INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each original is also photographed in one exposure and is included in reduced form at the back of the book.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

UMI

A Bell & Howell Information Company
300 North Zeeb Road, Ann Arbor MI 48106-1346 USA
313/761-4700 800/521-0600

THE TRADITIONAL VIEW ON THE ORIGINS
OF THE EMPLOYMENT-AT-WILL DOCTRINE:
MYTH OR REALITY?

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By

Deborah A. Ballam, J.D.

****

The Ohio State University
1997

Dissertation Committee:

Professor Warren R. Van Tine, Adviser

Professor K. Austin Kerr

Professor Mansel G. Blackford

Approved by

Adviser

Department of History

UMI Number: 9801637

UMI Microform 9801637
Copyright 1997, by UMI Company. All rights reserved.

**This microform edition is protected against unauthorized
copying under Title 17, United States Code.**

UMI
300 North Zeeb Road
Ann Arbor, MI 48103

ABSTRACT

At the time of the founding of the North American colonies, although one may question the extent to which it was followed, English law contained an annual hiring rule which presumed, unless stated otherwise, that the employment relationship was for a one-year period.

Scholars' traditional view is that the English rule presuming annual hirings was the first law of the colonial period and continued well into nineteenth century United States when it was discarded by state common law rulings or statutes in favor of employment-at-will. The employment-at-will doctrine is a legal principle developed in the United States holding that, absent a contract to the contrary, either the employer or the employee can terminate the employment relationship at any time for no reason without suffering a legal penalty. The traditional view holds that U.S. courts abandoned the annual hiring rule in the post-Civil War period in favor of the employment-at-will rule in an attempt to support the needs of developing businesses.

The origins of the traditional view on the development of the employment-at-will doctrine in the United States have

never been thoroughly examined. A review of legal and non-legal sources in ten states from their founding through the post-Civil War period reveals that the annual hiring rule may never have been followed in the United States, with the exception of a brief period in early colonial Massachusetts, despite treatise citations to the contrary. The reasons supporting the English rule, namely the surplus of labor and the requirement that local communities maintain the poor, did not exist to the same extent in the North American colonies. Thus, the annual hiring rule never took hold in this country. The courts, then, did not abandon the annual hiring rule in the late-nineteenth century in order to serve the needs of developing business. Rather, the U.S. never followed the annual hiring rule.

Dedicated to myself,
for reserving a little piece
of something that was all mine.

ACKNOWLEDGMENTS

I wish to thank my adviser and friend, Warren Van Tine, for both his academic and personal support. He truly has been my role model for how to conduct both my professional and my personal life with integrity, decency, fairness, and a willingness to stand front and center in the continuing struggle for human rights.

I wish to thank both Mansel Blackford and Austin Kerr for showing me that faculty can be both solid researchers and solid teachers, and for caring so much about both.

I wish to thank Les Benedict for challenging me and for showing me that it is possible to maintain a burning enthusiasm for one's work over the decades of a career.

I wish to thank the American Business Law Journal, the Berkeley Journal of Employment and Labor Law, and the Hofstra Labor Law Journal for permission to use portions of the articles that I published in those journals in this dissertation.

Finally, I wish to thank the women faculty and staff of The Ohio State University for being here with me and for being a constant source of support and hope for the future.

VITA

October 22, 1949.....Born--Mt. Vernon, Ohio
1972.....B.A. History, Ohio State University
1974.....M.A. History, Ohio State University
1977.....J.D., Ohio State University
1982 to present.....Faculty, College of Business,
Ohio State University

PUBLICATIONS

D. Ballam, "Affirmative Action: Purveyor of Preferential Treatment or Guarantor of Equal Opportunity? A Call for a 'Re-Visioning' of Affirmative Action." *Berkeley J. Employ. Labor Law* 18, 1 (1997).

D. Ballam, "Exploding the Original Myth Regarding Employment-at-Will: The True Origins of the Doctrine." *Berkeley J. Employ. Labor Law* 17, 91 (1996).

D. Ballam, "The Development of the Employment-at-Will Rule Revisited: A Challenge to Its Origins as Based in the Development of Advanced Capitalism." *Hofstra Labor Law J.* 13, 75 (1995).

D. Ballam, "The Traditional View on the Origins of the Employment-at-Will Doctrine: Myth or Reality." *Am. Bus. Law J.* 32, 1 (1995).

D. Ballam, "The Law as a Constitutive Force for Change, Part II: The Impact of the National Labor Relations Act on the U.S. Labor Movement." *Am. Bus. Law J.* 32, 447 (1995).

D. Ballam, "The Evolution of the Government-Business Relationship in the United States: Colonial Times to Present." *Am. Bus. Law J.* 31, 553 (1994).

D. Ballam, "Assessing the Extent of the Quid Pro Quo in Workers' Compensation: The Ohio Experience." *Labor Law J.* 45, 131 (1994).

D. Ballam, "The Law as a Constitutive Force for Change: The Impact of the Judiciary on Labor Law History." *Am. Bus. Law J.* 32, 125 (1994).

J. Franke and D. Ballam, "New Applications of Consumer Protection Law: Judicial Activism or Legislative Directive?" *Santa Clara Law Rev.* 32, 347 (1992).

D. Ballam, "Book Review: A History of the Anglo-American Common Law of Contract. Kevin M. Teveen." *Am. Bus. Law J.* 29, 519 (1991).

D. Ballam, "The Willful and Malicious Injury Exception to Discharge in Bankruptcy: An Analysis and Recommended Revision." *Am. Bus. Law J.* 28, 87 (1990).

D. Ballam, "Federalism's Re-Rebirth: Illusion or Reality?" *Oregon Law Rev.* 68, 925 (1989).

D. Ballam, "Kelly v. Robinson Revisited: Dischargeability of Restitution Obligations in Chapter 13 Bankruptcy Proceedings." *St. Louis U. Law J.* 34, 1 (1989).

D. Ballam, "The Workers' Compensation Exclusivity Doctrine: A Threat to Workers' Rights Under State Employment Discrimination Statutes." *Am. Bus. Law J.* 27, 95 (1989).

D. Ballam, "The Expanding Scope of the Tort of Negligent Misrepresentation: Are Publishers Next?" *Loyola of Los Angeles Law Rev.* 22, 761 (1989).

D. Ballam, "The Occupational Safety and Health Act's Preemptive Effect on State Criminal Prosecutions of Employers for Workplace Deaths and Injuries." *Am. Bus. Law J.* 26, 1 (1988).

D. Ballam, "The Good Faith Requirement for Confirmation of a Chapter 13 Bankruptcy Proceeding." *Am. Bus. Law J.* 25, 603 (1988).

D. Ballam, "Kelly v. Robinson: An Erosion of the Fresh Start Concept for Debtors in Bankruptcy." *St. Louis U. Law Rev.* 32, 103 (1987).

D. Ballam, "Intentional Torts in the Workplace: Expanding Employee Remedies." *Am. Bus. Law J.* 25, 63 (1987).

D. Ballam, "Applicability of Res Judicata/Collateral Estoppel to Utility Rate-Making Proceedings." *Am. Bus. Law J.* 24, 293 (1986).

FIELDS OF STUDY

Major Field: Recent U.S. History
Minor Field: Business History
Minor Field: U.S. Legal History

TABLE OF CONTENTS

	<u>Page</u>
Dedication.....	iv
Acknowledgments.....	v
Vita.....	vi
Preface.....	1
Chapters:	
1. Introduction.....	6
2. Backgrounds: English and American.....	30
3. Colonies That Became States.....	65
4. States Formed After the American Revolution.....	149
5. Conclusion.....	197
Bibliography.....	221

PREFACE

On more occasions than not, perhaps, one's research takes one down unexpected, but wonderfully interesting, trails. Such is the genesis of this research project. My area of expertise is employment law. One of the most important employment law issues of the 1990s is the erosion of the employment-at-will doctrine. This doctrine permits the employer, absent a contract that contains an express term during which the employment relationship will continue, to fire an employee at any time for any reason or even for no reason, without suffering any legal penalty. The employee also is permitted to quit at any time without penalty. In recent decades both courts and legislatures have been limiting the employers' ability to terminate employees without just causes; hence, the description of the doctrine as one that is eroding.

Because the doctrine has become so controversial in the last few decades, legal scholars have given it extensive attention in law review articles. During the decades that the erosion of the employment-at-will doctrine has been controversial the commonly accepted wisdom has been that the doctrine was indigenous to the United States and that it was

developed by common law judges in the late-nineteenth century in order to serve the needs of developing capitalists who wanted maximum freedom to structure their business affairs. Hence, the doctrine was adopted, the common wisdom asserted, in order to serve the needs of business. Prior to its adoption, the traditional wisdom held, the U.S. followed the English rule of annual hirings which presumed that hirings were for a year.

As I was working on another research project I came across a number of mid-nineteenth century employment cases dealing with the "entire contracts" doctrine. This doctrine, no longer in use, was widely used in the mid-nineteenth century in order to deny wages to workers who completed part, but not all, of their contract term. It was frequently used in agricultural contracts to deny workers who worked a few months, but not all months of their contract, any wages even for the months they did work. As I examined this line of cases it occurred to me that workers might also have supported the adoption of the employment-at-will doctrine because this doctrine would defeat the application of the entire contracts doctrine. Thus, this research project began as one seeking to understand the role labor played, if any, in convincing the late-nineteenth century common law judges to adopt the employment-at-will doctrine.

I decided that the first step in the research project would be to thoroughly acquaint myself with those nineteenth century cases that actually adopted the employment-at-will doctrine as well as the generation of cases that preceded these and that must have followed the English annual hiring rule, since it was this rule that purportedly was replaced by the employment-at-will rule beginning in the late-1870s. As I began my examination of the reported case decisions issued before the commonly believed period during which the employment-at-will doctrine was adopted I expected to find numerous applications of the English annual hiring rule. However, while I found many cases that paid lip service to the annual hiring rule, I found none that actually applied it. The court decisions repeatedly asserted that even though U.S. law followed the English hiring rule, it could not be applied in the particular decision because of some circumstance peculiar to that case. After reading perhaps one hundred cases like this from a number of states I began to wonder if our courts had ever really applied the annual hiring rule. It also occurred to me at this point in the research project that this was the real issue that needed to be addressed.

In order to research the issue, I determined that I needed to do an exhaustive review of the case law for a number of representative states from the date of their founding up through the late-1870s. The first phase of the

project involved four states from the original colonies-- Massachusetts, New York, Pennsylvania, and Maryland. These gave me geographic diversity and they included one slave state. I later added six additional states to provide greater diversity both in terms of geography and in terms of the time at which they were founded and economically developed--Georgia, Louisiana, Illinois, Montana, Texas, and California.

For each of these states I examined colonial statutes and case law, if applicable, as well as every state supreme court decision from the time the state was admitted to the union up until the time the court decisions or statutes for that state began making express reference to the employment-at-will doctrine as the law of that state. Although computerized research aids do exist, I did not use them for two reasons. First, they often times do not contain early nineteenth century cases, although these are being added for more states every year. Second, using the search terms for employment-at-will and the annual hiring rule would have led me to cases that dealt directly with the employment relationship. However, this approach would have missed, for example, the domestic relations cases and the probate cases that sometimes did contain references to work relationships, even though they were not at issue in the case. Thus, instead of using the computerized research approach, I literally sat in the law library and for each of the ten

states reviewed all of the state's supreme court decisions from the date they began being issued up until the date the court expressly adopted the principle. To say that this approach was tedious would be an understatement. However, it was well worth the effort and I recommend it for anyone doing historical legal research.

I also recognize that some readers might find it somewhat tedious to read the details of the employment cases. However, the lawyer in me made me want to provide overwhelming evidence to support the conclusion I reached, particularly since that conclusion challenged the conventional wisdom.

CHAPTER 1

INTRODUCTION

I.

Legal doctrine...is strongly influenced by economic conditions.¹

U.S. legal history since the 1960s has been heavily influenced by what has come to be called "the new legal history."² The new legal history, which is traced to the 1956 publication Law and the Conditions of Freedom in the Nineteenth-Century United States by James Willard Hurst,³ rejects analyzing legal history by focusing narrowly on changes in legal doctrine, and attempts to place those

---

¹ Jay Feinman, "The Development of the Employment at Will Rule," American Journal of Legal History 20 (1976): 118-135.

² For an excellent description of the new legal history and how it differs from the old legal history see Harry N. Scheiber, "American Constitutional History and the New Legal History: Complementary Themes in Two Modes," Journal of American Legal History 68 (1981): 337-350.

³ James Willard Hurst, Law and the Conditions of Freedom in the Nineteenth-Century United States (Madison: University of Wisconsin Press, 1956).

changes within the social, economic, and political context within which they occurred. The new legal history, then, examines the way in which the law shapes, and is shaped by, society. Hurst, for example, argued that the dominant factor shaping U.S. legal change in the nineteenth century was society's desire to "enlarge the options open to private individual and group energy."⁴ The "options" Hurst referred to focused on releasing individual and group energy to promote the economic development of the country.⁵ Thus, legal change in the nineteenth century created a "hospitable environment" for "the new business dynamics."⁶ The judiciary, and particularly the U.S. Supreme Court, in Hurst's view, played a key role in allowing this release of energy to occur.

In 1960, Arnold M. Paul published Conservative Crisis and the Rule of Law.⁷ Paul's thesis was that during the 1890s, the judiciary assumed a new importance in addressing

---

⁴ Ibid., 39.

⁵ Ibid., 44.

⁶ Ibid., 45.

⁷ Arnold M. Paul, Conservative Crisis and the Rule of Law: Attitudes of Bench and Bar, 1887-1895. (Ithaca, New York: Cornell University Press, 1960).

social and economic issues. This occurred primarily because of increasing pressure from the strengthened conservatism of the right wing of the legal community, a conservatism shaped by the increasing class conflict and social tensions of the 1890s. This "crisis of the nineties" prompted the judiciary, Paul argued, to intentionally subvert years of precedent by using laissez-faire constitutionalism to strike down protective legislation and statutes regulating business activity. The courts' motivation in striking down such legislation was to protect property interests from the threats from the masses, who increasingly were able to pressure legislatures to bow to their demands.

Lawrence Friedman produced the next major work in the new legal history with his 1973 publication of A History of American Law,⁸ a synthesis of U.S. legal history from colonial times through the mid-twentieth century. The way in which business needs and the needs of a developing economy shaped the course of U.S. legal developments provided one of the dominant themes in A History of American Law. For example, Friedman concluded that the need of developing businesses to have limitations placed on their liability shaped common law developments in the area of torts, particularly negligence. The doctrines of duty of care and proximate cause, Friedman concluded, developed in

---

⁸ Lawrence Friedman, A History of American Law 2d ed. (New York: Simon & Schuster, Touchstone Books, 1973).

the mid-nineteenth century and represented judicial attempts to create a more favorable environment for business development.⁹

In 1977, Morton Horwitz published what has come to be one of the most often cited works within the tradition of the new legal history that has focused on economics as the causative factor in U.S. legal change.¹⁰ In The Transformation of American Law Horwitz examined changes in U.S. common law during the late-eighteenth through the mid-nineteenth century. He concluded that during this time dramatic changes occurred in common law doctrine developed by judges, particularly in the areas of contract and property law. Horwitz further concluded that the judges who effected these changes did so with the intent of creating a favorable environment for business growth. Horwitz described the role of judges as follows:

What dramatically distinguished nineteenth century law from its eighteenth century counterpart was the extent to which common law judges came to play a central role in directing the course of social change. Especially during the period before the Civil War, the common law performed at least as great a role as legislation in underwriting and channeling economic development. In fact, common law judges regularly brought about the sort of far-reaching changes that would have been regarded earlier as entirely within the powers of the legislature. . . . Indeed, judges gradually began to shape common law doctrine with an increasing awareness that the impact of a decision extended far beyond the

---

⁹ Ibid., 468.

¹⁰ Morton J. Horwitz, The Transformation of American Law, 1780-1860 (Cambridge: Harvard University Press, 1977).

case before them and that their function had expanded beyond the necessity merely of doing justice in the individual case.¹¹

Thus, Horwitz concluded, during the first half of the nineteenth century judges transformed the law so as to enable "emergent entrepreneurial and commercial groups to win a disproportionate share of wealth and power in American society." The law, as shaped by the judiciary, "became a major instrument in the hands of these newly powerful groups."¹²

Some legal scholars have shared in the approach taken by the new legal history's economic interpretation of legal change. Critical legal studies scholars like Karl Klare, for example, have provided analyses of the law that are consistent with historians who view the needs of the business community as a dominant factor driving the way in which the judiciary shaped U.S. law.¹³ In a series of articles published during the late-1970s and early-1980s, Klare provided his analysis of the impact of the National

---

¹¹ Ibid., 1-2.

¹² Ibid., xv-xvi.

¹³ For a general discussion of critical legal studies, as well as for examples of works by critical legal studies scholars see David Kairys, ed., The Politics of Law: A Progressive Critique 2d ed. rev., (New York: Random House, Pantheon Books, 1990).

Labor Relations Act on the U.S. labor movement.¹⁴ Klare's thesis is that while the National Labor Relations Act itself had the potential to effect radical change in society, the U.S. Supreme Court interpreted the act in such a way as to subvert that radical potential and to instead turn the Act into a law that, in the name of industrial peace, served management's goals.¹⁵

In a work published in 1991, legal scholar William Forbath addressed the question of why the U.S. labor movement, with its late-nineteenth century adoption of "bread-and-butter unionism" focusing only on wages, hours, and working conditions, deviated from the European labor movement tradition with its focus on attaining deep-rooted social, economic, and political reforms. Forbath concluded that the judiciary, with its desire to support the employing class, provided the primary force shaping U.S. labor history. The enormous hostility displayed by a strong judiciary toward labor in the last decades of the nineteenth century and the first decades of the twentieth century,

---

¹⁴ Karl Klare, "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941," Minnesota Law Review 62 (1978): 265-339; Karl Klare, "Labor Law as Ideology: Toward a New Historiography of Collective Bargaining Law," Industrial Relations Law Journal 4 (1981): 450-482; Karl Klare, "Traditional Labor Law Scholarship and the Crisis of Collective Bargaining Law: A Reply to Professor Finkin," Maryland Law Review (1985) 44: 731-840; Karl Klare, "Critical Theory and Labor Relations Law," in Kairys, 61-89.

¹⁵ See, e.g., Klare, "Labor Law as Ideology," 452-53.

Forbath concluded, constituted the single most important factor causing the U.S. labor movement to deviate from its European counterparts. Judicial hostility forced the U.S. labor movement to choose a defensive strategy that led labor to a conservative path emphasizing hours, wages, and working conditions rather than broad based reforms.¹⁶

II.

Both historians and legal scholars have unquestionably accepted the employment-at-will doctrine as an outgrowth of the judiciary's desire to promote economic development. This rule provides that, absent an employment contract to the contrary, either the employer or the employee can terminate the employment relationship at any time without legal penalty. The employment-at-will rule has fascinated legal scholars since the mid-1960s.¹⁷ Although much of

---

¹⁶ William E. Forbath, Law and the Shaping of the American Labor Movement (Cambridge: Harvard University Press, 1991).

¹⁷ For a sampling of articles see, e.g., John D. Blackburn, "Restricted Employer Discharge Rights: A Changing Concept of Employment at Will," American Business Law Journal 17 (1980): 467-492; Lawrence E. Blades, "Employment At Will vs. Individual Freedom: On Limiting The Abusive Exercise of Employer Power," Columbia Law Review 67 (1967): 1404-1435; Elletta S. Callahan, "The Public Policy Exception to the Employment at Will Rule Comes of Age," American Business Law Journal 29 (1991): 481-517; Richard A. Epstein, "In Defense of the Contract at Will," University of Chicago Law Review 51 (1984): 946-982; Matthew M. Finkin, "The Bureaucratization of Work: Employer Policies and Contract Law," Wisconsin Law Review 1986 (1986): 733-753; Mayer G. Freed & Daniel D.

U.S. law was derived from English law, the employment-at-will doctrine did not originate in England. At the time of the founding of the North American colonies, English law contained a presumption of annual hiring.¹⁸

Legal scholars who have written on employment-at-will typically have not examined in any depth the origins of the employment-at-will rule. Rather, the introductory portions of their works often make a fleeting reference to the traditional view on the rule's origins: until the late

---

Polsby, "Just Cause for Termination Rules and Economic Efficiency," Emory Law Journal 38 (1989): 1097-1144; S. Maya Iwanaga, "A Comparative Approach to Japanese & United States Wrongful Termination Law," Hastings International & Comparative Law Review 13 (1990): 341-365; Kenneth T. Lopatka, "The Emerging Law of Wrongful Discharge--A Quadrennial Assessment of the Labor Law Issue of the 80s," Business Lawyer 40 (1984): 1-32; Jane P. Mallor, "Discriminatory Discharge and the Emerging Common Law of Wrongful Discharge," Arizona Law Review 28 (1986): 651-671; Michael J. Phillips, "Toward a Middle Way in the Polarized Debate Over Employment at Will," American Business Law Journal 30 (1992): 441-483; Ellen R. Pierce, et al., "Employee Termination At-Will: A Principled Approach," Villanova Law Review 28 (1982-83): 1-50; Todd M. Smith, Note, "Wrongful Discharge Reexamined: The Crisis Matures, Ohio Responds," Case Western Reserve Law Review 41 (1991): 1209-1269; Clyde W. Summers, "Individual Protection Against Unjust Dismissal: Time for a Statute," Virginia Law Review 62 (1976): 481-532.

¹⁸ See Feinman, "The Development of the Employment at Will Rule," (describing English law). Feinman cites Blackstone on the English rule as follows:

If the hiring be general, without any particular time limited, the law construes it to be a hiring for a year; upon a principle of natural equity, that the servant shall serve, and the master shall maintain him, throughout all the revolutions of the respective seasons, as well when there is work to be done as when there is not. Ibid., 120.

nineteenth century the U.S. followed the English annual hirings rule under which employment relationships were assumed to last for a set time period during which the employer could not fire the employee at will.¹⁹ However, according to the traditional view, our judiciary rapidly discarded the English rule in the late-nineteenth century and adopted the employment-at-will rule. These courts cited as authority for employment-at-will an 1877 treatise by Horace Wood.²⁰ The common assertion is that Wood simply

---

¹⁹ For a sampling of such views see, e.g., Phillips, "Toward A Middle Way"; Eugene N. Lindenbaum, Note, "The Status of the Employment-at-Will Doctrine in Ohio: Ohio Incorporates a Public Policy Exception," Ohio State Law Journal 52 (1991): 315-329; Callahan, "The Public Policy Exception"; Smith, Note, "Wrongful Discharge Reexamined"; Iwanaga, "A Comparative Introduction"; Finkin, "The Bureaucratization of Work"; Pierce, et al., "Employee Termination At-Will"; Summers, "Individual Protection Against Unjust Dismissal"; Daniel A. Matthews, Note, "A Common Law Action for Abusively Discharged Employees," Hastings Law Journal 26 (1975): 1435-1464; J. Peter Shapiro & James F. Tune, Note, "Implied Contract Rights to Job Security," Stanford Law Review 26 (1974): 335-369; Alfred W. Blumrosen, "Workers' Rights Against Employers and Unions: Justice Francis--A Judge for Our Season," Rutgers Law Review 24 (1970): 480-499.

However, historian Richard B. Morris, in the classic work on colonial labor, Government and Labor in Early America (New York: Columbia University Press, 1946), noted that the annual hiring rule, although widely followed in the colonies for domestic service and husbandry, was not widely followed for other occupations. Morris's scholarship in other areas of colonial law, however, has been attacked as inadequate. See Marylynn Salmon, "The Legal Status of Women in Early America: A Reappraisal," Law & History Review 1 (1983): 129-151. Thus, one must question the legitimacy of his conclusions on the annual hiring rule as applied in North America.

²⁰ Horace G. Wood, A Treatise on the Law of Master and Servant Covering the Relation, Duties and Liabilities of Employers and Employees (Albany, N.Y.: John D. Parsons, Jr., 1877). Wood included this passage in the treatise:

made the rule up with absolutely no authority to support it.²¹ Courts then rapidly adopted the rule, citing Wood's treatise as authority, because the rule suited the economic needs of employers who sought to maximize their freedom to terminate employees in an expanding industrial society.²²

With us the rule is inflexible, that a general or indefinite hiring is prima facie a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof. A hiring at so much a day, week, month, or year, no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day even, but only at the rate fixed for whatever time the party may serve.

Ibid., 272.

²¹ Shapiro & Tune, 341 n. 53-54 (1974). The four cases Wood cited are: Wilder v. United States, 5 Ct. Cl. 462 (1869), rev'd on other grounds, 80 U.S. 254 (1871); De Briar v. Minturn, 1 Cal. 450 (1851); Tatterson v. Suffolk Mfg. Co., 106 Mass. 56 (1870); Franklin Mining Co. v. Harris, 24 Mich. 115 (1871). Shapiro and Tune argued that none of these cases supported Wood's assertion that employment-at-will was followed in the U.S. because they either did not directly address the employment relationship (Wilder and De Briar) or because the juries (Tatterson and Franklin Mining Co.) found an implied intent by the parties to enter into one year contracts. As one scholar has pointed out, a scholarly debate which was triggered by the Shapiro & Tune article has arisen over whether these cases support Wood's assertion. Andrew P. Morriss, "Exploding Myths: An Empirical and Economic Reassessment of the Rise of Employment At-Will," Missouri Law Review 59 (1994): 679-773, 680. For this debate see Jay M. Feinman, "The Development of the Employment-at-Will Rule Revisited", Arizona State Law Journal 23 (1991): 733-740; Mayer G. Freed & Daniel D. Polsby, "The Doubtful Provenance of "Wood's Rule" Revisited," Arizona State Law Journal 22 (1990): 551-558; Feinman, "The Development of the Employment at Will Rule."

²² For a description of the various approaches scholars have taken with respect to the economic explanation for the adoption of the rule see Andrew P. Morriss, "Exploding Myths: An Empirical and Economic Reassessment of the Rise of Employment At-Will," Missouri Law Review 59 (1994): 679-773,

Industrialization, then, was the impetus for the rule. Until recently, however, this traditional view had not been supported by any in-depth analysis of the rule's U.S. origins.

In recent years the origin of the rule has attracted increasing attention. Marxist scholar Jay Feinman and industrial relations scholar Sanford Jacoby were the first to offer such in-depth analyses. Feinman's article The Development of the Employment at Will Rule provided the first attempt to seriously examine the historical context within which the rule developed and to provide an explanation for why judges so readily adopted the principle stated in Wood's treatise.²³ Feinman's thesis is that the judiciary adopted the employment-at-will rule to defeat the effort of mid-level managers, who appeared in the work force in significant numbers only in the last three decades of the nineteenth century,²⁴ to have applied to them what Feinman

---

690-94. For two major proponents of the economic explanation of the adoption of employment-at-will see Feinman, "The Development of the Employment at Will Rule,"; Sanford M. Jacoby, "The Duration of Indefinite Employment Contracts in the United States and England: An Historical Analysis," Comparative Labor Law 5 (1982): 85-128.

²³ Feinman.

²⁴ For a discussion of the development of middle-level management as an important component of the work force see Alfred D. Chandler, Jr., The Visible Hand: The Managerial Revolution in American Business (Cambridge: Harvard University Press, Belknap Press, 1977); Robert H. Wiebe, The Search for Order, 1877-1920, American Century Series (New York: Hill & Wang, 1967).

terms "the traditional doctrine" that employers could not fire employees at will.²⁵ By denying any job permanence or job security to mid-level managers, the courts thereby guaranteed to employers maximum freedom to control the work place:

Employment at will is the ultimate guarantor of the capitalist's authority over the worker. The rule transformed long-term and semi-permanent relationships into non-binding agreements terminable at will. If employees could be dismissed on a moment's notice, obviously they could not claim a voice in the determination of the conditions of work or the use of the product of their labor.²⁶

The judiciary adopted employment-at-will, Feinman concluded, to support "the dominion of the owners of capital over their employees and their enterprises...a basic element of the capitalist system."²⁷

Feinman arrived at this conclusion after examining the late-nineteenth and early-twentieth century New York cases that expressly announced the employment-at-will principle. Feinman chose New York because it was at that time both an important commercial state and an important shaper of the common law.²⁸ Feinman asserted that New York case law development was "typical of other states" and hence "is an

---

²⁵ Feinman, 132.

²⁶ Ibid.

²⁷ Ibid., 133.

²⁸ Ibid., 127.

appropriate vehicle for tracing the way the employment at will rule came to be dominant," although he provided no authority to support this proposition.²⁹

Feinman concluded that prior to 1894, the New York courts often applied the English rule of annual hirings.³⁰ In other cases, involving situations where the parties had expressly agreed on a contract for a year but the employee continued working beyond the year without a new contract, the courts did not follow a consistent rule; sometimes they found an implied extension for the original time period agreed upon and sometimes they found the employment relationship terminable at will.³¹ However, Feinman concluded that in 1895 the New York Court of Appeals "settled the issue" by expressly applying Wood's rule in Martin v. New York Life Insurance Co.³²

The plaintiff in Martin, a high-level management employee, had worked for the company for eleven years and made \$10,000 per year, a substantial salary for the 1890s.³³ In April 1892, Martin received notice that the company was discharging him effective at the end of the

---

²⁹ Ibid., 127.

³⁰ Ibid.

³¹ Ibid., 127-28.

³² 42 N.E. 416 (New York, 1895); Feinman, 128.

³³ 42 N.E. at 416-17.

month. Martin, paid monthly, received his salary for April. When the company refused to pay him for the remainder of the year, Martin filed a breach of contract action, alleging that his employment contract with the company was a yearly contract.³⁴ In rejecting Martin's claim, the New York Court of Appeals found that absent evidence that the parties actually intended a yearly contract, a salary stated at an annual rate was insufficient to establish such a contract. Further, the court cited Wood's Rule as authority for the proposition that a general hiring, for which no duration was stated, constituted an "indefinite hiring" that was "determinable at will by either party."³⁵

Upon examining Martin and subsequent New York cases that raised the duration of employment issue, Feinman discovered that the plaintiffs were neither common laborers or domestic workers, but rather mid-level employees who were relatively well-paid when compared to the average worker of the time period.³⁶ Thus, Feinman concluded

The employment at will rule developed in America in response to cases presented by a particular group of workers--middle-level managers. The overriding factor making the rule compelling was the position of these workers as an example of all workers in the developing modern capitalist economy. Seen thus, the rule is more than a particular response of the legal system to a particular economic problem; termination at will is

---

³⁴ Ibid., 417.

³⁵ Ibid., 417.

³⁶ Feinman, 127.

the law's development of a fundamental principle of the economy.³⁷

The changing needs of capitalists brought about by industrialization, then, was the causative factor, in Feinman's view, leading the judiciary to adopt the employment-at-will principle.

Feinman's conclusion that the judiciary adopted employment-at-will suddenly in the late-nineteenth century to support capitalist control over the work place is based on three assertions. First, Feinman asserted that New York often applied the annual hiring rule prior to 1894, yet he cited only two cases³⁸ to support this conclusion. Other than the two cases that led Feinman to conclude that New York courts often applied the annual hiring rule prior to 1895, he did not do any further analysis of the historical development of employment law in New York as it relates to the issue of duration of contracts. Second, Feinman asserted that the 1895 case Martin v. New York Life Insurance Co. effected a dramatic change in New York law because New York's highest court adopted Wood's rule in this case. He arrived at this conclusion solely because this is the first case in which the New York Court of Appeals made express reference to Wood's rule. Third, Feinman asserted

---

³⁷ Ibid.

³⁸ Adams v. Fitzpatrick, 26 N.E. 143 (1891); Davis v. Gorton, 16 N.Y. 255 (1857).

that a change in the legal status of middle-level management employees occurred in the late-nineteenth century whereby courts rejected the application of the annual hiring rule to these workers. He based this conclusion on his analysis of thirty cases that arose in New York during the two decades after the issuance of Martin, all dealing with the duration of employment contracts. These assertions on which Feinman relied will be re-examined in the Conclusion.

Like Feinman, Sanford Jacoby acknowledged that the state of U.S. law on the term of employment issue was confused throughout much of the nineteenth century:

The law was rather confused. Different courts might rule that an identical, indefinite contract was either presumptively annual, terminable at will or terminable at the end of a payment period. The textbooks of the period demonstrated the confused state of the law. Some mentioned only the annual hiring rule, others only the rate of pay rule, while most referred to both. The cases cited to support the annual hiring rule either were English, or irrelevant American cases.³⁹

But, also like Feinman, Jacoby argued that the employment-at-will doctrine was a new doctrine, adopted at the end of the nineteenth century.⁴⁰

Jacoby concluded that the underlying reason U.S. courts diverged from the English annual hiring rule in the late-nineteenth century was the relative strength of trade unions

---

³⁹ Jacoby, 109.

⁴⁰ Ibid., 85.

in each country.⁴¹ Trade unions were weaker in the U.S. than in England, and thus were unable to secure long-term job protection through union contracts.⁴² The gist of Jacoby's argument is that because British unions were strong they relied on that strength, rather than protective legislation, to protect their rights to organize and exist, as well as their ability to protect workers from unjust dismissals. U.S. unions, however, were weaker than their British counterparts and were subject to a hostile, powerful capitalist class. Thus, U.S. unions turned to the state for legislation protecting their rights to organize and exist, and to protect workers from arbitrary dismissals. However, U.S. courts generally declared such labor laws unconstitutional interferences with freedom of contract. Hence, Jacoby argued, U.S. workers' attempts to gain legislative protection for their rights backfired when courts, by invalidating these laws, firmly established the principle of employment-at-will. The courts then applied this employment-at-will principle, through common law developments, to all categories of jobs, including the newly emerging mid-level management jobs.

---

⁴¹ However, he also noted that prior to the late-nineteenth century, the courts "rarely invoked the annual hiring presumption." Ibid., 108.

⁴² Ibid., 120-26. Jacoby did note that U.S. industrial workers were not covered by the annual hiring rule at any time in the nineteenth century. Ibid., 105-06.

This traditional interpretation of the rule's origin, including both Feinman's and Jacoby's analyses, has come under attack. In 1990, Mayer G. Freed and Daniel D. Polsby argued that in fact Horace Wood did not make up the rule, but rather had authority to support his treatise discussion.⁴³ Wood cited four cases in the footnotes to this section of his treatise to support his assertion that employment-at-will was the law of the land in the U.S. Scholars have attacked the cases cited in these footnotes as not supporting the existence of the employment-at-will principle. In their analysis, Freed and Polsby focused on defending the cases Wood cited in his footnote in support of the existence of the employment-at-will rule. However, they did not provide any additional in-depth analysis of the rule's origins. Thus, their work has not had much impact and they did not undermine the traditional view which has continued to be cited for the origins of the rule.⁴⁴

In 1994, Andrew P. Morriss attacked the economic explanation for the rule's origins.⁴⁵ Morriss concluded that all but three states adopted employment-at-will after 1871.⁴⁶ He then performed an econometric analysis of the pattern of adoption in relationship to the pattern of

---

⁴³ Freed & Polsby, "The Doubtful Provenance."

⁴⁴ See, e.g., Phillips, "Toward A Middle Way," 444-45.

⁴⁵ Morriss.

⁴⁶ Ibid., 699.

industrialization. Morriss determined that the pattern of adoption was unrelated to when states industrialized.⁴⁷ Thus, he concluded, economics was not the motivating factor. Rather, Morriss argued that the late-nineteenth century witnessed a substantial increase in employment contract lawsuits. Courts adopted the rule in an effort to keep these ever-increasing numbers of employment contract disputes off the dockets, because courts as institutions were ill adapted to resolve such disputes.⁴⁸

Morriss argued that his analysis exploded the myths associated with the economic origins of the employment-at-will doctrine. For his study Morriss assumed that each state adopted the rule either when it was codified into statute or when the state's supreme court first clearly expressed the rule. In his discussion of the court decisions that he believed first adopted the rule, Morriss noted that "the earliest adopters generally cite no authority," that "there is little attempt to support the adoption of the rule with arguments or analysis," and that

---

⁴⁷ Morriss determined that the pattern of adoption "moved generally from the west to the south and midwest and only into the more heavily industrialized northeast after several decades." Ibid., 701.

⁴⁸ Ibid., 696. The gist of Morriss's argument is that by applying employment-at-will to contract disputes, the case could be ended without submission to the jury. But, if courts applied the annual hiring rule, then contract disputes would have to go to trial and be submitted to the jury.

the "adoption was not controversial in most cases."⁴⁹ Morriss failed, however, to examine the historical background of these decisions, an analysis that would have provided an explanation for why the courts in the decisions he claimed adopted employment-at-will cited no authority and provided little if any analysis, as well as why the "adoptions" did not seem controversial.

III.

Both historians and legal scholars who argue that changes in U.S. legal doctrine have been shaped by the judiciary's desire to promote a favorable climate for business development have received sharp criticisms for their analyses and conclusions.⁵⁰ While one may debate the legitimacy of some of these criticisms, one that oftentimes appears to be well-justified is that the historians and legal scholars who have reached broad conclusions about the

---

⁴⁹ Ibid., 697.

⁵⁰ For criticisms of historians see, e.g., Robert J. Kaczorowski, "The Common Law Background of Nineteenth Century Tort Law," Ohio State Law Journal 51 (1990): 1127-1199; Kevin M. Teveen, A History of the Anglo-American Common Law of Contracts (New York: Greenwood Press, 1990); Gary T. Schwartz, "Tort Law and the Economy in Nineteenth-Century America: A Reinterpretation," Yale Law Journal 90 (1981): 1717-1775; A.W. Brian Simpson, "The Horwitz Thesis and the History of Contracts," University of Chicago Law Review 48 (1979): 533-601. For criticisms of legal scholars see Matthew W. Finkin, "Revisionism in Labor Law," Maryland Law Review 43 (1984): 23-92.

desire of the judiciary to change the law so as to support a favorable business climate have relied on an inadequate sampling of cases from which they drew their conclusions. For example, one of the radical transformations in contract law cited by Morton Horwitz was that U.S. courts began to refuse to invalidate contracts based on inadequacy of consideration.⁵¹ However, Horwitz based this conclusion on five Pennsylvania cases and two Massachusetts cases.⁵² In order to arrive at any valid conclusions, especially regarding common law developments, one must perform a more comprehensive assessment of the case law. The purpose of this research is to perform such a comprehensive assessment with respect to the employment-at-will doctrine.

I conducted such an analysis for five states from the original thirteen colonies: Massachusetts, New York, Pennsylvania, Maryland, and Georgia. I chose to begin with states from the original colonies because if the English annual hiring rule had been imported to North America from England, the strongest evidence of that importation should have appeared in the colonies. I examined all employment

---

⁵¹ Horwitz, 177-85. Horwitz's discussion of the topic in The Transformation of American Law was based on an article he previously published, "The Historical Foundations of Modern Contract Law," Harvard Law Review 87 (1974): 917-956.

⁵² Horwitz, "The Historical Foundations of Modern Contract Law," 924-26. Horwitz's conclusions are discussed in A.W.B. Simpson, "The Horwitz Thesis and the History of Contracts," University of Chicago Law Review 46 (1979): 533-601, 575-80.

related cases from each state's supreme court from the time such decisions were reported until the date of that state's decision that is cited as the case adopting employment-at-will. In addition, I examined historical evidence regarding actual employment practices in each of those states. After examining this evidence I concluded that in these five states, with the exception of a brief period of time in early colonial Massachusetts, the employment-at-will rule was the norm and the English annual hirings rule generally was not followed.

However, because common law is made on a state by state basis, before one can arrive at a definitive conclusion regarding the origins of employment-at-will, it is necessary to examine additional states that would provide a more comprehensive geographic as well as economic sampling. I next examined five states that were not part of the original thirteen colonies: Louisiana, Illinois, Montana, Texas, and California. These states provide additional geographic coverage such that combined with the five states in the original study all regions of the country are covered. In addition, Illinois, Montana, Texas, and California were established at varying times during the nineteenth century, under economic circumstances very different from the original colonies. Further, under Morriss's analysis three of these states "adopted" employment-at-will by statute: Louisiana, Montana, and California. By including them, we

have a sampling of states that purportedly adopted employment-at-will both by statute and by common law, and Louisiana provides the additional perspective of a state whose laws are rooted in the Napoleonic Code.

As with the analysis for the five states from the original thirteen colonies, I examined both legal and non-legal historical sources. I analyzed each state's supreme court decisions regarding the employment relationship from the date the decisions began to be reported until the date that Morriss claimed each of these states adopted employment-at-will. In addition, I examined historical sources for evidence of the actual relationship between employers and employees with respect to the employers' obligation to retain the employees for specified time periods. My conclusion for these five states is consistent with that for the five from the original thirteen colonies: throughout their existence these five states followed the employment-at-will rule, and did not adopt the English rule of annual hirings.

I argue in this dissertation that Andrew Morriss should have gone one level deeper in exploding the myths surrounding the origins of the employment-at-will doctrine. The reason the cases Morriss analyzed failed, as Morriss noted, to cite authority, or to support the "adoption" with arguments or analysis, and did not contain controversy was because in fact these cases were not adopting the

employment-at-will doctrine. Rather, they merely reflected the long-standing, long-accepted, and long-understood state of employment law. My analysis, then, explodes the original myth surrounding the employment-at-will doctrine, that is that it was suddenly adopted by the courts in the last quarter of the nineteenth century. Rather, the doctrine has been firmly embedded in U.S. employment practices since colonial days.

This conclusion raises four questions. First, why did not the U.S. follow the English annual hiring rule? Second, if it was not a creation of the late-nineteenth century, how did the myth arise that it was? Third, why did court decisions in the late-nineteenth century begin containing express language rejecting the annual hiring rule, if it generally had not been applied in this country? Fourth, how do the U.S. developments with respect to the terms of hiring compare to the English developments in the eighteenth and nineteenth centuries after the founding of the North American colonies? I will return to these questions in the conclusion.

CHAPTER 2

BACKGROUNDS: ENGLISH AND AMERICAN

In order to analyze the extent to which the colonial law incorporated the English law on annual hiring one must understand the development of English law on the topic up to the early 1700s, by which time the thirteen original North American colonies had been established. One must also understand the U.S. economic and legal environment from the founding of the colonies through the nineteenth century in order to assess the validity of the traditional view on the origins of the employment-at-will doctrine.

I. English Background

One must begin in the fourteenth century to understand the development of the English annual hiring rule. Most of the population, of course, engaged in agricultural pursuits with the bulk of the agricultural labor provided by serfs pledged to lords. Feudalism was characterized by strong personal allegiances to lords, who served as protectors of individuals because nation states were non-existent or too

weak to provide any degree of order or protection. The bonds between lord and serf, based on custom and tradition, provided social order within the manors which were self-sufficient economic units. Within feudalism each individual had a well-defined role within a fixed, unchanging hierarchy.¹

The feudal system that dominated at the opening of the fourteenth century depended on an overabundance of labor and a shortage of land. These forces allowed the lords to continue the villeinage system which bound serfs to the land. The self-sufficiency of the manors also consolidated the power of the feudal lords. However, with the increasing growth of commerce, some specialization arose thereby undermining the self-sufficiency of the manor with a corresponding decline in the efficiency of the manor.²

In addition, early fourteenth century England, with a population of approximately three and a half million, suffered from over-population and pressures from agricultural depression.³ The agricultural depression and

---

¹ Mansel G. Blackford & K. Austin Kerr, Business Enterprise in American History, 3d ed. (Boston: Houghton Mifflin, 1994): 16-17.

² Douglass C. North & Robert Paul Thomas, The Rise of the Western World: A New Economic History (Cambridge: Cambridge University Press, 1973): 9-11.

³ George Holmes, The Later Middle Ages, 1272-1485 (Edinburgh: Thomas Nelson & Sons, Ltd., 1962): 137; A.R. Myers, England in the Late Middle Ages, 8th ed. (Middlesex, England: Penguin Books, 1971): 59.

the increasing commercial development led the feudal lords, who faced increasing difficulties in supporting their villain labor, to begin setting their peasants free. The lords then either rented their land to the now freed peasants or hired wage labor to work the land.⁴

In addition, overpopulation and depression led to famine and malnutrition, providing fertile conditions for the development of disease.⁵ The Black Death, bubonic plague, swept through Europe in the fourteenth century. It began in England in 1348 and reoccurred in the 1360s, killing more than forty percent of the population. By the end of the fourteenth century England's population was only half the size it was when the plague first struck in 1348.⁶

Although the mortality rate from the plague in the cities probably exceeded that in the countryside, the social impact was far greater for the countryside. The plague reinforced and accelerated the disintegration of the feudal system of labor.⁷ Wages and prices began an extraordinary rise soon after the plague began.⁸ While the freeing of

---

⁴ Myers, 61.

⁵ Myers, 60.

⁶ B. Wilkinson, The Later Middle Ages in England, 1216-1485 (New York: David McKay Co., Inc., 1969): 185.

⁷ Ibid.

⁸ Bertha Haven Putnam, The Enforcement of the Statute of Laborers During the First Decade After the Black Death, 1349-1359 (New York: AMS Press, 1908): 87.

labor and the disintegration of the feudal system had begun before the plague struck, with the shortage of labor and the consequent high wages that free labor could command--rising more than sixty percent during the ten years after the plague first struck in 1348--struck a fatal blow to the system.⁹ The advent of the plague created severe financial problems for the lords who now faced a severe labor shortage, with laborers commanding ever increasing wage rates. The lords immediately began complaining to state officials about the exorbitant wages being demanded by the now scarce laborers and the inability of the lords to obtain sufficient labor to work their lands.¹⁰

The thirteenth century had witnessed the rise of Parliament and the acceptance of the authority of the King and Parliament to enact laws.¹¹ The distressed lords successfully convinced the King to summon a special session of Parliament to deal with the emergency.¹² The former feudal lords, represented in Parliament in the Commons, sought assistance from that body in addressing the mid-fourteenth century labor crisis confronting them.¹³ The

---

⁹ Holmes, 141, 186.

¹⁰ Putnam, 2.

¹¹ Maurice Ashley, England in the Seventeenth Century (London: Penguin Books, 1952): 135.

¹² Putnam, 2.

¹³ Holmes, 141.

Statutes of Labourers, passed in 1349-51, represented attempts to protect the former feudal lords by placing the power of the state behind their labor requirements.¹⁴ These statutes required all able-bodied men and women to work, and prohibited all but those not able to work from soliciting alms. Lords had first rights to the labor of the tenants--whether agricultural laborers or artisans--residing on their land.¹⁵ The statutes also severely curtailed the mobility of laborers by requiring them to remain in their employ for one year, and by prohibiting other masters from hiring servants who had prematurely left their previous employ. The statutes further regulated wage rates so that the scarcity could not continue to drive up wages. Refusal to work or to accept the wages set by the statutory procedure constituted a criminal offense punishable by imprisonment.¹⁶ Because labor mobility continued to present problems for the employing class, a 1388 statute created a passport system for laborers which prohibited them

---

¹⁴ Maurice Dobb, Studies in the Development of Capitalism (New York: International Publishers, 1963): 48-49; Sir William Holdsworth, A History of English Law, vol. 4 (London: Methuen & Co., Ltd., 1924, 3d ed., 1945, reprinted 1966): 390.

¹⁵ Putnam, 91, 73.

¹⁶ Sir William Holdsworth, A History of English Law, vol. 2, (London: Methuen & Co., Ltd., 1903, 4th ed. 1936, reprinted 1966): 460-61.

from obtaining employment unless they had a permission letter from their prior employer.¹⁷

These statutes represented the first attempt at central government laws on wages and prices applied uniformly throughout the country.¹⁸ Parliament viewed these statutes as a normal outgrowth of the disintegration of villeinage. Now that laborers were free of the feudal status, the state instead of the feudal lords would determine labor terms. For people of the fourteenth century it was inconceivable that the terms of labor should be determined by the operation of the free market. The good of the community demanded that the state replace the feudal lords in regulating society. And, the good of the community mandated that laborers should not take advantage of their scarcity to gouge their employers. Legislation, then, replaced feudal customs.¹⁹

The fourteenth century English state did not limit its regulation to labor. The moral ideal providing the framework for government regulation consisted of a standard of right and wrong requiring honesty from both employers and employees, sellers and buyers. Statutes regulated manufacturers and sellers just as strictly as they regulated

---

¹⁷ Dobb, 66.

¹⁸ Putnam, 3.

¹⁹ Holdsworth, vol. 2, 461-65; Wilkinson, 187; Putnam, 220.

laborers. Fair, but not excessive profits, honest methods of manufacture, and fair but not excessive interest rates, were equally important as fair, but not excessive wages. No class should be permitted to take advantage of another.²⁰ During the fifteenth century the last remnants of villeinage disappeared, replaced by state regulation of commerce, industry, and labor.²¹

As the sixteenth century opened, England's population still had not returned to its pre-plague level of three and one-half million, hovering at less than two and a half-million. However, the sixteenth century witnessed significant population growth, reaching three million by 1545 and four million by century's end.²² Although small pockets of manufacturing activity existed, particularly in the cloth industry, most laborers still engaged in agricultural pursuits.

The growth in population not only alleviated the labor scarcity that had marked the fourteenth and fifteenth centuries--it now led to an overabundance of labor. Throughout the sixteenth century and into the first half of the seventeenth real wages, with actual wage rates held down by state regulation, steadily fell, reducing laborers'

---

²⁰ Holdsworth, vol. 2, 468-69.

²¹ Ashley, 191; Holmes, 147.

²² Barry Coward, The Stuart Age: A History of England 1603-1714 (London: Longman, 1980): 7.

standard of living. In order to obtain work, laborers were forced to become highly mobile, moving around frequently in search of work.²³

At the same time that wages declined, a series of bad harvests in the late-sixteenth and early-seventeenth centuries led to price increases.²⁴ Laborers, then, suffered a double blow--increasing prices and decreasing real wages.²⁵ Growing unemployment and poverty prevailed. Thus, a statutory scheme requiring all able-bodied people to work and prohibiting them from begging became counter-productive. These changing conditions led Parliament to modify both the poor laws and the labor statutes.

In 1535-36, Parliament enacted a new poor law designed to address the changed conditions. Under this new law, the state imposed a legal obligation to support the poor who were incapable of working. Local parishes, supervised by the local justices of the peace, assessed contributions from parishioners and administered the poor relief to those local settlers unable to work. The poor law prohibited those unable to work from moving to other parishes to protect those parishes from liability for new settlers. Children of the poor who were unable to work would be taught a trade through an apprenticeship or employed in agriculture.

---

²³ Coward, 50.

²⁴ Coward, 4.

²⁵ Ashley, 22.

Parishes had to provide work to the able-bodied, who the law required to work. Criminal penalties were assessed against the able-bodied who refused to work, as well as the able-bodied who sought alms.²⁶

Local authorities assessed monthly fines against parishes neglecting the duty to provide work to the unemployed able-bodied populace. Statutes passed in 1547 and 1549-50, attempting to re-enforce the parishes' duty to provide work, reflected the difficulty faced by parishes in fulfilling this duty. By 1572, Parliament recognized the futility of mandating the requirement that parishes provide work by passing a statute permitting the able-bodied unemployed to obtain licenses to beg.²⁷ The large masses of unemployed had become such a threat by 1575-76 that Parliament adopted a statute requiring each county to erect one or two houses of correction both to punish and to employ vagrants and beggars who refused to work on projects developed by the local parishes.²⁸

In addition to poor law legislation, Parliament attempted in 1562-63 to address the changed social and economic conditions by modifying the fourteenth century labor statutes. Three basic principles underlay the new labor legislation. First, the legislation continued the

---

²⁶ 27 Henry VII. c. 25; Holdsworth, vol. 4, 391-92.

²⁷ Holdsworth, vol. 4, 391-96.

²⁸ Holdsworth, vol. 4, 396.

principle contained in the 1348-49 laws requiring all able-bodied people to work. Statutes also legally required employers to provide employment. For example, a licensing act adopted late in the sixteenth century required master printers to provide work, and helped ensure a need for labor by limiting the number of copies that could be printed of any book's edition. Statutes further provided that the hiring must be for a year in a specified number of particular occupations. This provision most likely led to the presumption that an indefinite hiring was a hiring for a year. At this time, the state also began pressuring employers to provide work for employees. On numerous occasions during the sixteenth and early seventeenth centuries the state pressured manufacturers to continue operations, even though there was no market for their goods, and the Merchant Adventurers to continue buying products in order to ensure employment for workers. Such actions were supported by public opinion and were consistent with the prevailing view on the role of the state in the economy--to ensure the good of all by not allowing one class to exploit another.²⁹

The second principle underlaying the new labor legislation continued the regulation of wages. Workers were expected to work for reasonable wages, with justices of the peace determining the prevailing wage rate after considering

---

²⁹ Holdsworth, vol. 4, 380-83.

the cost of necessities. Employers had an obligation to pay the established wages, just as workers had an obligation to work at those wages.³⁰ The wage rate statutes, then, protected the sixteenth century worker from depressed wages due to an overabundance of labor just as the fourteenth century statutes attempted to protect employers from inflated wage rates due to the scarcity of labor.

Finally, the new labor legislation provided penalties not only for workers who quit the employment prior to the end of their term, but also for employers who wrongfully dismissed their workers. Civil penalties in the nature of monetary fines were assessed against non-complying employers, while criminal penalties awaited workers--for whom monetary fines were meaningless since they generally had no assets--who wrongfully quit their employment.³¹ Because of the widespread unemployment that plagued seventeenth-century England, one might question the reality of whether the one-year rule was actually widely followed.³² Nevertheless, the rule remained firmly ensconced in English law.

Although underemployment continued to be a problem as England entered the seventeenth century, by mid-century the

---

³⁰ Holdsworth, vol. 4, 382-83.

³¹ Holdsworth, vol. 4, 383.

³² Paul Bernstein, American Work Values: Their Origin and Development (Albany, New York: State University of New York Press, 1997): 95-108.

century and a half period of price increases and population expansion ended.³³ After 1650, with population growth leveled off, the oversupply of labor began to decrease leading to a rise in real wages.³⁴ Moreover, during this century industry, commerce, and shipping began to expand.³⁵ By the opening of the eighteenth century England had undergone significant economic expansion. However, the political framework established in the sixteenth century remained in place with the state heavily engaged in regulating commerce, industry, and labor.³⁶ This political framework known as mercantilism dominated between 1500 and 1800 and served as the ideological bridge between the world dominated by feudalism and the world that would be dominated by modern capitalism.³⁷ Mercantilism also provided the ideological background for the settlers who established the original thirteen colonies on the North American continent.

II. American Background

By the sixteenth century a number of powerful nation states had arisen in Europe. In the mercantalist view, the

---

³³ Coward, 445.

³⁴ Ibid., 450.

³⁵ Ashley, 387.

³⁶ Coward, 456.

³⁷ Blackford & Kerr, 19.

world's wealth was finite. The new nation states, desirous of consolidating and expanding their power, supported the development of merchant capitalism as a way to increase their own power.³⁸ Mercantilists believed that wealth could not be created, but rather must be acquired or taken. Thus, a nation state could increase its power by taking wealth from other countries or by ensuring that exports exceeded imports. In this view, the development of colonies comprised a critical component of solidifying and expanding a nation state's power. Colonies could increase exports over imports and could increase the nation state's stock of gold and silver. It was within this context that the founders established the North American colonies.

Throughout the colonial period poorly developed internal transportation and communication networks impeded internal trade. Consequently, the focus of trade remained on the local market and on England, thus fulfilling the mercantilist mission of using the colonies to enrich the mother country.

Although historians generally agree that the founders brought the mercantilist philosophy with them to the colonies, there is less agreement over the extent to which they brought English law. Colonial charters typically permitted each colony to develop its own legal system as

---

³⁸ Shepard B. Clough & Charles W. Cole, Economic History of Europe (Boston: D.C. Heath & Co., 1941): 195.

long as the laws were consistent with English law.³⁹ However, because few trained lawyers were among the colonists who arrived during the first century of immigration from England, few colonists had formal knowledge of English law.⁴⁰ Thus, the law they brought with them was based on local customs and an imperfect recollection of legal principles.⁴¹ In addition, local conditions shaped colonial law.⁴² Thus, while the colonists may have shared broad principles, the details of the law differed among them.⁴³

Even though the law varied among the colonies, the English mercantilist approach nevertheless dominated the intellectual framework for the law with its focus on making the colonies wealth-enhancing units in service of the mother country. Consistent with this approach, the economic rights of individuals were secondary to those of the colony as a whole. Consequently, colonial law adopted the mercantilist

---

³⁹ George L. Haskins, Law and Authority in Early Massachusetts: A Study in Tradition and Design (New York: Macmillan, 1960): 5.

⁴⁰ Peter C. Hoffer, Law and People in Colonial America (Baltimore: Johns Hopkins University Press, 1992): xi.

⁴¹ Hoffer, xi.

⁴² Kermit L. Hall, et al., American Legal History: Cases and Materials (New York: Oxford University Press, 1991): 4; Haskins, 6; David T. Konig, Law and Society in Puritan Massachusetts: Essex County, 1629-1692 (Chapel Hill: University of North Carolina Press, 1979): 37.

⁴³ Haskins, viii.

view that competition was inefficient and harmful. Laws regulated minute details of business operations and the colonies wholeheartedly adopted the English tradition of government regulation of activities affected with a public interest.

Much of this regulation was local in nature, because geographic limitations made more general regulations simply unenforceable.⁴⁴ Thus, local laws regulated such matters as the price and quality of bread, tobacco, meat, and leather. Some colonies required the inspection of lumber before sale, while others regulated the quality and prices of services provided by taverns. Virginia, because of fears of an oversupply, regulated the amount of tobacco each planter could grow. Grain millers' rates were regulated, as were the prices on toll roads, ferries, and bridges. In addition, many colonies adopted labor laws similar to those adopted in the fourteenth and sixteenth centuries in England. They placed caps on wages because the labor shortage gave workers the ability to demand high wages.⁴⁵

Thus, law as it developed in the colonies reflected the same close supervision of economic activities as did English law. However, although the first colonists were willing to accept extensive government regulation of minute details of

---

⁴⁴ Lawrence Friedman, A History of American Law, 2d ed. (New York: Simon & Schuster, Touchstone Book, 1985): 77.

⁴⁵ Haskins, 115; Konig, 75; Friedman, 76-82; Hall, 40.

their lives, the succeeding generation was less accepting of an intrusive government. This generation began adopting laws providing protections for individuals from governmental authority. Massachusetts' adoption in 1641 of the Body of Liberties and in 1648 of the Massachusetts Code reflected this desire to curb the power of established authority.⁴⁶ The 1682 First Frame of Government of Pennsylvania and the 1683 New York Charter of Libertyes further evidenced this movement.⁴⁷

Long before the Revolution, then, colonists began questioning governmental authority. This also led to a questioning of the mercantilist philosophy. Actually, changes in the way the colonists viewed the world from those of their English counterparts began occurring as soon as they arrived in North America. These ideological changes arose from a combination of factors. The wilderness environment with which the early settlers continually contended operated to break down social distinctions that had been brought from the old world. When confronted with the need to survive, individual skills, talents, and strength, rather than social status, dictated success.⁴⁸ The abundance of rich natural resources in North America,

---

⁴⁶ Haskins, 231; Friedman, 91; Konig, 35.

⁴⁷ Hall, 20-21.

⁴⁸ Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge: Belknap Press of Harvard University Press, 1967): 303-04.

combined with increasing technical knowledge, created opportunities for economic success, leading to significant economic mobility, for even those at the bottom of the social scale. Even before the Revolution, then, a significant change in ideology had occurred in the North American colonies.

The year 1776 accelerated the ideological change not only because it marked the beginning of the American Revolution, but also because it marked the publication of Adam Smith's Wealth of Nations, which influenced the reshaping of economic ideology. Smith advocated a self-regulating economic system based on the tenets of supply and demand, one driven by the goal of increasing individual wealth and not the wealth of the state. Smith asserted that such a self-regulating system could produce increasing amounts of wealth.⁴⁹ The colonists seized upon Smith's economic philosophy because it accorded with their experiences. By the opening of the Revolution, the colonists enjoyed one of the highest standards of living in the world.⁵⁰ Extensive colonial business development focused on farming with significant agricultural

---

⁴⁹ For a discussion of Smith's impact on colonial thinking see Blackford & Kerr, 59-62. Blackford and Kerr note that Adam Smith's The Wealth of Nations merely "summarized what some scholars and men of affairs. . . were thinking about mercantilism and its faults, and his ideas influenced Thomas Jefferson, Alexander Hamilton, and other American revolutionary leaders. . . ."

⁵⁰ Blackford & Kerr, 40.

specialization, merchant houses engaged in commerce with England and Europe, shipping, and the beginning of manufacturing with numerous artisans located in the numerous towns and cities that flourished.⁵¹

When the political revolution began in 1776, the ideological revolution was already well advanced. By the time the actual fighting was over in 1783, the new nation of approximately 3 million was ready to partake of Adam Smith's new world. With the conclusion of the Revolution the creation of a central government which supported private investment as well as the existence of a large internal unified market laid the foundations for the development of a new business system. By the 1790s, then, mercantilism was being eroded--although not completely replaced as evidenced by the strong role that government continued to play into the nineteenth century in supporting business development--by Smith's faith in growth and progress, and his focus on increasing the wealth of individuals rather than that of the state.⁵²

The 1790s also witnessed significant governmental activity in creating an environment that promoted development of individual wealth. In 1791, Secretary of Treasury Alexander Hamilton submitted to Congress his Report

---

⁵¹ Ibid., 40.

⁵² Alan I. Marcus & Howard P. Segal, Technology in America: A Brief History (San Diego: Harcourt, Brace, Jovanovich, 1989): 1-2, 52.

on Manufactures. Although Congress rejected much of Hamilton's Report, it did adopt some of the recommendations with the establishment of the first Bank of the United States being the most significant. The Bank facilitated the ability to transfer money around the country, thus promoting business transactions.⁵³ Congress also took actions to promote the development of a national transportation system by making available to state and local governments the expertise of the Army Corps of Engineers and by providing land grants and subsidies to aid in the construction of telegraph and railroad lines.⁵⁴

State and local governments also played critical roles in creating a positive economic environment. New York state, for example, financed the entire seven million dollar cost of the Erie Canal, while the city of Baltimore financed the construction of a railroad line from Baltimore to the Ohio Valley.⁵⁵

The extensive government activity supporting business development was amply rewarded by an explosion of business development between 1800 and 1830 aided by the War of 1812 which cut off the supply of British manufactured goods. The increased use of watermills constituted the most important technological development of this period. Watermills

---

⁵³ Blackford & Kerr, 67.

⁵⁴ Ibid., 126-29.

⁵⁵ Ibid., 131-32.

provided the only source of mechanized power and hence were essential for the development of manufacturing. In 1800 approximately 10,000 mills existed in the United States. They generally supported small manufacturing concerns employing only a few people, although in 1801 the largest, a textile mill in Rhode Island, employed over a hundred people.⁵⁶

The textile industry quickly embraced the use of machinery. Other small manufacturing ventures soon followed. By 1830, over 50,000 watermills existed, evidence of the dramatic growth in manufacturing which was consistent with equally dramatic population growth during this time period.⁵⁷ At the start of the Revolution, the population numbered 2.5 million. This figure had tripled by 1830.⁵⁸ Although the pace of growth of manufacturing firms increased tremendously, their size remained small.⁵⁹ Development of larger firms, leading to even greater economic growth, had to await new developments in transportation, communications, and agriculture that began during the 1830s.

Government activities in developing the railroads resulted in only 3,000 miles of track by 1840. However, by the 1850s sufficient track had been laid to link together

---

⁵⁶ Marcus & Segal, 53; Blackford & Kerr, 96.

⁵⁷ Marcus & Segal, 53, 70.

⁵⁸ Ibid., 53.

⁵⁹ Ibid., 69.

nearly all regions of the country, and by 1860 over 30,000 miles of track had been laid.⁶⁰ The communications revolution flourished along with the transportation revolution. The telegraph, the most important communication link for the country by the 1850s, constituted an essential factor in the development of railroads because of their need for instantaneous communication to coordinate schedules. Other businesses quickly understood the potential for the telegraph, readily adopting its use.⁶¹

The agricultural revolution flourished along with the transportation revolution. Development of a nationwide railroad system opened up a potential national market for agricultural goods, thereby encouraging full use of the nation's rich agricultural lands. New technology made the agricultural revolution possible. For example, the cotton gin and the mechanical grain reaper greatly increased the productivity of American farmers.⁶²

With the convergence of the transportation, communications, and agricultural revolutions, by the Civil War the United States, with a population of over 30 million, was one of the leading industrial countries in the world.⁶³ Industrialization had changed the nature of work. Machines

---

⁶⁰ Blackford & Kerr, 88.

⁶¹ Marcus & Segal, 97-101.

⁶² Blackford & Kerr, 91.

⁶³ Ibid., 95.

replaced handicraft labor; new and more efficient power sources contributed to higher productivity. Between 1850 and 1870 steam power began replacing water power, thereby allowing for the location of factories away from water sources and for the development of larger worksites.⁶⁴ This combination led to the growth of factories and to the concentration of large numbers of workers in one place.⁶⁵ The general merchant of colonial times had been replaced by specialized firms, although these firms remained small until late in the nineteenth century.⁶⁶

From Reconstruction to the turn of the century the dramatic economic development continued, transforming the nation from an agrarian rural society in which business was conducted primarily by small, locally owned firms, to an urban, industrial economy in which large, nationally based corporations dominated. The 1870 census was the last to show a majority of workers engaged in agricultural pursuits.⁶⁷ In that same year, the average industrial firm employed only eight workers, many of whom were family members of the owner.⁶⁸ Only thirty years later, over

---

⁶⁴ William L. Barney, The Passage of the Republic: An Interdisciplinary History of Nineteenth-Century America (Lexington, Massachusetts: D.C. Heath & Co., 1987): 294.

⁶⁵ Blackford & Kerr, 99.

⁶⁶ Ibid., 104.

⁶⁷ Barney, 293.

⁶⁸ Ibid., 300.

fifteen hundred firms employed at least 50 workers each, and firms doing business as corporate entities employed over seventy percent of all industrial workers.⁶⁹ While these businesses certainly were not big by today's standards, they were sufficiently large to change the nature of the work processes which now required more mid-level managers to supervise the work place.

The rapid spread of the railroad in the years after the Civil War provided much of the basis for this economic growth. Between 1850 and 1871, the federal government gave the railroads 158 million acres of land to encourage further building. By the 1880s sufficient track existed to link the nation into one transportation network, thereby allowing the development of mass markets with firms engaged in nationwide production and distribution.⁷⁰ Capital investment in manufacturing increased 600 percent from 1870 to 1900. During this same time period, steel rather than iron and wood became the basic material for building machinery. With steel, larger machinery could be built and larger factories became viable.⁷¹ Steel also permitted the development of urban mass transit systems beginning with the cable car in

---

⁶⁹ Ibid., 300, 308.

⁷⁰ See Alfred D. Chandler, Jr., "The Beginnings of Big Business in American Industry," Business History Review 33 (1959): 1-31; Robert H. Wiebe, The Search for Order, 1877-1920, American Century Series (New York: Hill & Wang, 1967): 11.

⁷¹ Barney, 298-301.

1873 and the electric trolley in 1886, both key forces in the expansion of the size of cities. These systems allowed workers to travel longer distances to the work place, thereby encouraging the growth of large factories.⁷²

Throughout the latter third of the nineteenth century urbanization and industrialization worked synergistically. During the decades after the Civil War, large numbers of rural residents, no longer necessary for farm work due to increased mechanization of agriculture, migrated to the cities to work in factories. In addition, the pace of immigration greatly increased after the Civil War, with four million people per decade arriving between 1870 and 1900. Urban residents presented an increasingly large market for the goods produced in factories. In turn, the existence of a mass market permitted the rise of corporations engaged in mass production and distribution. By the beginning of the twentieth century, a few large enterprises, which in many cases owned their own source of raw materials, dominated the major industries.

The nature of work also changed dramatically from colonial times through the end of the nineteenth century. Throughout this period, the labor force in the North American British colonies, and later the United States, consisted of both agricultural and non-agricultural laborers, although the ratio of each changed significantly

---

⁷² Ibid., 293.

over time. Prior to 1800, virtually all laborers worked in agricultural pursuits.⁷³ By 1820, agricultural labor still dominated with eighty percent of laborers engaged in agricultural work; by 1870, the ratio had changed to approximately an even split between agricultural and non-agricultural workers.⁷⁴ From the colonial period through the late-nineteenth century, non-agricultural laborers worked as skilled artisans, journeymen, and apprentices learning a trade from skilled artisans, in the building trades either as skilled or unskilled workers, as domestic servants, as unskilled occasional labor, in the sea trades, and, after the 1820s-30s, as unskilled factory operatives.⁷⁵ During the mid-nineteenth century, clerk positions with businesses became more widespread.

Particularly prior to 1800, a significant part of the labor force for both agricultural and non-agricultural

---

⁷³ See Stephen Innes, ed., Work and Labor in Early America, (Chapel Hill: University of North Carolina Press, 1988) (a collection of excellent essays on colonial labor). See also Gary B. Nash, The Urban Crucible: The Northern Seaports and the Origins of the American Revolution (Cambridge: Harvard University Press, 1986) (discussing, in part, colonial laborers); Morris, (discussing colonial labor).

⁷⁴ Clarence H. Dahnof, Change in Agriculture: The Northern United States, 1820-1870 (Cambridge: Harvard University Press, 1969): 10.

⁷⁵ See Innes, Work and Labor, (describing non-agricultural labor); David Brody, "Time and Work During Early American Industrialism," Labor History 30 (1989): 5-46; A Documentary History of American Industrial Society, vol. 3, John R. Commons et al., eds. (Cleveland, Ohio: The Arthur Clark Co., 1910).

workers consisted of "unfree labor."⁷⁶ One historian estimates that between 1580 and 1775, three hundred and fifty thousand white laborers immigrated to British North America and that about half of these came as indentured servants.⁷⁷ Indentured servants generally were bound to multi-year indentures, often for a seven-year period, during which time they were obligated not only to labor for their masters, but to obey all of their commands. In turn the masters owed the legal obligation to feed, clothe, and otherwise support the servants for the period of the indenture.⁷⁸ Indentured servitude began to die out after 1820, although it continued to be used until the Civil War for children and immigrants.⁷⁹ Slavery was the other primary form of unfree labor. Approximately a quarter of a million slaves were brought to the British North American colonies between 1600 and 1780.⁸⁰ Slaves continued to arrive in North America in large numbers until the English

---

⁷⁶ See Robert J. Steinfield, The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1850-1870 (Chapel Hill: University of North Carolina Press, 1991) (discussing "unfree labor" and the transformation in the United States to "free labor.")

⁷⁷ Richard S. Dunn, "Servants and Slaves: The Recruitment and Employment of Labor," in Jack P. Greene & J.R. Poole, eds., Colonial British America: Essays in the New History of the Early Modern Era, (Baltimore: Johns Hopkins University Press, 1984): 157-194.

⁷⁸ See Steinfield (discussing indentured servants).

⁷⁹ Ibid., 163-72.

⁸⁰ Dunn, 165.

slave trade was abolished in 1807.⁸¹ Slaves, of course, retained that status for life, unless set free by their master. As with indentured servants, masters had the legal obligation to feed, clothe, and otherwise support their slaves.⁸²

The existence of a large unfree labor force was critical to colonial economic development. The availability of relatively inexpensive land made wage labor unattractive for many free laborers, who--compared to laborers in England--more easily became landowners, with the result that labor scarcity plagued the colonies.⁸³ Unfree labor then, whether through indentured servitude or slavery, provided a steady labor supply. However, by the end of the eighteenth century, in New England and the Middle Atlantic region, the use of unfree labor of both types greatly dissipated. Although free labor could attract high wages, because of its scarcity it still was less costly to pay the high wages to free laborers hired on a short term basis or paid by the piece than it was to pay for the year-around support of

---

⁸¹ Ibid., 167-68.

⁸² Not all laborers were "unfree." When indentured servants finished their term of indenture, they became free laborers. Also, some free laborers immigrated prior to 1800, as well as throughout the nineteenth century. Free laborers typically became independent farmers or artisans, or engaged in wage labor. Dunn, 158.

⁸³ See Marcus Wilson Jernegan, Laboring and Dependent Classes in Colonial America, 1607-1783 (Chicago: University of Chicago Press, 1931): 55 (discussing labor scarcity).

unfree labor required both by indentured servitude and slavery.⁸⁴

Complaints of labor shortages continued throughout the first half of the nineteenth century, both for agricultural labor and for the developing New England textile mills.⁸⁵ The high mobility rate for laborers both in the eighteenth and nineteenth centuries also contributed to the inability of employers to command sufficient labor. If workers were dissatisfied with their wages or working conditions or simply became restless, the availability of land and other work opportunities made it possible for them simply to pick up and leave.⁸⁶

Labor scarcity affected not only the working conditions and terms of work for laborers in this country, but it also affected the poor laws the colonies adopted. Unlike in England, where the overabundance of laborers meant many of the poor were able-bodied adult men, many of the poor in colonial North America in the early nineteenth century were

---

⁸⁴ See Nash, 206; Brody, 25-27; Jernegan, 55.

⁸⁵ 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 (1990): 213-261, 227-29; Paul W. Gates, The Farmers Age, 1815-1860 (New York: Holt, Rinehart, Winston, 1960): 271-278.

⁸⁶ See e.g., Peter R. Knights, The Plain People of Boston, 1830-1860: A Study in City Growth (New York: Oxford University Press, 1971); Thomas Dublin, "Rural-Urban Migrants in Industrial New England: The Case of Lynn, Massachusetts in the Mid-Nineteenth Century," Journal of American History 73 (1986): 623-644 (discussing the high rate of labor mobility).

women and children.⁸⁷ Healthy women and children who were old enough to work were forced to become indentured servants. Young children and women who could not work became charges on the community. In order to avoid being financially responsible for the support of able-bodied men, communities had the right to "warn out" any paupers who tried to enter the community or who had not lived there for at least one year.⁸⁸ With the exception of a short period in early colonial Massachusetts, there is no indication in the colonial statutes or in the studies of colonial poor laws that the colonies attempted to use the annual hiring rule; indeed, it would not have made sense to use it because those who could work were forced into indentures.⁸⁹

When one analyzes the labor profile from colonial times through the nineteenth century within the context of the applicability of the English rule of annual hiring in the North American British colonies, one obvious conclusion can

---

⁸⁷ See Jernegan, 175-209; George Daitsman, "Labor and the 'Welfare State' in Early New York," Labor History 4 (1963): 248-256; Morris, 45 (discussing poor laws in the colonies).

⁸⁸ Haskins, 203.

⁸⁹ For colonial statutes see The Colonial Laws of Massachusetts, Reprinted from the Edition of 1660 (Boston, n.p.: 1889); John D. Cushing, ed., Massachusetts Province Laws, 1692-1699 (Wilmington, Delaware: Michael Glazer, 1978); John D. Cushing, ed., Earliest Printed Laws of New York, 1665-1693 (Wilmington, Delaware: Michael Glazer, 1978); John D. Cushing, ed., Earliest Printed Laws of Pennsylvania, 1681-1713 (Wilmington, Delaware: Michael Glazer, 1978); John D. Cushing, ed., Laws of the Province of Maryland, 1692-1718 (Wilmington, Delaware: Michael Glazer, 1978).

be reached. By definition, the English rule would not have been applied to unfree labor, whether indentured servitude or slavery. The effect of the English rule was to impose an implied condition where none existed by contract--that the term of employment would be one year unless the parties expressly agreed otherwise or custom dictated otherwise. Slavery was not a contractual relationship, but rather a legal status of permanent bondage. Thus, the term of employment was not an issue. Indentured servants did serve under a contractual relationship. However, the indentures specified the term of service, thereby removing all of these employment relationships from the operation of the English rule.

One historian has estimated that, when one considers both slaves and indentured servants, approximately three-fourths of all who migrated to the North American British colonies came as unfree laborers.⁹⁰ Of those migrants who did not come either as slaves or indentured servants, some were self-employed artisans, merchants, or farmers. Many indentured servants also became self-employed once the terms of their indentures expired. Thus, when one considers the eighteenth century labor force as a whole, only a small proportion were free wage laborers to whom the English rule could have had any applicability. Of course, as indentured servitude began to dissipate in the early nineteenth

---

⁹⁰ Innes, Work and Labor, 10.

century, the rule could have applied to larger numbers of workers.

Dramatic changes in the law accompanied the dramatic changes in the nature of business and work that occurred from the end of the Revolution and continuing through the nineteenth century. Indeed, these economic changes could not have occurred without significant changes in the law. Although the rudimentary state of property, contract, corporations, and tort law during the colonial period did not hinder the colonial business system, it became a potential death knell to business growth during the nineteenth century. However, dramatic changes in the law occurred during this time period to produce a legal environment in which businesses could prosper. The ideological revolution regarding the origins and function of the law that occurred during the Revolutionary period made these nineteenth century legal changes possible.

State legislatures assumed responsibility for initiating important changes in corporation law by adopting general incorporation laws. These laws permitted businesses to use the corporate form merely by meeting certain capital requirements and filing paperwork with the state. No longer reserved for a select few chosen by the legislature, the corporate form now was available to all.

That constitutions and governments were supposed to represent the will of the people constituted one of the

major ideological changes of the revolutionary period. This new ideology permitted judges to take on legislative functions in terms of making new law with their case decisions. Instead of being merely technical appliers of existing precedent, as they viewed their role during colonial times, judges "began to conceive of themselves as the leading agents of change."⁹¹

Judges initiated many of the important legal changes during the nineteenth century. They changed basic tenets of contract law in ways that supported the sanctity of private contracts and minimized government intrusion into private contractual matters. They developed tort law in such a way as to minimize business liability for injuries attributable to business activities. They supported the development of eminent domain law permitting private land to be taken by the state for public purposes. All of these changes played critical roles in facilitating business development.

Historians disagree on the judiciary's motives. Some argue that their decisions formed part of a deliberate design to create a legal framework in which businesses could

---

⁹¹ Morton J. Horwitz, The Transformation of American Law, 1780-1860 (Cambridge: Harvard University Press, 1977): 22-23. See also William E. Nelson, Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830 (Cambridge: Harvard University Press, 1975): 171-72.

prosper.⁹² Others see no such deliberate design. Rather, they argue that the application of old principles to new times had the unintended effect of creating a more favorable environment for business.⁹³ A further view is that many of the decisions that had a positive impact on business development were motivated out of a desire to further the authority of the judiciary.⁹⁴ Finally, some view the actions of the judiciary as reflecting the continuing influence of Lockean liberalism which demanded that the state remove all artificial barriers to individual success and allow the natural workings of the market to rule. Classical economic thought had become the pervasive ideology in the U.S. during the first half of the nineteenth century and that classicism spilled over into the law.⁹⁵

---

⁹² See, e.g., Lawrence Friedman, A History of American Law, 2d ed. (New York: Simon & Schuster, Touchstone Books, 1973); Kermit Hall, The Magic Mirror: Law in American History (New York: Oxford University Press, 1989); G. Edward White, Tort Law in American History (New York: Garland Publishing, 1980); Horwitz; Stanley I. Kutler, Privilege and Creative Destruction: The Charles River Bridge Case (Johns Hopkins Paperback ed. 1990) (Philadelphia: Lippincott, 1971).

⁹³ See, e.g., Gary T. Schwartz, "Tort Law and the Economy in Nineteenth-Century America: A Reinterpretation," Yale Law Journal 90 (1981): 1717-1775; Gary T. Schwartz, "The Character of Early American Tort Law," UCLA Law Review 36 (1989): 641-718.

⁹⁴ Victoria Hattam, Labor Visions and State Power: The Origins of Business Unionism in the United States (Princeton: Princeton University Press, 1993).

⁹⁵ See Herbert Hovenkamp, Enterprise and American Law, 1836-1937 (Cambridge: Harvard University Press, 1991).

Regardless of how one interprets the judges' motivations, it is clear that many of the pre-Civil War judicial decisions did create a more favorable environment for business development. The critical changes in business law came in the areas of torts, contracts, corporations, and property law. These changes reflect a shift in the function played by the law. Prior to the Revolution, the republican legacy placed primary value on community welfare. This value dominated colonial law.⁹⁶ After the Revolution the law began to emphasize individual freedom consistent with concepts of Lockean liberalism, particularly freedom to engage in economic activities.⁹⁷ As a result, the law increasingly reflected the legitimization of economic competition, an idea generally denounced during colonial times.

It is within the context of the development of the law's support for economic competition and the move away from support for republican legal principles that the traditional view on the origins of the employment-at-will rule is based--it was a creation of nineteenth century judicial activism designed to promote business development. An examination of the development of the employment-at-will doctrine in specific states will help us understand the

---

⁹⁶ Nelson, 143.

⁹⁷ Ibid., 143.

legitimacy of the traditional view on the origins of
employment-at-will.

CHAPTER 3

COLONIES THAT BECAME STATES

Analyzing the development of the employment-at-will doctrine in the original colonies is critical both in understanding to what extent the English law on this topic was transported to the colonies and in understanding the extent to which colonial conditions as well as the economic developments of the eighteenth and nineteenth centuries may have affected the development of the annual hiring rule in the North American colonies. This chapter examines the development of the rule in a representative sample of the original thirteen colonies: Massachusetts, New York, Pennsylvania, Maryland, and Georgia.

I. MASSACHUSETTS

Recent Massachusetts Supreme Judicial Court cases dealing with the erosion of the employment-at-will doctrine cite an 1873 case, Harper v. Hassard, as precedent for

Massachusetts' adoption of the employment-at-will rule.¹

The Hassard court held that because the employers had made no contractual commitment to the employee for any specific period of time, the employers were free to "terminate their agreement with the plaintiff at any time by reasonable notice."² This language supports the interpretation that this case is consistent with the employment-at-will doctrine.

Three points stand out with respect to this decision. First, it was issued in 1873, four years before Wood published his treatise. Thus, some support existed for Wood's assertions about employment-at-will. Second, the decision in Hassard lists no precedents to support the holding that the employers could terminate the relationship at any time absent a contract to the contrary. The only other U.S. cases the decision cites are cases in which a

---

¹ Fortune v. National Cash Register Co., 364 N.E. 2d 1251, 1255 (Mass. 1977) cites Fenton v. Federal St. Bldg. Trust, 39 N.E. 2d 414 (Mass. 1942) as authority for Massachusetts' adoption of employment-at-will. The decision in the Fenton case cites Harper v. Hassard, 113 Mass. 187 (1873) as the earliest case adopting employment-at-will in Massachusetts.

Hassard involved the interpretation of an express employment contract. The contract provided that the employee, Harper, would provide his services on an exclusive basis to the employer, Hassard and his partners, for a three year period. The employers agreed to pay Harper \$30 per week; however, the contract contained no express agreement that the employers would keep Harper in their employ for the three year period or for any specific length of time. Harper sued for breach of contract when he was fired before the expiration of the three year period.

² 113 Mass. at 190.

specific term had been agreed to in the contract and hence their holdings were not applicable to the issue in Hassard. Third, what is most striking about the Hassard decision is that there is no indication that the judges thought they were creating a new common law principle or were breaking with past precedent. One could conclude that the judges believed they were following established principle. A further analysis of Massachusetts law from colonial times to 1873 supports this conclusion.

A colonial Massachusetts court did hold in 1631 that "noe man shall hire any pson for a servant for lesse time than a yeare, unles he be a settled housekeep."³ The Massachusetts Bay Colony had been founded the year before and it appears that the court had adopted the English rule of annual hirings.⁴ However, by 1660, the compilation of colonial laws for Massachusetts made no mention of this rule of annual hiring, although it did contain a section entitled "Masters, Servants, Laborers" which provided detailed regulations regarding wages, the workday, and how servants were to be punished for running away.⁵ It appears, then,

---

³ Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692, vol. 2 (Boston: County of Suffolk, 1904), 15.

⁴ See George L. Haskins, Law and Authority in Early Massachusetts: A Study in Tradition and Design (New York: Macmillan, 1960) (discussing colonial law in Massachusetts).

⁵ The Colonial Laws of Massachusetts, Reprinted from the Edition of 1660 (Boston: 1889), 174-75. See also John D. Cushing, ed., John D. Cushing, ed., Massachusetts Province

that the colony had dropped the annual hiring rule. Case developments after Massachusetts became a state support the conclusion that the annual hiring rule had been dropped.

Massachusetts' decisions began to be formally reported in 1804. For the period from 1804 until the 1873 decision in Harper v. Hassard, Massachusetts' highest court issued twenty-five decisions that provide evidence with respect to the term of employment issue,⁶ although none involved the

---

Laws, 1692-1699 (Wilmington, Delaware: Michael Glazer, 1978) (containing no law incorporating the English annual hiring rule).

⁶ Faxon v. Mansfield, 2 Mass. 147 (1806); Dawes v. Jackson, 9 Mass. 490 (1813); Connor v. Hackley, 43 Mass. 613 (1841); Nichols v. Coolahan, 51 Mass. 449 (1845); White v. Atkins, 62 Mass. 367 (1851); Allcott v. Boston Steam Flour Mill Co., 63 Mass. 17 (1851); Thornton v. Suffolk Mfn. Co., 64 Mass. 376 (1852); Noon v. Salisbury Mills, 85 Mass. 340 (1862); Tatterson v. Suffolk Mfg. Co., 106 Mass. 56 (1870) (providing examples of how employment contracts were formed and how they were to be interpreted).

Bowen v. Matheson, 14 Allen 499 (Mass. 1867); Walker v. Cronin, 107 Mass. 555 (1871) (enticement cases in which the employer sued another employer for enticing away the first employer's workers).

Moulton v. Trask, 50 Mass. 577 (1845); Mullaly v. Austin, 97 Mass. 30 (1867) (involving the issue of whether the employee could recover damages for having been wrongfully terminated prior to the expiration of the term of service).

Boston Glass Mfg. v. Binney, 21 Mass. 425 (1827); Stevens v. Reeves, 26 Mass. 201 (1829); Hunt v. Otis Co., 45 Mass. 464 (1842); Fuller v. Brown, 52 Mass. 440 (1846); Hughes v. Wamsutta Mills, 93 Mass. 201 (1865); Partington v. Wamsutta Mills, 110 Mass. 467 (1872) (addressing the issue of whether the employee forfeited unpaid wages for having failed to give the contractually agreed upon notice prior to quitting--generally two to four weeks).

Stark v. Parker, 19 Mass. 267 (1824); Moses v. Stevens, 19 Mass. 332 (1824); Thayer v. Wadsworth, 36 Mass. 349 (1837); Olmstead v. Beale, 36 Mass. 528 (1837); Rice v. Dwight Mfg. Co., 56 Mass. 80 (1848) (focusing on the issue of whether employees who were contractually bound for a specific time period forfeited their wages if they left prior to the

applicability of the English rule of annual hirings. They do however, provide evidence of the terms of employment.

Many of these cases, which included both manual and agricultural labor positions, involved express contracts for a specific period of time. With respect to express contracts for agricultural labor, one case indicated that such contracts were used to ensure a labor supply.⁷ These cases obviously would not be covered by the annual hiring rule because they were for a term certain. However, they do indicate that express contracts were used during the nineteenth century even for unskilled labor and for agricultural labor. Other cases do not mention a time commitment. However, in one the court held that the term of the contract was month-to-month because the parties initially agreed that the wage would be \$11 per month.⁸ This holding suggests that there was no automatic rule of

---

expiration of the term).

Commonwealth v. Hunt, 45 Mass. 111 (1842) (involving a criminal conspiracy indictment against labor union activity).

Additional cases that dealt with the issue of parishes' contractual commitment to their ministers are not included in the analysis because Massachusetts' common law paid some deference to ecclesiastical law, which had an impact on the outcome of these cases. See Avery v. Tyringham, 3 Mass. 159 (1807).

⁷ See Stark v. Parker, 19 Mass. 267 (1824) where an agricultural laborer left one job to take another. The court noted that in Massachusetts "where the important business of husbandry leads to multiplied engagements of precisely this description, it should least of all be questioned, that the laborer is worthy of his hire, only upon the performance of his contract, and as the reward of fidelity." Id. at 275.

⁸ Nichols v. Coolahan, 51 Mass. 449 (1845).

annual hirings. In a number of the cases, the only time commitment that appears to have been made was to give a notice period, generally two to four weeks, prior to quitting. These cases suggest, then, that one could quit at any time, so long as the proper notice was given.

Although few of these twenty-five cases directly addressed the issue of the duration of the contract when no duration had been specifically agreed on, one case from 1842 is directly on point. In this case, Hunt v. The Otis Co., the employee sued her former employer for the balance due on her wages, an amount the employer refused to pay because the employee had not given four weeks notice before quitting as required by company rules.⁹ In holding that the employee was entitled to the withheld wages, the court reasoned that, because the employee "did not expressly agree to labor for any specific time," it was "a contract of indefinite and uncertain duration, terminable at the pleasure of the plaintiff [employee]."¹⁰ The language "terminable at the pleasure" is precisely the language used to describe the employment-at-will doctrine. Another case from the same year as The Otis Co. case indicated that employees, absent a contract to the contrary, have the right to quit their employment at their pleasure. The issue in Commonwealth v. Hunt was whether labor union activity was punishable under

---

⁹ 45 Mass. 464 (1842).

¹⁰ Ibid., 466-67.

the criminal conspiracy laws.¹¹ The labor union activity complained of was inducing fellow workers to strike. In holding that this was not illegal and hence could not be the subject of a criminal conspiracy charge, the court noted that the fellow workers, who were artisans, "are not bound by contract, but free to work for whom they please, or not to work, if they so prefer."¹²

Two other cases, one from 1870 and the other from 1871, addressed the issue of the contractual commitment between employee and employer. In Tatterson v. Suffolk Manufacturing Co., the Company had hired Tatterson at a stated annual salary payable quarterly. One year and nine months after Tatterson began work, the Company fired him. Tatterson then sued for the wages for the last quarter, arguing that he was originally hired under an annual contract, which automatically had been renewed at the beginning of the second year. The Company denied that Tatterson had been hired under an annual contract and argued instead that the stated annual salary merely referred to the wage rate he would be paid and nothing more. The court ruled that the determination of whether a contract existed for the year depended entirely on the intent of the parties when they entered into the arrangement. The parties' understanding, then, would determine the contract. Although

---

¹¹ 45 Mass. 111 (1842).

¹² Ibid., 130.

no reference was made to the annual hiring rule, its operation was precluded by the court's holding that the contract was limited to the intent of the parties. This certainly is a case in which the court would have discussed the annual hiring rule, if it had been used in Massachusetts. The complete absence of any such discussion suggests that the rule was not in use. In the very next year, 1871, in Walker v. Cronin the court reaffirmed the discussion in the 1842 Commonwealth v. Hunt case that, unless a contract provided otherwise, employees were free to leave their employment.¹³

This review of Massachusetts case law provides some evidence with regard to the issue of annual hiring versus employment-at-will. One can conclude that, from at least 1842, non-agricultural employees were not bound by the annual hiring rule to stay with their employers for a year at a time. Unless they agreed otherwise in their contract, they were free to leave as they wished. One cannot reach the same conclusion for agricultural laborers because three of the four cases involving them had express contracts for a period of time,¹⁴ and the fourth made no mention of the agreed upon term, although it was an express contract.¹⁵

---

¹³ 107 Mass. 555 (1871).

¹⁴ Stark v. Parker, 19 Mass. 267 (1824); Olmstead v. Beale, 36 Mass. 528 (1837); White v. Atkins, 62 Mass. 367 (1851).

¹⁵ Noon v. Salisbury Mills, 85 Mass. 340 (1862).

However, the fact that all four agricultural cases involved express contracts does suggest that express contracts were frequently used for agricultural laborers. Also, none of the cases involved domestic servants. Finally, the cases do not address the employer's commitment. Did the employer have the same freedom to terminate the employment relationship as did the employee who was not contractually bound? Although the case law does not answer these questions, an analysis of non-legal sources such as help wanted advertisements provides additional insight.

The help wanted advertisements from colonial Massachusetts typically stated the desire to hire and contained no hints about terms of employment.¹⁶ The nineteenth century help wanted advertisements, however, do contain helpful information.¹⁷ The bulk of the ads, which covered all types of labor--clerks, supervisors, skilled, unskilled, agricultural, domestic servants, and factory labor--made no mention of the term of the job. Some did

---

¹⁶ I reviewed the help wants ads for the Boston Evening Post for the period August, 1735 to April, 1775. I reviewed the ads in two to four papers per month for every fifth year beginning with 1735.

¹⁷ For the period 1830 to 1877, I reviewed help wanted advertisements in the Boston Transcript which changed names throughout this period, from Boston Transcript to Boston Evening Transcript to the Daily Evening Transcript. Again, I generally reviewed the advertisements in two to four papers per month for every fourth or fifth year. Availability dictated the year reviewed. The specific years reviewed were: 1830, 1835, 1840, 1844, 1848, 1850, 1855, 1860, 1865, 1870, 1875, and 1877. Newspapers were unavailable for the period 1775 to 1830.

refer to specific time periods, generally either one year or for "the season." The ads that mentioned a term of months or for the season clearly seemed to make a commitment to retain the employee for that period of time. Typical of these ads are the following:

Wanted for the year or season, six Tin Workmen, to whom a liberal price will be paid.¹⁸

Wanted . . . a young man 18 or 20 years old, to serve one year, at Chair painting; terms, \$50 and board.¹⁹

Wanted, a Cook and Chambermaid to go into the country for three months.²⁰

Journeyman carpenter wanted to work in Cambridge for the season.²¹

Wanted--By a Commission House, an intelligent Boy, about 14 years of age, for two months.²²

Wanted--Cook . . . for five or six weeks only.²³

Wanted . . . a penman . . . A good job for three months.²⁴

Wanted--For the summer in a small family in the country . . . a pleasant, steady woman.²⁵

---

¹⁸ Boston Evening Transcript, 23 September 1835, p. 1.

¹⁹ Ibid., 12 March 1840, p. 1.

²⁰ Ibid., 4 October 1850, p. 3.

²¹ Ibid., 25 May 1855, p. 3.

²² Boston Daily Evening Transcript, 23 January 1860, p. 3.

²³ Ibid., 24 May 1865, p. 3.

²⁴ Boston Evening Transcript, 19 August 1865, p. 3.

²⁵ Ibid., 22 June 1875, p. 3.

Based on these advertisements, one can conclude that many jobs were not for the term of one year. However, the annual hiring rule did not preclude parties from entering into contracts for terms of less than one year if specifically agreed upon. Thus, these ads do not answer the question of whether the annual hiring rule applied.

Other advertisements listed a specific rate of pay by the year. Typical of these ads are the following:

Yankee girls wanted, 6 Girls who are willing to learn a trade that will give them \$3.50 per week for the first year.²⁶

Wanted, in a counting room, a lad about 15 or 16 years of age . . . one hundred dollars per annum as compensation will be given.²⁷

Wanted, salesman--\$1000 per year will be paid to a man who is experienced.²⁸

Wanted--A young man about 18 years old to work in a store. Compensation the first year \$100.²⁹

It is difficult to conclude from these ads whether the employer was promising to keep the employee on for the entire year or was merely referring to a rate of pay. These

---

²⁶ Boston Daily Evening Transcript, 8 August 1850, p. 3.

²⁷ Ibid., 4 October 1850, p. 3.

²⁸ Boston Evening Transcript, 16 October 1855, p. 4.

²⁹ Ibid., 30 September 1870, p. 1.

ads, then, do not help answer the question of the operation of the annual hiring rule.

A third set of ads, however, does provide evidence that the annual hiring rule was not in effect in nineteenth century Massachusetts. A substantial number of ads made promises of "steady" or "permanent" employment.

Representative of these ads are the following:

Situation wanted. A young man . . . who writes a good hand and is quick at figures, would like a permanent situation.³⁰

Tin plate workers wanted. Steady employment.³¹

Laundress wanted . . . may hear of a permanent situation upon application.³²

Situation wanted--Salesman--wishes a permanent situation.³³

Young man wants a situation . . . steady employment required.³⁴

Wanted--50 good American girls, to work on cloaks. Steady employment given.³⁵

Wanted--Assistant Bookkeeper . . . may find a permanent situation.³⁶

---

³⁰ Ibid., 17 March 1835, p. 1.

³¹ Ibid., 6 August 1835, p. 3.

³² Daily Evening Transcript, 11 April 1844, p. 3.

³³ Ibid., 1 April 1850, p. 3.

³⁴ Boston Evening Transcript, 23 August 1855, p. 3.

³⁵ Ibid., 2 November 1855, p. 3.

³⁶ Ibid., 23 June 1865, p. 3.

Wanted. Shirtmakers . . . who wish regular and constant employment.³⁷

Wanted--By a Protestant seamstress, a permanent situation.³⁸

Wanted--A hostler and gardener to be generally useful. A permanent place for a first-class man and his wife.³⁹

Wanted immediately--A finisher and a forwarder in our bindery; . . . steady employment and fair wages will be given.⁴⁰

The promise of "steady" or "permanent" employment in these ads, which cover positions for office work, skilled work, factory work and domestic service, suggests that not all jobs provided steady or permanent employment. If the annual hiring rule were in effect, steady employment would not be an issue, and permanent employment would be an issue only if the employee sought a commitment for longer than one year.⁴¹

The review of the help wanted ads provides some support for the findings from the case law that skilled and unskilled positions were not encompassed within the annual

---

³⁷ Ibid., 3 July 1865, p. 3.

³⁸ Ibid., 28 April 1870, p. 1.

³⁹ Ibid., 6 July 1870, p. 1.

⁴⁰ Ibid., 12 February 1875, p. 3.

⁴¹ The help wanted ads examined for other states were almost identical to those for Massachusetts. Thus, the examination of the ads for other states will not be discussed in order to avoid repetition.

hiring rule. The ads promising permanence, some of which were for domestic service positions, suggest that domestic servants were not covered by the annual hiring rule, although the ads do not provide a definitive answer. The ads did not include agricultural labor.

A review of the terms of employment for particular jobs or at particular work sites in Massachusetts supports the conclusions derived from examining the case law and the help wanted advertisements. Prior to 1820, although some mills employed operatives, much of the manufacturing activity that occurred took place in the household.⁴² Women and children in rural families performed much of this work on an outwork basis.⁴³ Because this was part-time work done as time permitted, the English annual hiring rule obviously would not have applied. During the late-eighteenth and early-nineteenth centuries this system of outwork, performed on a part-time basis at home, inhibited the growth of a full-time wage labor force.⁴⁴ However, by the 1820s manufacturing establishments began to grow in numbers, in part because farm families no longer could provide

---

⁴² Christopher Clark, The Roots of Rural Capitalism: Western Massachusetts, 1780-1860, (Ithaca, N.Y.: Cornell University Press, 1990), 95.

⁴³ Ibid., 184-85.

⁴⁴ Ibid., 105.

sufficient work for all of their offspring.⁴⁵ Mills and factories sprang up throughout Massachusetts.

Although more farm children were moving to the factories, a serious shortage of labor still existed throughout the antebellum years.⁴⁶ Because of the shortage of labor, workers could move freely from one job to another, while still commanding high wages.⁴⁷ Employers responded to the high wage rates by hiring workers to complete a particular task, rather than for a specific time period.⁴⁸ Hiring skilled laborers by the task rather than for a specific time period had been used throughout the colonial period, in large part because skilled workers were needed only to perform a particular task.⁴⁹ The employer response to the high mobility rate of workers was to attempt to bind them to a certain period of employment by use of a written

---

⁴⁵ Ibid., 229.

⁴⁶ Jonathan Prude, The Coming of Industrial Order: Town and Factory Life in Rural Massachusetts, 1810-1860, (Cambridge: Cambridge University Press, 1983), 89.

⁴⁷ Clark, 260-61; Prude, 144, 146, 227; Paul G. Faler, Mechanics and Manufacturers in the Early Industrial Revolution: Lynn, Massachusetts, 1780-1860, (Albany: State University of New York Press, 1981), 140.

⁴⁸ Prude, 107.

⁴⁹ Stephen Innes, Labor in a New Land: Economy and Society in Seventeenth-Century Springfield (Princeton: Princeton University Press, 1983), 73. Clark, 239 (providing an example of a tool making business that used some annual labor contracts, but also used contracts for specific tasks or for shorter periods of time).

contract.⁵⁰ Although some mills had used written contracts even as early as the 1790s, by the 1820s-1830s, written contracts requiring service for twelve months became widely used.⁵¹ The attempt to reduce the high mobility rate through the use of 12 month contracts, however, was abandoned. Workers tended to ignore their commitment and leave anyway.⁵² Also, employers found that they themselves did not want to be bound to a twelve-month commitment--they wanted to retain their ability to lay off workers in slow times.⁵³

Because of both the high degree of labor mobility and the widespread use of layoffs in times of depression, wage work during this period was highly intermittent. Historian Thomas Dublin provides an example of one mill worker who between 1831 and 1837 worked in the mills for four periods of time: seven months, four months, ten months, and twelve months.⁵⁴ The labor patterns in the shoe industry also

---

⁵⁰ Prude, 150.

⁵¹ Ibid., 150; Gary Kulik, et al., The New England Mill Village, 1790-1860, (Cambridge: MIT Press, 1982), 437; Thomas Dublin, Women at Work: The Transformation of Work and Community in Lowell, Massachusetts, 1826-1860 (New York: Columbia University Press, 1979), 59; John R. Commons, et al., eds., A Documentary History of American Industrial Society, vol. 8 (Cleveland, Ohio: Arthur H. Clark, Co., 1910), 153-54.

⁵² Dublin, 60.

⁵³ Prude, 151.

⁵⁴ Dublin, 185.

reveal the intermittent nature of factory work during this period. From the 1830s to the Civil War, the shoe industry was the most important industry in New England.⁵⁵ Shoe production was highly seasonal with the heavy periods coming in January to June and again in August to October. The mills routinely laid off large numbers of workers at the end of each cycle.⁵⁶ The intermittent nature of work in the U.S. was verified by a British traveler to the U.S. who noted in 1844 that many U.S. workers were "idle nearly half the year."⁵⁷

The freedom of workers to leave jobs as they chose, the freedom of employers to dismiss factory workers whenever they chose, and the attempt to bind workers by means of twelve month written contracts provide convincing evidence that the English rule of annual hirings did not apply to manufacturing jobs. This conclusion is consistent with the case law and with the help wanted advertisements.

Agricultural labor, of course, was the dominant sector of the labor force throughout the first two-thirds of the nineteenth century. Evidence from throughout the colonial period through the nineteenth century indicates that labor

---

⁵⁵ Alan Dawley, Class and Community: The Industrial Revolution in Lynn (Cambridge: Harvard University Press, 1976), 73.

⁵⁶ Ibid., 139-42.

⁵⁷ John Finch quoted in John R. Commons, et al., eds., Documentary History of American Industrial Society, vol. 7 (Cleveland, Ohio: Arthur H. Clark Co., 1910), 55.

shortages in the agricultural sector were a continuing problem. Farms were heavily dependent on family labor throughout the year, hiring extra help, when it was available, only during the busy seasons. The major landowner in Springfield, Massachusetts during the 1650s, John Pynchon, hired substantial numbers of local men and boys to do occasional labor on his land.⁵⁸ Pynchon also owned the town's mill and owned herds of livestock. Thus, he often was in need of skilled artisans whom he paid by the task.⁵⁹ Historian Stephen Innes, who studied Pynchon's operations, found that over half of Springfield's population in any given year during the 1650s worked a month or more for Pynchon.⁶⁰ Most of this work was done pursuant to oral contracts, although agreements for more specialized long-term work typically were reduced to writing.⁶¹ The nature of the colonial economy, heavily dependent on agriculture, precluded full-time permanent work for most people.⁶²

The same situation carried over into the eighteenth and nineteenth centuries. Continuing labor scarcity meant that families performed much of their own labor, calling on

---

⁵⁸ Innes, Labor in a New Land, 72-73.

⁵⁹ Ibid., 72.

⁶⁰ Ibid.

⁶¹ Ibid., 73.

⁶² Eric Guest Nellis, "Labor and Community in Massachusetts Bay: 1630-1660," Labor History 18 (1977): 525-544.

friends or occasional hired labor only during the busy seasons.⁶³ The wealthier farmers typically hired hands for the four or five months during harvest season.⁶⁴ The smaller farmers generally would hire extra help for only a few days at a time.⁶⁵ A study of one Massachusetts farmer's records showed that during the year 1809 he had hired thirty-four different people, each of whom worked an average of four and one-half days.⁶⁶ Farmers also would hire themselves or their sons out for occasional day labor as a way to supplement their income.⁶⁷ Hiring out on an occasional basis occurred most frequently with younger farmers, desiring extra capital to get started in farming, who hired out to older or more established farmers.⁶⁸ During the nineteenth century, farmers attempted to follow the same strategy as factories and mills and to secure a steady labor supply through written term contracts. The typical term for agricultural contracts during the 1830s and

---

⁶³ Clark, 40-41.

⁶⁴ Dunn, 187.

⁶⁵ Clark, 108.

⁶⁶ Ibid., 108.

⁶⁷ Bettye Hobbs Pruitt, "Self-Sufficiency and the Agricultural Economy of Eighteenth-Century Massachusetts," William & Mary Quarterly 3rd Ser. (1984): 333-364, 350.

⁶⁸ David W. Galenson, "Labor Market Behavior in Colonial America: Servitude, Slavery, and Free Labor," in Markets in History: Economic Studies of the Past, ed. David W. Galenson (Cambridge: Cambridge University Press, 1989), 92-93.

1840s was for five to seven months, although yearly contracts sometimes were used.⁶⁹ This use of written contracts is consistent with the case law for this period where all four agricultural labor cases involved express contracts.

None of the evidence regarding Massachusetts' agricultural labor suggests that the English rule of annual hiring was in effect. Indeed, the evidence indicates that many agricultural workers were hired for express periods of time during the peak of the season, and that few worked an entire year.

Similar evidence exists with respect to domestic servants. Complaints about shortages of good domestic servants have existed in North America since colonial times.⁷⁰ Colonists generally attempted to fill these positions with indentured servants or sometimes slaves.⁷¹ Both of these sources would fall outside the scope of the annual hiring rule. The study of John Pynchon indicated that, during the latter half of the seventeenth century, his household employed over thirty domestic servants for a year or longer.⁷² Oftentimes these domestics were teenage girls

---

⁶⁹ Ibid.

⁷⁰ Hasia R. Diner, Erin's Daughters in America (Baltimore: Johns Hopkins University Press, 1983), 90.

⁷¹ Ibid.; David M. Katzman, Seven Days a Week (Urbana: University of Illinois Press, 1981), 224.

⁷² Innes, Labor in a New Land, 117.

who were taken into the household to live with the family.⁷³ Whether they were indentured servants or free labor is not clear. However, at least some of these contracts were written and specified the term of service at one year, as well as the payment.⁷⁴ Other evidence exists that in colonial Massachusetts, domestics were hired for a year's term, although again their status is unclear.⁷⁵

After the Revolution, free labor generally replaced indentured servants and, at least outside the South slave labor, as the source of domestic help.⁷⁶ Throughout the nineteenth century, complaints about the shortage of good domestics continued. As with manufacturing and agricultural work, the shortage of domestic workers promoted great mobility in their ranks.⁷⁷ However, even though they were scarce, domestic workers still were subject to job loss during low points in the economic cycle. During the winter of 1830, one Boston employer of domestic servants noted that the overabundance of servants on the market led to "sporadic hirings, layoffs, and turnover," which "worked serious

---

⁷³ Ibid., 118.

⁷⁴ Ibid.

⁷⁵ Dunn, 187.

⁷⁶ Katzman, 225.

⁷⁷ See generally Katzman; Diner.

hardship on domestics."⁷⁸ The records of a Brookline, Massachusetts employer indicate the sporadic nature of domestic work. This employer frequently dismissed her domestic servants, sometimes because she thought they were "disagreeable" or "too slow," although she sometimes dismissed them just because she found someone she liked better.⁷⁹ These findings are consistent with the help wanted advertisements regarding domestic servants, which often indicated either no time period or a specific term of a few months.

While not as much has been done by historians that specifically addresses domestic servants in Massachusetts as has been done with skilled and unskilled labor, the evidence that does exist suggests that there is no reason to believe that domestic servants had any more job security than did other classes of laborers.

---

⁷⁸ Faye E. Dudden, Serving Women: Household Service in Nineteenth-Century America (Middletown, Conn.: Wesleyan University Press, 1983), 51.

⁷⁹ Ibid., 56-57.

II. NEW YORK

An 1895 case, Martin v. New York Life Insurance Co., is cited as the decision establishing employment-at-will in New York.⁸⁰ In Martin, the court held that in the absence of any agreement for a specific time period, the employment was "a hiring at will" terminable at any time.⁸¹ The court noted that decisions from lower courts were not uniform on this issue, although it did not provide any citations to these lower court decisions. However, the court concluded that Wood had "correctly stated" this rule and it had been adopted in a number of other states.⁸²

It appears from a reading of the Martin case that New York law was confused prior to 1895. Part of that confusion stemmed from a case that New York's Court of Appeals had

---

⁸⁰ 42 N.E. 416 (New York 1895). Feinman cites this as the case by which New York adopted employment-at-will. Feinman, 126.

The employee, Martin, was hired in 1881 at an annual salary of \$5,000 by New York Life to head their real estate department. The contract did not specify that he would be employed for any specific period of time. He received periodic annual raises, and he was paid monthly. After Martin was discharged in April 1892, he sued for the annual salary for the remainder of that year, arguing that, because his salary was stated at an annual rate, he was employed under an implied annual contract. In rejecting Martin's claim, the New York Court of Appeals (New York's highest court) held that merely stating an annual salary did not create an implied contract for a year.

⁸¹ Ibid., 417.

⁸² Ibid.

issued only four years earlier, Adams v. Fitzpatrick.⁸³ In dicta, the Adams court inserted a discussion of the English annual hiring rule, suggesting that it applied in New York state.⁸⁴ The only cases the court cited to support this proposition were English cases. The court also cited a treatise by a U.S. author that included a discussion of master-servant law, Schouler's Law of the Domestic Relations.⁸⁵ However, an examination of the language in Schouler's treatise, which encompassed discussions of both U.S. and English law, indicates that his discussion of the

---

⁸³ 26 N.E. 143 (N. Y. 1891). The facts in the Adams case were similar to Martin in that both contracts provided for an annual salary and both employees worked for their employer beyond one year. However, Adams' initial contract specified that he would be employed from October 15, 1885 to November 1, 1886, while Martin's initial contract never specified any time period. Adams continued working for his employer after the expiration of the initial time period, but without any new agreement for any specific time. When Adams was dismissed in May 1887, he filed suit for the remaining salary for May to November 1, 1887, arguing that when he continued working after the expiration of the initial time period, the contract automatically was renewed for one year. The court agreed that, when an employee has an express contract for one year and then continues working beyond that year, an implied contract is created for an additional year's service. To support its holding, the court correctly cited Wood's 1877 Treatise for the proposition that "[w]here a person has been employed by another for a certain definite term, in the same business, it is presumed that the continued services are rendered upon the same terms." The court also correctly cited in support of this proposition a number of cases both from New York and from other states. This rule, however, is not equivalent to the annual hiring rule under which a contract for a year is automatically implied. Ibid., 145.

⁸⁴ Ibid.

⁸⁵ James Schouler, A Treatise on the Law of the Domestic Relations, 4th ed. (1889), 698, § 458.

annual hiring rule "was founded in English rather than American usage," something that the Adams decision neglected to note.⁸⁶ The judge in Adams obviously had not read Wood's Treatise carefully, because the decision does not cite Wood's statement that contracts are at will in the U.S., unless otherwise agreed. It is not even clear why the discussion of the annual hiring rule made its way into the case because it was not necessary to decide this case. The same court four years later in the Martin case, with a different judge writing the decision, noted that the Adams decision's discussion of the annual hiring rule was not relevant to the decision in the Adams case.⁸⁷

The decision in the Martin case, which clearly rejected the Adams' case discussion of the English hiring rule, made it appear that New York suddenly adopted employment-at-will with the 1895 Martin decision. A review of colonial statutes and cases from New York's highest court from throughout the nineteenth century, while still leaving some room for doubt about what rule New York followed, does clear up much of the confusion.

New York's colonial laws contained statutes regulating the relations between master and servant. Unlike the Massachusetts colonial laws, these laws did not incorporate the annual hiring rule and made no mention of terms of

---

⁸⁶ Ibid.

⁸⁷ 42 N.E. at 417.

employment for free labor.⁸⁸ Decisions from New York's highest court are available beginning in 1799. From that year until the issuance of Adams in 1891, the state's highest court issued twenty-seven decisions that in some way dealt with terms of employment.⁸⁹

A review of the cases suggests several general conclusions. First, as in Massachusetts, a large number involved express contracts for a fixed time period, suggesting that express contracts were widely used. Second, the cases provided examples of express contracts for fixed

---

⁸⁸ John D. Cushing, ed., Earliest Printed Laws of New York, 1665-1693 (Wilmington, Delaware: Michael Glazer, 1978).

⁸⁹ *M'Millan v. Vanderlip*, 12 Johns. 165 (N.Y. 1815); *Thorpe v. White*, 13 Johns. 53 (N.Y. 1816); *Lantry v. Parks*, 8 Cow. 63 (N.Y. 1827); *Reab v. Moor*, 19 Johns. 337 (N.Y. 1822); *Maarsh v. Ruleson*, 1 Wend. 515 (N.Y. 1828); *Monell v. Burns*, 4 Denio 121 (N.Y. 1847); *Wolfe v. Howes*, 20 N.Y. 197 (1859) (involving the "entire contracts" issue of whether the employee sacrifices wages if he or she leaves before the end of the entire contract term).

Haywood v. Miller, 3 Hill 90 (N.Y. 1842); *Costigan v. Mohawk & Hudson R.R.*, 2 Denio 77 (N.Y. 1846); *Howard v. Daly*, 61 N.Y. 362 (1875); *Gifford v. Waters*, 67 N.Y. 80 (1876); *Perry v. Dickerson*, 85 N.Y. 345 (1881); *Everson v. Powers*, 89 N.Y. 527 (1882); *Paine v. Howells*, 90 N.Y. 660 (1882); *Linton v. Unexcelled Fireworks Co.*, 124 N.Y. 533 (1891) (wrongful discharge actions filed by employees who were fired prior to the expiration of the fixed term in their employment contract).

Woodward v. Washburn, 3 Denio 369 (N.Y. 1846); *Whitmarsh v. Hall*, 3 Denio 375 (N.Y. 1846); *Davis v. Gorton*, 16 N.Y. 255 (1857); *Bergin v. Wemple*, 30 N.Y. 319 (1864); *Huntington v. Claffin*, 38 N.Y. 182 (1868); *Smith v. Velie*, 60 N.Y. 106 (1875); *Weed v. Burt*, 78 N.Y. 191 (1879); *Swift v. City of New York*, 83 N.Y. 528 (1881); *Turner v. Kouwenhoven*, 100 N.Y. 115 (1885); *In re Gardner*, 103 N.Y. 533 (1886); *Lacy v. Getman*, 119 N.Y. 109 (1890); *Douglass v. Merchants' Insur. Co.*, 118 N.Y. 484 (1890) (involving a variety of employment issues).

periods of time for all categories of labor: manual, agricultural, domestic service, sales positions, and office work. These cases further illustrated that express contracts with fixed terms of employment were used from early in the nineteenth century. Six of the cases provide specific evidence as to New York's position on the annual hiring rule. An 1815 case, M'Millan v. Vanderlip,⁹⁰ noted that it is the general practice in New York to hire laborers, artisans, and farm workers under contracts for either six or twelve months.⁹¹ This suggests that the automatic annual hiring rule did not apply. In an 1846 case, Woodward v. Washburn, the judge noted that journeymen laborers, who typically were paid by the piece, were hired by the day, providing clear evidence that the annual hiring rule did not apply to such laborers.⁹² Another case from 1846, Costigan v. Mohawk & Hudson Rail-Road Co., noted that domestic servants generally were considered to have been hired on a monthly basis, thus negating the applicability of the annual hiring rule for this class of labor.⁹³ None of these cases suggested that New York followed the English annual hiring rule. If such a rule were followed, one would

---

⁹⁰ 12 Johns. 165 (N.Y. 1815).

⁹¹ Ibid., 167.

⁹² 3 Denio 369, 373 (N.Y. 1846).

⁹³ 2 Denio 609, 613 (1846).

expect that some discussion of it, or at least a reference to it, would show up in the case law.

An 1857 case, Davis v. Gorton, however, did discuss the annual hiring rule.⁹⁴ For over thirteen years, the Davises had lived at and managed the affairs of the farm of Mrs. Davis's father, James Moore. No agreement was made about the rate of compensation Moore would pay them for these services, and they received no payment during the thirteen years of service. After Moore's death, the Davises presented a claim against Moore's estate for payment for their years of service. Their right to receive payment for their services was not in dispute. The issue was whether the six-year statute of limitations, the time period during which law suits for contract claims had to be filed or the claim forfeited, prohibited the Davises' recovery for the entire thirteen years of work. The statute of limitations for contract actions began to run at the termination of the contract. If the thirteen years of service were viewed as one contract, then the statute of limitations would not bar the Davises' claim. However, the court rejected the argument that this was one thirteen-year contract because this would be an extremely unusual arrangement. Because the parties had not agreed to any express terms, the court held that "the case strongly resembles those of the hiring of clerks, servants in husbandry and other similar employments,

---

⁹⁴ 16 N.Y. 255 (1857).

in which . . . to give each party the benefit of all the seasons during the year, or from year to year, an indefinite hiring is taken to be a hiring for a year, or from year to year, the compensation payable at that time."⁹⁵ The court added, however, that perhaps "even monthly payments would be more in accordance with the usual terms of such employment."⁹⁶ The court did not clarify which arrangement it thought this was--a year to year contract or a monthly contract. The most logical explanation for why the court did not clarify this matter is because establishing a term of employment was not so much the issue here as determining the statute of limitations question. And, whether one looked at the Davises' service as thirteen one-year contracts or 156 monthly contracts, the outcome would be the same--the Davises could recover only for a six year or 72 month period.

The only authority the Davis decision cited to support the assertion that indefinite hires were considered to be year-to-year terms was two English cases.⁹⁷ No New York cases or U.S. cases were cited by the court. Although one might interpret the "year to year" language in the decision as New York's adoption of the English rule of annual hiring, it is clear that New York courts that cited Davis as

---

⁹⁵ Ibid., 257.

⁹⁶ Ibid.

⁹⁷ Ibid.

precedent did not view the case this way. Between the time Davis was issued in 1857 and the issuance of the Martin decision in 1895, the Davis case was cited as precedent by New York courts on eight occasions. Seven of these cases involved the statute of limitations for claims against estates, three of which were not based on an employment relationship.⁹⁸ The eighth case cited Davis for the proposition that when no express time is agreed to, but the agreed wages are \$15 per month, a month-to-month contract is implied.⁹⁹ None of these cases even hinted that, with Davis, New York had adopted the English annual hirings rule.

An 1875 case supports the suggestion that New York did not adopt the annual hirings rule with the Davis decision. In Smith v. Velie, the issue again involved the statute of limitations as operating to bar claims against an estate for employment services that were rendered prior to the six-year statute of limitations.¹⁰⁰ The employee had served the deceased for nearly eighteen years without a contract. The estate's executor, in trying to defeat the claim for all but the last six years, argued that each year should be

---

⁹⁸ Rider v. Trotter, 28 N.Y. 385 (1863); Turner v. Martin, 27 N.Y.S. 661 (N.Y. Sup. Ct. 1865); Nicholl v. Larkin, 2 Redfield 236 (N.Y. Co. Sur. Ct. 1876); In re Teyn, 2 Redfield 306 (N.Y. Co. Sur. Ct. 1876); Burnett v. Noble, 5 Redfield 69 (N.Y. Co. Sur. Co. 1880); Carney v. Wadhams, N.Y. Civ. Pro. Rpts. 204 (N.Y. Sup. Ct. 1885); In re Gardner, 9 N.E. 307 (N.Y. 1886).

⁹⁹ Jagau v. Goetz, 32 N.Y.S. 144 (Com. Pleas 1895).

¹⁰⁰ 60 N.Y. 106 (1875).

considered a separate contract, an argument that would be consistent with the Davis decision, although that decision was not cited. However, the court rejected this argument, finding that there was "no foundation in the evidence" to support this conclusion.¹⁰¹ If the Davis decision had adopted the annual hirings rule, its operation would be automatic and no evidence would be needed to support it. Thus, by refusing to find year-to-year contracts because of lack of actual evidence, the court could not have believed that the annual hiring rule was in operation.

Two additional cases support the conclusion that New York had not adopted the annual hiring rule. In the first, Swift v. City of New York, the court held that a contract with no fixed term but payable at a monthly rate was "terminable at the pleasure" of the employer.¹⁰² However, this is not a clear cut statement of the employment-at-will doctrine because the contract provided that the employee would be paid the monthly amount "as long as his employment should continue."¹⁰³ It is possible that the court interpreted this language as the authority that gave the employer the right to terminate at its pleasure. In the second case, Douglass v. The Merchants' Insurance Co., the court held that an agreement to pay an annual salary did not

---

¹⁰¹ Ibid., 110.

¹⁰² 83 N.Y. 528 (1881).

¹⁰³ Ibid., 531.

equate to an agreement to employ for one year.¹⁰⁴ Thus, because the parties did not have a contract for a fixed term, the employer was free to dismiss the employee at any time pursuant to a corporation by-law which provided for service "at the pleasure of the board."¹⁰⁵ Again, because of the language in the by-laws, this is not a clear cut case of employment-at-will. The case is important, however, because it clarified that a mere agreement to pay a salary at an annual rate did not translate into a contract for that same term.

While the language in the Davis and Adams cases does provide some room for confusion with respect to New York's position on the annual hiring rule, the analysis of all of these cases provides substantial support for the proposition that New York followed employment-at-will throughout the nineteenth century. A review of the non-legal sources will provide additional evidence as to New York's position on this rule.

The review of the terms of employment for particular jobs or at particular work sites in New York supports the conclusion that New York did not follow the annual hiring rule for any positions, even agricultural labor. Evidence exists for the terms of employment for skilled and unskilled New York laborers for both the eighteenth and nineteenth

---

¹⁰⁴ 118 N.Y. 484 (1890).

¹⁰⁵ Ibid.

centuries. New York City, in particular, had a substantial free labor population during both centuries.¹⁰⁶ In the eighteenth century, most skilled laborers were paid by the piece and not by any time period, suggesting that their work relationship was not covered by the annual hiring rule.¹⁰⁷ By the end of the eighteenth century, unskilled free labor was abundantly available in New York City. Because of their abundance, free laborers began to replace indentured servants and slaves after the Revolution. Employers preferred free laborers because they required no initial capital outlay, as did slaves, and because employers had no ongoing obligation to support free laborers during times that their labor was not needed, an obligation that did exist with both slaves and indentured servants.¹⁰⁸

The abundance of free labor continued into the early nineteenth century. A New York City newspaper, the American Citizen, in an article critical of the Embargo of 1807, estimated in 1808 that "there are at least ten thousand persons who live by their daily labour, the greatest part of whom must under present circumstances be thrown out of

---

¹⁰⁶ See Samuel McKee, Jr., Labor in Colonial New York, 1664-1776 (n.p., 1935) (providing an excellent discussion of labor in New York during colonial times).

¹⁰⁷ Ibid., 28.

¹⁰⁸ Ibid., 46.

employment."¹⁰⁹ Obviously, these ten thousand persons who were daily laborers and who could be dismissed from their employment at any time, were not covered by the annual hiring rule. Evidence abounds that unskilled laborers in New York City were day laborers, sometimes described as "casual laborers." In 1811, the city, plagued with an over population of dogs, hired a number of day laborers to round up and destroy stray dogs.¹¹⁰ An 1818 letter from John Doyle, an Irish immigrant printer living in New York, to his wife made note of the constant struggle, for him as well as his acquaintances, to find steady work at unskilled positions.¹¹¹

As unskilled laborers began to be employed in the developing factories, the struggle to find steady employment continued. Much factory labor was seasonal, resulting in frequent lay-offs and recalls. One combmaker's account books indicated that during January and February, for the four year period 1843-46, he employed an average of seventeen workers, but during June and July an average of

---

¹⁰⁹ American Citizen, Jan. 1, 1808, quoted in Daitsman, 248.

¹¹⁰ Paul A. Gilje & Howard B. Rock, eds., Keepers of the Revolution: New Yorkers at Work in the Early Republic (Ithaca, New York: Cornell University Press, 1992), 82.

¹¹¹ Ibid., 85.

only four.¹¹² Women workers, often engaged in clothing manufacturing positions, were particularly subject to seasonal variations. In the dress trimming business, for example, the labor force dropped by seventy-five percent from the three-to six-month busy season to the six-month slack season.¹¹³ Cyclical economic downturns that occurred throughout the nineteenth century contributed to the uncertainty of employment.¹¹⁴

Skilled laborers in the nineteenth century suffered from the same uncertainties as the unskilled. In his 1818 letter home, one laborer noted that journeymen printers in New York were "often out of work."¹¹⁵ One journeyman printer in 1846-47 worked for ten different employers during one six-month period. Journeymen tailors suffered the same job insecurity, as reflected in an 1819 call appearing in the New York Evening Post by journeymen tailors to exclude women from the business in order to guarantee steady employment for men. "A Journeyman Tailor," the letter noted, "in this country only earns from \$10 to \$12 per week, and that only about one half the year."¹¹⁶ Even

---

¹¹² Richard B. Stott, Workers in the Metropolis: Class, Ethnicity, and Youth in Antebellum New York City (Ithaca, N.Y.: Cornell University Press, 1990), 115.

¹¹³ Ibid., 119.

¹¹⁴ Ibid., 108.

¹¹⁵ Gilje & Rock, 85.

¹¹⁶ Ibid., 256-58.

apprentices, who during colonial times were hired under specific term contracts, had no such job security by the mid-nineteenth century. Although apprenticeships were not commonly used by the middle of the nineteenth century, except in cases of hiring young boys, those that did survive were oftentimes referred to as "halfway" apprenticeships because they did not provide steady employment and no longer provided room and board.¹¹⁷

While many of the studies of skilled and unskilled laborers focus on their experience in New York City, there is no evidence suggesting that the experience was different in the rest of the state. For these laborers, then, the evidence clearly supports the conclusions from the case law that employment for skilled and unskilled labor was an at-will relationship.

Throughout the eighteenth and nineteenth centuries, as was the case throughout the country, agricultural labor was the dominant labor group.¹¹⁸ In the colonial period, two types of labor arrangements prevailed in New York. Free laborers could enter into a sharecropping arrangement by which they lived on the land and worked it, agreeing to share a portion of the crops with the owner. This arrangement typically would be accomplished by a lease for a

---

¹¹⁷ Christine Stansell, City of Women: Sex and Class in New York, 1789-1860 (New York: Knopf, 1986), 203.

¹¹⁸ McKee, 23.

term, generally a year at a time.¹¹⁹ A lease arrangement, however, does not necessarily equate to an annual hiring rule because leases to sharecrop were not employment contracts. The landlord did not pay the sharecropper/lessor a wage. Rather, the landlord provided the land and the sharecropper paid rent by giving the landlord a share of the crops. In addition to sharecropping, free laborers could work on a daily wage basis, suggesting they were day laborers. Account books for eighteenth century New York farmers indicate that they frequently hired agricultural laborers for a day or a few days at a time.¹²⁰ Colonial New York does not appear to have used the annual hiring rule for agricultural laborers. There is no evidence suggesting that nineteenth century agricultural hiring practices in New York differed from those used in the eighteenth century.

The same situation appears to have applied to domestic labor. New York, particularly before the 1840s when the waves of Irish immigration began, suffered from the same shortage of domestic servants as did the rest of the country.¹²¹ Employers' diaries from the 1790s indicated that, because of the severe shortage of domestic servants, the women and girls who held these positions could easily

---

¹¹⁹ Ibid., 24-25.

¹²⁰ Sung Bok Kim, Landlord and Tenant in Colonial New York Manorial Society, 1664-1775 (Chapel Hill: U. North Carolina Press, 1978), 132-33.

¹²¹ Stott, 107.

find other work and changed positions often.¹²² The diary of one woman indicates that over one five-year period, she employed "at least ten different female servants in fairly rapid succession."¹²³ Most domestic servants stayed in their positions for only a few months.¹²⁴ Some were hired only to perform certain tasks, most frequently for a few weeks to help with the spring cleaning.¹²⁵ Many, it appears, were only hired for a few months. Farm families often hired domestic servants to work in the late summer and early fall in order to help with the increased domestic load during harvest time.¹²⁶ Summer was also a time when many urban domestic servants were dismissed. The wealthier New York families spent the summer in the country and dismissed their urban domestic servants before leaving.¹²⁷

With industrialization and the increasing growth of the middle class, the shortage of domestic help became an issue of great public concern resulting in 1825 in the creation of the Society for the Encouragement of Faithful Domestic

---

¹²² Mary B. Norton, Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800 (Boston: Little, Brown, 1980), 22-23.

¹²³ Ibid., 23.

¹²⁴ Ibid.

¹²⁵ Dudden, 49.

¹²⁶ Stansell, 13.

¹²⁷ Ibid., 157.

Servants in New York.¹²⁸ Along with the goal of attracting more women to enter the field, a major goal of the society was to address the problem of "constant turnover" among domestics made possible because of the shortage, by providing incentive payments to those "who stayed longer than a year with one employer."¹²⁹ However, in spite of the labor shortage, there is evidence that domestic servants still were subject to arbitrary dismissal without notice.¹³⁰

It appears, then, that in New York neither agricultural laborers nor domestic servants were encompassed within the English annual hiring rule.

---

¹²⁸ Katzman, 225.

¹²⁹ Ibid., 224-25.

¹³⁰ Stansell, 157.

III. PENNSLYVANIA

An 1864 case, Coffin vs. Landis, is cited as the decision in which Pennsylvania adopted employment-at-will.¹³¹ Three points about this case are significant for the issue of the status of employment-at-will. First, the decision was issued thirteen years before Wood's Rule was announced in 1877, indicating, as did the Harper v. Hassard decision in Massachusetts, that support did exist for Wood's Rule at the time it was announced. Second, as was the case

---

¹³¹ 46 Pa. 426 (1864). See Freed & Polsby, 556 (asserting that this is the case in which Pennsylvania first adopted employment-at-will).

Landis employed Coffin in a full-time sales position pursuant to a written contract that contained no term for the employment. After Landis dismissed Coffin, Coffin sued for wages for the remainder of the year, arguing that this was a year-to-year, or at a minimum a month-to-month, employment contract. The sole issue the Pennsylvania Supreme Court dealt with in this appeal was whether "it was the right of the defendant, at his will, to terminate the arrangement into which they had entered, and to discharge the plaintiff from his employment." 46 Pa. at 431. The court determined that the issue had to be resolved by determining the intent of the parties when they entered into the contract, expressly rejecting any external standards to determine the employer's obligation such as what the court--and hence society--might consider a reasonable arrangement, what "may be supposed the parties anticipated," and "whether the plaintiff's early discharge was a hardship to him." Ibid. Because the court held that it would rely only on the parties' intent as expressed in the terms of the written contract, and because those terms contained no particular time period, the court determined that the contract did not bind either party "any longer than during the will of the parties." Ibid., 433. Either party could terminate the contract at any time, with no notice required and with no legal liability attaching for the termination. This decision clearly used the employment-at-will approach.

with the Hassard decision, there is no indication in Coffin that the court thought it was adopting a revolutionary new principle. Third, the court did address the English annual hirings rule. The employee had argued that, because no term was specified in the contract, it properly should be considered a hiring for a year. However, the only cases cited to support this proposition were English cases.¹³² The court rejected this argument, noting that "no doubt there is a class of contracts for the employment of servants where the law presumes the contracts to intend a yearly or monthly employment, though nothing is said of the duration of service."¹³³ However, the court further noted that these contracts "are more numerous in England than in this country," and they generally apply only to "menial, domestic and husbandry servants."¹³⁴ The court decided that it did not need to determine whether the English rule applied in Pennsylvania "where usage is so various," because this contract did not fall into the category of menial, domestic, or husbandry service.¹³⁵ This last statement is a clear indication that the Pennsylvania Supreme Court was not certain what all of the lower courts in Pennsylvania were doing with respect to the annual hiring rule; it also

---

¹³² Ibid., 429.

¹³³ Ibid., 433.

¹³⁴ Ibid.

¹³⁵ Ibid., 434.

is a clear indication that the Pennsylvania Supreme Court itself had not adopted the annual hiring rule.

A review of colonial law and the state's supreme court cases issued prior to the Coffin decision provides additional evidence on the status of the rule in Pennsylvania. As was the case in New York, Pennsylvania's colonial statutes made no mention of the annual hiring rule, although they did contain extensive regulations with respect to the master-servant relationship.¹³⁶ Prior to Coffin, the Pennsylvania Supreme Court, in fifteen cases, addressed issues bearing on terms of employment.¹³⁷ In a 1780 case, Montgomery v. Henry, Pennsylvania's highest court held that a captain employed by the owners of a ship under a general retainer could be dismissed without penalty at any time for any reason or even "without cause." However, if the parties had agreed that the captain would serve on a particular voyage, the owners would be liable for damages for breach of

---

¹³⁶ John D. Cushing, ed., The Earliest Printed Laws of Pennsylvania, 1681-1713 (Wilmington, Delaware: Michael Glazer, 1978).

¹³⁷ Montgomery v. Henry, 1 Dall. 52 (Pa. 1780); Ex parte Meason, 5 Binn. 167 (Pa. 1812); Algeo v. Algeo, 10 Serg. & Rawle, 235 (Pa. 1823); Gracy v. Bailee, 16 Serg. & Rawle, 126 (Pa. 1827); Libhart v. Wood, 1 Watts & Serg. 265 (Pa. 1841); Singer v. M'Cormick, 4 Watts & Serg. 265 (Pa. 1842); Beaver v. Hartley, 11 Pa. 254 (1849); Guthrie v. Horner, 12 Pa. 236 (1849); Stewart v. Walker, 14 Pa. 293 (1850); Shoup v. Shoup, 15 Pa. 361 (1850); Hackman v. Flory, 16 Pa. 196 (1851); Wallace v. Floyd, 29 Pa. 184 (1857); Logan v. Caffrey, 30 Pa. 196 (1858); Pennsylvania Coal Co. v. Costello, 33 Pa. 241 (1859); Ranck v. Albright, 36 Pa. 367 (1860).

contract if they dismissed the captain without cause. While this was a clear adoption of employment-at-will, the position of captain of a ship was not comparable to most types of jobs held by Pennsylvanians during the time period and thus one has to question whether this case did establish a general principle of law.

Three cases from the mid-nineteenth century dealt with the issue of the length of the contract. In an 1849 case, Beaver v. Hartley, an operative--an unskilled factory worker--worked under an agreement whereby he was compensated both by monthly wages and by being permitted to live rent free in an employer-owned house.¹³⁸ Many Pennsylvania factories of this time period provided houses to their workers who had families, with rent considered part of their compensation.¹³⁹ The resolution of the case, which involved the family's right to receive assistance under the Poor Laws, revolved around the operative's legal status with respect to the company-owned house in which he and his family lived. The court held that with respect to the house, the operative was a tenant-at-will, meaning that the tenancy could be terminated at any time by the employer-owner.¹⁴⁰ The court did not discuss the duration of the employment contract itself. However, because the use of the

---

¹³⁸ 11 Pa. 254 (1849).

¹³⁹ Ibid., 256.

¹⁴⁰ Ibid., 257.

house was part of that employment contract, if the use of the house could be terminated at the will of the owner, then it is possible that the operative's job likewise could be terminated at the employer's will.

In Hackman v. Flory, an 1851 case, the contract was for service for \$10 per month. After nine months, the employer informed the employee he would now pay only \$7 per month. The employee continued working for four additional months, and then filed suit for money due, including the \$3 per month his wages had been reduced. Although the decision focuses on another issue, and thus there was not much discussion on the term of employment issue, the summary of the proceedings from the trial indicated that one issue the jury had to determine was whether "the contract was for the whole year, at \$10 per month."¹⁴¹ The jury found in favor of the employee and thus presumably determined that it was a contract for a year. The decision provided no information to show the basis of the jury's decision. The significance, however, is that the issue was even presented to the jury. If Pennsylvania followed an automatic annual hiring rule, the issue of whether there was a contract for a year would not have been presented to the jury.

An 1859 case, Pennsylvania Coal Co. v. Costello, required the court to determine whether coal miners were

---

¹⁴¹ Ibid., 197.

laborers for purposes of a state garnishment statute.¹⁴² The court determined that they were laborers because under their contract labor "was contracted for and performed" with "wages resulting therefrom according to the contract."¹⁴³ In discussing the proceedings from the court below, the supreme court noted that the trial court judge concluded that the miners could be "dismissed, at any time by the proper superintendent."¹⁴⁴ This recognition of the right to dismiss at any time is a clear indication that employment-at-will existed prior to the Coffin case.

While the other cases did not deal directly with the term of employment issue, they do provide evidence on the issue. In an 1812 case, Meason v. Ashman, the summary of one of the lawyer's arguments notes that, in iron works, "colliers and wood cutters work by the piece," while "many others work by the month."¹⁴⁵ An 1849 case, Guthrie v. Horner, notes that one of the parties had hired a skilled laborer "by the day. . . for an agreed price."¹⁴⁶ An 1858 case, Logan v. Caffrey, involved an agricultural worker who had been hired by the day.¹⁴⁷ Ranck v. Albright provided

---

¹⁴² 33 Pa. 241 (1859).

¹⁴³ Ibid., 245.

¹⁴⁴ Ibid., 241.

¹⁴⁵ 5 Binn. 167, 173 (Pa. 1812).

¹⁴⁶ 12 Pa. 236, 237 (1849).

¹⁴⁷ 30 Pa. 196 (1858).

an example of an 1854 express contract for domestic service for one year.¹⁴⁸ The Ranck decision also made reference to workers being hired "for a certain time, either week, month, or year."¹⁴⁹ If agricultural laborers and domestic servants were covered under the annual hiring rule, there would not be day laborers in agriculture or a need for an express one year contract for a domestic servant. The reference to workers being hired by the week, month, or year most likely referred to common practice in Pennsylvania reflecting the Coffin decision's comment regarding "contracts of hire in this state where usage is so various."¹⁵⁰

Two cases indicate that Pennsylvania followed the antebellum practices of Massachusetts and New York in determining that an agreement for an annual salary implied an agreement to employ for a year, and if one worked for an agreed period of time pursuant to a contract and then continued working beyond the stated time, an implied contract was created for the same time period as in the original express contract.¹⁵¹

---

¹⁴⁸ 36 Pa. 367 (1860).

¹⁴⁹ Ibid., 370.

¹⁵⁰ Coffin v. Landis, 46 Pa. 426, at 434.

¹⁵¹ Singer v. M'Cormick, 4 Watts & Serg. 265 (Pa. 1842); Wallace v. Floyd, 29 Pa. 184 (1857).

In addition to the cases already discussed, four other cases provide examples of contracts for express periods of time, two for one year each and two for the season.¹⁵² Three of these involved unskilled labor, and one involved a clerk position. None of these cases involved application of the annual hiring rule. The closest any of them came was to make reference to the rule, but to note that it did not apply in the case being determined. The cases taken as a whole provide substantial evidence that the English annual hiring rule was not followed in Pennsylvania. A review of the non-legal sources supports this conclusion.

As was the case with both Massachusetts and New York, numerous case studies exist of skilled and unskilled labor in colonial and nineteenth century Pennsylvania. And, as was the case with both of the other states, these studies show that laborers in these categories had no job security that would come from the application of the annual hiring rule. Both eighteenth and nineteenth century journeymen artisans were subject to seasonal labor and to economic cycles as evidenced by frequent lay-offs and frequent changes of jobs. A study of Philadelphia journeymen from 1750 to 1800 concluded that for both cordwainers and tailors "work was seasonal and winter was usually a slack

---

¹⁵² Algeo v. Algeo, 10 Serg. & Rawle 235 (Pa. 1823); Libhart v. Wood, 1 Watts & Serg. 265 (Pa. 1841); Stewart v. Walker, 14 Pa. 292 (1850); Shoup v. Shoup, 15 Pa. 361 (1850).

period."¹⁵³ Another study for the same time period found the same seasonal nature of employment for other classes of artisans, particularly in the building trades.¹⁵⁴ A study that examined Philadelphia cabinetmakers in the 1790s concluded that these journeymen stayed an average of six months.¹⁵⁵

Journeymen's lack of job security did not change in the nineteenth century. The transcript of an 1827 conspiracy trial of journeymen tailors in Philadelphia indicated that the masters had the right to discharge their employees at any time, even with no reason, and that the employees had the same right to leave their employment at any time.¹⁵⁶ The transcript of an 1815 conspiracy trial of Pittsburgh cordwainers noted that the journeymen were under no contract to work for their masters and could quit at any time.¹⁵⁷

---

¹⁵³ Billy Smith, "The Material Lives of Laboring Philadelphians, 1750 to 1800," William & Mary Quarterly 3d ser. (1981): 163-202, 196.

¹⁵⁴ John K. Alexander, Render Them Submissive: Responses to Poverty in Philadelphia, 1760-1800 (Amherst: University of Massachusetts Press, 1980), 15.

¹⁵⁵ David Montgomery, "The Working Classes of the Pre-Industrial American City, 1780-1830," Labor History 9 (1968): 3-22, 7.

¹⁵⁶ John R. Commons, et al., eds., A Documentary History of American Industrial Society, vol. 4, (Cleveland, Ohio: Arthur H. Clark, Co., 1910), 172, 238, 245.

¹⁵⁷ Ibid., 67.

The same transcript indicated that one of the masters had hired a boy, presumably unskilled, "by the month."¹⁵⁸

Pennsylvania followed the general pattern of largely abandoning indentured servants and slaves by the end of the eighteenth century and replacing them with day laborers to whom the master owed no ongoing obligations. In Philadelphia, for example, in 1750, indentured servants and slaves made up forty percent of the workforce, but, by 1800, they comprised only two percent of the workforce.¹⁵⁹ The unskilled free laborers who replaced indentured servants and slaves fared no better than skilled labor. Labor by the day was common for unskilled workers of the early nineteenth century.¹⁶⁰ Thus, the seasons and economic fluctuations affected unskilled workers' job prospects, just as these factors affected job prospects for skilled workers.¹⁶¹ A study of one Philadelphia shipyard indicated that, in the

---

¹⁵⁸ Ibid., 43.

¹⁵⁹ Sharon V. Salinger, "Artisans, Journeymen, and the Transformation of Labor in Late Eighteenth-Century Philadelphia," William & Mary Quarterly 40 (1983): 62-84, 64-65.

¹⁶⁰ Montgomery, 15.

¹⁶¹ Alexander, 15; William A. Sullivan, The Industrial Worker in Pennsylvania, 1800-1840 (Harrisburg, Pa.: Pennsylvania Historical & Museum Commission, 1955), 73.

1790s, the unskilled workers averaged only a few months on the job.¹⁶²

Factory operatives of the mid-nineteenth century fared no better than their unskilled counterparts from earlier in the century. Antebellum factory workers often complained about arbitrary firings.¹⁶³ Manufacturers claimed a moral right to be able to fire workers freely and replace them with labor-saving devices that were being introduced at that time.¹⁶⁴ One of the demands of mill strikers in 1842 was to be free from such arbitrary dismissals: "No person shall be discharged from this factory without his or her consent. A contrary course evidently conflicts with proper liberty and is one of the greatest evils of factories in general."¹⁶⁵ The widespread occurrence of arbitrary dismissals certainly suggests that the annual hiring rule was not in effect for factory operatives in the antebellum years.

---

¹⁶² Sharon V. Salinger, "To Serve Well and Faithfully," Labor and Indentured Servants in Pennsylvania, 1682-1800 (1987), 156.

¹⁶³ Philip Scranton, Proprietary Capitalism: The Textile Manufacture at Philadelphia, 1800-1885 (New York: Cambridge University Press, 1983), 155.

¹⁶⁴ Anthony F. C. Wallace, Rockdale: The Growth of an American Village in the Early Industrial Revolution (New York: Knopf, 1978), 243.

¹⁶⁵ Ibid., 371, citing strike demands by Pennsylvania mill workers as reported in the Delaware County Republican, 8 July 1842.

As was the case generally in the U.S. during this time period, laborers were extremely mobile.¹⁶⁶ One of the measures factory owners took to combat the immediate effects of employee departures was to adopt workplace rules requiring two weeks notice before quitting; if the proper notice was not given, the employee sacrificed any wages still due. Employees bitterly resented the two week notice requirement, because the factory owners did not bind themselves to a two week notice period for dismissals.¹⁶⁷

Substantial evidence exists to suggest that the English annual hiring rule applied neither to skilled nor to unskilled labor in Pennsylvania in the eighteenth and nineteenth centuries. A similar situation appears to have existed with agricultural laborers.

The findings of specific studies of Pennsylvania agricultural labor practices are consistent with the conclusions contained in general studies regarding the heavy reliance on family labor, the severe shortage of agricultural workers resulting in high wages, and the resulting short-term hiring of such labor for either a few days or for the season. A study of Chester County, Pennsylvania rural labor practices revealed that few free agricultural laborers worked the year around because of the

---

¹⁶⁶ Ibid., 63-64; Salinger, "Artisan," 72-73.

¹⁶⁷ Sullivan, 34-35.

seasonal nature of the demand for their labor.¹⁶⁸ One farmer's account books from 1768 showed that during that year he hired six day laborers, each of whom averaged about three weeks of work for him during the year, and four youths who among them worked a total of six days.¹⁶⁹ Another Chester County farmer's account books revealed that he used a combination of long-term labor hired under an annual contract, labor for the season, and day laborers for extra help during the extremely busy times.¹⁷⁰ A third farmer's account books indicated that, during the 1792 harvest, he hired two extra laborers for a total of twenty-three and a half days of work.¹⁷¹ The account books of a fourth farmer, which covered a three decade period during the late eighteenth and early nineteenth centuries, indicated heavy reliance on short-term workers. From 1800 to 1810, this farmer hired seventy workers, most of whom were used for only a few days at harvest time or for a few months on other projects; only a few were long-term workers.¹⁷²

Wealthier farmers in Chester County who had large land holdings often relied on the "cottage system," a system used

---

¹⁶⁸ Paul G.E. Clemens & Lucy Simler, "Rural Labor and the Farm Homestead in Chester County, Pennsylvania, 1750-1820," in Work and Labor, 106, 117.

¹⁶⁹ Ibid., 116.

¹⁷⁰ Ibid., 124.

¹⁷¹ Ibid., 130.

¹⁷² Ibid., 131.

particularly in the eighteenth century.¹⁷³ Under this system, cottagers rented a house from the farmer and paid the rent by working so many days each year for the farmer. These arrangements were made pursuant to express annual contracts, running from April to April, and hence the annual hiring rule would not encompass them.

While the evidence from Chester County shows that some laborers worked on annual contracts, those contracts were express contracts. Moreover, the practice in Chester County generally involved use of short-term labor for a few days or weeks or for the season. The detailed study of Chester County agricultural labor practices revealed not even a hint that the English rule of annual hirings was in operation. There is no evidence to suggest that the situation was any different for agricultural labor in the rest of the state.

The same study of Chester County also examined the use of domestic servants. The work patterns for domestic servants were similar to those for agricultural labor. Many domestic servants were hired for the short term, typically to complete particular tasks. One farm family during 1765 hired a spinner to work for three weeks and a helper to stay for sixteen weeks after the birth of a baby.¹⁷⁴ From 1790

---

¹⁷³ Ibid.; Lucy Simler, "The Landless Worker: An Index of Economic and Social Change in Chester County, Pennsylvania, 1750-1820," Pennsylvania Magazine of History & Biography 14 (1990): 163-169, 164.

¹⁷⁴ Clemens & Simler, 123.

to 1796, another family hired twenty-five different women to come for varying times to do their spinning. The average stay was seventeen weeks, although some stayed for as little as five weeks.¹⁷⁵ Another family's records revealed that, for the year 1793, it employed five different women to help with household chores. One, who agreed to live-in in exchange for room and board, lasted most but not all of the year. The other four, who were paid a daily, weekly, or monthly rate, worked from four weeks to three months.¹⁷⁶ Domestic work also commonly was performed by the task on an as-needed basis.¹⁷⁷ Temporary domestic help also was used in the cities to help particularly with spring and fall cleanings.¹⁷⁸

This analysis of domestic service work suggests, as does the same study for agricultural work, that the English annual hiring rule was not operational for domestic servants.

---

¹⁷⁵ Simler, 182-83.

¹⁷⁶ Clemens & Simler, 129.

¹⁷⁷ Ibid., 135.

¹⁷⁸ Dudden, 49.

IV. MARYLAND

Modern courts cite an 1887 case, McCullough Iron Co. v. Carpenter, as the decision by which Maryland adopted the employment-at-will rule.¹⁷⁹ This decision is noteworthy for two reasons. First, the discussion reflected the employee's (Carpenter) employment history with the company. He had worked for the company for a total of twenty-seven years, beginning in 1859. Carpenter testified that, during that twenty-seven year period, he had worked "part of the time by the day, part of the time by the ton, and the balance of the time by the year."¹⁸⁰ Carpenter's contention that he had worked part of the time by the year

---

¹⁷⁹ 11 A. 176 (Md. 1887). Carpenter sued the McCullough Iron Company for wrongful discharge after he was dismissed in the middle of the year. Carpenter argued that he had been hired initially on a yearly basis and that each year he continued working, the yearly contract was impliedly renewed. In rejecting Carpenter's claim, the Maryland Supreme Court found that no express contract had ever been entered into between Carpenter and the company as to the length of his current employment. The only action taken by the company was that, when Carpenter was promoted to his current position, the company secretary handed him an envelope that was marked with the notation "1,000 a year," and the secretary asked him if that was satisfactory. Carpenter responded in the affirmative. Nothing more was discussed between the parties. Because the court determined that this was an indefinite hiring, it held that the employer could terminate the employment at the employer's will. In reaching this decision, the court cited Wood's Rule as the prevailing rule in the United States: "There can be no doubt that, in this country, the rule is, an indefinite hiring is prima facie a hiring at will." Ibid., 178. In addition to Wood's Rule, the court cited three other U.S. cases to support its holding, although none of these were Maryland cases.

¹⁸⁰ Ibid., 177.

appears to have referred to the position from which he was fired, but his contention that this was a yearly contract was rejected by the court. However, his testimony that he had in the past worked by the day or by the ton, and that he had not worked during this time by the year, provides proof that the English rule of annual hirings was not operational for this factory. The second factor that makes the decision noteworthy is that, in addition to the ease with which the court accepted employment-at-will as the prevailing rule in this country, there was no suggestion that the decision in this case was a revolutionary change in Maryland law. The tone of the discussion suggested that employers had the right to terminate their employees at will, absent an express contract to the contrary. While the decision cites no Maryland cases, a review of colonial law and the prior case development supports the suggestion that this decision was not a revolutionary break with past precedent.

As was the case with New York and Pennsylvania, Maryland's colonial statutes contained no reference to the annual hiring rule.¹⁸¹ Because Maryland was a slave state, the index to the Maryland state court decisions reflects many cases regarding slave labor and fewer regarding free labor. However, Maryland's highest court did address contract terms for free laborers in ten cases, three of

---

¹⁸¹ John D. Cushing, ed., Laws of the Province of Maryland, 1692-1718 (Wilmington, Delaware: Michael Glazer, 1978).

which were antebellum cases dealing with contracts for overseers.¹⁸² The other seven, dealing with a variety of issues, came after 1870.¹⁸³

In the first overseer case, Cushman v. Sim's Administrator, the issue revolved around whether the overseer and the decedent had an express contract for a year's service. Both parties to the case agreed that Cushman had indeed worked as an overseer for the year. The issue was whether Cushman should recover for his services under a contract theory or the theory of quantum meruit. The court held that no express agreement had been proven, although it permitted Cushman to recover on the quantum meruit theory for the actual work done. The fact that the court needed to decide whether there was a contract for the year suggests that there was no automatic rule of an annual hiring. Further, if the annual hiring rule existed in Maryland, one would expect that it would have been used in this case rather than the quantum meruit theory. If an implied contract existed quantum meruit would not be the appropriate theory. The other two overseer cases provide

---

¹⁸² Cushman v. Sim's Administrator, 2 H. & J. 352 (1808); Courney v. Covington, 5 H. & J. 45 (1820); Berry v. Waring, 2 H. & G. 103 (1827).

¹⁸³ Adams' Express Co. v. Trego, 35 Md. 47 (1871); Hahn v. Concordia Society of Baltimore Co., 42 Md. 460 (1875); Cumberland & Pa. R.R. Co. v. Slack, 45 Md. 161 (1876); Hamill & Co. v. Foute, 51 Md. 419 (1879); Evans v. Davidson, 53 Md. 245 (1879); Norton v. Cowell, 65 Md. 359 (1886); L. Stern & Co. v. Rosenheim, 67 Md. 503 (1887).

examples of express contracts for one year, one of which was written.

The seven cases issued after 1870 provide examples of express contracts, five of which were for a year. One, involving agricultural labor, was for nine months, and the seventh, a contract between an actor and a theatrical company, was for seven months. One of the cases, Norton v. Cowell, issued in 1886, does contain a discussion indicating that at will employment contracts were recognized in Maryland. The issue in the case was whether a letter constituted a promise to employ for a year. The letter promised a monthly wage with an increase at the end of the first year if the performance was satisfactory. In its discussion, the court noted that the issue was whether the letter "by legal construction, constituted a contract of yearly, or monthly, hiring, or a contract of hiring at will merely."¹⁸⁴ This language provides clear evidence that the M'Cullough Iron Co. v. Carpenter case issued a year later did not adopt a revolutionary principle. The language also suggests that contracts at will were an accepted fact in Maryland.

For the most part, the other cases are not particularly enlightening with respect to the employment-at-will issue. They do, however, illustrate three points. First, express contracts were used in Maryland, as they were in the other

---

¹⁸⁴ 65 Md. 359, 361 (1886).

three states. Second, as was true in the other states, Maryland courts did equate an agreement to pay a salary at a stated annual rate as an agreement to employ for that same time period.¹⁸⁵ Third, the nine-month agricultural contract also was consistent with the other states in that agricultural labor was expressly contracted for, sometimes for time periods of less than one year. Taken as a whole, these cases provide no evidence that the English annual hirings rule was used in Maryland; however, they do provide evidence to suggest that the rule was not applicable.

Because Maryland's economy was heavily oriented towards tobacco production, the state did not have the same degree of industrialization as did the other states. However, by the late eighteenth century, Baltimore had a significant population of artisans, and Maryland had substantial iron works. Thus, studies of the Baltimore artisans and labor experiences at the iron works provide evidence of terms of employment for skilled and unskilled workers. The terms of labor for artisans in Baltimore appear to have been similar for artisans in Massachusetts, New York, and Pennsylvania. There was no job security. Masters were free to dismiss the workers at any time, and workers had the concomitant right to quit at will, as illustrated by an agreement reached

---

¹⁸⁵ See Adams' Express Co. v. Trego, 35 Md. 47 (1871).

between master artisans and journeymen in Baltimore.¹⁸⁶ In the 1790s, the Carpenters' Society, an association of journeymen carpenters, reached an agreement with master carpenters that required the master to give six days notice prior to dismissing an employee and required the journeymen to give the same six days notice before quitting.¹⁸⁷ The masters also agreed that, unless the job was for a term of less than two weeks, they would not hire any journeymen who did not belong to the society.¹⁸⁸ Finally, the Carpenters' Society maintained an insurance fund, one purpose of which was to provide travel expenses for members laid off and looking for work elsewhere.¹⁸⁹

A study of the Northampton Iron Works revealed that, during the late-eighteenth century the iron works employed indentured servants, slaves, "hirelings," and free laborers.¹⁹⁰ Hirelings generally were former indentured servants who agreed to stay beyond their indenture period

---

¹⁸⁶ Charles G. Steffen, The Mechanics of Baltimore: Workers and Politics in the Age of Revolution, 1763-1812 (Urbana: University of Illinois Press, 1984); John R. Commons, et al., eds., A Documentary History of American Industrial Society, vol. 4, 272 (Cleveland, Ohio: Arthur H. Clark, Co., 1910).

¹⁸⁷ Steffen, 104.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Charles G. Steffen, "The Pre-Industrial Iron Worker: Northampton Iron Works, 1780-1820," Labor History 20 (1979): 89-110, 91.

with wages being paid monthly.¹⁹¹ These hirelings typically stayed for only a few months.¹⁹² The free laborers performed both skilled and unskilled labor. Wood cutters and wagoners were the most plentiful of the unskilled jobs. Although work was generally available, it was not guaranteed. Steady wages were not guaranteed, and payment was made by the cord of wood cut or by the delivery trips made.¹⁹³ Skilled artisans also were in demand at the iron works. These artisans did not receive monthly wages and were not employed for any certain term; rather, they were paid by the piece. Some masters hired out their journeymen as day laborers.¹⁹⁴ For all of the types of free labor, seasonal fluctuations affected their employment.¹⁹⁵

Studies of free Blacks living in Baltimore in the antebellum years also confirmed the widespread use of day labor and short-term hirings. Many free Blacks in Baltimore in the 1850s were hired under the "hiring-out method" whereby they agreed to work "by the week, month, year, or

---

¹⁹¹ Ibid., 95-96.

¹⁹² Ibid., 96. Steffen provides an example of one hireling who remained for seven months after his indenture expired. Ibid., 95.

¹⁹³ Ibid., 96-97.

¹⁹⁴ Ibid., 97.

¹⁹⁵ Ibid., 98.

term of years."¹⁹⁶ Many free Blacks worked by the day at the docks or for the railroads.¹⁹⁷ In addition to free Blacks, many of the unskilled workers in Baltimore in the antebellum years were immigrants, who worked for a daily wage.¹⁹⁸

The experiences of both the artisans and unskilled workers of Baltimore and the free laborers at the Northampton Iron Works provide no evidence of the existence of the English annual hiring rule; rather, they suggest that, just as in the other three states, skilled and unskilled laborers had no job security.

During the colonial period, many of the agricultural workers and domestic servants were indentured servants or slaves.¹⁹⁹ After the Revolution, as the use of indentured servitude decreased, the use of slavery increased. Thus, Maryland had a much smaller population of free agricultural

---

¹⁹⁶ M. Ray Della, Jr., "An Analysis of Baltimore's Population in the 1850s," Maryland Historical Magazine 68 (1973): 20-35, 29.

¹⁹⁷ M. Ray Della, Jr. The Problems of Negro Labor in the 1850s, Maryland Historical Magazine 66 (1975): 15-29, 18-19.

¹⁹⁸ Suzanne E. G. Chapelle, et al., Maryland: A History of Its People (Baltimore, Maryland: Johns Hopkins University Press, 1986), 144.

¹⁹⁹ Aubrey C. Land, "Economic Base and Social Structure: The Northern Chesapeake in the Eighteenth Century," Journal Economic History 25 (1965) 639-654; Lois G. Carr & Russell R. Menard, "Immigration and Opportunity: The Freedman in Early Colonial Maryland," in The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society, eds. Thad W. Tate & David L. Ammerman (Chapel Hill: University of North Carolina Press, 1979), 214.

and domestic servants than did the other three states. Nevertheless, the findings of specific studies in Maryland regarding terms of employment for agricultural and domestic laborers are consistent with the general studies as well as the specific findings from the other three states on these two groups--while they sometimes were employed on a long-term basis, they generally worked on a short term, occasional basis and had no job security.

Even though much of Maryland's labor force during the seventeenth century consisted of indentured servants, once the indentured servants' time of service had expired they became free laborers. Former indentured servants generally had three employment options. Some did agree to contracts for long-term wage labor. More frequently, however, they hired out occasionally, either on a short-term or daily basis, devoting the rest of their time trying to become established as small farmers on their own plots of land.²⁰⁰

By the eighteenth century the slave labor force began to grow substantially. Although slavery was widely used throughout Maryland to work the tobacco fields, the eastern shore area focused more on wheat production than on tobacco. By the late-eighteenth and early-nineteenth centuries, the

---

²⁰⁰ Russell R. Menard, "From Servant to Freeholder: Status Mobility and Property Accumulation in Seventeenth-Century Maryland," in Colonial America: Essays in Politics and Social Development eds. Stanley N. Katz & John M. Murrin (New York: Knopf, 1983), 82-83; Russell R. Menard, Economy and Society in Early Colonial Maryland (New York: Garland, 1985), 72-73; Carr & Menard, 212.

wheat farmers of the eastern shore stopped using slavery and shifted to using free labor for economic reasons--it was less costly to hire free labor only during the busy seasons when extra labor was needed than it was to maintain slaves year around.²⁰¹ A study that examined free agricultural labor in 1769 to 1770 noted that these free day laborers generally were paid minimal wages plus one meal per day and sometimes a pint of rum. If they were hired for longer than a few days, they would be provided with room and board.²⁰²

Evidence indicates that the practice of hiring occasional or short-term agricultural labor continued into the nineteenth century. Maryland's small farmers during the antebellum years generally could not afford to hire even day labor at harvest time; rather, because they were so desperate for cash, they hired themselves and their sons out as day laborers to the wealthier farmers.²⁰³ In the post-Civil War years, the large planters hired some of their former slaves back on a wage basis. However, feeling that this did not give them sufficient control over the former slaves, the planters then tried to gain more control by having the former slaves sign long-term contracts, something

---

²⁰¹ Chappelle, et al., 109; Paul G. E. Clemens, The Atlantic Economy and Colonial Maryland's Eastern Shore: From Tobacco to Grain (Ithaca: Cornell University Press, 1980), 196-97.

²⁰² David C. Skaggs, Roots of Maryland Democracy, 1753-1776, (Westport, Connecticut: Greenwood Press, 1973), 59-60.

²⁰³ Chappelle, et al., 140.

that many refused to do. Finally, the planters resorted to the sharecropping and tenant systems.²⁰⁴ The various hiring arrangements attempted during the post-Civil War years certainly indicated that the annual hiring rule was not in effect.

Although planters and farmers made substantial use of free labor even during colonial times, the same did not occur with respect to domestic servants. During the colonial period domestic service was performed almost exclusively by indentured servants, most of whom were women.²⁰⁵ Once their indentures expired, these women generally married small farmers or planters; thus, unlike former male indentured servants, these women did not join the day labor force.²⁰⁶ By the end of the eighteenth century, slaves began replacing indentured servants as domestic workers.²⁰⁷ This pattern continued until the Civil War. Because such little use was made of free labor

---

²⁰⁴ Gilbert C. Fite, Cotton Fields No More: Southern Agriculture, 1865-1980, (Lexington, Kentucky: University Press of Kentucky, 1984).

²⁰⁵ Judith Rollins, Between Women: Domestics and their Employers (Philadelphia: Temple University Press, 1985), 48-49; Lois G. Carr & Lorena S. Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," in A Heritage of Her Own: Toward a New Social History of American Women, eds., Nancy F. Cott & Elizabeth H. Pleck, 25 (New York: Simon & Schuster, 1979).

²⁰⁶ Carr & Walsh, 25-31; Sara M. Evans, Born for Liberty: A History of Women in America (New York: Free Press, 1989), 225-26.

²⁰⁷ Rollins, 51.

for domestic servants, little evidence exists with respect to the use of the annual hiring rule for domestic servants in Maryland. However, because almost all domestic service labor was non-free labor throughout most of the period, the annual hiring rule could not have been applicable to such labor. Although studies do not examine the hiring practices after the Civil War, presumably planters and farmers attempted the same arrangements for domestic labor as for agricultural labor--hiring wage labor or attempting to negotiate longer term contracts.

Maryland, then, shows the same pattern for agricultural labor as the other three states. Substantial use of day and short-term workers suggests that the annual hiring rule was not in effect in Maryland. Although definite conclusions with respect to domestic service are more difficult to arrive at, none of the studies gave any indication that an annual hiring rule was in effect for this class of labor.

V. GEORGIA

Georgia was founded by the Spanish in the late-16th century and became an English colony in 1733.²⁰⁸ Population remained sparse until after the Revolution, with 3,500 non-native inhabitants in 1752, and 33,000 in 1773.²⁰⁹ From the Revolution to 1820, population increased tenfold to 340,989.²¹⁰ Land was plentiful, "almost free for the taking."²¹¹ From settlement through 1820, the state was dominated by small farmers, with rice, cotton, and corn being the most important crops.²¹² After 1820 cotton plantations began to develop, although small farmers remained the dominant element in the state.²¹³ After the Civil War many of the large plantations that did exist were

---

²⁰⁸ Kenneth Coleman, et al., A History of Georgia (Athens: University of Georgia Press, 1977), 10-11, 16. The British founders of Georgia envisioned it as providing "a refuge for European Protestants who suffered injustices at the hand of their overlords," and as providing a relief for "the problem of unemployment at home." Ibid., 17. Initially land grants were limited to a maximum of 500 acres so that Georgia would not become a colony of large land holders, but would remain one dominated by many land holders. Most of the early settlers were "small businessmen, tradesmen, and unemployed laborers" who came for a fresh start as landowners. Ibid., 18.

²⁰⁹ Ibid., 413.

²¹⁰ Ibid.

²¹¹ Amanda Johnson, Georgia As Colony and State (Atlanta: Walker W. Brown Publishing Co., 1938), 231.

²¹² Coleman, et al., 116.

²¹³ Ibid., 162.

sliced up into small farms.²¹⁴ In 1870, seventy percent of the work force was engaged in agricultural pursuits.²¹⁵

Prior to 1820, manufacturing was practically non-existent, although during the decade of the 1820s a small artisan class began appearing in urban areas.²¹⁶ Most manufactured goods were obtained from England. Prior to the Civil War, infant industries grew in cotton gins, mills, tanneries, mining, turpentine distilleries, and lumber.²¹⁷ However, only a small percent of Georgia's population worked in these industries. In 1850 Georgia's population totaled 906,185, but only 8,368 Georgians were employed in manufacturing pursuits.²¹⁸ By 1860 the total population had risen to 1,057,286, of which 11,575 were engaged in manufacturing.²¹⁹ Industrialization increased after the Civil War, primarily because of the growth of cotton mills.²²⁰ By 1870 the number of Georgians employed in manufacturing had risen to 71,046 out of a total population of 1,184,109, still only 6% of the total.²²¹ Even though

---

²¹⁴ Johnson, 645.

²¹⁵ Coleman, et al., 234.

²¹⁶ Ibid., 117, 168.

²¹⁷ Ibid., 168.

²¹⁸ Ibid., 172, 413.

²¹⁹ Ibid., 172, 413.

²²⁰ Johnson, 653.

²²¹ Ibid., 234.

manufacturing activity did increase after the Civil War, Georgia remained primarily an agricultural state throughout the nineteenth and into the twentieth century.²²²

Agricultural labor, then, was the dominant occupation for Georgians until well into the twentieth century. Colonial Georgia suffered from a scarcity of labor as did the other colonies, a shortage aggravated by Georgia's prohibition on slavery that remained in effect until 1749.²²³ After that time slavery proliferated. Indentured servants were used throughout the colonial period and into the early nineteenth century. Until the mid-19th century, free white laborers were in short supply. Land was so cheap and easily obtainable that not many free whites were willing to work for wage labor.²²⁴ While plantations were worked by slave labor, the owners typically hired overseers to supervise the plantation. Other than the plantations that employed slave labor, most of Georgia's economic activity centered on small, independent farmers who did not require a permanent hired labor force. Evidence exists to suggest that these small farmers did hire occasional labor during harvest or planting season, typically for a daily wage.²²⁵

---

²²² Coleman, et al., 225.

²²³ Ibid., 71, 78.

²²⁴ Johnson, 396.

²²⁵ Steven Hahn, The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850-1890 (New York: Oxford University Press, 1983), 162.

Prior to the Civil War, then, few of Georgia's agricultural laborers would have been affected by the English annual hiring rule. Slavery was not a contractual relationship. Indentured servitude was the subject of express contracts for specified time periods. Occasional hired labor was just that--occasional with no long term commitment.

After the Civil War the great plantations were broken up and sharecropping became a dominant form of working the land.²²⁶ Sharecropping by its nature involved express contracts for specific time periods and thus was not subject to the annual hiring rule. Landowners who did not work their land by sharecropping did hire former slaves for their work force. However, the Freedmen's Bureau, an agency established by the federal government to protect the rights of former slaves, insisted that these work arrangements be reduced to express contracts.²²⁷ Because both types of agricultural labor used in the post-war years were subject to contract, the annual hiring rule would not have been used.

Workers in manufacturing also appear not to have been affected by the annual hiring rule. Historian Dudley S.

---

²²⁶ Coleman, 226.

²²⁷ For discussions of the role of the Freedmen's Bureau with respect to these labor contracts see Thomas F. Armstrong, "From Task Labor to Free Labor: The Transition Along Georgia's Rice Coast, 1820-1880," Georgia Historical Quarterly 64 (1980): 432-447; Sara Rapport, "The Freedmen's Bureau as a Legal Agent for Black Men and Women in Georgia: 1865-1868," Georgia Historical Quarterly 73 (1989): 26-53.

Johnson traced the work history of a Georgian, William Harris Garland, who worked in various manufacturing and clerical establishments from the 1830s through the 1870s.²²⁸ In his study, Johnson also discussed the work histories of Garland's friends and family. Garland, a skilled artisan, worked in numerous establishments throughout his life. Some jobs he left voluntarily, while he was dismissed from others. For example, in the spring of 1841 he worked on a riverboat for less than two months, at which time he was discharged because "business was slow."²²⁹ Garland then secured employment on another riverboat, but that job did not even last through the summer.²³⁰ His next job was as an engineer at a sawmill. After his employer encountered financial difficulties, Garland was dismissed from the sawmill job, a position that he had held for nine months.²³¹ For the remainder of his years, Garland either was self-employed or worked at a variety of wage-paying jobs which provided no job security.

Garland's friends and family suffered from the same lack of job security. Johnson describes the situation for Garland and his family and friends as follows:

---

²²⁸ Dudley S. Johnson, "William Harris Garland: Mechanic of the Old South," Georgia Historical Quarterly 63 (1969): 41-56.

²²⁹ Ibid., 43.

²³⁰ Ibid., 44.

²³¹ Ibid., 45-46.

Among his friends were sawmill and steamboat owners, clerks, storekeepers, school teachers, and farmers; they all experienced unemployment and periods of near destitution. They were so occupied with earning a living that when they wrote to each other they did not discuss politics but only those things of immediate concern, such as employment opportunities and illnesses which kept them from their jobs.²³²

Other historians, who focused on studying specific non-agricultural industries, found the same pattern of job insecurity. Georgia lumber and turpentine industries were staffed primarily by African Americans, as slaves prior to the Civil War and as free laborers after the war.²³³ After the war, some of the workers entered into annual contracts with the companies, while others worked as occasional or day laborers.²³⁴ The variations in work arrangements were attributable to the seasonal nature of the work.²³⁵ The economy also affected the demand for labor. Because of the "boom and bust cycles of the lumbering industry" workers "were subject to frequent lay-offs, shortages of pay, and

---

²³² Ibid., 53-54.

²³³ Thomas F. Armstrong, "The Transformation of Work: Turpentine Workers in Coastal Georgia, 1865-1901," Labor History 25 (1984): 518-532, 523.

²³⁴ Ibid., 526.

²³⁵ Ibid., 528.

periods of marginal employment."²³⁶ The same type of job insecurity existed in the cotton mills.²³⁷

Whether for agricultural or non-agricultural labor, there is substantial historical evidence to suggest that the English rule of annual hirings did not operate in Georgia. An analysis of Georgia Supreme Court decisions supports the conclusion that the annual hiring rule was not recognized in Georgia. Morriss argued that the Georgia Supreme Court adopted the employment-at-will rule in 1889 and that the legislature codified the rule in 1895.²³⁸ Prior to 1889, the Georgia Supreme Court addressed the law governing the employment relationship in eighteen cases. Four of these cases appeared prior to the Civil War, and as would be expected from the dominance of agriculture in the economy, all four involved agricultural labor. Three of the four involved overseer contracts. Two of the overseers had express contracts for terms of one year, and a dispute arose between the parties over alleged breach of the one year contracts.²³⁹ Because these two cases contained express

---

²³⁶ Thomas F. Armstrong, "Georgia Lumber Laborers, 1880-1917: The Social Implications of Work," Georgia Historical Quarterly 67 (1983): 435-450, 438.

²³⁷ Jacquelyn D. Hall, et al., Like A Family: The Making of a Southern Cotton Mill World (1987), 101 (describing the cotton operatives as subject to arbitrary dismissals).

²³⁸ Morriss, 766.

²³⁹ *Rogers v. Parham*, 8 Ga. 190 (1850); *Britt v. Hayes*, 21 Ga. 157 (1857). The Rogers case presents an example of a contract whereby the employee was to be paid in farm produce

contracts for a specific time period, they do not answer the question of whether the annual hiring rule automatically applied in Georgia.

The third case, Henderson v. Stiles, decided in 1853, provides clear evidence that the annual hiring rule did not apply.²⁴⁰ In this case, Stiles hired Henderson in January 1852 to be the overseer for his plantation. In September, Stiles and Henderson had a dispute and Henderson left his employment. Henderson then sued for his wages for the nine months worked. The decision in the case hinged on whether the parties had agreed on a contract for the term of one year. The court described the state of Georgia law as follows:

The general law governing this class of cases was properly administered, to wit, that if a contract

---

instead of cash. Under the terms of the express, written contract Parham was to work as Rogers' overseer for the year 1847, and at the end of that year Parham would receive a certain portion of the corn, cotton, fodder and wheat that had been produced on the plantation during that year. 8 Ga. 191. Because of the severe currency shortage that inflicted the country throughout the first three-quarters of the nineteenth century, it is likely that many contracts provided for payment in goods rather than money. The currency shortage also likely explains why many other contracts, such as the one in the Britt case, which did provide for payment in money, specified that the entire payment would be made at the end of the year. It is likely that the plantation owners would not have had the currency available to pay on a regular basis, but rather would have had to wait to sell the produce. Because payment would not have been made on many contracts until the end of the year, it certainly was to the employee's benefit to have the terms reduced to writing. This may explain the extensive use of written employment contracts throughout much of the nineteenth century.

²⁴⁰ Henderson v. Stiles, 14 Ga. 135 (1853).

for the year was proven, and the plaintiff violated it, he was not entitled to recover any thing. If he failed to comply with his covenants, or if he abandoned the service of his employer, he forfeited all right to any benefit under the contract. If there was no contract for a specified time, the plaintiff may recover on his quantum meruit count. And if there was proof of a contract, for the year, and the defendant Stiles broke his covenants by turning the plaintiff off or otherwise, then the plaintiff is entitled to recover for the time that he was in his service. These rules apply generally to this class of cases.²⁴¹ (emphasis added)

The court's discussion of the law in the event there was no contract for a specified time in no way indicated that such a contract would be implied under the English annual hirings rule. On the contrary, the court held that where no time period was specified, recovery would be had under *quantum meruit*, a theory designed to allow recovery for unjust enrichment in cases where no contract existed between the parties. If the English rule of annual hirings had been in effect, the court would have relied on it.

The final decision issued before the Civil War might be interpreted as supporting the annual hiring rule for agricultural labor, in the absence of an express agreement to the contrary. In Hobbs v. Davis a slaveowner hired out one of his slaves to work for a cotton plantation owner "to make a crop for that year."²⁴² However, the parties did

---

²⁴¹ Ibid., 136-37.

²⁴² Hobbs v. Davis, 30 Ga. 423 (1860).

not specify the date at which the contract would end. In May the slaveowner withdrew his slave from the employment relationship, thereby causing the plantation owner to lose the entire cotton crop for that year. The slaveowner argued that he had not breached the contract by withdrawing his slave from the employment because no fixed term had been agreed upon. The Georgia Supreme Court, however, disagreed, holding that "when a negro is hired for farming purposes, and no time is set for the termination of the contract for hire, that the law implies a hiring for the year."²⁴³

While this may appear to be a statement of the annual hiring rule, a closer analysis of the court's reasoning suggests otherwise. The court noted that when the time period is not specified for a contract of hire for a slave, the implied time period will be that "time necessary to complete the job and so of every contract of hiring."²⁴⁴ The court further noted that with cotton plantations the universal practice is to hire for the entire year.²⁴⁵ The decision, then, was based not on a rule of automatic hiring for a fixed term, but rather based on what the court construed to be the parties', and particularly the employer's, implied intent regarding the length of time the employment relationship would continue. Finding an implied

---

²⁴³ Ibid., 425.

²⁴⁴ Ibid., 426.

²⁴⁵ Ibid.

contract for the term of one year based on the parties' intent is quite different from finding an annual contract based on a presumption built into the law that employment contracts would last for one year. Thus, this case does not support the proposition that Georgia followed the annual hiring rule.²⁴⁶

From the end of the Civil War through 1889, the Georgia Supreme Court addressed employment contract issues in fourteen cases. Ten of these cases involved breaches of express contracts and thus do not shed any light on the issue of whether the annual hiring rule applied. However, they do suggest that express contracts were used for a wide variety of occupations. Two involved agricultural

---

²⁴⁶ Jacoby interpreted Hobbs v. Davis as a case that applied the annual hiring rule. See Jacoby, 105, n.126 wherein Jacoby described the ruling in Hobbs as follows: "A slave hired from her owner to raise crops was presumptively hired for a year, but not a slave hired to build a house or chimney." However, the court actually treated both agricultural contracts and contracts to perform certain tasks, such as building a house or a chimney, in the same manner. The time periods for both types of contracts were to be interpreted as for the amount of time necessary to complete the job.

labor,²⁴⁷ five involved clerks,²⁴⁸ one an overseer,²⁴⁹ one a warehouse worker,²⁵⁰ and one a baker.²⁵¹

The other four cases are worth examining in detail. The first, Slater v. Howard,²⁵² reflects the common practice in the post-Civil War era regarding employment of former slaves. The importance of this case, for the purposes of this study, is that it illustrates the nature of the legal relationship in the post-war era between employers and former slaves. Slater was an enticement case in which one plantation owner, Howard, sued another, Slater, for enticing Howard's employees, all of whom were former slaves, to leave their employment with him and work for Slater. Howard had prepared written one-year employment contracts for each of the workers, which the Freedman's Bureau had to

---

²⁴⁷ Day v. Oglesby, 53 Ga. 646 (1875); Jones & Jeter v. Blocker, 43 Ga. 331 (1871). Day v. Oglesby is another example of a contract which provided that while the employee would receive room and board during the year of employment, he would not receive any cash payments until the conclusion of the year. 53 Ga. at 647.

²⁴⁸ Blun & Sterne v. Holitzer, 53 Ga. 82 (1874); Echols & Co. v. Fleming, 58 Ga. 156 (1877); Ansley v. Jordan, 61 Ga. 483 (1878); Newman v. Reagan, 63 Ga. 756 (1879) and 65 Ga. 513 (1875); Isaacs v. Davies, 68 Ga. 169 (1881). The employee in the Echols & Co. case appeared to be one of the mid-level management employees that Feinman described. The contract in this case was an express contract for one year, for Fleming's services as a bookkeeper.

²⁴⁹ Williams v. Jeter, 64 Ga. 738 (1880).

²⁵⁰ Putney v. Swift, Murphy & Co., 54 Ga. 266 (1875).

²⁵¹ Edwards v. Block, 73 Ga. 450 (1884).

²⁵² 43 Ga. 601 (1868).

approve before they could be legally binding.²⁵³ The ostensible purpose for this approval was to ensure that employers did not take advantage of the freedmen. However, the Freedman's Bureau was as concerned about ensuring a labor supply for employers as about protecting the freedmen.²⁵⁴ Agents even permitted the use of specific performance to force the freedmen to carry out the term of the contracts.²⁵⁵ Even if one were to interpret the Hobbs decision as support for the existence of the annual hiring rule, the Freedman's Bureau's requirement that employment contracts with freedmen be reduced to writing with wages and terms specified would have supplanted the operation of the rule, at least for the former slaves.

The second post-war case that furthers the understanding of the existence of employment-at-will is an 1873 case, Western & Atlantic Railroad v. Bishop.²⁵⁶ Bishop, a railroad employee, had signed a contract whereby he agreed to assume the risk of injury. The issue was

---

²⁵³ Ibid., 604.

²⁵⁴ See Rapport, 31 for a discussion of the pro-planter bias of the Freedman's Bureau agents. Rapport concludes that "the record reveals that however much blacks attempted to control their labor, agents forced them to make and then abide by contracts with decidedly pro-planter terms." Ibid. Another goal of the Freedman's Bureau was to teach the former slaves the doctrines of free labor, including tenets of contracts. Ibid., 32.

²⁵⁵ Ibid., 34.

²⁵⁶ 50 Ga. 465 (1873).

whether such a provision was binding. The significance of the decision is the court's discussion on the general duties impliedly associated with employment contracts. With respect to such duties the court noted as follows:

Generally, the duties cast by law upon employer and employee are only implications of law, in the absence of stipulations of the parties. If one enters into the employment of another, and there be no stipulations as to wages, hours of labor, industry, etc., the law implies an obligation upon the employer to pay reasonable or customary wages, and upon the employee reasonable industry, and upon both reasonable hours of labor. It also implies various other duties and obligations, but, obviously, these are all only implications, in the absence of any agreement between the parties, and it would be a dangerous interference with private rights to undertake to fix by law the terms upon which employer and employee shall contract. For myself, I do not hesitate to say that I know of no right more precious, and one which laboring men ought to guard with more vigilance, than the right to fix by contract the terms upon which their labor shall be engaged. . . . they should remember that the same law-giver which claims to make a contract for them upon one point, may claim to do so upon others, and thus, step by step, they cease to be free men.²⁵⁷

For two reasons, this decision suggests that the annual hiring rule was not in operation. First, if such a rule did exist, one would expect the court to include it in a discussion of the general terms that are implied in an employment contract. The failure to mention it in this discussion suggests that it did not apply. Second, the discussion regarding the loss of freedom for employees if

---

²⁵⁷ Ibid., 470-71.

the law makes contracts for them suggests that no automatic time period applied to employment contracts.

An 1885 case provides even more compelling evidence that Georgia did not recognize the annual hiring rule. In Walker v. The Vale Royal Manufacturing Co., Walker sued for breach of the employment contract, alleging that the employer refused to pay him at the rate promised by the employer's superintendent.²⁵⁸ Although the legal issue involved the superintendent's agency authority, the testimony cited by the court in its decision addresses the issue of the existence of the annual hiring rule. At the trial Walker testified as follows:

I was not bound for any particular time by my agreement with Morse; suppose the longer I staid [sic] the better I would be liked. He told me there was no doubt about my getting the place. I had the right to quit when I pleased; he could have discharged me, if he wanted to, at any time, because there was no agreement.²⁵⁹

The superintendent also testified that he had the authority to hire and fire workers "as he saw fit."²⁶⁰ In its decision, the court held that the superintendent's hiring of Walker as a day laborer "was no ratification . . . of a contract to give permanent employment at a much higher

---

²⁵⁸ 75 Ga. 28 (1885).

²⁵⁹ Ibid., 30-31.

²⁶⁰ Ibid., 31.

price."²⁶¹ The testimony by the two parties and the language from the court's decision strongly suggest that employment-at-will was the legal standard.

Magarahan v. Wright²⁶² is the case Morriss cites as the one in which Georgia first adopted employment-at-will. The Wright & Lampkin Company had hired Magarahan as a clerk for the sum of \$50 per month. The contract did not specify any time period. The company fired Magarahan prior to the end of the first year, prompting Magarahan to file suit for wages due for the remainder of the year. The issue was whether the hiring was for the term of one year, even though no express agreement for any time period was specified by the parties. In upholding a verdict for the company the court held that unless there was evidence suggesting that the parties actually intended the hiring to be for a specified period, the hiring was only for the time period specified for the payment of wages.²⁶³ Thus, this contract was for only one month because the payment was specified for \$50 per month.

Clearly the Magarahan case expressly rejected the employee's argument that if no time period is specified then the hiring is impliedly for one year. However, there is nothing in the case to suggest that the court thought it was

---

²⁶¹ Ibid., 33.

²⁶² 10 S.E. 584 (Ga. 1889).

²⁶³ Ibid., 585.

adopting a new principle or was changing the current state of the law. In fact, the holding in the case was consistent with prior Georgia Supreme Court decisions on the employment relationship and it was consistent with the historical evidence regarding the ability of Georgia employers to fire at will.

The legal and historical evidence suggests that many Georgia employment arrangements were based on express contracts that specified the time period. The evidence also suggests that for employment situations not covered by express contracts for a specified time period, Georgia followed employment-at-will.

VI. CONCLUSION

The analysis of the legal and non-legal evidence from these five states provides substantial evidence that employment-at-will was always the standard in these states, for all classes of laborers, except for a short period of time in colonial Massachusetts. Because the legal analysis was limited to decisions from each state's highest court, it is possible that studies of trial court records might show a different practice. However, based on the analysis of the specific evidence of labor employment practices, which overwhelmingly suggest that the annual hiring rule was not used, it is unlikely that local records would show any widespread deviation from employment-at-will.

CHAPTER 4

STATES FORMED AFTER THE AMERICAN REVOLUTION

The examination of the five states from the original colonies provides solid evidence that the employment-at-will doctrine firmly rooted itself in the U.S. during colonial days and was not suddenly adopted in the late-nineteenth century. However, in order to arrive at any definitive conclusions for the U.S. as a whole, one must examine additional states, states that provide a more comprehensive geographic as well as economic sampling. This chapter provides this additional analysis by examining the states of Louisiana, Illinois, Texas, California, and Montana.

I. LOUISIANA

In the early sixteenth century, Spain sent the first European explorers to what is now Louisiana. The French began their explorations in the area in the seventeenth century. By the end of the seventeenth century, at which time European settlers were still scarce, both Spain and France claimed the Louisiana territory.¹ During the early eighteenth century the French gained control of the area by virtue of success in founding settlements there, with the first successful settlement being established in 1702.² France remained in control until 1762 when it ceded Louisiana to Spain.³

The colony struggled during the period of French rule. Governor Antoine de la Monthe Cadillac arrived in 1713, at which time a mere three hundred European settlers populated the area, most of whom were engaged in hunting and the fur trade. Cadillac's charge was to promote agricultural development, something that would require significant new settlement.⁴ Several thousand European settlers arrived from 1717 to 1722, and Cadillac arranged in 1716-17 for the

---

¹ Edwin Adams Davis, Louisiana: The Pelican State (Baton Rouge, Louisiana: Louisiana State University Press, 1959), 25-26.

² Davis, 26-33.

³ Davis, 61.

⁴ Davis, 38.

importation of 3,500 slaves from the West Indies.⁵ By 1731 the European and slave population together reached 7,500.⁶ Most settlers engaged in small scale farming worked by family members, although some plantations had been established and were worked by slave labor. The farms and plantations produced tobacco, indigo, corn, and vegetables. A few settlers were artisans who engaged primarily in keeping in repair the manufactured goods imported from Europe.⁷

French law in the colonies consisted of the King's law. The French, unlike the English, had no common law tradition and hence the civil law code prevailed. However, as in the English colonies, the government heavily regulated everyday living and commercial activities. During times of scarcity the government established food prices, meat and fish had to be government inspected prior to sale, weights and measures were regulated, and settlers were required to build and maintain small bridges and levees.⁸

The Louisiana colony failed to thrive under Cadillac's rule, and in fact by 1744 the total free and slave

---

⁵ Davis, 42.

⁶ Davis, 49.

⁷ Bennett H. Wall, ed., Louisiana: A History (Arlington Heights, Illinois: Forum Press, 1984), 79.

⁸ Davis, 68.

population had fallen to 5,000 inhabitants.⁹ By 1756, the population had again reached the 7,500 level, but by 1762 France gave up on Louisiana, ceding it to Spain.¹⁰

Louisiana prospered during the first forty years of Spanish rule. Through generous land grant programs and free seeds, tools, and a year's provisions, the Spanish governor lured thousands of immigrants, who rapidly settled much of the unoccupied land.¹¹ The bulk of the population continued to be engaged in agricultural pursuits. The scarcity of labor, however, limited the size of individual farm's productivity. With free land available, agricultural labor was difficult to secure. The available free labor was hired by the month, for room and board. Unfree labor, slaves and indentured servants, were in short supply even though the Spanish rulers greatly accelerated the slave trade.¹² The increased slave trade did permit the rise of large plantations which by the end of the eighteenth century engaged primarily in cotton and sugar production.

Although agriculture remained the dominant occupation, manufacturing did increase somewhat during Spanish rule. The numbers of sawmills, brickyards, tanneries, and grain

---

⁹ Davis, 58.

¹⁰ Davis, 61.

¹¹ Davis, 108; Joe Gray Taylor, Louisiana: A Bicentennial History (New York: Norton, 1976), 24.

¹² Taylor, 26; Davis, 111.

mills grew during the last half of the eighteenth century. However, the bulk of the manufacturing done by artisans continued to be for items needed in the home: clothing, furniture, tools, and utensils.¹³

By the time Spain ceded Louisiana back to France in 1800, the population had increased to approximately 50,000. Even though the colony had generally prospered under Spanish rule, many of the residents never accepted Spanish culture, retaining their French customs, language, and diet.¹⁴ French customs continued to prevail even after the U.S. purchased the Louisiana territory in 1803. Thus, when Louisiana became an organized U.S. territory in 1805 it retained much of the French civil code that had been established early in the eighteenth century, although since Spanish law was based on the same Roman law as the French civil code one cannot dismiss the Spanish influences on Louisiana law.¹⁵ In 1808, the territory adopted a new civil code, patterned after the French Napoleonic Code.¹⁶

Louisiana, like the English colonies, suffered from a severe labor shortage during its colonial era. And, as in

---

¹³ Davis, 113.

¹⁴ Taylor, 28; Davis, 108.

¹⁵ For a discussion of both the French and Spanish influences on Louisiana law see Edward F. Haas, "Louisiana's Legal Heritage: An Introduction," in Edward F. Haas, ed., Louisiana's Legal Heritage (Perdido Bay Press, Pensacola, Fla., 1983), 1-6.

¹⁶ Taylor, 19.

the English colonies one result of the shortage was extensive use of unfree labor and hiring free labor only on a short-term basis with no long-range commitment desired by either the masters or the servants. Because colonial Louisiana was dominated by French law and culture, and during the latter half of the eighteenth century by Spanish law, there would be no reason to believe that the English annual hiring rule would have taken root in Louisiana. Indeed, both French and Spanish law by this time contained a principle not yet found in English common law--strong support for freedom of contract which is inconsistent with the annual hiring rule.¹⁷

Consistent with the freedom of contract tradition and with the actual labor practices during Louisiana's colonial period, the 1808 Louisiana Civil Code, adopted in preparation for Louisiana being admitted to the Union, contained a provision expressly legalizing the employment-at-will rule. Article 57 of the Code specified that "A man is at liberty to dismiss a hired servant attached to his person or family, without assigning any reason for so doing. The servant also is free to depart without assigning any cause."¹⁸ The 1808 Code drafters had been charged with writing a code that reflected then prevailing law, rather than creating new law. Thus, Article 57 reflected then

---

¹⁷ Haas, 1.

¹⁸ Article 57, Louisiana Civil Code of 1808.

prevailing law.¹⁹

Because Louisiana had always been a civil law state, instead of a common law one, the state of the law regarding employment-at-will is clear--it has been the standard in Louisiana since 1808. And, the historical evidence from colonial Louisiana suggests that it followed employment-at-will throughout its colonial period.

---

¹⁹ Project du Gouvernement (1800), Book III, Title XIII, Art. 112. See also Morriss, 768.

II. ILLINOIS

Anglo-American settlers, primarily self-sufficient small farmers, first moved into Illinois after the Revolutionary War.²⁰ Illinois was later admitted to the Union in 1818.²¹ However, the state suffered from a severe labor shortage until the late 1830s, and continued to be populated by small farmers through the 1840s.²² Indeed, those making the westward trek became convinced, because of the labor shortage, that Illinois was unsuited for anything other than small farms, although coal mining was established on a rudimentary level in the 1820s.²³ In the 1840s Illinois was still described as a "simple rural democracy."²⁴

---

²⁰ James E. Davis, "New Aspects of Men and New Forms of Society," The Old Northwest, 1790-1820, Illinois State Historical Society Journal 69 (1976): 164-172.

²¹ Ibid., 164.

²² Ibid., 171. In fact, Davis reported that hired workers resisted any notion that they were inferior to their employers and would not tolerate being called a "servant." Ibid., 165.

²³ Solon J. Buck, Illinois in 1818 (n.p. 1967), 139; Robert P. Howard, Illinois: A History of the Prairie State (Grand Rapids, Michigan: W.B. Eerdmans Publishing Co., 1972), 251. Indeed, some of the Anglo-American settlers came with the intent of establishing large farms that would be worked by hired labor, but were unable to establish such farms because of the severe shortage of labor. Buck, 137.

²⁴ Theodore C. Pease, The Story of Illinois, 3d ed. (Chicago: University of Chicago Press, 1965), 142.

The railroads arrived in Illinois in the decade of the 1850s, and by the end of that decade a rail network connected the state.²⁵ The railroads led to the demise of the frontier in Illinois and to increasing urbanization and industrialization.²⁶ Chicago's population, for example, grew from 29,963 in 1850, to 109,260 in 1860, and 298,977 in 1870.²⁷ By the 1850s, Chicago had become the railroad and commercial center of the West, with grain elevators, stockyards, and packing plants dominating the city's economy.²⁸ Also in the early 1850s, the state's population passed one million and by 1860 Illinois was the fourth most populous state in the union, with 1,711,951 residents.²⁹

Coal mining and manufacturing grew synergistically with the railroads.³⁰ Because Illinois remained predominantly an agricultural state, with wheat and corn as the major crops, numerous agricultural machinery manufacturing firms developed in Illinois, including McCormick's reaper plant which he moved to Chicago from Virginia in 1847.³¹ A

---

²⁵ Arthur C. Cole, The Centennial History of Illinois: The Era of the Civil War, 1848-1870 (Springfield, Illinois: Illinois Centennial Commission, 1919), 2.

²⁶ Ibid., 1-2.

²⁷ Ibid., 2; Pease, 150.

²⁸ Howard, 242, 269-70.

²⁹ Ibid., 255.

³⁰ Ibid., 251.

³¹ Ibid., 263.

variety of other small manufacturing concerns were established in the 1850s and 1860s.³² In the post-Civil War era, meat packing became the state's biggest industry.³³ However, Illinois remained predominantly an agricultural state. By 1860, the state had approximately 3,000 manufacturing establishments, far fewer than the industrial giants New York, Pennsylvania, and Ohio.³⁴ During the thirty year period beginning with 1860, Illinois was the leading producer of corn and wheat.³⁵

Historical studies of employment relationships show a pattern for Illinois similar to that for Georgia. A severe labor shortage continued to affect the state well into the 1850s.³⁶ The shortage of available labor led to the dominance of small farms that could be worked without permanent hired labor, a pattern that was established early in the nineteenth century. Some laborers were available. However, because the labor shortage meant they could always find work, many of these wage earners were day laborers who went from job to job, staying only a short time at each, apparently valuing their freedom more than permanent

---

³² Ibid., 266-67.

³³ Ibid., 392.

³⁴ Ibid., 303.

³⁵ Ibid., 358.

³⁶ Ibid., 265.

employment.³⁷ Some farmers attempted to ensure some permanence in their labor supply by resorting to written contracts for specific terms. Other farmers eventually resorted to a contract labor system whereby foreigners were brought to Illinois under contract for a specified time, usually for a several year period.³⁸ Neighbors also helped each other with farm tasks.³⁹ The annual hirings rule would not have applied to any of these types of agricultural labor relationships.

The historical evidence regarding non-agricultural labor also suggests that the annual hiring rule was not utilized in Illinois. The 1850s was the first decade in

---

³⁷ Davis, 168. The variety of jobs any individual might hold in a lifetime revealed the fluidity of jobs, a condition consistent with labor shortages. Davis recited the following recollection of a Swedish traveler in Illinois during this time period:

The speed with which people here change their life calling and the slight preparation generally needed to leave one calling for another are really surprising, especially to one that has been accustomed to our Swedish guild-ordinances . . . . A man who today is a mason may tomorrow be a doctor, the next day a cobbler, and still another day a sailor, druggist, waiter, or school master. Ibid., 168.

Although this traveler may have exaggerated the frequency with which people changed jobs, as well as the variety of jobs held, the story does illustrate the lack of rigid rules governing the frontier labor market.

³⁸ Carl Hallberg, "Soperville: An Immigrant Community in Knox County," Illinois Historical Society Journal 74 (1981): 51-57, 53.

³⁹ Ibid.

which any meaningful industrialization occurred in the state. A number of historians have chronicled the lives of Illinois workers during that decade and the next. In their general histories of Chicago and Illinois both Bessie Pierce and Arthur Cole note that by the 1850s work in urban areas had become seasonal and uncertain, and that during the 1857 depression, workers were laid off on a daily basis.⁴⁰ Periods of unemployment had become so prevalent that by the 1850s Illinois's urban areas found themselves facing the problem of caring for paupers.⁴¹

Historians who have examined specific occupations also found uncertainty in employment. During the Civil War period, African Americans migrated to Illinois. Because of the war-induced labor shortage, employers were willing to hire African American workers. However, these African American workers were more likely to be laid off during down times than were white workers.⁴² Because the 1850s was the boom period for railroad growth, many workers were engaged

---

⁴⁰ Bessie R. Pierce, A History of Chicago: From Town to City, 1848-1871 (n.p., 1940), 156; Cole, 202.

⁴¹ Cole, 202. See also Otto M. Nelson, "The Chicago Relief and Aid Society, 1850-1874," Illinois State Historical Society Journal 59 (1966): 48-66. Nelson reported that during one particularly cold part of the winter of 1869-70, Chicago had an unemployment rate of 50%, which suggests employers did not have any term obligations to their employees. Nelson, 58.

⁴² Shirley J. Carlson, "Black Migration to Pulaski County, Illinois, 1860-1900," Illinois Historical Journal 80 (1987): 37-46, 43.

in construction work. However, they were paid by the day and they had no more guarantee of steady work than did the African American workers. The railroad workers were not paid if they missed work due to illness and they often were dismissed if either bad weather or material shortages caused delays, events which occurred with some frequency.⁴³

Carpenters, in great demand during the urban building boom period that occurred beginning in the 1850s, experienced the same job insecurity. Carpenters were paid by the piece and had work only until the completion of a project. They experienced frequent periods of unemployment, prompting the carpenters' union in 1870 to set up an unemployment benefit fund.⁴⁴

The historical evidence, then, suggests that employment-at-will was the norm in Illinois. The Illinois Supreme Court decisions that reflect the state of employment law are consistent with this historical evidence. Morriss asserts that Illinois adopted employment-at-will in 1874, in

---

⁴³ David L. Lightner, "Construction Labor on the Illinois Central Railroad," Illinois State Historical Society Journal 66 (1973): 285-301, 294. Railroad construction projects engaged a substantial labor force. Lightner reports that the Illinois Central Railroad employed up to 10,000 construction workers during certain building booms in the 1850s. Ibid., 285.

⁴⁴ Richard Schneirov & Thomas J. Suhrbur, Union Brotherhood, Union Town: The History of the Carpenter's Union of Chicago, 1863-1987 (Carbondale, Illinois: Southern Illinois University Press, 1988), 6-7, 17. Itinerant carpenters from Canada often flooded the Chicago labor market during the busy building season and left town for the winter. Ibid., 7.

the case of Orr v. Ward.⁴⁵ Prior to the Orr decision, the Court issued fourteen decisions that provide some guidance on whether the annual hiring rule ever operated in Illinois. All but one of these cases involved breach of an express employment contract. Seven of the express contract cases involved agricultural labor,⁴⁶ one for sales,⁴⁷ one for a maintenance job,⁴⁸ one for a stage manager,⁴⁹ one for a gardener,⁵⁰ one for a bookkeeper,⁵¹ and one for a clerk.⁵² The fact that thirteen of the fourteen cases⁵³ dealt with by the Illinois Supreme Court contained express employment

---

⁴⁵ 73 Ill. 318 (1874),

⁴⁶ Eldridge v. Rowe, 7 Ill. 91 (1845); Badgley v. Heald, 9 Ill. 64 (1847); Schoonover v. Christy, 20 Ill. 426 (1858); Angle v. Hanna, 22 Ill. 429 (1859); Swanzey v. Moore, 22 Ill. 63 (1859); Hansell v. Erickson, 28 Ill. 257 (1862); Thrift v. Payne, 71 Ill. 408 (1874).

Only one of these involved a one-year contract (Swanzey). The others involved time periods from three and two-thirds months to eight months. These differing time periods suggest that the employing farmers wanted to pay for labor only during the busy harvest seasons, as well as suggesting their desire to ensure a labor supply.

⁴⁷ Pfund v. Zimmerman, 29 Ill. 269 (1862).

⁴⁸ Thomas v. Cook County, 56 Ill. 351 (1870).

⁴⁹ Fuller v. Little, 61 Ill. 21 (1871).

⁵⁰ Trustees v. Shaffer, 63 Ill. 243 (1872).

⁵¹ Chiles v. Belleville Nail Mill Co., 68 Ill. 123 (1873).

⁵² Mahon v. Daly, 70 Ill. 653 (1873).

⁵³ The case that did not involve an express contract was Moline Water Power & Mfg. Co. v. Nichols, 26 Ill. 90 (1861).

contracts for a wide variety of jobs suggests the widespread use of such contracts. Four of these cases are worth exploring in more detail.

In an 1861 case, Moline Water Power & Manufacturing Co. v. Nichols,⁵⁴ the employee, Nichols, was employed as an engineer. After he was dismissed from the employment, he sued for his salary for one year, the time served, and expenses due. The employer argued on appeal that Nichols could not recover salary for one year unless he could prove the existence of a specific contract for that time period. In rejecting the employer's argument the court determined that there was no need to prove the existence of a specific contract for a year's service if Nichols could prove that he in fact provided services for the year.⁵⁵ If Illinois recognized the annual hiring rule, this issue would not have arisen. If the annual hiring rule had been in effect, the assumption would have been that the contract was for one year, unless the parties had specifically agreed otherwise. The fact that the rule was not discussed or applied in this case is strong evidence that it was not recognized in Illinois.

---

⁵⁴ Ibid.

⁵⁵ Ibid., 93.

The 1862 case of Pfund v. Zimmerman⁵⁶ involved one of the mid-level management employees described by Feinman. Zimmerman had been hired by Pfund as a salesman at a salary of \$1,000 per annum. Zimmerman's employment ended after 16 months and he sought recovery for unpaid wages. The issue was whether the agreement to pay \$1,000 per annum established the terms of the contract on a yearly basis. The court held that it did not and that no evidence had been presented to support a finding that the parties had agreed on an annual term of service: "The evidence in this case does not show a hiring for any specified time."⁵⁷ Thus, the stated salary of \$1,000 per annum was merely a "rate of compensation" and "not a specification of any particular term of service, agreed upon."⁵⁸ If the annual hiring rule applied, the court would not have needed to concern itself with the parties' intent; rather, it would have found an automatic one year contract. The language in this decision strongly suggests that employment-at-will was the standard in Illinois in 1862, far before Wood's 1877 treatise was published.

In 1872 the Illinois Supreme Court issued a decision that contained a clear statement of the employment-at-will principle. In Trustees v. Shaffer the parties had an

---

⁵⁶ 29 Ill. 269 (1862).

⁵⁷ 29 Ill. at 271.

⁵⁸ Ibid.

express employment contract for the term of one year.⁵⁹ After the employee Shaffer, who served as a gardener, was discharged without cause before the expiration of the year, he brought an action for wages for the remainder of the year. In finding for Shaffer the court noted that the trustees did not have the power "at pleasure and without cause, to discharge the servants of the institution, when a special contract had been made."⁶⁰ The court further noted that "if a corporation desires to retain the right of removal at its discretion, it must not bind itself by a special contract."⁶¹ This language supports the conclusion that employers could dismiss employees at will in the absence of a special contract. There is nothing in the decision indicating that the court believed it was adopting new law or offering a new interpretation of existing law.

A decision issued one year later, in 1873, further supports the conclusion that Illinois followed employment-at-will. In Chiles v. Belleville Nail Mill Co. the sole issue was whether the parties had entered into an employment contract for one year.⁶² The company argued that the contract did not specify a fixed term. The court noted that there was a conflict in the evidence, but, after examining

---

⁵⁹ 63 Ill. 243 (1872).

⁶⁰ Ibid., 245.

⁶¹ Ibid., 246.

⁶² 68 Ill. 123 (1873).

the negotiations leading up to the contract in an attempt to determine the parties' intent, concluded that the parties indeed had intended to enter into a one year contract.⁶³

If the annual hiring rule were in effect, the court would have relied on it, rather than on the actual intent of the parties as reflected in the negotiations.

Thus, by the time the Illinois Supreme Court issued its 1874 decision in Orr v. Ward,⁶⁴ the case in which Morriss asserted Illinois first adopted employment-at-will, that principle was already firmly established in Illinois law. The Orr decision was not without importance, however. It did reaffirm the holding in Pfund that an employer's agreement to pay wages at an annual rate did not commit the employer to a contract for that same time period; only an express provision regarding a time period could do that. However, Orr in no way abandoned an annual hiring rule and adopted employment-at-will; that had occurred with the early settlement of Illinois as reflected in Illinois employment practices and Illinois law throughout the nineteenth century.

---

⁶³ Ibid., 124.

⁶⁴ 73 Ill. 318 (1874).

III. TEXAS

The Anglo-American colonization of the Texas territory began in the 1820s, during which time Texas was still part of Mexico.⁶⁵ When Texas declared its independence of Mexico in 1836, its non-Native American population numbered approximately 25,000, most of whom were farmers.⁶⁶ Texas became a state in 1845.⁶⁷ By 1850, the population had grown to 212,592, of whom 58,161 were slaves.⁶⁸ At this time most Texans were farmers, mostly small farmers. Urban areas were sparse, with only four percent of the population living in towns.⁶⁹ The largest town in 1850 was Galveston with a population of 4,177.⁷⁰ The chief impediments to business development in Texas at this time were the lack of adequate banking facilities and the absence of roads or other transportation systems.⁷¹ By 1860, the state's

---

⁶⁵ Rupert Norval Richardson, et al., Texas: The Lone Star State 3d ed. (Englewood Cliffs, New Jersey: Prentice-Hall, 1970), 47.

⁶⁶ Ibid., 59.

⁶⁷ Ibid., 131.

⁶⁸ Ibid., 149.

⁶⁹ Ernest Wallace, Texas in Turmoil, 1849-1875 (Austin, Texas: Steck-Vaughn Co., 1965), 13.

⁷⁰ Richardson, 164. No other towns had even a thousand inhabitants. Ibid.

⁷¹ Ibid., 65, 165. Lack of banking and roads had plagued Texas from the earliest days of its settlement. Ibid., 165.

population had swelled to 604,215, of whom 182,921 were slaves.⁷² San Antonio was now the largest town with 8,236 inhabitants.⁷³ In the 1860 census approximately one-half of Texans listed themselves as farmers, most of whom were small farmers, although some large plantations did exist; the remaining population identified themselves as stockmen or planters.⁷⁴ Cotton and corn were the most important crops.⁷⁵ Cattle ranching also spread through Texas during the 1830s-1840s.⁷⁶ By 1860 Texas cattle outnumbered the inhabitants six fold.⁷⁷

Although manufacturing was not significant in the antebellum Texas economy, it did exist.⁷⁸ The 1860 census indicated that 3,449 people listed themselves as employed in manufacturing, and that 983 manufacturing firms existed.⁷⁹ Milling and the lumber industry had been present since the

---

⁷² Ibid., 149.

⁷³ Ibid., 164.

⁷⁴ Seymour V. Connor, Texas: A History (New York, New York: Crowell, 1971), 182. In 1860, Texas had "51,569 farmers, 2,576 stockmen, and 265 planters among the 105,491 persons listed with occupations." Ibid.

⁷⁵ Richardson, 158-59.

⁷⁶ Ibid., 258.

⁷⁷ Ibid., 258. Texas had 3,786,433 cattle and 604,215 people. Ibid.

⁷⁸ Connor, 181; Richardson, 158.

⁷⁹ Richardson, 158.

early years.⁸⁰ Cotton gins and sugar cane processing became established by the 1850s.⁸¹

In 1870, Texas was still primarily an agricultural state, with its industrial production occurring on a small scale, designed to serve the demands of local communities.⁸² Less than one percent of the total population of 818,579 listed themselves as industrial workers in the 1870 census.⁸³ Texas industries produced only two percent of the nation's manufactured goods.⁸⁴ The 1870s also witnessed the growth of the sheep ranches.⁸⁵ Only 6.7 percent of the population lived in urban areas, the largest of which was Galveston with a population of 13,818, followed by San Antonio with 12,256 inhabitants.⁸⁶ No other Texas towns numbered over 10,000.⁸⁷

---

⁸⁰ Connor, 271.

⁸¹ Ibid., 182. Other, less significant industries of this time period included "liquor distilleries, furniture manufacturers, tin and sheet iron producers, cement makers, iron works (makers of boilers, kettles, and small steam engines," and weaving and spinning mills. Ibid., 181-82.

⁸² Richardson, 272. In fact, a large portion of Texas was totally uninhabited. Ibid.

⁸³ Ibid., 280, 397.

⁸⁴ Connor, 271. Twenty percent of these manufactured goods came from flour and grist milling. Ibid.

⁸⁵ Richardson, 267.

⁸⁶ Ibid., 285-86.

⁸⁷ Ibid., 286.

Although railroad construction began in the 1850s, the rail network did not cover most of the state until the late 1880s.⁸⁸ As the railroads covered more of the state through the 1870s and 1880s, the pace of industrialization picked up, although Texas remained an agricultural state throughout the nineteenth century.⁸⁹ By 1880, out of a population of 1,591,749, only twelve thousand Texans were employed in manufacturing pursuits.⁹⁰ While the total industrial output almost doubled from that of 1870,⁹¹ the Texas economy remained dominated by agriculture.⁹² Flour milling and lumbering were the leading industries, although meat packing, textiles, and mining also were becoming significant industries.⁹³

While manufacturing activity did pick up in the state during the last two decades of the nineteenth century, Texas remained primarily an agricultural state until well into the twentieth century. The primary form of labor throughout nineteenth century Texas remained agricultural related

---

⁸⁸ Ibid., 165, 263.

⁸⁹ Connor, 270-71, 279.

⁹⁰ Billy M. Jones, The Search for Maturity, 1875-1900 (Austin, Texas: Steck-Vaughn Co., 1965), 102.

⁹¹ Connor, 271.

⁹² Jones, 102. Jones described Texas as "industrially backward," producing only one dollar worth of goods for every \$367 produced nationally. Ibid.

⁹³ Richardson, 280-81.

labor. Prior to the Civil War much of this labor was done either by slaves, who would not have been covered by the annual hiring rule, or by the small farmers themselves. After the Civil War, Texas followed the same pattern as Georgia. The Freedmen's Bureau required that the freedmen's labor arrangements be reduced to written contracts detailing the terms of the employment.⁹⁴ Sharecropping also was widely used.⁹⁵ Thus, many types of hired agricultural labor would not have been covered by the annual hiring rule. Evidence also exists suggesting that Texas ranches hired extra help, on a short-term basis, during the busy times of the year.⁹⁶

Texas manufacturing concerns also seemed to follow the same pattern as Georgia and Illinois. A study of the experiences of Czech immigrants to Texas provides profiles of three immigrants who worked a variety of jobs in mid-nineteenth century Texas. Frantisek Branecky who lived in Houston in the 1850s held a number of short term jobs.⁹⁷

---

⁹⁴ Ibid., 211.

⁹⁵ Ibid., 221.

⁹⁶ Coleman McCampbell, Texas Seaport: The Story of the Growth of Corpus Christi and the Coastal Bend Area (New York, New York: Exposition Press, 1952), 58. McCampbell reports that sheep ranchers "hired extra help, mostly from Mexico, . . . for dipping, for lambing time, and for shearing twice a year." Ibid.

⁹⁷ Clinton Machann & James W. Mendl, Jr., Czech Voices: Stories from Texas (College Station, Texas: Texas A&M Press, 1991), 34-38.

He first worked in agriculture as a day laborer on a small farm for 30 cents a day; he worked for another farmer for one month. He then worked at a brick factory for a short period, followed by a two week stint hauling oysters. Jan Ustynik worked in several small towns in the 1860s.⁹⁸ Like Branecky, he first worked on a farm, for a two month period. Then he worked part of 1868 as a carpenter and part of the year at a cotton gin. The next year he worked four months at another cotton gin. Josef Lebeda worked in Monterrey during the 1860s, first for a few months as a coachman and then was hired by a Mr. Novak, although his occupation was not disclosed.⁹⁹ However, soon after he began work for Mr. Novak, Lebeda "fell ill and was released from work."¹⁰⁰

Thus, it appears that workers in Texas suffered from the same types of job insecurity as did those in Georgia and Illinois. Texas Supreme Court decisions do not provide any more evidence supporting the existence of the annual hiring rule than does the historical evidence regarding occupations. Morriss asserted that Texas adopted employment-at-will in 1888 with the Texas Supreme Court decision of East Line & R.R. v. Scott.¹⁰¹ Prior to the issuance of that decision, the Texas Supreme Court addressed

---

⁹⁸ Ibid., 39-65.

⁹⁹ Ibid., 84-87.

¹⁰⁰ Ibid., 87.

¹⁰¹ Morriss, 772; 10 S.W. 99 (Tex. 1888).

employment contracts in thirteen cases. Seven were issued prior to the Civil War. Six of these involved express employment contracts specifying fixed terms: four were overseer contracts,¹⁰² in one a slaveowner contracted his slave to another plantation for a year,¹⁰³ and one involved a school teacher.¹⁰⁴

The seventh case, D. & R. Meade v. Rutledge,¹⁰⁵ issued in 1853, was an overseer case. Here, the parties had entered into a contract providing an annual salary of \$600, payable monthly, plus room and board. However, the written contract did not specify a term. A few months after Rutledge took up his position, Meade fired him. Rutledge then sued for the balance due on his salary for the remainder of the year. Meade denied liability, arguing that because the written contract did not specify a fixed term, he was not obligated to pay Rutledge for the remainder of the year. Counsel for Meade argued that the rule was well-established in Texas that a written contract "must be taken

---

¹⁰² Hassell v. Nutt, 14 Tex. 260 (1855); Wilson v. Adams, 15 Tex. 323 (1855); Nations v. Cudd, 22 Tex. 550 (1858); Fowler v. Waller, 25 Tex. 696 (1860).

The contracts in Hassell and Fowler provide illustrations of payment terms that provided a residence and a share of the crops at year's end, rather than cash payments.

¹⁰³ Townsend v. Hill, 18 Tex. 422 (1856-57).

¹⁰⁴ Riggs v. Horde, 25 Tex. Supp. 456 (1860). The plaintiff in this case had a written contract for five months service.

¹⁰⁵ 11 Tex. 22 (1853).

for what it expresses upon its face, without adding to or diminishing therefrom."¹⁰⁶ Because the parties had not specified a time period, the court could not read one into the contract.

Rutledge's counsel responded that even though the written contract did not specify a time period, the parties intended it to be a one year contract:

This was a general employment or hiring, and was for a year. . . . If a contract is made for labor or services for a certain period, and the employer discharges the employee before the expiration of the time, without any fault of the latter, he may recover for the whole time stipulated.¹⁰⁷

Rutledge's counsel cited a treatise, *Chitty on Contracts*, to support his contention that his client was entitled to the salary for the remainder of the year.¹⁰⁸ The specific pages from *Chitty* that Rutledge's counsel cited addressed the issue of the right to payment when an employee is discharged without cause prior to the expiration of the fixed term.¹⁰⁹ However, the three pages preceding the pages counsel cited contain a discussion of the English hiring rule.¹¹⁰ As was typical of nineteenth century

---

¹⁰⁶ Ibid., 47.

¹⁰⁷ Ibid., 49-50.

¹⁰⁸ Ibid. at 49-50; Joseph Chitty, A Practical Treatise on The Law of Contracts, Not Under Seal, 7th Am. ed. with American footnotes (New York, New York: J.C. Perkins, 1848).

¹⁰⁹ Chitty, 579-581.

¹¹⁰ Ibid., 575-78.

treatises, *Chitty* was an English law treatise. The textual discussion, then, summarized English law. The American version of these English treatises contained footnotes for U.S. cases, even though the text was limited to English law. If Texas recognized the English annual hiring rule, one would have expected Rutledge's counsel to use this rule and to cite these pages from *Chitty*. The fact that he did not do so suggests that the rule was not recognized in Texas.

The court determined that the contract was for the term of one year, and ordered recovery for Rutledge. However, the court did not rely on the English annual hiring rule in making this determination. The court determined that the contract was for one year for two reasons. First, overseers generally are hired for one year terms, and if the parties had intended anything different, they would have so specified in the contract. Second, at the trial court Meade did not deny the existence of a one year contract; thus, he probably regarded it as a one year contract.¹¹¹ The court did not mention the annual hiring rule or any other automatic hiring rule. If such a rule were recognized, one would expect that the court would have relied on it. Nor did the court base its decision on the fact that the wage was stated on a per annum basis. Rather, the decision was based on the intent of the parties. This case provides strong support for the proposition that Texas did not

---

¹¹¹ 11 Tex., at 51.

recognize the English annual hiring rule.

The Texas Supreme Court addressed the term of employment issue in six post-Civil War cases. Three of these provide examples of breaches of express contracts that did contain fixed terms. One was for a bookkeeper,¹¹² one for a mill operator,¹¹³ and one for a farm manager.¹¹⁴ Three additional cases involved employment on the railroads. One, involving the issue of assumption of the risk, contained language indicating the employees were free to quit rather than use dangerous machinery.¹¹⁵ There was no suggestion in the case that the employees faced the risk of a breach of contract action for doing so, or that the employer had breached an annual employment contract by forcing the workers to use dangerous machinery. However, because the court did not directly address this issue, it is difficult to draw conclusions from this case. A second railroad case

---

¹¹² Edrington v. Leach, 34 Tex. 285 (1870). The summary of the facts and the decision in this case are quite short, only one printed page. It is not clear whether the parties specifically agreed to a one year term or to payment per annum. In either event, the court found a contract for the year. The court did not address the specifics of this issue, presumably because the plaintiff had already worked the year and was seeking payment for his labor.

¹¹³ Basse v. Allen, 43 Tex. 481 (1875). In this case the contract provided for service for one year, but contained a provision permitting either party to terminate by giving one month's notice. Ibid., 482.

¹¹⁴ Hearne v. Garrett, 49 Tex. 619 (1878). The contract provided that Hearne would pay Garrett \$100 in gold at the end of the year's service.

¹¹⁵ G., H. & San Antonio Ry. v. Drew, 59 Tex. 10 (1883).

affirmed the right of the railroad to dismiss employees who were guilty of misconduct or poor work.¹¹⁶ However, this holding is not inconsistent with the annual hiring rule. The third railroad case suggests that employers can give their agents full power to hire and fire.¹¹⁷ This case involved the applicability of the fellow-servant rule, however, and did not involve any firings. Thus, it is not necessarily inconsistent with the annual hiring rule.

By the time the Texas Supreme Court issued its 1888 decision in the East Line case,¹¹⁸ which Morriss asserted first adopted the employment-at-will rule, Texas law was less clear than that of Georgia and Illinois. However, the language of the East Line case itself suggests that employment-at-will was already the standard in Texas. In this case the issue was not whether the parties had agreed to a fixed term, but rather whether they had even entered into a contract. Scott, an engineer, suffered an on-the-job injury in 1882. The railroad settled with him by paying him \$4,500 and agreeing to employ him for as long as he desired to be employed, once he recovered from his injuries. In 1886, Scott recovered sufficiently to return to work, but the railroad refused to reemploy him. Scott then filed suit

---

¹¹⁶ Burton v. G., H., & San Antonio Ry., 61 Tex. 526 (1884).

¹¹⁷ Douglas v. Texas Mexican Ry., 63 Tex. 564 (1885).

¹¹⁸ 10 S.W. 99 (Texas 1888).

for breach of contract.

The decision contains a summary of counsels' arguments. The railroad's counsel raised four issues: statute of frauds because the alleged agreement, which was not in writing, was that Scott could work the rest of his life; lack of authority of the agent who dealt with Scott to bind the company; lack of mutuality of obligation because Scott did not agree to commit himself to work for the company for any period of time, even though he claims the railroad agreed to employ him for life; and, because no fixed term was agreed to, there was no means of calculating damages for breach of the contract. Scott's counsel responded to the statute of frauds argument by asserting that the contract did not come within the statute because it was possible it could be performed within one year.¹¹⁹ Scott's counsel argued that the railroad's agent had apparent authority to bind the railroad to the contract, and by accepting the benefits of the original compromise agreement negotiated by that agent the railroad ratified the agreement.¹²⁰ The summary of counsels' arguments does not reflect any attempt by Scott's counsel to address the mutuality or indefiniteness issues.

The court determined that the railroad's agent did have

---

¹¹⁹ Ibid., 71.

¹²⁰ Ibid.

authority to bind the company to the compromise agreement.¹²¹ However, the court held that mutuality of obligation was lacking because while Scott had secured a promise from the railroad to employ him for life, Scott had not in turn promised to work for life or for any time period at all.¹²² Thus, the term of service depended totally upon Scott's "own will." The court then noted that

[I]t is very generally if not uniformly held, when the term of service is left to the discretion of either party, or the term left indefinite or determinable by either party, that either may put an end to it at will and so without cause.¹²³

There is nothing in the court's decision that suggests the judges believed they were adopting any new principle or changing the existing state of the law. In fact, the language that employment-at-will is the general rule suggests the judges believed this to already be the law.

Although the evidence with respect to Texas is not as clear as with Georgia and Illinois, it is important to note that the Texas Supreme Court never, in any of its decisions, used the words annual hiring rule, or any version thereof. In fact it could have done so with the 1853 Rutledge decision, but that holding was based on the parties' intent and not on an automatic hiring rule. While the case law may

---

¹²¹ Ibid., 74.

¹²² Ibid., 75.

¹²³ Ibid., 75.

not be as clear regarding Texas practice, when one considers the historical evidence the balance is tipped toward the conclusion that Texas did not recognize the rule.

IV. CALIFORNIA

Settled by the Spanish in the late-eighteenth century, California was part of the Mexican territory that revolted from Spanish rule in 1822.¹²⁴ In the 1848 treaty ending the Mexican War, Mexico ceded California to the United States.¹²⁵ Gold was discovered in that same year.¹²⁶ Prior to the discovery of gold, California's economy was primarily a pastoral one focused on producing sufficient food supplies for the inhabitants.¹²⁷ The gold rush altered that economy. The demands of the miners led to the development of manufacturing, initially in lumbering and sawmills.¹²⁸ The discovery of gold also led to the development of a market for agricultural goods.¹²⁹ In the decade of the 1850s, then, California was both a mining and an agricultural frontier.

---

¹²⁴ Warren A. Beck & David A. Williams, California: A History of the Golden State (Garden City, New York: Doubleday, 1972), 30, 66.

¹²⁵ Ibid., 121.

¹²⁶ David F. Selvin, A Place in the Sun: A History of California Labor (San Francisco, California: Boyd, Fraser Publishing Co., 1981), 4.

¹²⁷ Beck & Williams, 153.

¹²⁸ John W. Caughey, California (New York, New York: Prentice Hall, 1940), 314. Selvin reported that in 1850 nearly a third of California workers held occupations that supported the mining communities. Selvin, 5.

¹²⁹ Ibid., 84.

Only two years after acquiring California, the U.S admitted it to the union as a state.¹³⁰ The state's non-Native American population, at the time of admission, was 92,597.¹³¹ The gold rush spawned dramatic population growth, which reached 380,015 by 1860,¹³² and passed 500,000 by 1870.¹³³ In the early 1860s mining still employed more Californians than any other occupation.¹³⁴ The first meaningful railroad development occurred in the state in the 1860s.¹³⁵ Labor shortages presented a serious problem for the companies constructing the railroads. Much of California's labor force was devoted to mining and supporting occupations. The railroads recruited Chinese immigrants to build the railroads.¹³⁶ A labor surplus did not appear in California until the mid-1870s.¹³⁷

---

¹³⁰ William J. Palmer & Paul P. Selvin, The Development of Law in California (St. Paul, Minnesota: West Publishing Company, 1983), 28.

¹³¹ W. Sherman Savage, Blacks in the West (Westport, Conn.: Greenwood Press, 1976), 12.

¹³² Caughey, 306.

¹³³ Selvin, 9.

¹³⁴ Caughey, 306. The peak for gold mining occurred in the early 1850s, but other types of mining gradually became more important. Ibid.

¹³⁵ Beck & Williams, 218.

¹³⁶ Ibid., 220-21.

¹³⁷ Ibid., 252.

In May 1869, when the Central Pacific and the Union Pacific met at Promontory Point, Utah, the California market now became connected to the national market, an event that would have a dramatic impact on the state's economy.¹³⁸ The railroads spurred the development of commercial agriculture, with wheat becoming an export crop in the 1860s.¹³⁹

Until the turn of the century agriculture dominated the California economy, although mining continued to be important.¹⁴⁰ The manufacturing that did develop prior to the turn of the century was associated with the needs of an agricultural and mining society.¹⁴¹ Because of the need for lumber in mining, railroad construction, and housing construction, the lumber industry rapidly developed.¹⁴² Other manufacturing activities arose in the arena of consumer goods: meatpacking, milling, food processing, leather goods, textiles, wagon making, breweries, and iron works.¹⁴³ However, other types of industrialization did

---

¹³⁸ Ibid., 225.

¹³⁹ Ibid., 255, 278.

¹⁴⁰ Ibid., 291.

¹⁴¹ Ibid., 294.

¹⁴² Ibid., 295.

¹⁴³ Ibid.

not develop until the state was united by a rail network in the 1880s and later.¹⁴⁴

The major occupations for Californians in the last half of the nineteenth century were in agriculture and mining, with railroad building and commercial manufacturing activities providing some jobs. Unlike in other states where small farmers dominated, California land was evenly divided between small farmers and large land holders. This pattern of land holding was a legacy of the days of Spanish and Mexican control, during which time extensive land grants consisting of thousands of acres were made to individuals.¹⁴⁵ Mexicans, Chinese, and American Indians typically worked these large land holdings on a seasonal basis.¹⁴⁶ Thus, California agricultural labor was seasonal from the earliest days and remained that way throughout the nineteenth century and indeed through today.¹⁴⁷ These seasonal farm workers spent the winter in unemployment, going from odd job to odd job at a daily rate, if they were lucky enough to find such jobs.¹⁴⁸ Workers in the mines

---

¹⁴⁴ Ibid., 299. For an in-depth treatment of California's business development during the late-nineteenth century see Mansel G. Blackford, The Politics of Business in California, 1890-1920 (Columbus, Ohio: Ohio State University Press, 1977).

¹⁴⁵ Ibid., 258-59.

¹⁴⁶ Ibid., 259.

¹⁴⁷ McWilliams, 108, 137.

¹⁴⁸ Selvin, 33.

had no greater job security than did agricultural laborers. Most miners worked on a daily wage basis, although some worked on contracts that paid them a certain wage per foot mined.¹⁴⁹ Miners suffered from the same seasonal unemployment as did agricultural workers and unemployment was widespread in the winter months.¹⁵⁰

Winter unemployment on the farms and in the mines affected employment in the industries dependent on agriculture and mining. These workers often labored either on a piece rate or on a daily rate, and were subject to the vagaries of the economy and the weather.¹⁵¹ In the winter of 1852, a newcomer to San Francisco found widespread destitution and unemployment.¹⁵² In the winter of 1856, three thousand San Francisco laborers were out of work, out of a total population of 50,000, many of whom were not even part of the labor market.¹⁵³

---

¹⁴⁹ Richard E. Lingenfelter, The Hardrock Miners: A History of the Mining Labor Movement in the American West, 1863-1893 (Berkeley, California: University of California Press, 1974), 19.

¹⁵⁰ Selvin, 8.

¹⁵¹ William R. Garner, Letters from California, 1846-1847 (Berkeley, California: University of California Press, 1970), 114; Albert Camarillo, Chicanos in a Changing Society: From Mexican Pueblos to American Barrios in Santa Barbara and Southern California, 1848-1930 (Cambridge: Harvard University Press, 1979), 29-30.

¹⁵² Selvin, 8.

¹⁵³ Ibid.

The historical evidence suggests that California did follow employment-at-will. The case law from the California Supreme Court supports that conclusion. Morriss asserted that California adopted employment-at-will by statute in 1872.¹⁵⁴ Prior to 1872 the court issued seven decisions that addressed the term of employment issue. An 1851 decision addressed the issue. In DeBriar v. Minturn¹⁵⁵ the employee had been hired as a barkeeper for \$300 per month plus room and board. The employer discharged the barkeep and gave him notice to vacate the room he occupied. When the employee refused to comply, the employer had him ejected by force. The employee then sued. The court found for the employer, holding that because the barkeep had not been hired for any definite period, the employer had the right to discharge him and eject him from the premises. The court noted that under the terms of the employment, the barkeep had "the privilege of occupying a room so long as he remained in the defendant's employ."¹⁵⁶ The court reasoned that because the employee "was not hired for any definite period, and he was discharged by the defendant" . . . "the plaintiff had no right to remain in the defendant's house after being notified to leave, and the defendant had a right

---

¹⁵⁴ Morriss, 765.

¹⁵⁵ 1 Cal. 450 (1851).

¹⁵⁶ Ibid., 451.

to eject him."¹⁵⁷ Because the right to occupy the premises was part of the employment contract, one would have expected the court to find the ejection illegal if the employer had breached an annual hiring contract by early discharge.¹⁵⁸ However, because it is not squarely on point, one cannot reach any definitive conclusions based solely on this decision.

Prior to 1872, the California Supreme Court addressed employment contracts in six additional cases.¹⁵⁹ All of

---

¹⁵⁷ Ibid. De Briar is one of the cases Wood cited in his 1877 treatise in support of the employment-at-will rule. Wood, 272. Shapiro and Tune argued that Wood's reliance on this case was misplaced because the issue was not an employment contract issue, but rather the right of ejection and "touched only tangentially on the employment relationship." Shapiro & Tune, 341, n.54. While it is true that the case touches only "tangentially" on the employment law issue, nevertheless it does provide some evidence of the state of California law which, taken with the other evidence of actual employment practices, suggests that employment-at-will always was followed in California.

¹⁵⁸ The headnote for the case contains a clear statement of the employment-at-will rule:

Where no definite period of employment is agreed upon between a master and servant, master has a right to discharge the servant at any time. 1 Cal. at 450.

The headnote, of course, is not part of the official decision and may not even have been written contemporaneously with the decision. The volume in which I found this case was published in 1887 and thus it must have been written before that date. However, if the headnote was written for the 1887 publication it certainly is possible that it was written based on Wood's interpretation of the case. Thus, the headnote is not very helpful in understanding the court's view of the law in 1851.

¹⁵⁹ *Hutchinson v. Wetmore*, 2 Ca. 324 (1852); *Nicholson v. Patchin*, 5 Ca. 475 (1855); *Hogan v. Titlow & Prince*, 14 Ca. 255 (1859); *Bates v. Sierra Nevada Lake Water & Mining*

these cases involved interpretations of express contracts. One is worth exploring in more detail because it addressed the issue of how to interpret the contractual relations of the parties once the initial agreed upon period of employment had expired. In Nicholson v. Patchin¹⁶⁰ the employee, a clerk, had been hired for one month at a salary of \$100. At the end of the month the employee continued working, although the parties did not further discuss the salary or expressly agree to any rate of compensation. A dispute then arose as to the amount of salary to which the employee was entitled. The court held that in these circumstances, the presumption is that the parties intended the original salary of \$100 per month to continue. There was no mention of the annual hiring rule. If such a rule were recognized, one would have expected the court to address it in this case. This case does provide support for the proposition that some courts did equate payment terms to terms of employment.

Another case, Bates v. Sierra Nevada Lake Water & Mining Co.,¹⁶¹ issued in 1861 provides some evidence of the contractual status of mid-level management employees. The plaintiff was hired to be the general superintendent of a

---

Co., 18 Ca. 171 (1861); Webster v. Wade, 19 Ca. 291 (1861); Moulin v. Columbet, 22 Ca. 509 (1863).

¹⁶⁰ 5 Ca. 475 (1855).

¹⁶¹ 18 Ca. 171 (1861).

company. The contract specified an annual payment term and it provided that the contract was terminable on six months notice by either party.¹⁶² While the decision does not address the annual hiring rule, it does suggest that employers knew how to protect their interests against the claims of mid-level managers that they had a right to long-term job security.

California case law prior to 1872 is not definitive on the issue of employment-at-will. However, there is no case where the California Supreme Court adopted the annual hiring rule, or even made reference to it. The language in De Briar and the absence of discussion of the annual hiring rule, combined with the historical evidence on California employment practices, suggests that California followed the employment-at-will rule and did not suddenly adopt it with the 1872 codification.¹⁶³ Indeed, the 1872 codification specified that the code provisions "so far as they are substantially the same as existing statutes or the common law, must be construed as continuations thereof and not as new enactments."¹⁶⁴

---

¹⁶² Ibid., 172.

¹⁶³ The Civil Code of the State of California, Section 1999 (1872).

¹⁶⁴ Ibid., Section 5. In fact the 1872 code adopted two provisions dealing with terms of employment: one, Section 1999, for employees which appear to have been independent contractors and one, Sections 2010-11, for servants, who fell within the traditional definition of servants. Section 1999 specified that "an employment having no specified term may be

V. MONTANA

The discovery of gold in the Montana hills in the 1860s brought the first waves of white settlement to the area.¹⁶⁵ By 1870, the non-native population remained sparse, at just over 20,000.¹⁶⁶ Mining blossomed, and by the 1870s was conducted primarily by corporations rather than by individual miners.¹⁶⁷ Because of the intense need for wood supports for mines, the lumber industry grew alongside mining, just as it had done in California.¹⁶⁸ Railroads quickly made their appearance in the territory, with the first rails laid in the early 1870s, and a network crossing the state was in place by the mid-1880s.¹⁶⁹ Unlike the other states examined in this study, agriculture initially was not an important part of Montana's economy. In 1880

---

terminated at the will of either party, on notice to the other." Section 2010 provided that where the parties had not agreed on a term of service, but had agreed on a term for payment of wages, the term of service would correspond with the period for the payment of wages. Section 2011 provided that where the parties had agreed neither on term of service nor wages, the presumption would be a monthly contract at reasonable wages.

¹⁶⁵ Michael P. Malone & Richard B. Roeder, Montana: A History of Two Centuries (Seattle, Washington: University of Washington Press, 1976), 70.

¹⁶⁶ Ibid., 74. Over a third were immigrants.

¹⁶⁷ Clark C. Spence, Montana: A Bicentennial History (New York, New York: Norton, 1978), 35-36.

¹⁶⁸ Malone & Roeder, 253.

¹⁶⁹ Ibid., 130-33.

only 12% of Montanans were engaged in agriculture; by 1890 that number had risen only to 20%, out of a total population of 132,159.¹⁷⁰ Cattle and sheep ranching developed in the 1870s and 1880s.¹⁷¹ By the time Montana became a state in 1889, mining and agriculture, including cattle and sheep ranching, were the two primary industries and they remain so today.¹⁷²

The primary occupations in late-nineteenth century Montana were in mining, building the railroads, lumbering, on cattle and sheep ranches, and in agriculture. Workers in these occupations suffered from the same lack of job security as workers in the other states examined in this study. Miners worked on a daily wage basis and were subject to unemployment during the winter months and when rainy conditions filled the mines with water.¹⁷³ Railroad workers also suffered from irregularity of employment. In a study of nineteenth century railroad workers, historian Shelton Stromquist found that the available work on the

---

¹⁷⁰ Laurie K. Mercier, "Women's Economic Role in Montana Agriculture: 'You Had to Make Every Minute Count'," Montana Magazine of Western History 38, no. 4 (1988):50-61; Robert R. Swartout, Jr. & Harry W. Fritz, The Montana Heritage: An Anthology of Historical Essays (Helena, Montana: Montana Historical Society Press, 1992), 105.

¹⁷¹ Malone & Roeder, 110.

¹⁷² Ibid., 261.

¹⁷³ Ibid., 66; Robert W. Lovett, "Montana Episodes: A Maine Man in the West--Letters of Stephen C. Barron, 1867-1874," Montana Magazine of Western History 32, no. 2 (1982), 67-70, 69.

railroads alternated with the periods of expansion and contraction of the railroads.¹⁷⁴ The regularity of the railroad workers' employment depended on "the season, the state of business, and their seniority."¹⁷⁵ Even the cowboys on the cattle and sheep ranches lacked job security. At roundup time, the ranchers appointed one "roundup captain" who had "unlimited authority to hire, fire, and command any cowboy from any ranch."¹⁷⁶ Frontier workers suffered generally from a lack of steady work. Historian Carlos Schwantes reports that frontier workers "seldom worked long for an employer."¹⁷⁷

Morriss asserted that Montana adopted employment-at-will by an 1895 statute.¹⁷⁸ Prior to 1895, the Montana courts addressed employment contracts in only five cases. Three of these provide examples of express contracts, one for a mine manager,¹⁷⁹ one for a school teacher¹⁸⁰ and one

---

¹⁷⁴ Shelton Stromquist, A Generation of Boomers: The Pattern of Railroad Conflict in Nineteenth-Century America (Urbana, Illinois: University of Illinois Press, 1987), 123.

¹⁷⁵ Ibid., 116.

¹⁷⁶ Malone & Roeder, 120.

¹⁷⁷ Carlos Schwantes, "Images of the Wagerworkers' Frontier," Montana Magazine of Western History 38, no. 4 (1988), 38-49, 40.

¹⁷⁸ Morriss, 769.

¹⁷⁹ Isaacs v. McAndrew, 1 Mont. 437 (1872).

¹⁸⁰ Case v. School Dist., 35 P. 906 (1894).

for a ranch foreman,¹⁸¹ but otherwise do not provide any guidance on the existence of employment-at-will. The mine manager case, however, provides evidence that employers knew how to protect themselves from claims of mid-level managers for long-term job security. The mine manager's contract was for a five year term, but could be dissolved or canceled at any time by either party.¹⁸² In a fourth case the court found an implied contract for services rendered,¹⁸³ but did not address the employment-at-will issue. The final case, Alvord v. Hendrie,¹⁸⁴ provides some hints about the Montana court's view on the employment relationship, and thus is worth examining in more detail.

In Hendrie the issue involved the application of Montana's mechanics' lien statute. Hendrie had agreed to work for Alvord, a mine owner, as a mechanic for the salary of "\$2,500 per annum."¹⁸⁵ A dispute arose over what the term of payment meant with respect to the time period of employment. Hendrie worked for Alvord for twenty-one months. At the conclusion of the work, Hendrie filed a mechanic's lien pursuant to the territorial statute. The

---

¹⁸¹ Keyser v. Rehberg, 41 P. 74 (1895).

¹⁸² Isaacs v. McAndrew, 1 Mont. 437, 443 (1872).

¹⁸³ Felton v. West Iron Mountain Mining Co., 40 P. 70 (1895).

¹⁸⁴ 2 Mont. 115 (1874).

¹⁸⁵ Ibid., 117.

mechanics' lien law required the employee to perfect the paperwork for the lien within 60 days after completion of the work. Alvord argued that Hendrie was precluded from obtaining a lien for the first year's work, which Alvord argued constituted a separate contract from the subsequent nine months Hendrie had worked for him. Because it was a separate contract, Alvord argued that the lien for wages due for that year had to have been filed within 60 days of the completion of that first year.

The court determined that the words "\$2,500 per annum" referred only to the rate of payment and did not mean a yearly contract:

The contract between the parties was, that the plaintiff was to work . . . for the consideration of \$2,500 per annum; i.e., by the year, or at the rate per year, not for one year. The time was indefinite; it might extend to many years; and, indeed, from the character and nature of the business, we might infer that it might extend to many years, if they could agree.¹⁸⁶

The court determined that the twenty-one month period constituted the contract period and that it was a single contract. Thus, Hendrie had properly perfected his lien.

We can draw two conclusions from this case that provide some evidence that employment-at-will was the standard in Montana. First, if the annual hiring rule were in effect one would have expected Alvord to use it to support his argument that the agreement should be viewed as a series of

---

¹⁸⁶ Ibid., 123.

annual contracts. The fact that he did not use this argument suggests that the annual hiring rule was not recognized in Montana. Second, the court's ruling that "\$2,500 per annum" refers only to a method of payment and not to the term of the contract suggests that the annual hiring rule was not recognized. Because no definite term was stated in this contract, if the annual hiring rule was recognized one would expect the court to at least offer an explanation of why it did not apply in this case. Again, the fact that no explanation was offered suggests that the rule was not recognized.

Because Montana was not settled by Anglo-Americans until the 1860s, the time period available for examination of this issue is much shorter than for the other states. Thus, there is not an abundance of evidence to analyze for Montana. Although the case law does not provide a great deal of enlightenment of the issue of the annual hiring rule versus employment-at-will, the historical evidence regarding work relationships suggests that employment-at-will was the recognized standard.

CONCLUSION

The analysis of the legal and non-legal evidence from these five states leads to the same conclusion as the analysis for the five states from the original English colonies--employment-at-will was always the standard for all classes of laborers.

CHAPTER 5

CONCLUSION

Until the late-nineteenth and early-twentieth centuries, agriculture provided the bulk of employment opportunities in the United States. Evidence regarding employment terms for agricultural workers can be found in both the reported cases and historical descriptions of agricultural labor. As early as 1815, courts suggested that agricultural hirings were subject to express agreement and not to an automatic hiring rule. The reported cases provide no evidence that even hints that the annual hiring rule was used for agricultural labor. Indeed, they suggest that the rule did not apply. Historical evidence regarding agricultural employment practices is consistent with the cases. Farmers' account books from eighteenth century New York, for example, reflect frequent hiring of agricultural laborers, but only for a few days at a time.¹ The prevalence of short-term hirings likely occurred due to two

---

¹ Sung Bok Kim, Landlord and Tenant in Colonial New York Manorial Society, 1664-1775 (Chapel Hill, North Carolina: University of North Carolina Press, 1978), 132-33.

factors. First, many eighteenth century farms were small and a permanent labor force was not needed. Second, to the extent that permanent labor was needed, indentured servants bound to multi-year contracts and for whom the master generally had to provide only room and board, but no wages, were readily available to fill the need and were preferred over hiring, on a long-term basis, free labor, which was scarce and hence expensive. Farmers tended to hire indentured servants for long-term labor and hired free labor only for short periods of time. Although indentured servitude began to die out by the first third of the nineteenth century, no evidence suggests that farmers' employment practices with respect to free labor changed in the nineteenth century.

After agriculture, domestic labor and manual labor, both skilled and unskilled, provided the two other most prevalent forms of labor in the nineteenth century. The practice with respect to these categories of labor appears to have been similar to that of agricultural labor. The case law from these ten states contains no suggestions that the annual hiring rule applied to either of these categories of labor. Although some cases suggested that domestic servants had to be given one month's notice of termination, most contained no such requirements. Actual employment practices also provide no evidence that the annual hiring rule applied to domestic labor. Eighteenth-century

employers' diaries described a severe shortage of domestic servants and complained that because of the shortage domestic workers could easily change jobs and did so frequently. Evidence from the nineteenth century also indicates that many domestic servants remained in position for only a few months, and some were hired for a short term to perform specific tasks such as spring cleaning or to help with domestic chores during a few months of the harvest season. Historical evidence also shows that domestic servants were subject to arbitrary dismissals with no notice whatsoever, a practice consistent with employment-at-will.

Similar evidence from these ten states exists with respect to manual labor. During both the eighteenth and nineteenth centuries, skilled laborers generally were paid by the piece, and were not considered bound to any term of employment, absent an express contract to the contrary. Unskilled laborers generally worked on a day basis and had no job security. In fact, by the early nineteenth century employers began to prefer free unskilled labor over indentured servitude because of the absence of long-term commitment to the free laborers. By the 1840s, factory labor became more prevalent in the northeastern states among the ten studied here. Factory employment, tied to economic conditions and seasonal demands for products, resulted in frequent lay-offs for factory workers. Employment-at-will, then, always prevailed for manual labor.

No evidence in these ten states, either in the case law or in the descriptions of actual employment practices, indicates that the annual hiring rule actually applied to any category of free labor in either the eighteenth or the nineteenth centuries. Employment-at-will appears to have been the standard practice for all categories of labor from colonial times through the nineteenth-century. The analysis of these ten states shows that the judiciary did not suddenly create the employment-at-will rule in the late-nineteenth century. Rather, it has been the norm throughout U.S. history.

This conclusion raises four questions. First, why did not the U.S. follow the English annual hiring rule? Second, if it was not a creation of the late-nineteenth century, how did the myth arise that it was? Third, why did court decisions in the late-nineteenth century begin containing express language rejecting the annual hiring rule, if it generally had not been applied in this country? Fourth, how do the U.S. developments with respect to the terms of hiring compare to the English developments in the eighteenth and nineteenth centuries after the founding of the North American colonies?

I.

As for the first issue, this country did not adopt the English annual hiring rule because the economy, the availability of relatively inexpensive land, and the labor market created a set of conditions not conducive to the annual hiring rule.

The North American colonies were settled primarily as agricultural communities. While some small scale manufacturing did exist even in colonial times, the colonies remained agricultural based economies throughout the colonial period, and well into the nineteenth century. Not until the 1880 census did the number of non-agricultural workers equal that of agricultural workers.² The territories settled in the nineteenth-century primarily were agricultural based, and remained so through much of the nineteenth century. And, while large landholders held some of the agricultural land, particularly in the southern states and California, small, subsistence farmers owned much of it.

A severe scarcity of labor characterized this agricultural labor market during colonial times and until well into the middle of the nineteenth century. The labor scarcity had two main effects with respect to the

---

² Barney, 293.

inhospitability of conditions for the adoption of the annual hiring rule. First, slaves and indentured servants provided the bulk of the U.S. labor force prior to the Revolutionary War. Approximately one-half of the 350,000 caucasian workers who arrived in North American between 1580 and 1775 came as indentured servants bound to their masters by multi-year contracts, thus removing them from the operation of the annual hiring rule.³ From 1700 to 1790, approximately 250,000 slaves arrived in the North American colonies, and of course would not have been covered by the annual hiring rule because slavery is not a contractual status.⁴ If one considers both indentured servants and slaves, approximately three-fourths of all immigrants to the North American colonies prior to 1790 came as "unfree laborers" who could not have been covered by the annual hiring rule.⁵ Most of the others either immediately became land owners or worked as occasional or day laborers while they accumulated the funds to buy their own land.

The second effect of the labor scarcity with respect to the annual employment rule was that the scarcity created a high demand for the labor that was available, thus driving up the wages. Employers could not afford to pay high wages

---

³ Dunn, 159.

⁴ Bruchey, 68.

⁵ Innes, Work and Labor.

for year around labor, and, as we have seen from the case discussions, employers typically resorted to hiring occasional or day labor. Employers, then, did not wish to be bound, and could not afford to be bound, by the annual hiring rule. Free laborers also likely did not want to be bound to labor contracts for long time periods. Most free laborers wanted to work only long enough to make sufficient money to buy their own land. Thus, with neither employer nor free laborers wishing to be bound to long-term labor contracts, no pressure existed for government regulation in this area, unlike in fourteenth and sixteenth century England.

Further, most of the cases from these states that made their way to the state supreme courts involved express written contracts. This suggests that employers and employees reduced to writing many contracts for other than occasional or day labor. The shortage of labor is the likely explanation for the common use of written employment contracts that specified the duration of the employment contract. Employers did not want to be bound to labor contracts on a year round basis. However, they did want to ensure a labor supply during their busy seasons. Because labor shortages promote labor mobility, employers would want to use written contracts to bind an employee to their services for the time period needed. Employment relationships defined by express contracts for specified

time periods obviously would not fall within the purview of the annual hiring rule.

It is reasonable to conclude, then, that because of the extensive use of indentured servitude, slavery, and express contracts for specified terms, and because of the severe labor shortage few laborers would have been in situations where the annual hiring rule could have applied. The agricultural economy dominated by small subsistence farmers who did not need permanent hired help and the labor shortage militated against the adoption of the annual hiring rule in this country.

II.

With substantial evidence supporting the conclusion that the U.S. always followed employment-at-will, the second question that arises is how did the widespread notion develop that it was a new development in late-nineteenth century law? A probable explanation is found in the New York case of Adams v. Fitzpatrick.⁶ This is one of the cases that suggested that the annual hiring rule was followed in the United States, although it cited no U.S. or New York cases in support of this proposition; rather, the only citation was to a treatise.

---

⁶ 26 N.E. 143 (N.Y. 1891).

Until the last quarter of the nineteenth century, judges and lawyers did not have the ready access to precedents either from their state or from other states that is available today. The regional reporter system by which cases from each region of the country are published together in regional volumes did not appear until 1879. The citation system, by which lawyers today can easily determine if a particular case has been cited in other cases, was not available until this time either; nor were the extensive volumes that publish discussions of cases from all over the country, indexed by topics and in encyclopedia format, available until the late-nineteenth century.⁷ Before these sources became available, judges and lawyers relied on treatises to inform them of the current state of the law. Most treatises focused only on a particular topic within the law, such as the treatise cited in the Adams v. Fitzpatrick case, Schouler's Law of the Domestic Relations.⁸ The standard approach of most treatises published during the first two-thirds of the nineteenth century summarized English law and added appropriate references to U.S. law,

---

⁷ See Friedman, 408-09 (discussing the development of these systems).

⁸ Schouler, 120.

sometimes including these references only in the footnotes.⁹

Some of these treatises, such as Schuler's treatise, that provided summaries of English law with references to U.S. cases, recited the English hiring rule. Schuler's treatise, however, at least noted that this rule was "founded in English rather than American usage,"¹⁰ although the New York court in Adams failed to refer to this part of the sentence. However, some treatises failed to note that this was the English rule and not the U.S. rule. Smith's Treatise on the Law of Master and Servant indicated in the section on "General Hiring" that, "[w]here no time is limited either expressly or by implication, for the duration of a contract of hiring and service, the hiring is considered as a general hiring, and in point of law a hiring for a year."¹¹ The only cases cited to support this proposition are English cases. However, because for the most part judges had access only to treatises and not to case reports, many judges may have believed that U.S. courts

---

⁹ See e.g., Charles Manley Smith, A Treatise on the Law of Master and Servant (Philadelphia: T. & J.W. Johnson, 1852) (noting that it was the "Law Library Edition, with Notes and References to American Cases"); C.G. Addison, A Treatise on the Law of Contracts and Rights and Liabilities 2d ed. (Philadelphia: Robert H. Small, 1857) (noting that it was the "Second American Edition, from the Fourth English Edition, with notes and references to American decisions").

¹⁰ Schouler, 698.

¹¹ Smith, Treatise, 53.

widely followed the annual hiring rule even though they themselves never found an occasion to apply it. Thus, it is possible that U.S. courts in their decisions made reference to this rule, as did the New York court in Adams v. Fitzpatrick, as if it were the U.S. rule, even though these courts never applied the rule in the cases before them, which is what happened in the Adams case. By reciting the rule frequently enough, even though courts did not actually apply it, the illusion could have been created that the rule was sometimes followed.

III.

If employment-at-will was not a sudden creation of the late-nineteenth century, the third question that needs to be addressed is why, then, did judicial decisions of this time period begin to contain express language rejecting the annual hiring rule, language that had not been seen in earlier decisions? Prior to this time the decisions generally did not address the rule at all, as we have seen from the case analysis.

Feinman argued that courts adopted employment-at-will in an effort to protect employers from the demands of mid-management workers. While I disagree with Feinman that this was the time of adoption, Feinman may have part of the explanation for why the courts began using the language of

employment-at-will. Mid-management workers did not begin to appear in the work force in any significant numbers until after the Civil War.¹² By this time the U.S. had developed into one of the leading industrial nations in the world. By the 1870 census, for the first time as many workers reported being engaged in non-agricultural pursuits as in agricultural ones. Factories were developing and specialized firms were replacing the general merchant. The new organizations required by the growth of factories and specialized firms produced a new class of mid-level managers many of whom served in a supervisory capacity over other workers or in the newly developing fields of accounting and finance. This new class of employees typically was not considered short-term or temporary labor and hence received salaries rather than the day or weekly wages typically received by agricultural and manual laborers. Salaries were stated by a specific time period--for example, \$200 per month or \$3,000 per year.

Feinman made a convincing case that many of the plaintiffs in the cases he identified as establishing the employment-at-will principle were middle-level management employees. Further examination of the 1895 New York case, Martin v. New York Life Insurance Co., that Feinman asserted adopted Wood's employment-at-will rule provides an

---

¹² See Wiebe for a discussion of the rise of this class of workers.

explanation for why courts began using language expressly noting that the U.S. followed the employment-at-will rule.¹³

Prior to Martin, New York courts, as did the courts in the other states examined here, differed on how to interpret an agreement to pay an employee at a rate stated by a specific time period. Some held that a rate stated for a specific time period equated to a contract for that same period, while others held that the stated rate was nothing but a payment term and did not constitute an agreement to employ for any time period.¹⁴ The only class of workers for whom this issue had any importance were the mid-level managers.

In Martin the New York Court of Appeals settled this issue by holding that a salary stated at an annual rate did not create a contract for that same time period. In its decision, the court quoted approvingly from Wood's 1877 treatise:

In England it is held that a general hiring, or a hiring by the terms of which no time is fixed, is a hiring by the year. * * * With us, the rule is inflexible that a general or indefinite hiring is,

---

¹³ 42 N.E. 416 (N.Y. 1895).

¹⁴ For example, Jagau v. Goetz, 32 N.Y.S. 144 (N.Y. Ct. Com. Pleas 1895) held that a month-to-month contract is implied from an agreement to pay wages on a monthly basis. However, Douglass v. The Merchants' Insurance Co., 118 N.Y. 484 (1890) held that the statement of the salary on an annual basis did not equate to an agreement to employ for the year.

prima facie, a hiring at will; and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof. A hiring at so much a day, week, month, or year, no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day even, but only at the rate fixed for whatever time the party may serve. * * * A contract to pay one \$2,500 a year for services is not a contract for a year, but a contract to pay at the rate of \$2,500 a year for the services actually rendered, and is determinable at will by either party. Thus, it will be seen that the fact that the compensation is measured by so much a day, month, or year does not necessarily make such hiring a hiring for a day, month, or year, but that in all such cases the contract may be put an end to by either party at any time, unless the time is fixed, and a recovery had at the rate fixed for the services actually rendered.¹⁵

Thus, it is obvious that the decision does contain a clear statement of support for the employment-at-will doctrine. However, a statement of approval does not equate to an adoption. The doctrine of employment-at-will had long been followed in New York. The significance of the case, however, is that it did clarify the legal effect of payment terms. After Martin, payment terms were to be interpreted as rates of pay and not as commitments to a fixed duration for an employment contract. This was a significant decision, but did not represent the dramatic break with the law as portrayed by Feinman.

It appears, then, that in an effort to attain job security this new class of mid-level management workers argued that stating a salary by a particular time period created a contract for that same time period. They also

---

¹⁵ 42 N.E. at 417.

appear to have relied on the treatises that contained the annual hiring rule to bolster their arguments. The courts clearly rejected these attempts and in doing so cited with approval the employment-at-will doctrine. However, this does not mean that the courts were establishing new law. My analysis shows that they were simply reaffirming the existing state of the law, and not creating new law.

Feinman's argument that the courts created the employment-at-will doctrine in the late-nineteenth century in an attempt to protect capital by denying job security to mid-level management workers does not ring true for another reason. As this case analysis shows, the courts of the late-nineteenth century clearly honored the terms of express contracts. If employers needed to deny long-term job security to their mid-level management employees, they could easily have done so in the terms of the job contracts. They did not have to wait for a change in the common law to accomplish this.

Sanford Jacoby's work on employment-at-will in the U.S. as compared to Great Britain also provides some insight into why U.S. courts in the late-nineteenth century began using the language of employment-at-will in their decisions. Jacoby argued that U.S. courts adopted employment-at-will in the late-nineteenth century because of the relative weakness of U.S. unions as compared to British unions. While the British unions were able to secure job protections through

union contracts, the weaker U.S. unions had to rely on protective legislation. U.S. courts, however, generally found such legislation unconstitutional infringements on freedom of contract. Freedom of contract analysis was a creation of the Civil War amendments. In particular the courts widely interpreted the Fourteenth Amendment as providing constitutional protection for freedom of contract. Thus, late-nineteenth century jurisprudence in general, and not just cases relating to the duration of employment contracts, began containing discussions of and support for freedom of contract principles. The employment-at-will doctrine fits squarely within the context of the new freedom of contract jurisprudence. Judges, when responding to the challenges raised by the mid-level managers, naturally relied on the language of the age in explaining their decisions. Thus, even though the judiciary did not adopt employment-at-will in the period after the Civil War, it did begin enunciating the doctrine using the freedom of contract language.

Andrew Morriss's analysis also supports the conclusion I have reached about why courts began using in the last three decades of the nineteenth century the employment-at-will language in their decisions. Morriss argued that the late-nineteenth century courts adopted employment-at-will to serve a gatekeeper function--to minimize the numbers of employment disputes that would be brought to courts for

resolution. Courts viewed themselves and juries, Morriss argued, as ill-equipped to resolve employment disputes, and thus the courts adopted employment-at-will to take the issue out of the hands of the juries. If the law made it clear that employers had the freedom to dismiss their employees without penalty for any reason or no reason, then there would be no factual dispute for a jury to determine and hence no basis for the lawsuit. Again, while I disagree with Morriss that this was when employment-at-will was adopted, his gatekeeper theory may explain this significant change in the law that did occur in the late-nineteenth century as represented by the Martin case, as well as the courts' sudden use of employment-at-will language in their decisions. The sudden increase in cases from the mid-level managers raising employment security issues created the incentive for courts to enunciate the rule in their decisions in order to avoid trials.

My analysis of these ten states provides substantial support for the proposition that the U.S. has generally always followed the employment-at-will doctrine. Thus, when late-nineteenth century jurists expressly applied the doctrine to mid-level management employees, they simply were relying on law that had existed throughout our nation's history and were not creating a new doctrine.

IV.

The fourth question raised by my conclusion on the origins of the employment-at-will doctrine is how do the U.S. developments compare to the continuing developments of English law in the eighteenth and nineteenth centuries?

During the period of the founding of the English colonies in North America, as we have seen, the annual hiring rule was firmly ensconced in British law. When the last North American British colony, Georgia, was founded in 1733, England still had an agrarian economy. However, the beginnings of manufacturing and the factory system were in place.

England witnessed significant economic change and population growth beginning in the eighteenth century. Historians generally date the beginning of the Industrial Revolution in Great Britain as the late-seventeenth and early eighteenth centuries.¹⁶ By the end of the eighteenth century the factory system was in place, labor no longer was scarce, and most factory workers were hired by the day or week. Industrialization and the growth of the factory system provided incentives for the courts to begin to abandon enforcement of much of the detailed regulatory

---

¹⁶ Blackford, Rise of Modern Business, 39.

mechanisms adopted during the sixteenth and seventeenth centuries.

By the end of the eighteenth century, although Parliament had by no means abandoned its attempts to regulate master-servant relations, Adam Smith's laissez-faire theory was gaining adherents in Britain just as had occurred in the United States at the same time.¹⁷ And, just as had happened in the North American colonies late in the eighteenth century, economic opinion began questioning the efficacy of the extensive government regulation of prices, wages, manufacturing processes, and other aspects of commercial activity.¹⁸ Thus, growing popular sentiment supported freedom of action and freedom from government interference for capitalist activities.

Acting consistently with this growing sentiment, justices of the peace frequently refused to engage in wage fixing as required by the 1563 statutes. By the middle of the eighteenth century, wage fixing had nearly disappeared, although the justices on occasion did continue to set wages and enforce the wage rates to forestall labor difficulties.¹⁹ In the early nineteenth century, Parliament began repealing many of the laws left from the mercantilist

---

¹⁷ Holdsworth, vol. 3, 473-74; 499.

¹⁸ Holdsworth, vol. 11, p. 466.

¹⁹ Holdsworth, vol. 11, 467-71.

period. However, many of the repealed laws had already fallen into disuse.²⁰ For example, Parliament formally repealed the rarely used sixteenth century wage fixing statutes in 1813, although Parliament did retain the wage regulations for some industries.²¹

The laissez-faire ideology also affected the annual hiring rule. Because factory workers did not exist when the annual hiring rule was first adopted, no specific statute applied to them. Because they were paid by the day or week, courts generally refused to apply the annual hiring rule to them, finding that the payment terms dictated the term of employment and hence they had not been hired for an indefinite term.²² However, at the turn of the nineteenth century, British courts still recognized the annual hiring rule for other classes of laborers for contracts which stated no definite duration.²³

But, early in the century courts began modifying the annual hiring rule, modifications that by mid-century rendered it meaningless with respect to many categories of workers. The first modifications to the rule came with agricultural labor. In the late eighteenth and early

---

²⁰ Blackford, Rise of Modern Business, p. 31.

²¹ Holdsworth, vol. 13, 327.

²² Holdsworth, vol 11, 465-68.

²³ Jacoby, 95.

nineteenth century, British courts came to view agricultural labor contracts as of definite duration determined by the stated rate of pay. Thus, such contracts were no longer considered of indefinite duration and hence were not covered by the statutory annual hiring rule.²⁴ In the 1840s, courts stopped recognizing the annual hiring rule for non-manual workers--clerks, managers, and white-collar employees, although for this group of workers the courts did insist that reasonable notice, generally three months, be given before dismissal.²⁵

Thus, although British law did continue to require employers to provide reasonable notice before dismissing employees, by the mid-nineteenth century the annual hiring rule no longer applied to British workers hired under a contract of indefinite duration.²⁶

---

²⁴ Jacoby, 97.

²⁵ Jacoby, 100.

²⁶ In order to minimize strikes, British employers frequently sought express contracts for definite terms because British criminal law provided criminal penalties for workers who for whatever reason, including strikes, left their job before the end of the contract term. Criminal penalties for job desertion were repealed in 1875. However, this issue is separate from the annual hiring rule which applied to cases where workers had not agreed on a definite term. For further information see Jacoby, 97-99.

My analysis lends substantial support to the contention of legal scholars like Jay Feinman and Karl Klare, as well as historians like Charles Beard and Arnold Paul that "Legal doctrine . . . is strongly influenced by economic conditions."²⁷ The English adoption of the annual hiring rule occurred because of changing economic conditions. The failure of that annual hiring rule to take root in the North American colonies was shaped by the particular economic needs of a labor scarce-land abundant society.

Thus, my disagreement with Feinman, et al., is not on the impact of economics on historical developments, but rather with when and how economics affected the development of the specific issue of employment-at-will. First, growing industrialization in the U.S. did not lead to the adoption of the employment-at-will doctrine. That doctrine was firmly established during colonial days in response to the specific needs of the colonial agrarian economy. Second, scholars like Feinman who contend that the judiciary suddenly adopted employment-at-will in the late-nineteenth century in response to the needs of the new industrial titans argue that judges intentionally manipulated the law to suit the needs of the dominant economic class. Because I

---

²⁷ Feinman, 118.

have not conducted a thorough analysis of other legal issues I will reserve judgment on the extent to which the U.S. judiciary has intentionally manipulated the law to serve economic interests. However, with respect to this particular issue of employment-at-will, no evidence suggests any intentional manipulation by the courts; rather, the doctrine appears to have developed because it served the needs of most participants, whether masters or free laborers, in colonial society.

VI.

Legal historians trained in law, but not history, as is the case with many who are on law school faculties, tend to focus on doctrinal developments in the law but ignore the economic, social, and ideological context within which the law develops. The pure doctrinal analysis emanating from law schools tends to lack the depth of analysis necessary to truly understand legal change. Thus, Jay Feinman reached erroneous conclusions about the origins of the employment-at-will doctrine because he examined only legal decisions. Legal historians who are trained in history, but with no formal legal training do provide the depth of understanding that comes from including the social, economic, and ideological context in their analysis. However, historians with no legal training tend to misunderstand the

significance of legal decisions. Thus, Morton Horwitz reached conclusions about all of U.S. law by focusing only on a few cases from two states. Common law, which was the most significant source of legal change in the nineteenth century, develops on a state-by-state basis and hence one cannot draw meaningful conclusions simply by looking at a few cases from only two states.

One must combine the best of what both legal scholars and historians have to offer in order to provide the most complete, and hopefully the most accurate, legal history. This can be a tedious undertaking because one must examine many cases from a variety of states, and then place them in the historical context, before arriving at any final conclusions. However, this comprehensive approach provides the only method of truly grasping legal historical change.

Bibliography

PRIMARY SOURCES

Court Reporters and Statutory Sources

California

California Reports, Vols. 1-22 (1851-1863).

The Civil Code of the State of California (1872).

Complied Laws of the State of California (1853).

Georgia

Georgia Reports, Vols. 1-79 (1846-1885).

Southern Reporter, Vols. 1-10 (1887-1889).

Illinois

Illinois Reports, Vols. 1-73 (1819-1874).

Louisiana

Louisiana Civil Code of 1808.

Maryland

Maryland Reports: Harris & McHenry, Vols. 1-4 (1700-1799).

Maryland Reports: Harris & Johnson, Vols. 1-7 (1800-1826).

Maryland Reports: Harris & Gill, Vols. 1-2 (1826-1829).

Maryland Reports: Gill & Johnson, Vols. 1-12 (1829-1842).

Maryland Reports: Gill, Vols. 1-9 (1843-1851).

Maryland Reports, Vols. 1-67 (1851-1887).

Earliest Printed Laws of the Province of Maryland, 1692-1718. Wilmington, Delaware: Michael Glazer, 1978.

Massachusetts

Massachusetts Special Laws, Vols. 1-16 (1780-1893).

Massachusetts Reports, Vols. 1-138 (1804-1885).

Charters and General Laws of the Colony and Province of Massachusetts Bay. Boston: T.A. Wait & Co., 1814.

Colonial Laws of Massachusetts: Reprinted from the Edition of 1660, with the Supplements to 1672. Boston: n.p., 1889.

Colonial Laws of Massachusetts: Reprinted from the Edition of 1672, with Supplements through 1686. Boston: n.p., 1887.

Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692. Boston: County of Suffolk, 1904).

Massachusetts Province Laws, 1692-1699. Wilmington, Delaware: Michael Glazer, 1978.

Laws of the Commonwealth of Massachusetts from November 28, 1780 to February 28, 1807. Boston: Thomas & Andrews and Manning & Loring, 1807.

Revised Statutes of the Commonwealth of Massachusetts. Boston: Dutton & Wentworth, 1836).

Supplements to the Revised Statutes of Massachusetts. Vol. 1 (1836-1853). Boston: n.p., 1855.

Supplements to the Revised Statutes of Massachusetts. Vol. 2 (1853-1859). Boston: n.p., 1861.

Montana

Montana Reports, Vols. 1-14 (1872-1894).

New York

Johnson's Cases, Vols. 1-3 (1799-1802).

Caines' Reports, Vols. 1-3 (1803-1805).

Johnson's Reports, Vols. 1-20 (1806-1823).

Johnson's Chancery Reports, Vols. 1-7 (1814-1823).

Hopkin's Chancery Reports, Vol. 1 (1824-25).

Cowen's Reports, Vols. 1-9 (1823-1828).

Paige's Chancery Reports, Vols. 1-11 (1828-1845).

Wendell's Reports, Vols. 1-26 (1829-1841).

Hill's Reports, Vols. 1-7 (1841-1845).

Deno's Reports, Vols. 1-5 (1845-1848).

Edmond's Reports, Select Cases, Vols. 1-2 (1834-1853).

Lockwood's Reversed Cases (1799-1847).

Edward's Chancery Reports, Vols. 1-4 (1831-1850).

Hoffman's Chancery Reports, Vol. 1 (1839-40).

Clarke's Chancery Reports (1839-1841).

Sanford's Chancery Reports, Vols. 1-4 (1843-1847).

Barbour's Chancery Reports, Vols. 1-3 (1845-1848).

New York Reports, Vols. 1-125 (1847-1891).

Northeast Reporter, Vols. 1-42 (1888-1896).

Earliest Printed Laws of New York, 1665-1693. Wilmington, Delaware: Michael Glazer, 1978.

Pennsylvania

Pennsylvania Reports, Dallas, Vols. 1-4 (1754-1806).

Pennsylvania Supreme Court Reports, Vols. 1-4 (1791-1795).

Pennsylvania Reports, Binney, Vols. 1-6 (1808-1814).

Sergeant & Rowle's Reports, Vols. 1-17 (1814-1828).

Rawle's Reports, Vols. 1-5 (1828-1835).

Pennsylvania Supreme Court Reports, Penrose & Watts, Vols. 1-3 (1829-1832).

Watts Reports, Vols. 1-10 (1832-1840).

Watts & Sergeant's, Vols. 1-9 (1841-1845).

Pennsylvania State Reports, Barr, Vols. 1-10 (1845-1849).

Pennsylvania State Reports, Vols. 11-46 (1849-1863).

Earliest Printed Laws of Pennsylvania, 1681-1713.
Wilmington, Delaware: Michael Glazer, 1978).

Texas

Texas Reports, Vols. 1-72 (1840-1889).

Other Legal Sources

Addison, C.G. A Treatise on the Law of Contract, Second American Edition, from the Fourth English Edition. Philadelphia: Robert H. Small, 1857.

Addison, C.G. A Treastise on the Law of Contract, Third American from the Seventh London Edition. Jersey City, New Jersey: Frederick D. Linn & Co., 1881.

Chitty, Joseph. A Practical Treatise on the Law of Contracts. Springfield, Massachusetts: G.&C. Merriam, 1848.

Field, George W. A Treatise on the Law of Damages. Des Moines, Iowa: Mills & Co., 1881.

LaBatt, C.B. Commentaries on the Law of Master and Servant, Vols. 1-2. Rochester, New York: The Lawyers Co-Operative Publishing Co., 1913.

Schouler, James. A Treatise on the Law of the Domestic Relations, 4th ed. Boston: Little Brown & Co., 1889.

Smith, Charles Manley. A Treatise on the Law of Master and Servant. Philadelphia: T. & J.W. Johnson, 1852.

Story, William W. A Treatise on the Law of Contracts, Vol. II, 5th ed. Boston: Little, Brown & Co., 1874.

Wood, H.G. A Treatise on the Law of Master and Servant. Albany, New York: John D. Parsons, Jr., 1877.

Newspapers

Boston Daily Evening Transcript

Boston Evening Transcript

Boston Post

Maryland Gazette

New York Daily Times

New York Evening Post

New York Times

United States Gazette

SECONDARY SOURCES

Books

Alexander, John K. Render them Submissive: Responses to Poverty in Philadelphia, 1760-1800. Amherst: University of Massachusetts Press, 1980.

Ashley, Maurice. England in the Seventeenth Century. London: Penguin Books, 1952.

Bailyn, Bernard. The Ideological Origins of the American Revolution. Cambridge: Belknap Press of Harvard University Press, 1967.

Barney, William L. The Passage of the Republic: An Interdisciplinary History of Nineteenth-Century America. Lexington, Massachusetts: D.C. Heath & Co., 1987.

Beck, Warren A. and David A. Williams. California: A History of the Golden State. Garden City, New York: Doubleday, 1972.

Blackford, Mansel G. The Politics of Business in California. Columbus, Ohio: Ohio State University Press, 1977.

_____. The Rise of Modern Business in Great Britain, The United States, and Japan. Chapel Hill: University of North Carolina Press, 1988.

Blackford, Mansel G. and K. Austin Kerr. Business Enterprise in American History, 3d. ed. Boston: Houghton Mifflin, 1994.

Buck, Solon J. Illinois in 1818. N.p., 1967.

Camarillo, Albert. Chicanos in a Changing Society: From Mexican Pueblos to American Barrios in Santa Barbara and Southern California, 1848-1930. Cambridge: Harvard University Press, 1979.

Caughey, John W. California. New York: Prentice Hall, 1940.

Chandler, Alfred D., Jr. The Visible Hand: The Managerial Revolution in American Business. Cambridge: Harvard University Press, Belknap Press, 1977.

Chappelle, Suzanne E.G., et al. Maryland: A History of Its People. Baltimore: Johns Hopkins University Press, 1986.

Clark, Christopher. The Roots of Rural Capitalism: Western Massachusetts, 1780-1860. Ithaca, New York: Cornell University Press, 1990.

Clemens, Paul G.E. The Atlantic Economy and Colonial Maryland's Eastern Shore: From Tobacco to Grain. Ithaca: Cornell University Press, 1980.

Clough, Shepard B. and Charles W. Cole. Economic History of Europe. Boston: D.C. Heath & Co., 1941.

Cole, Arthur C. The Centennial History of Illinois: The Era of the Civil War, 1848-1870. Springfield, Illinois: Illinois Centennial Commission, 1919.

Coleman, Kenneth et al. A History of Georgia. Athens: University of Georgia Press, 1977.

Commons, John R., et al., eds. A Documentary History of American Industrial Society, Vols. 3, 4, 7, and 8. Cleveland, Ohio: The Arthur Clark Co., 1910.

Connor, Seymour V. Texas: A History. New York: Crowell, 1971.

Coward, Barry. The Stuart Age: A History of England 1603-1714. London: Longman, 1980.

Dahnof, Clarence H. Change in Agriculture: The Northern United States, 1820-1870. Cambridge: Harvard University Press, 1969.

Davis, Edwin Adams. Louisiana: The Pelican State. Baton Rouge: Louisiana State University Press, 1959.

Dawley, Alan. Class and Community: The Industrial Revolution in Lynn. Cambridge: Harvard University Press, 1976.

Diner, Hasia R. Erin's Daughters in America. Baltimore: Johns Hopkins University Press, 1983.

Dobb, Maurice. Studies in the Development of Advanced Capitalism. New York: International Publishers, 1963.

Dublin, Thomas. Women at Work: The Transformation of Work and Community in Lowell, Massachusetts, 1826-1860. New York: Columbia University Press, 1979.

Dudden, Faye E. Severing Women: Household Service in Nineteenth-Century America. Middletown, Connecticut: Wesleyan University Press, 1983.

Evans, Sara M. Born for Liberty: A History of Women in America. New York: Free Press, 1989.

Faler, Paul G. Mechanics and Manufacturers in the Early Industrial Revolution: Lynn, Massachusetts, 1780-1860. Albany, New York: State University of New York Press, 1981.

Fite, Gilbert C. Cotton Fields No More: Southern Agriculture, 1865-1980. Lexington: University of Kentucky Press, 1984.

Forbath, William E. Law and the Shaping of the American Labor Movement. Cambridge: Harvard University Press, 1991.

Friedman, Lawrence. A History of American Law 2d. ed. New York: Simon & Schuster, Touchstone Books, 1973.

Garner, William R. Letters from California, 1846-1847. Berkeley, California: University of California Press, 1970.

Gates, Paul W. The Farmers Age, 1815-1860. New York: Holt, Rinehart, Winston, 1960.

Gilje, Paul A. and Howard B. Rock, eds. Keepers of the Revolution: New Yorkers at Work in the Early Republic. Ithaca, New York: Cornell University Press, 1992.

Hahn, Steven. The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850-1890. New York: Oxford University Press, 1983.

Hall, Jacquelyn D., et al. Like A Family: The Making of a Southern Cotton Mill World. Chapel Hill: University of North Carolina Press, 1986.

Haskins, George L. Law and Authority in Early Massachusetts: A Study in Tradition and Design. New York: Macmillan, 1960.

Hall, Kermit L., et al. American Legal History: Cases and Materials. New York: Oxford University Press, 1991.

Hall, Kermit L. The Magic Mirror: Law in American History. New York: Oxford University Press, 1989.

Hattam, Victoria. Labor Visions and State Power: The Origins of Business Unionism in the United States. Princeton: Princeton University Press, 1993.

Haskins, George L. Law and Authority in Early Massachusetts: A Study in Tradition and Design. New York: Macmillan, 1960.

Hoffer, Peter C. Law and People in Colonial America. Baltimore: Johns Hopkins University Press, 1992.

Holdsworth, Sir William. A History of English Law, Vol. 2. London: Methuen & Co., Ltd., 1903, 4th ed. 1936, reprinted 1966.

_____. A History of English Law, Vol. 4. London: Methuen & Co., Ltd., 1924, 3d ed., 1945, reprinted 1966.

Holmes, George. The Later Middle Ages, 1272-1485. Edinburgh: Thomas Nelson & Sons, Ltd., 1962.

Horwitz, Morton J. The Transformation of American Law, 1780-1860. Cambridge: Harvard University Press, 1977.

Hovencamp, Herbert. Enterprise and American Law, 1836-1937. Cambridge: Harvard University Press, 1991.

Howard, Robert P. Illinois: A History of the Prairie State. Grand Rapids, Michigan: W.B. Eerdmans Publishing Co., 1972.

Hurst, James Willard. Law and the Conditions of Freedom in the Nineteenth-Century United States. Madison: University of Wisconsin Press, 1956.

Innes, Stephen. Labor in a New Land: Economy and Society in Seventeenth-Century Springfield. Princeton: Princeton University Press, 1983.

Innes, Stephen, ed. Work and Labor in Early America. Chapel Hill: University of North Carolina Press, 1988.

Jernegan, Marcus Wilson. Laboring and Dependent Classes in Colonial America, 1607-1783. Chicago: University of Chicago Press, 1931.

Johnson, Amanda. Georgia as Colony and State. Atlanta: Walker W. Brown Publishing Co., 1938.

Jones, Billy M. The Search for Maturity, 1875-1900. Austin, Texas: Steck-Vaughn Co., 1965.

Kairys, David, ed. The Politics of Law: A Progressive Critique 2d. ed. rev. New York: Random House, Pantheon Books, 1990.

Katzman, David M. Seven Days a Week. Urbana: University of Illinois Press, 1981.

Kim, Sung Bok. Landlord and Tenant in Colonial New York Manorial Society, 1664-1775. Chapel Hill: University of North Carolina Press, 1978.

Konig, David T. Law and Society in Puritan Massachusetts: Essex County, 1629-1692. Chapel Hill: University of North Carolina Press, 1979.

Knights, Peter R. The Plain People of Boston, 1830-1860: A Study in City Growth. New York: Oxford University Press, 1971.

Kulik, Gary, et al. The New England Mill Village, 1790-1860. Cambridge: MIT Press, 1982.

Kutler, Stanley I. Privilege and Creative Destruction: The Charles River Bridge Case. Philadelphia: Lippincott, 1971.

Lingenfelter, Richard E. The Hardrock Miners: A History of the Mining Labor Movement in the American West, 1863-1893. Berkeley, California: University of California Press, 1974.

Malone, Michael P. and Richard B. Roeder. Montana: A History of Two Centuries. Seattle, Washington: University of Washington Press, 1976.

Marcus, Alan I. and Howard P. Segal. Technology in America: A Brief History. San Diego: Harcourt, Brace, Jovanovich, 1989.

Machann, Clinton and James W. Mendl, Jr. Czech Voices: Stories from Texas. College Station, Texas: Texas A&M Press, 1991.

- McC Campbell, Coleman. Texas Seaport: The Story of the Growth of Corpus Christi and the Coastal Bend Area. New York: Exposition Press, 1952.
- McKee, Samuel, Jr. Labor in Colonial New York, 1664-1776. N.p., 1935.
- Menard, Russell R. Economy and Society in Early Colonial Maryland. New York: Garland, 1985.
- Morris, Richard B. Government and Labor in Early America. New York: Columbia University Press, 1946.
- Myers, A. R. England in the Late Middle Ages, 8th ed. Middlesex, England: Penguin Books, 1971.
- Nash, Gary B. The Urban Crucible: The Northern Seaports and the Origins of the American Revolution. Cambridge: Harvard University Press, 1986.
- Nelson, William E. Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830. Cambridge: Harvard University Press, 1975.
- North, Douglass C. and Robert Paul Thomas. The Rise of the Western World: A New Economic History. Cambridge: Cambridge University Press, 1973.
- Norton, Mary B. Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800. Boston: Little, Brown, 1980.
- Palmer, William J. and Paul P. Selvin. The Development of Law in California. St. Paul, Minnesota: West Publishing Co., 1983.
- Pease, Theodore. The Story of Illinois, 3rd. ed. Chicago: University of Chicago Press, 1965.
- Pierce, Bessie R. A History of Chicago: From Town to City, 1848-1871. N.p., 1940.
- Prude, Jonathan. The Coming of Industrial Order: Town and Factory Life in Rural Massachusetts, 1810-1860. Cambridge: Cambridge University Press, 1983.
- Putnam, Bertha Haven. The Enforcement of the Statute of Laborers During the First Decade After the Black Death, 1349-1359. New York: AMS Press, 1908.

Richardson, Rupert Norval, et al. Texas: The Lone Star State, 3d ed. Englewood Cliffs, New Jersey: Prentice-Hall, 1970.

Rollins, Judith. Between Women: Domestic and their Employers. Philadelphia: Temple University Press, 1985.

Salinger, Sharon V. "To Serve Well and Faithfully," Labor and Indentured Servitude in Pennsylvania, 1682-1800 (1987).

Savage, W. Sherman. Blacks in the West. Westport, Connecticut: Greenwood Press, 1976.

Schneirov, Robert and Thomas J. Suhrbur. Union Brotherhood, Union Town: The History of the Carpenter's Union of Chicago, 1863-1987. Carbondale, Illinois: Southern Illinois University Press, 1988.

Scranton, Philip. Proprietary Capitalism: The Textile Manufacture at Philadelphia, 1800-1885. New York: Cambridge University Press, 1983.

Selvin, David F. A Place in the Sun: A History of California Labor. San Francisco: Boyd, Fraser Publishing Co., 1981.

Skaggs, David C. Roots of Maryland Democracy, 1753-1776. Westport, Connecticut: Greenwood Press, 1973.

Spence, Clark C. Montana: A Bicentennial History. New York: Norton, 1978.

Stansell, Christine. City of Women: Sex and Class in New York, 1789-1860. New York: Knopf, 1986.

Steffen, Charles G. The Mechanics of Baltimore: Workers and Politics in the Age of Revolution, 1763-1812. Urbana: University of Illinois Press, 1984.

Steinfeld, Robert J. The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1850-1870. Chapel Hill: University of North Carolina Press, 1991.

Stott, Richard B. Workers in the Metropolis: Class, Ethnicity, and Youth in Antebellum New York City. Ithaca, New York: Cornell University Press, 1990.

Stromquist, Shelton. A Generation of Boomers: The Pattern of Railroad Conflict in Nineteenth-Century America. Urbana, Illinois: University of Illinois Press, 1987.

Sullivan, William A. The Industrial Worker in Pennsylvania, 1800-1840. Harrisburg, Pennsylvania: Pennsylvania Historical & Museum Commission, 1955.

Swartout, Robert R., Jr. and Harry W. Fritz. The Montana Heritage: An Anthology of Historical Essays. Helena, Montana: Montana Historical Society Press, 192.

Taylor, Joe Gray. Louisiana: A Bicentennial History. New York: Norton, 1976.

Teveen, Kevin. A History of the Anglo-American Common Law of Contracts. New York: Greenwood Press, 1990.

Wall, Bennett H., ed. Louisiana: A History. Arlington Heights, Illinois: Forum Press, 1984.

Wallace, Anthony F.C. Rockdale: The Growth of an American Village in the Early Industrial Revolution. New York: Knopf, 1978.

Wallace, Ernest. Texas in Turmoil, 1849-1875. Austin, Texas: Steck-Vaughn Co., 1965.

White, G. Edward. Tort Law in American History. New York: Garland Publishing, 1980.

Wiebe, Robert H. The Search for Order, 1877-1920. American Century Series. New York: Hill & Wang, 1967.

Wilkinson, B. The Later Middle Ages in England, 1216-1485. New York: David McKay Co., Inc., 1969.

Articles

Armstrong, Thomas F. "From Task Labor to Free Labor: The Transition Along Georgia's Rice Coast, 1820-1880." Georgia Historical Quarterly 64 (1980): 432-447.

_____. "Georgia Lumber Laborers, 1880-1917: The Social Implications of Work." Georgia Historical Quarterly 67 (1983): 435-450.

_____. "The Transformation of Work: Turpentine Workers in Coastal Georgia, 1865-1901." Labor History 25 (1984): 518-532.

Blackburn, John D. "Restricted Employer Discharge Rights: A Changing Concept of Employment at Will." American Business Law Journal 17 (1980): 467-492.

Blades, Lawrence E. "Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power." Columbia Law Review 67 (1967): 1404-1435.

Blumrosen, Alfred W. "Workers' Rights Against Employers and Unions: Justice Francis--A Judge for Our Season." Rutgers Law Review 24 (1970): 480-499.

Brody, David. "Time and Work During Early American Industrialism." Labor History 30 (1989): 5-46.

Callahan, Elletta S. "The Public Policy Exception to the Employment at Will Rule Comes of Age." American Business Law Journal 29 (1991): 481-517.

Carlson, Shirley J. "Black Migration to Pulaski County, Illinois, 1860-1900." Illinois Historical Journal 80 (1987): 37-46.

Carr, Lois G. and Russell R. Menard. "Immigration and Opportunity: The Freedman in Early Colonial Maryland." In The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society. Eds. Thad W. Tate & David L. Ammerman. Chapel Hill: University of North Carolina Press, 1979.

Carr, Lois G. and Lorena S. Walsh. "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland." In A Heritage of Her Own: Toward a New Social History of American Women. Eds. Nancy F. Cott & Elizabeth H. Pleck. New York: Simon & Schuster, 1979.

Chandler, Alfred D., Jr. "The Beginnings of Big Business in American Industry." Business History Review 33 (1959): 1-31.

Clemens, Paul G.E. and Lucy Simler, "Rural Labor and the Farm Homestead in Chester County, Pennsylvania, 1750-1820." In Work and Labor in Early America. Edited by Stephen Innes. Chapel Hill: University of North Carolina Press, 1988.

Daitsman, George. "Labor and the 'Welfare State' in Early New York." Labor History 4 (1963): 248-256.

Davis, James E. "'New Aspects of Men and New Forms of Society': The Old Northwest, 1790-1820." Illinois State Historical Society Journal 69 (1976): 164-172.

Della, M. Ray, Jr. "An Analysis of Baltimore's Population in the 1850s." Maryland Historical Magazine 68 (1973): 20-35.

_____. "The Problems of Negro Labor in the 1850s." Maryland Historical Magazine 66 (1975): 15-29.

Dublin, Thomas. "Rural-Urban Migrants in Industrial New England: The Case of Lynn, Massachusetts in the Mid-Nineteenth Century." Journal of American History 73 (1986): 623-644.

Dunn, Richard S. "Servants and Slaves: The Recruitment and Employment of Labor." Pages 157-194 in Colonial British America: Essays in the New History of the Early Modern Era. Eds. Jack P. Greene & J.R. Poole. Baltimore: Johns Hopkins University Press, 1984.

Epstein, Richard A. "In Defense of Contract at Will." University of Chicago Law Review 51 (1984): 946-982.

Feinman, Jay. "The Development of the Employment at Will Rule." American Journal Legal History 20 (1976): 118-135.

_____. "The Development of the Employment at Will Rule Revisited." Arizona State Law Journal 23 (1991): 733-740.

Finkin, Matthew M. "The Bureaucratization of Work: Employer Policies and Contract Law." Wisconsin Law Review 1986 (1986): 733-753.

_____. "Revisionism in Labor Law." Maryland Law Review. 43 (1984): 23-92.

Freed, Mayer G. and Daniel D. Polsby. "Just Cause for Termination Rules and Economic Efficiency." Emory Law Journal 38 (1989): 1097-1144.

_____. "The Doubtful Provenance of 'Wood's Rule' Revisited." Arizona State Law Journal 22 (1990): 551-558.

Galenson, David W. "Labor Market Behavior in Colonial America: Servitude, Slavery, and Free Labor." In Markets in History: Economic Studies of the Past. Ed. David W. Galenson. Cambridge: Cambridge University Press, 1989.

Haas, Edward F. "Louisiana's Legal Heritage: An Introduction." Pages 1-6 in Louisiana's Legal Heritage. Ed. Edward F. Haas. Pensacola, Florida: Perdido Bay Press, 1983.

Hallberg, Carl. "Soperville: An Immigrant Community in Knox County." Illinois Historical Society Journal 74 (1981): 51-57.

Horwitz, Morton J. "The Historical Foundations of Modern Contract Law." Harvard Law Review 87 (1974): 917-956.

Iwanaga, S. Maya. "A Comparative Approach to Japanese & United States Wrongful Termination Law." Hastings International & Comparative Law Review 13 (1990): 341-365.

Jacoby, Sanford M. "The Duration of Indefinite Employment Contracts in the United States and England: An Historical Analysis." Comparative Labor Law 5 (1982): 85-128.

Johnson, Dudley S. "William Harris Garland: Mechanic of the Old South." Georgia Historical Quarterly 63 (1969): 41-56.

Kaczorowski, Robert J. "The Common Law Background of Nineteenth Century Tort Law." Ohio State Law Journal 51 (1990): 1127-1199.

Karsten, Peter. "'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 (1990): 213-261.

Klare, Karl. "Critical Theory and Labor Relations Law." Pages 61-89 in The Politics of Law: A Progressive Critique 2d. ed. rev. Ed. David Kairys. New York: Random House, Pantheon Books, 1990, 61-89.

_____. "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941." Minnesota Law Review 62 (1978): 265-339.

_____. "Labor Law as Ideology: Toward a New Historiography of Collective Bargaining Law." Industrial Relations Law Review 4 (1981): 450-482.

_____. "Traditional Labor Law Scholarship and the Crisis of Collective Bargaining Law: A Reply to Professor Finkin." Maryland Law Review 44 (1985): 731-840.

Land, Aubrey C. "Economic Base and Social Structure: The Northern Chesapeake in the Eighteenth Century." Journal of Economic History 25 (1965): 639-654.

- Lightner, David L. "Construction Labor on the Illinois Central Railroad." Illinois State Historical Society Journal 66 (1973): 285-301.
- Lindenbaum, Eugene N. "The Status of the Employment-at-Will Doctrine in Ohio: Ohio Incorporates a Public Policy Exception." Ohio State Law Journal 52 (1991): 315-329.
- Lopatka, Kenneth T. "The Emerging Law of Wrongful Discharge--A Quadrennial Assessment of the Labor Law Issue of the 80s." Business Lawyer 40 (1984): 1-32.
- Lovett, Robert W. "Montana Episodes: A Maine Man in the West--Letters of Stephen C. Barron, 1867-1874." Montana Magazine of Western History 32, no. 2 (1982).
- Mallor, Jane P. "Discriminatory Discharge and the Emerging Common Law of Wrongful Discharge." Arizona Law Review 28 (1986): 651-671.
- Matthews, Daniel A. "A Common Law Action for Abusively Discharged Employees." Hastings Law Journal 26 (1975): 1435-64.
- Menard, Russell R. "From Servant to Freeholder: Status Mobility and Property Accumulation in Seventeenth-Century Maryland." In Colonial America: Essays in Politics and Social Development. Eds. Stanley N. Katz & John M. Murrin. New York: Knopf, 1983.
- Mercier, Laurie K. "Women's Economic Role in Montana Agriculture: 'You Had to Make Every Minute Count'." Montana Magazine of Western History 38 (1988): 50-61.
- Montgomery, David. "The Working Classes of the Pre-Industrial American City, 1780-1830." Labor History 9 (1968): 3-22.
- Morriss, Andrew P. "Exploding Myths: An Empirical and Economic Reassessment of the Rise of Employment At-Will." Missouri Law Review 59 (1994): 679-773.
- Nellis, Eric Guest. "Labor and Community in Massachusetts Bay: 1630-1660." Labor History 18 (1977): 525-544.
- Nelson, Otto M. "The Chicago Relief and Aid Society, 1850-1872." Illinois State Historical Society Journal 59 (1966): 48-66.

Phillips, Michael J. "Toward a Middle Way in the Polarized Debate Over Employment at Will." American Business Law Journal 30 (1992): 441-483.

Pierce, Ellen R., et al. "Employee Termination At-Will: A Principled Approach." Villanova Law Review 28 (1982-83): 1-50.

Pruitt, Bettye Hobbs. "Self-Sufficiency and the Agricultural Economy of Eighteenth-Century Massachusetts." William & Mary Quarterly 3rd Ser. (1984): 333-364.

Rapport, Sara. "The Freedman's Bureau as a Legal Agent for Black Men and Women in Georgia: 1865-1868." Georgia Historical Quarterly 73 (1989): 26-63.

Salinger, Sharon V. "Artisans, Journeymen, and the Transformation of Labor in Late Eighteenth-Century Philadelphia." William & Mary Quarterly 3rd Ser. (1983): 62-84.

Salmon, Marylynn. "The Legal Status of Women in Early America: A Reappraisal." Law & History Review 1 (1983): 129-151.

Scheiber, Harry N. "American Constitutional History and the New Legal History: Complementary Themes in Two Modes." Journal of American Legal History 68 (1981): 337-350.

Sschwantes, Carlos. "Images of the Wageworkers' Frontier." Montana Magazine of Western History 38, no. 4 (1988).

Schwartz, Gary T. "The Character of Early American Tort Law." UCLA Law Review 36 (1989): 641-718.

Schwartz, Gary T. "Tort Law and the Economy in Nineteenth-Century America: A Reinterpretation." Yale Law Journal 90 (1981): 1717-1775.

Shapiro, J. Peter and James F. Tune. "Implied Contract Rights to Job Security." Stanford Law Review 26 (1974): 335-369.

Simler, Lucy. "The Landless Worker: An Index of Economic and Social Change in Chester County, Pennsylvania, 1750-1820." Pennsylvania Magazine of History & Biography 14 (1990): 163-169.

Simpson, A.W. Brian. "The Horwitz Thesis and the History of Contracts." University of Chicago Law Review 48 (1979): 533-601.

Smith, Billly. "The Material Lives of Laboring Philadelphians, 1750 to 1800." William & Mary Quarterly 3rd Ser (1981): 163-202.

Smith, Todd M. "Wrongful Discharge Reexamined: The Crisis Matures, Ohio Responds." Case Western Reserve Law Review 41 (1991): 1209-1269.

Steffen, Charles G. "The Pre-Industrial Iron Worker: Northampton Iron Works, 1780-1820." Labor History 20 (1979): 89-110.

Summers, Clyde W. "Individual Protection Against Unjust Dismissal: Time for a Statute." Virginia Law Review 62 (1976): 481-532.