempted other groups from enslavement, first, as a matter of religious difference, to which by the seventeenth century an ideology of race accreted as a further justification.[67] Another side of this story – why

[65] In this sense, the documentation and presumptions of consent in labor relations were parallel to the doctrine of reasonable doubt, which James Whitman has argued protected the consciences premodern jurors faced with judging their neighbors and fearing God's wrath: James Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial* (New Haven, CT: Yale University Press, 2008).

[66] A classic statement is in John Locke, *Two Treatises of Government*, Book 2, ch. VII, sec. 85.

[67] Tamar Herzog, "Identities and Processes of Identification," in *The Oxford Handbook of the Atlantic World: 1450–1850*, ed. Nicholas Canny and Philip Morgan (New York: Oxford University Press, 2011), 480–95 at 492.

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early modern non-African people's labor generally was organized by contracts – has been less well explained.

Contract labor was fundamentally distinct from transatlantic chattel slavery. In the former, both superiors and subordinates had obligations and privileges. Indeed, even people who were forced to enter labor contracts or whose masters transferred their contracts to others without their consent were nevertheless sometimes able to benefit from their positions. Most of the laboring people discussed here expected sufficient food, clothing, shelter, healthcare, and other necessities of survival to be provided by their masters. They could often secure their freedom in court, if assaulted beyond socially accepted forms of "correction" or held beyond the ends of their terms. For instance, prisoners of war who went to Barbados as indentured servants in the early 1650s sometimes managed to complete or buy out the rest of their service terms and achieve liberty in a way that their original captors and transporters neither expected nor desired. Spiriting victims in indentured servitude in Maryland, Virginia, and Massachusetts petitioned colonial justices for freedom when they believed they had served out the years in their indentures. For prisoners of war set to work in England without written contracts, the length of service depended more on circumstances within the relevant wars than on a date set at the outset of their service, but their contracts too came to an end. The same happened with men in arms, who expected to be released from duty when a campaign ended. If servants died under suspicious circumstances, magistrates and coroners investigated the matter. Their children did not inherit parents' servile condition.[68] Contract laborers retained their names, language, and their sense of belonging in a coherent social world; they did not

[68] Eric Williams, *Capitalism and Slavery* (Chapel Hill: University of North Carolina Press, 1994 [1944]), 16–19; Steinfeld, *The Invention of Free Labor*, 87–93, 99–100; Philip D. Morgan, "The Poor: Slaves in Early America," in *Slavery in the Development of the Americas*, ed. David Eltis, Frank D. Lewis, and Kenneth L. Sokoloff (Cambridge: Cambridge University Press, 2004), 288–323; Christine Daniels, "'Liberty to Complaine': Servant Petitions in Colonial Anglo-America," in *The Many Legalities of Early America*, ed. Tomlins and Mann, 219–49; Trevor G. Burnard, *Planters, Merchants, and Slaves: Plantation Societies in British America, 1650–1820* (Chicago: University of Chicago Press, 2015), 35–38; Jerome S. Handler and Matthew C. Reilly, "Contesting 'White Slavery' in the Caribbean: Enslaved Africans and European Indentured Servants in Seventeenth-Century Barbados," *New West Indian Guide* 91, no. 1–2 (January 2017): 30–55.

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suffer the trauma of displacement and dispossession that their enslaved contemporaries did.

In all these ways, coerced contract laborers' conditions differed from enslaved people who had no contracts. These systems were essentially unanalogous.[69] People in contract labor were not enslaved. Consent was invoked in the contract labor systems where coercion was high, precisely to emphasize their difference from slavery. Tellingly, the archival material used here shows that servants rarely reached for the metaphor of slavery to describe their condition. The rhetoricians of English liberty in high politics used "slavery" far more loosely.[70]

On the other hand, these contract laborers did not see themselves as the embodiment of freedom and would have been amazed by how scholars have marshaled their lives to illustrate free labor. Instead, they thought their contracts secured a baseline expectation of protection in relationships of dependency. Their consent did not express their liberty, but rather reasserted rank and reproduced inequalities.

[69] Christopher L. Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge: Cambridge University Press, 2010), 11.

[70] Quentin Skinner, "Rethinking Political Liberty," *History Workshop Journal* 61, no. 1 (2006): 156–70.

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