

From Slavery to the Cooperative
Commonwealth

*Labor and Republican Liberty in the
Nineteenth Century*

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first moment of this paradox slavery – chattel slavery – was also the chrysalis sheltering the second moment.

By the 1850s, the hardening of ideological lines between North and South imposed a kind of truce between the abolitionists and the various land and labor reformers as they gathered under the Republican tent. Lincoln elided the dispute by accepting that wage-labor was not fully free labor, but then by focusing attention on the immediate danger to all northern workers posed by Southern slavery. Once slavery was abolished, this elision was no longer sustainable. The challenge of wage-slavery would once again take center stage.

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“Independent Laborers by Voluntary Contract”

The Laissez-Faire Republican Turn

Where are the slave auction-blocks ... the slave-yokes and fetters ...
They are all gone! From chattels to human beings.... Freedmen at work
as independent laborers by voluntary contract!

*William Lloyd Garrison*¹

It was 1869. The Civil War was over and Congress had ratified the Thirteenth and Fourteenth Amendments to the American Constitution, which abolished slavery and guaranteed equal protection of the laws. William Lloyd Garrison's debates with working men and national reformers were long behind him. He could finally consider his life's work accomplished. Surveying the new economy, he exulted that he saw nothing but “independent laborers by voluntary contract.” It was a telling turn of phrase – “independent ... by contract.” Although in the last chapter we saw how Garrison opposed his abolitionist theory of freedom to the republican emphasis on independence, in this later utterance we see a blurring of the lines. Now, for Garrison, the absence of interference with voluntary agreements just *was* independence.

Garrison might not have been running these ideas together intentionally, but it was an important feature of the postbellum ideological atmosphere. As the “labor crisis” took center stage, it became increasingly common to find economists, legal theorists, employers, and public officials arguing that wage-labor was free labor because legal self-ownership was enough to guarantee a person's economic independence. If the wage-laborer was legally “*sui iuris*,” or under his own power, then that was enough to know he was independent. Legal status described economic condition. The abolition of slavery and the universal guarantee of freedom of contract eliminated chattel slavery and secured legal protection against becoming subject to any particular employer's will. Nobody could be forced to work for anyone else; each chose his employer voluntarily.

¹ Quoted in Stanley, *From Bondage to Contract*, 4.

This chapter reconstructs this view because it was the hegemonic idea against which labor republicans would react. This reconstruction is also important because it reminds us that the purity of two ideological traditions, represented in scholarly statements like "we have inherited two rival and incommensurable theories of negative liberty,"² is difficult to maintain. In fact, laissez-faire ideas arose not so much by negating the republican theory as by incorporating it into liberal thinking and practice.

As we proceed, it is important to recognize that all of the competing intellectual tendencies discussed in this and the following chapters share a theoretical commitment to the idea that independence must be universal. That is why the ensuing theoretical and political contest for the soul of modern republicanism was over whether wage-labor was a realization or violation of free labor. After all, if wage-labor was unfree, it was not unfree in the same way as chattel slavery. The nature of the wage-laborers' servitude required analysis and exposition. If the wage-laborer was free, then defenders of that position had to show why legal self-ownership was adequate to guarantee a workers' independence. In other words, the terrain of the struggle shifted from whether republican liberty could be universal to competing accounts over what counted as a relation of domination and thus what counted as a truly universalizable conception of free labor.

To understand this contested and shifting ideological terrain, this chapter begins with the prehistory of republican thinking about wage-labor. This prehistory points us to ambiguities in the theory of "dependence" or "domination" on which the republican theory of liberty rests, which in turn directs our attention to the way in which a society organized on the basis of wage-labor imposes new conceptual demands on that theory. Both the legal freedom and the complex interdependence of the workers in the emerging labor market presented important challenges to existing ways of thinking about wage-labor and economic dependence. With an appreciation of this material challenge in hand, we then move to the nineteenth-century laissez-faire republican theory itself. We see how the defense of wage labor as free labor emerged, especially in the judiciary, as a way of attempting to reconcile the republican theory to new social realities. On this view, wage-labor was free labor because the wage-laborer was sole proprietor of his own labor. In virtue of his legal self-ownership, he exercised the control over his labor that any independent property-owner exercised over property. As such, the wage-laborer was a free laborer in full possession of his republican liberty.

The Prehistory of Wage-Labor in Republicanism

Prior to the nineteenth century, there are two notable features of the republican discussion of wage-labor. The first is the near universal assumption that wage-labor is dependent and servile. As far back as Cicero, we find comments such

² Skinner, "A Third Concept of Liberty," 262.

as "all those workers who are paid for their labour and not for their skill have servile and demeaning employment; for in their case the very wage is a contract to servitude."³ Kant, whose ideas about wage-labor were taken from republican sources, said a citizen "must be his own master (*sui iuris*), and must have some property.... In cases where he must earn his living from others, he must earn it only selling that which is his, and not by allowing others to make use of him; for he must in the true sense of the word serve no-one but the commonwealth."⁴ Recall, too, that slavery appealed to Jefferson, Madison, and many in the Founding generation as an alternative to the dependence of wage-laborers. Even Lincoln, in the speech quoted in the previous chapter, structures his vision of social mobility around the contrast between wage-labor and free labor: "[T]he prudent, penniless beginner in the world, labors for wages awhile, saves surplus with which to buy tools or land, for himself; then labors on his own account another while.... [This] is free labor."⁵ From Cicero to Lincoln, wage-labor is avowedly a dependent form of labor. For those, unlike Cicero but like Lincoln, willing to conceive of some forms of work as fully free, economic independence was more than a condition of self-ownership. It was also control over one's labor and property – a lack of subjection to the commands of others in how one performs one's daily activity.

If wage-labor was understood to be dependent, it nevertheless received very little direct theoretical attention by pre-nineteenth-century republicans. The quotations assembled previously are mostly offhand, throwaway comments, extraneous footnotes, and casual historical inferences. That is mainly because of the second notable feature of pre-nineteenth-century republican thinking: it was based on a social assumption that wage-labor would never be more than a passing, marginal, or seasonal fact of the economy, rather than a central and permanent way of organizing economic production. That assumption was based on a further belief about property and labor. Republicans had assumed there would always be enough land such that a citizen could acquire adequate property to be individually self-sufficient. This tacit belief is immediately evident in Lincoln's speech and undergirded the early republican ideal of individual proprietorship. The further assumption was that, to the degree that there would be a class of dependent laborers, they would be slaves or other kinds of legally bound workers. That thought is apparent in thinkers from Aristotle and Cicero through Jefferson, and is the reason the paradox of slavery and freedom emerges in the first place.

But these were all semi-articulated premises. They were not carefully arranged in relation to other key aspects of the republican tradition. A chain of social

³ Cicero, *On Duties*, 58.

⁴ Immanuel Kant, "On the Common Saying: 'This May Be True in Theory, but It Does Not Apply in Practice,'" in *Kant Political Writings*, ed. H. S. Reiss (Cambridge: Cambridge University Press, 1991), 61–92, 78.

⁵ Lincoln, "Address to the Wisconsin State Agricultural Society," 158 first emphasis added.

assumptions and theoretical premises were connected in an unstable equilibrium. Wage-labor was servile; free labor was self-sufficient and autarkic; property was land; land was abundant; the state guaranteed independence by guaranteeing personal property and legal status. These positions roughly held together so long as they bore some relation to social reality and so long as challenges to them remained marginal. Because this set of theoretical positions rested on some underdeveloped social assumptions, any attempt to understand the development of republican thought must touch on the social history of the period.

The Crisis of Free Labor

The social and economic transformations of the nineteenth century undermined all of these assumptions at once. The dominant form of human labor, its interdependent organization, its legal status, and the distribution of and kinds of property, all changed rapidly. The Civil War did settle the question of whether republican thought could generate a universalizable conception of liberty, embodied in the free labor ideal. That ideal possessed some relation to social reality in antebellum United States, which "had spread self-employment remarkably widely," thus control over one's labor could still be "the moral norm, the bedrock meaning of free labor."⁶ In these circumstances, it was possible to maintain something like the National Reformer conception of the free labor ideal as an individuated condition of personal dominium. The individual exercised complete, undominated control over his own personal activity. However, the rise of a permanent wage-labor force produced an intellectual crisis for this conception. As historian Leon Fink puts it, "the fact that by 1870 two-thirds of the American workforce were hirelings posed a stark ideological dilemma for a culture in which the lack of property and independence was associated with slavery or 'wage slavery.'"⁷ Permanent wage-laborers were defined by the absence of any realistic chance to own productive property, be it land or tools and raw material, which appeared to mean that they could not be independent.

Permanent wage-labor went hand-in-hand with factory production. Here the problem was not just the sale of one's labor, but the fact that the labor activity itself was routinized and mechanized into a process over which workers lost control.⁸ Terence Powderly, General Master Workman of the Knights of Labor, gave voice to these worries in Gothic tones:

The village blacksmith shop was abandoned, the road-side shoe shop was deserted, the tailor left his bench, and all together these mechanics turned away from their country

homes and wended their way to the cities wherein the large factories had been erected. The gates were unlocked in the morning to allow them to enter, and after their daily task was done the gates were closed after them in the evening.⁹

Here it was not just subjection to an employer but to a particular kind of process that threatened the self-directed character of free labor. The social and mechanical character of factory production appeared to mean a loss of individual productive control. The problem was not just technological, but organizational: "[N]ew techniques of organization separated specific tasks hitherto the responsibility of one artisan among teams of workers."¹⁰ Where new skilled positions did arise, they were part of an integrated social process, unlike the autarky of the self-employed farmer or artisan.¹¹ The crisis of the free labor ideal was therefore the product of widespread and growing wage-labor alongside interdependent factory production. The citizen-worker faced potentially new forms of dependence in the wage-labor contract and in the labor process itself.

The crisis in the concept of free labor was registered at all levels of society, in court cases, congressional inquiries, popular presses and theoretical tracts.¹² After all, it was not merely objective social changes that challenged republican thinking. Different social actors applied republican categories to these new circumstances in ways that led to reinterpretations of its core concepts. Following William Forbath, what I call "laissez-faire republicanism"¹³ interpreted the republican ideal in the direction of a classical liberal defense of freedom of contract and legal autonomy. Although evident in a number of areas of public opinion, it was perhaps most pronounced as a doctrinal strand of American state and federal Supreme Court decisions. In the hands of justices, along with legal theorists and social critics, the republican ideal became a kind of intellectual medium out of which grew a liberal jurisprudence and body of thought.

The stakes in this ideological move were high. In the late nineteenth century, various state and federal courts struck down labor laws regulating hours, wages, and work safety, as well as blocked or curtailed union organizing,

⁹ Powderly, *Thirty Years of Labor 1859-1889*, 26. General Master Workman, originally "Grand" Master Workman, was the highest office in the Knights of Labor. See Chapters 4 and 5 for a discussion of the Knights and the relevant references.

¹⁰ Dubofsky, *Industrialism and the American Worker*, 4.

¹¹ *Ibid.*, 5.

¹² On wage-slavery, see Eric Foner, *The Story of American Freedom* (New York: W. W. Norton, 1998), 116-37; Rodgers, *The Work Ethic in Industrial America*, 30-35. On legal conceptions of free labor, see Montgomery, *Citizen-Worker*, 13-50; Robert J. Steinfeld, "Changing Legal Conceptions of Free Labor," in *Terms of Labor: Slavery, Serfdom and Free Labor*, ed. Stanley L. Engerman (Stanford, CA: Stanford University Press, 1999), 137-47. See also Forbath, "Ambiguities of Free Labor," 767; Pope, "Labor's Constitution of Freedom," 941-1031; Bernard Mandel, *Labor, Free and Slave: Workingmen and the Anti-Slavery Movement in the United States* (Champaign: University of Illinois Press, 1955); Cunliffe, *Chattel Slavery and Wage Slavery*; Roediger, *The Wages of Whiteness*.

¹³ Forbath, "Ambiguities of Free Labor," 767.

⁶ Daniel T. Rodgers, *The Work Ethic in Industrial America, 1850-1920* (Chicago: University of Chicago Press, 1979), 34-35.

⁷ Fink, "From Autonomy to Abundance: Changing Beliefs about the Free Labor System in Nineteenth-Century America," 116-36, 128.

⁸ Rodgers, *The Work Ethic in Industrial America*, 23-26; Montgomery, "Labor and the Republic in Industrial America," 201-15, 202-4; Melvyn Dubofsky, *Industrialism and the American Worker* (Arlington Heights, IL: Harlan Davidson, Inc., 1985), 4-9.

strikes, and boycotts – many of which were organized or supported by the Knights of Labor and their labor republican leaders.¹⁴ Although the “laissez-faire” character of this period can be over-stated,¹⁵ it is true that a very influential set of ideas emerged connecting the freedom of the individual laborer to a defense of freedom of contract.¹⁶ These ideas contributed to a rejection of many attempts to regulate or control the workplace through various types of collective action.

Laissez-Faire Republicanism and Jurisprudence: The Slaughterhouse Cases

It is important to recall that the defense of wage-labor did not begin as a straightforwardly republican one. As one historian puts it, “antislavery rendered freedom abstract by enshrining ownership of self, at the expense of an older republican emphasis on ownership of productive property.”¹⁷ We saw something of this opposition between a voluntarist and a republican conception of freedom in the previous chapter, but as a picture of history it misses the way in which many came to interpret the commodification of labor-power as the condition of republican liberty itself. Not only did Garrison and other abolitionists eventually participate in this fusion of languages,¹⁸ but the independent citizen-worker, selling his labor for wages, was soon to become a dominant ideal of public discourse.¹⁹

How, then, did treating labor as a commodity that could be bought and sold come to be seen as the guarantee of republican liberty? Post-Civil War actors inherited the idea that the free laborer is independent insofar as he controls his own labor. His labor is not subject to the arbitrary will of anyone else. But

¹⁴ “Boycotting May Be Illegal,” *JSP* 2, no. 101 (September 13, 1885); “Law and the Boycott,” *JUL* VII, no. 20 (January 29, 1887), 2268; Forbath, *Law and the Shaping of the American Labor Movement*, 37–127; Christopher L. Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880–1960* (Cambridge: Cambridge University Press, 1985), 32–52.

¹⁵ For instance, Michael Les Benedict, “Laissez-Faire and Liberty: a Re-Evaluation of the Meaning and Origins of Laissez-Faire Constitutionalism,” *Law and History Review* 3, no. 2 (Autumn 1985), 293–331; William Novak, “The Legal Origins of the Modern American State,” in *Looking Back at Law’s Century*, ed. Robert Kagan and Austin Sarat Bryant Garth (Ithaca: Cornell University Press, 2001).

¹⁶ Montgomery, *Citizen-Worker*; Morton J. Horwitz, *Transformation of American Law, 1870–1960: The Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1994), 160–210; Steinfeld, “Changing Legal Conceptions of Free Labor,” 137–67; Fink, “From Autonomy to Abundance.”

¹⁷ Stanley, *From Bondage to Contract*, 23.

¹⁸ Garrison, ed., “Free and Slave Labor”; Forbath, “Ambiguities of Free Labor,” 783–84.

¹⁹ Montgomery, *Citizen-Worker*. Montgomery argues that it was up to labor reformers to overcome the conceptual limitations on not just abolitionists but the radical Republicans. Montgomery, *Beyond Equality: Labor and the Radical Republicans, 1862–1872* (New York: Alfred A Knopf, 1967), 230–60.

what kind of control? As we have seen, republicans had always tacitly assumed that this control meant continuous control over one’s labor activity. Yet the rise of a modern labor market, alongside disappearance of legally constituted master-slave relations, seemed at once to eliminate the hated form of personal dependence on a master, while increasingly putting full control over one’s labor out of reach. Nineteenth-century defenders of wage-labor as free labor had to show that the wage-laborer still enjoyed the morally relevant form of control. They did so by arguing that because a wage-laborer owned his labor, he controlled it in the way any property owner controls any of his property. As an influential legal textbook of the era put it: “Every person sui juris has a right to make use of his labor in any lawful employment on his own behalf, or to hire it out in the service of others. This is one of the first and highest of civil rights.”²⁰ So long as the individual could sell his labor on terms of his own choosing, then he controlled his labor as an independent, republican citizen. As Forbath puts it, “the worker’s freedom rested simply in his ownership of his capacity to labor.”²¹

This ownership of one’s capacity to labor deserved to be called independence because, unlike the slave, the wage-worker was not forced to work for a particular master. He stood in an equal relationship to employers and forged only those relationships he agreed to. William Graham Sumner, an especially influential nineteenth-century social thinker, and *bête noire* for labor reformers like the Knights of Labor,²² had no time for the “wild language about wage-slavery and capitalistic tyranny”²³ coming from the mouths of labor reformers. Contrasting feudal relations of status and dependence with the modern society of contract, Sumner argued, “a society based on contract is a society of *free and independent* men, who form ties without favor or obligation, and *cooperate without cringing or intrigue.*”²⁴ Sumner here deployed the republican odium for servility – “cringing or intrigue” – with deliberate intent. Wage-laborers were in no way subject to an employer’s will; they could leave their job if they wanted, unlike slaves and indentured servants of earlier eras. The only way to violate a worker’s independence was through a law that interfered with his voluntary agreement with an employer. Such interference gave one side an unfair, coercive advantage or, like a maximum-hours law,

²⁰ Thomas McIntyre Cooley, *A Treatise on the Law of Torts, or, The Wrongs Which Arise Independently of Contract* (London: Callaghan & Company, 1888), 326.

²¹ William Forbath, “Ambiguities of Free Labor,” 767–817, 769.

²² For example, a Knight of Labor in Gantt’s didactic novel calls Sumner a “fossilized relic of Yale College,” who is important to read to be “better able to prove the falseness of the doctrines” of labor’s enemies. T. Fulton Gantt, “Breaking the Chains: A Story of the Present Industrial Struggle,” in *The Knights in Fiction: Two Labor Novels of the 1880s*, ed. Mary C. Grimes (Champaign: University of Illinois Press, 1986), 68.

²³ William Graham Sumner, “The Absurd Effort to Make the World Over,” *Forum*, March 1894, 95.

²⁴ William Graham Sumner, *What Social Classes Owe to Each Other* (New York: Harper & Brothers Publishers, 1883), 26 emphasis added.

unjustifiably limited what each side could agree to. Absent any such law, both faced each other as equally situated property-owners. They were "sui juris," possessing the ability and legal power to make rational judgments about the best use of their property.

The basic outlines of this "laissez-faire republicanism" emerge in force soon after the Civil War in a series of Supreme Court decisions commonly known as the *Slaughterhouse Cases*. Decided in 1873, these were the first cases to test the new Reconstruction amendments banning slavery and giving citizens equal rights.²⁵ After Louisiana passed a law forcing butchers to do their work in a single New Orleans slaughterhouse chartered as a private corporation, a group of white butchers appealed to the antislavery Reconstruction Amendments to raise the republican objection that the law compromised their economic independence.²⁶ Among other things, they argued that the Louisiana law violated the Thirteenth Amendment's ban on "slavery and involuntary servitude"²⁷ because it illegitimately restricted their control over their own activity. The law forced them to work according to the rules of the chartered slaughterhouse, rather than as they saw fit. This, "if not strictly a servitude" in the sense of chattel slavery, was

certainly a servitude in a more popular sense, and, being an enforced one, it is an involuntary servitude. Men are surely subjected to a servitude when ... every man and every woman in them is compelled to refrain from the use of their own land and exercise of their own industry and the improvement of their own property, in a way confessedly lawful and necessary in itself, and made unlawful and unnecessary only because, at their cost, an exclusive privilege is granted to seventeen other persons to improve and exercise it for them. We have here the "servients" and the "dominants" and the "thralldom" of the old seigniorial system.²⁸

→ The butchers' argument was a version of the early republican idea that free labor was a matter of continuous control over one's productive activity. At the state level their argument succeeded, with one of the justices proclaiming that there is no "more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more nor less than the sacred right of labor."²⁹

But the butchers lost at the national level. Justice Miller, writing for the majority of the Supreme Court, rejected their expansive interpretation of "involuntary servitude," saying he found it "difficult to see a justification

²⁵ "This court is thus called upon for the first time to give construction to these articles," *In Re Slaughter-House Cases*, 83 U.S. 36, 67 (1872).

²⁶ For an extensive history of the case, emphasizing the legislation's origins in public health concerns, see Ronald Labbé and Jonathan Lurie, *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment* (Lawrence: University Press of Kansas, 2003).

²⁷ "Constitution of the United States of America," in *The Declaration of Independence and the Constitution of the United States* (Washington, DC: Cato Institute, 2002).

²⁸ *In Re Slaughter-House Cases*, 50-51.

²⁹ *Ibid.*, 106.

for the assertion that the butchers are deprived of the right to labor in their occupation."³⁰ Notably, the Supreme Court might have wished to avoid the free labor question altogether. The original case did not start out as a referendum on it.³¹ But the butchers' broad interpretation of the Thirteenth Amendment ban on "involuntary servitude" forced the Court to define the parameters of this republican ideology and in effect to reject the conception of free labor as continuous productive control. On Miller's view, though involuntary "servitude is of larger meaning than slavery," that was only because "the obvious purpose [of the Reconstruction Amendments] was to forbid all shades and conditions of African slavery."³² There were many shades of legal dependence to which slaves had been subject, and thus the furthest these Amendments could stretch were similarly extreme conditions of legal subjection, such as possibly "Mexican peonage or the Chinese coolie labor system."³³ Beyond that, any self-owning citizen was suitably independent to be considered a free laborer. It was almost as if a white man could not be unfree so long as he avoided one of the historical servitudes of other races.

The *Slaughterhouse Cases* are important because they illuminate the conceptual puzzles that faced any defender of free labor in emerging, industrial conditions. For instance, the majority decision may have rejected an expansive interpretation of free labor, but it was the pro-butcher minority ruling, written by Justice Field, that inspired the later strand of laissez-faire constitutionalism.³⁴ That is because the thrust of Field's dissent was largely about illegitimate state interference in private economic activity. Although Field approvingly quotes the lower court's proclamation about the "sacred right of labor,"³⁵ he does so less to accept the view of free labor as continuous control over labor and more to reject restrictions on private contracts.

Part of the reason for these peculiarities of the majority and minority decision in the *Slaughterhouse Cases* is that the plaintiffs were property-owning, skilled craftsmen, not industrial wage-laborers. The butchers' claims were still those of artisans, who conceived of free labor in the highly individuated terms of individual dominion over the labor process - precisely the kind of labor that industrialization was eliminating. Free labor was still a private activity for them, performed by individuals who were brought into relations with each other by selling the products of their labor, not their capacity to labor itself. The butchers' views therefore blurred into arguments for the sanctity of individual property rights and of freedom from interference. Moreover, the butchers defended noninterference with contracts because they thought it prevented the emergence of state-backed monopoly privileges, like the chartered

³⁰ *Ibid.*, 61.

³¹ Labbé and Lurie, *The Slaughterhouse Cases*.

³² *In Re Slaughter-House Cases*, 70, also 72.

³³ *Ibid.*, 72.

³⁴ See Forbath's excellent discussion Forbath, "Ambiguities of Free Labor."

³⁵ *In Re Slaughter-House Cases*, 106.

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butcher-house, and the aristocratic class that benefited from these privileges: "It was from a country which had been thus oppressed by monopolies that our ancestors came."³⁶ Although the Slaughterhouse Cases might have signaled a rejection of the idea that free labor was continuous control over one's labor, it was only later decisions – which specifically dealt with wage-labor – that could address the ambiguities of applying old terms to new situations. In the *Slaughterhouse Cases*, labor and laissez-faire republican arguments remained significantly intertwined. In fact, the cases are ideologically unstable enough that a judicial path could have emerged in which free labor acquired a more expansive definition, consistent with a conception of servitude applicable to wage-labor.³⁷ All *Slaughterhouse* accomplished was to say that the independence of the free laborer was not uniquely a matter of whether each exercised continuous control over his or her own labor. Subsequent justices had to do more work to establish just how and why wage-labor was independent in the relevant sense.

From Slaughterhouse to Lochner: Ownership as Control

It did not take long for the ideological contest over the meaning of free labor to sharpen, and for various state and the federal justices to develop the laissez-faire republican view. For instance, in 1886, the Pennsylvania Supreme Court struck down an 1881 anti-truck statute, which among other things prohibited employers from paying employees in "scrip" or orders from company stores, rather than in money – the same issue that would inflame tensions in Thibodaux, Louisiana the following year.³⁸ The justice writing for the majority in *Godcharles v. Wigeman* argued that the anti-truck law prevented "persons who are sui juris from making their own contracts."³⁹ It was therefore, "an infringement alike of the rights of the employer and the employe[e]; more than this, it is an insulting attempt to put the laborer under legislative tutelage, which is not only degrading to his manhood, but subversive to his rights as a

citizen."⁴⁰ Note the republican cast of the argument. To have his freedom of contract restricted for any other purpose than for the sake of public health was to place the wage-laborer under a political "tutelage" because it substituted the judgment of a legislator for the judgment of the worker as to how to dispense with his labor. This loss of control transformed the worker into a dependent laborer. If the worker consented to being paid scrip then that was up to him, not to anyone else. Laws that restricted hours, enacted wage floors, or regulated conditions, unless they had a specific public health purpose, were understood to be a form of "class legislation," whereby one class illegitimately used the law to advance its interests by restricting the contractual freedom of both the employer and employee.⁴¹

The insistence that a person was independent so long as he remained legally *sui juris* was a consistent feature of labor cases during the period. In a case from 1895, *Ritchie v. People*, the Illinois Supreme Court struck down a law limiting the legal working day for women in various garment industries to eight hours. Here again, the majority intoned against restricting the judgments of legally independent workers:

In this country the legislature has no power to prevent persons who are *sui juris* from making their own contracts, nor can it interfere with the freedom of contract between the workman and the employer. The right to labor or employ labor, and make contracts in respect thereto upon such terms as may be agreed upon between the parties, is included in the constitutional guaranty above quoted.⁴²

Recall that the phrase *sui juris* means "under one's own power" and is taken from the definition of a free person in the Roman law. It is taken from the selfsame portion of the Roman law that has served as the touchstone for the modern and neo-republican theory of liberty.⁴³ That the same idea should appear in these court cases is more than a verbal coincidence. These courts understood themselves to be identifying the conditions under which a person was truly under his own power and then to be subsuming wage-laborers under that description.

These judicial rulings found support in the wider sphere of public opinion. John Bates Clark, an important economist of the day, argued that labor could be treated as a commodity that was exchangeable like any other; while Francis Amasa Walker, another economist who was sympathetic to labor reform, said about wage-laborers that "you can control your own time, brains, and hands," which was why to sell your labor was not to "sell yourself at all."⁴⁴ Notably,

⁴⁰ Ibid.

⁴¹ Benedict, "Laissez-Faire and Liberty."

⁴² *Ritchie v. The People*, 155 Ill. 98.

⁴³ Skinner, "The Republican Ideal of Political Liberty."

⁴⁴ Stanley, *From Bondage to Contract*, 82. On Walker, Clark and the new economists' sympathy to the labor movement see Rosanne Currarino, *The Labor Question in America: Economic Democracy in the Gilded Age* (Urbana, Chicago, and Springfield: University of Illinois Press, 2011), 60–85.

³⁶ Ibid., 48. On the anti-monopoly strand of republican argument, see Howard Gillman, *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence* (Durham: Duke University Press, 1993), 33–45; Appleby, *Capitalism and a New Social Order*; Benedict, "Laissez-Faire and Liberty."

³⁷ See for instance James Gray Pope's fascinating reconstruction of the labor movement's interpretation of the Thirteenth Amendment's abolition of servitude. Pope, "Labor's Constitution of Freedom," 941–1031; James Gray Pope, "The Thirteenth Amendment Versus the Commerce Clause: Labor and the Shaping of American Constitutional Law, 1921–1957," *Columbia Law Review* 102, no. 1 (January 2002), 1–122.

³⁸ I am indebted to Laura Phillips for illuminating conversations about *Godcharles* and the early free contract cases. See Laura Phillips Sawyer, "Contested Meanings of Freedom: Workingmen's Wages, the Company Store System, and the *Godcharles v. Wigeman* Decision," *The Journal of the Gilded Age and Progressive Era*, 12, no. 3 (July 2013), 285–319. On Thibodaux, see the Introduction.

³⁹ *Godcharles v. Wigeman*, 113 Pa. St. 431, 437.

economists such as Walker supported unionization, the need for higher wages, and the role of these reforms in protecting a certain idea of citizenship. But they stopped short of saying there was any further claim labor had to exercising control over work itself. As one historian observes, "Walker denounced workmen for 'seeking to legislate concerning the ways in which industry shall be carried on' and [for] the 'spirit which delighted in humiliating and harassing the employer.'" Because workers had no legitimate claim to being denied their liberty, their demand to exercise control at work was just an attempt to "overbear the rightful authority of the employer."⁴⁵ Even a commentator such as E. L. Godkin, who, in a famous article for a leading magazine, expressed concern for wage-laborers' "dependence for their bread on the good-will of employers," their "long subjection to factory discipline," and their "servile tone and servile way of thinking," refused to take this republican language in radical directions. He did not argue that the relevant domination was bound up with labor contracts themselves and he rejected arguments for infringing employer's rights to rule the workplace.⁴⁶ Many important public investigations of the labor question, including a famous 1883 U.S. Senate inquiry, showed a similar willingness to consider labor's concerns while rejecting the idea that the commodification of the capacity to labor was inconsistent with the wage-laborer's independence.⁴⁷ In fact, as early as an 1866 report by a special committee of the Massachusetts House of Representatives, we find the authors arguing that maximum hours legislation was unjustifiable "legal compulsion" that interfered with the "spontaneous" agreements between "the capitalist and the laborer."⁴⁸ With a nod to the wider, post-Civil War ideological context of their report, they argued that in "the long struggle for the abolition of slavery ... it was not till the capitalist was left free as the laborer, that labor was really emancipated."⁴⁹

Leading legal treatises similarly affirmed the independence of the wage-laborer. Thomas Cooley, a law professor, Michigan Supreme Court Justice, and eventual head of the Interstate Commerce Commission, wrote in his 1878 *Treatise on the Law of Torts*, that "every person sui juris has a right to make use of his labor in any lawful employment on his own behalf, or to hire it out in the service of others. This is one of the first and highest of civil rights."⁵⁰ Another important legal scholar, Christopher Tiedeman, wrote in his *A Treatise on the Limitations of the Police Power in the United States*: "No

⁴⁵ Quoted *ibid.*, 83.

⁴⁶ E. L. Godkin, "The Labor Crisis," *The North American Review* CV (July 1867), 177-213, 212.

⁴⁷ *Report of the Committee of the Senate upon the Relations Between Labor and Capital, and Testimony Taken by the Committee: Volume 1* (Washington, DC: Government Printing Office, 1885), 82-83.

⁴⁸ *Report of the Special Commission on the Hours of Labor and the Condition and Prospects of the Industrial Classes* (Boston: Wright & Potter, State Printers, February 1866), 30.

⁴⁹ *Ibid.*, 31.

⁵⁰ Cooley, *A Treatise on the Law of Torts*, 326.

man's liberty is safe, if the legislature can deny him the right to engage in a harmless calling."⁵¹ Neither Cooley nor Tiedeman were themselves particularly committed to republican ideas. Instead, they were providing the contours for thinking about the relationship between law and power in the new economy. Others took the same language and connected it more directly to republican citizenship. "To-day the labor contract is perfectly free," wrote Frederic J. Stimson in his *Labor in its Relation to Law*; "the recognition of the laborer as a free citizen, free to contract, capable of acquiring contractual rights, has been his great emancipation of the past."⁵² No matter how self-consciously republican, all of these writers understood themselves to be intervening in a political debate. Tiedeman made the stakes clear in the 1886 preface to his treatise on police powers, written at the peak of Gilded Age class conflict, when the Knights of Labor had the active support of roughly a million workers and when massive strike waves roiled mines, railways, factories, and indeed whole cities⁵³: "Socialism, Communism, and Anarchism are rampant throughout the civilized world. The State is called on to protect the weak against the shrewdness of the stronger, to determine what wages a workman shall receive for his labor, and how many hours daily he shall labor. ... The principal object of the present work is to demonstrate ... that under the written constitutions, Federal and State, democratic absolutism is impossible in this country."⁵⁴

Not every judge who adopted the laissez-faire republican view shared Tiedeman's *revanchist* spirit. But they adopted the same basic theory of power and freedom when interpreting the meaning of free labor. They knew that in doing so they were taking a position in the central political question of the time. Echoing William Lloyd Garrison's early abolitionist view that "poverty was not slavery,"⁵⁵ they adopted some version of Tiedeman's view that liberty did not require protecting "the weak against the shrewdness of the stronger." Mere "weakness" in bargaining over the terms of a contract did not count as dependence or subjection. So long as individuals owned their own labor, they were under their own power, and thus arbiters of their fate. They enjoyed the republican liberty owed to all.

The identification of individual self-ownership with republican self-government continued through the 1890s. In an 1896 California Supreme Court decision, *ex parte Jentsch*, the court struck down a law prohibiting barbers from working on Sundays. The majority held that "our institutions are founded upon the conviction that we are not only capable of self-government as a community, but what is the logical necessity, that we are capable, to a great extent,

⁵¹ Christopher Gustavus Tiedeman, *A Treatise on the Limitations of the Police Power in the United States* (St. Louis: The F. H. Thomas Law Book Co., 1886), 195.

⁵² Quoted in Stanley, *From Bondage to Contract*, 74.

⁵³ Richard Oestreicher, "A Note on Knights of Labor Membership Statistics," *Labor History* 25, no. 1 (1984), 102-8.

⁵⁴ Tiedeman, *A Treatise on the Limitations of the Police Power in the United States*, vii.

⁵⁵ "Wendell Phillips and 'Young America,'" *The Liberator* 16, no. 36 (September 4, 1846), 143.

of individual self-government."⁵⁶ Such individual self-government required permitting each individual "the utmost possible amount of personal liberty, and, with that guaranteed him, he is treated as a person of responsible judgment, not as a child in his nonage, and is left free to work out his destiny as impulse, education, training, heredity, and environment direct him."⁵⁷ Again, the main threat to this worker's independence was a law, ostensibly passed in his interest, but limiting his contractual freedom and thus his independent judgment.

As this laissez-faire republican argument developed, justices repeatedly emphasized that they were not just defending a purely negative, private liberty but a form of political freedom appropriate for self-governing individuals: "A man's constitutional liberty means more than his personal freedom. It means, with many other rights, his right freely to labor, and to own the fruits of his toil."⁵⁸ Or again, in *re Jacobs*, an 1895 New York case overturning a law prohibiting cigar rolling in tenements, stated

Liberty, in its broad sense as understood in this country, means the right, not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation.⁵⁹

The making of contracts to sell property, including one's own labor, was the activity through which one reproduced and maintained one's independence as a citizen. Contracts were the central medium through which one exercised and realized one's liberty as a republican citizen because they were the most important way in which the citizen exercised control over his life. The absence of interference in contracts made possible this positive exercise of independent judgment – the kind of judgment, or "individual self-government," every citizen as a citizen was expected to be able to make.

Through the end of the century, courts regularly argued that freedom of contract was about free labor, and that free labor was a positive condition of individual self-control, not mere absence of restraint. In an important Colorado Supreme Court case from 1899, *In re Morgan*, striking down eight-hours legislation for mining and smelting, the majority drew together quotations from Cooley and Tiedeman's earlier treatises, as well as language from some of the earlier cases to pass judgment on the whole line of thinking. Justice Campbell, writing for the majority, asserted the familiar republican view that freedom is not mere absence of interference, but the positive exercise of independent judgment:

Liberty means something more than mere freedom from physical restraint. It includes the privilege of choosing any lawful occupation for the exercise of one's physical and

⁵⁶ *Ez Parte Jentzsch* 112 Cal. 468, 472 (1896).

⁵⁷ *Ibid.*, 473.

⁵⁸ *Ibid.*

⁵⁹ *In re Jacobs*, 2 N.Y.Crim.R. 539, 106 (1895).

mental faculties which is not injurious to others. The right to acquire and possess property includes the right to contract for one's labor. The latter is essentially a property right.⁶⁰

For judges, it was now a settled question that the free laborer is free in virtue of the control he exercises over his labor-power as his own property, not as a form of inalienable control over the activity of work itself. To freely alienate this control over one's capacity to labor, through a labor contract, was no violation of one's independence because the individual had consented to give this control over his property to another for a specified period of time and on terms to which he had consented. Significantly, the *in re Morgan* Court was rejecting a view, expressed the year earlier by the Utah Supreme Court, in *Holden v. Hardy*, that the rise of industry had created new social inequalities and work conditions that placed individual workers in conditions of extreme disadvantage, greatly constraining their will. The *Holden* court said:

prior to the adoption of the constitution ... we were then almost purely an agricultural people, the occasion for any special protection of a particular class did not exist ... in the vast proportions which these industries have since assumed, it has been found that they can no longer be carried on, with due regard to the safety and health of those engaged in them, without special protection against the dangers necessarily incident to these employments.⁶¹

For the *Holden* court, substantial regulation of the workplace did not so much violate the independence of the worker as recognize that legal status did not describe economic reality:

the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them.⁶²

The majority in *Holden* was commenting on a new kind of economic dependence, based on extremes of wealth and poverty, which gave reason to think freedom of contract did not bear as tight a relation to independent judgment "fairly exercised" as others believed. Of course, *Holden v. Hardy* only went so far as to say that workers could be treated as dependents and thus protective legislation extended to miners and smelters. It did not offer a full theory of how to eliminate the new economic dependence to which the new class of "operatives" were subject. In fact, the classification of groups such as women and veterans as "dependents" was a standard intellectual move by which

⁶⁰ *In re Morgan*, 26 Colo. 415, 420 (1899).

⁶¹ *Holden v. Hardy*, 169 US 366, 392 (1898).

⁶² *Ibid.*, 397

courts permitted infringements of freedom of contract.⁶³ As such, even Holden backhandedly affirmed the view that, to the degree a person could be considered independent, he should be treated as a wage-laborer, in full legal possession of his labor-power. The full, laissez-faire republican view, expressed in decisions such as *in re Morgan*, simply refused to accept the social ontology of a case like Holden, which suggested that there were fewer and fewer parts of the economy in which one could realistically imagine employer and employee as similarly situated with respect to power over the terms of work and the use of property. As the *Morgan* court said,

in a purely private, lawful business ... the carrying on of which is attended by no injury to the general public, it is beyond the power of the legislature ... to prohibit an adult man who desires to work thereat from working more than eight hours a day, on the ground that working longer may, or probably will, injure his own health.⁶⁴

To claim that workers, despite their legal autonomy, were subject to some other kind of compulsion that forced them to take these hazardous jobs and extreme hours was not only wrong as a description of social power but indicated a failure to respect their independence. As such, it threatened core institutions: "Such legislation does not denote an advance in the law of the domestic relations. On the contrary, it is a distinct and emphatic return – a retrogression – to that period in English history ... against which our ancestors rebelled."⁶⁵ The exercise of collective power to regulate contracts and work conditions was a threat to the legal and social foundations of republican self-government.

As these ideas reached the U.S. Supreme Court, their republican roots started to fade. In 1897, the Court ruled in *Allgeyer v. Louisiana* that freedom of contract was an explicit, substantive right guaranteed under the due process clause of the Fourteenth Amendment. It thereby established a constitutional limit to various labor reform laws.⁶⁶ In *Allgeyer*, Justice Peckham argues for the unanimous Court that liberty of contract means:

to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes mentioned above.⁶⁷

The language of free labor – "free in the enjoyment of all his faculties" or "to pursue any livelihood or avocation" – is seamlessly fused with freedom of

contract through the prepositional clause "for that purpose." The constitutional goal remains the guarantee of free labor. Free labor is equated with legal autonomy because the law protects him from arbitrary interference both by the state and by individuals in civil society. Any interference by the state not clearly in the public interest is essentially class legislation, the arbitrary imposition of one group's will on another through the instrument of the state.⁶⁸ Only those interfering laws narrowly pertaining to "health, safety, and morals" – that is, in the public interest – are legitimate.⁶⁹ Legal autonomy, moreover, ensures no specific individual can exercise arbitrary power over the contracting individual.

By 1905, in the most famous case of the period, *Lochner v. New York*, we see liberty as noninterference fully emerging out of an earlier republican language. *Lochner* is regularly identified as the most important "laissez-faire" liberal case of the period,⁷⁰ which set the defining precedent for more decades of hostility to labor legislation.⁷¹ In *Lochner*, which struck down a maximum-hours law for bakers, it is the same judge from *Allgeyer*, Justice Peckham, who makes the case that the bakers' liberty as citizens have been infringed:

There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the state, interfering with their independence of judgment and of action. They are in no sense wards of the state.⁷²

To infringe on an individual's freedom of contract, for instance by limiting the hours he contracts to work, implies that the individual lacks the capacity for "independence of judgment and of action" required to pursue his own interests rationally. It marks him as a dependent or "ward of the state."⁷³ Moreover, independence of judgment can be exercised under nearly any economic conditions so long as the person's freedom of contract is not constrained by interfering laws. It is only the law, not anything like economic dependence, that can arbitrarily constrain a person's independence of judgment.

In Peckham's opinion, the language of "independence" remains but mostly sapped of its republican origins. It is true that the primary justification for

⁶³ Benedict, "Laissez-Faire and Liberty," 305–14; Gillman, *The Constitution Besieged*, 45–60.

⁶⁴ Horwitz, *Transformation of American Law*, 30. Gillman shows how class conflict undermined consensus understandings of 'public interest,' *The Constitution Besieged*, 93–97.

⁶⁵ See for instance *ibid.*, 29–31; Ackerman, *We the People: Foundations*, 63–67.

⁶⁶ Forbath, *Law and the Shaping of the American Labor Movement*; Pope, "Labor's Constitution of Freedom"; Tomlins, *The State and the Unions*, 3–98.

⁶⁷ *Lochner v. People of State of New York*, 198 U.S. 45, 57 (1905).

⁶⁸ The "ward of the state" concept has its own complex history, for which there is no space here. But the protection, then loss of protection, then recovery of protection for women tracks the degree to which they were considered dependent or independent and the degree to which that remained a relevant judicial consideration. See *Muller v. Oregon* (1908, argued by later Supreme Court Justice Brandeis); *Adkins v. Children's Hospital of District of Columbia*, 261 U.S. 525 (1923); *West Coast Hotel Co. v. Parrish Et Ux.*, 300 U.S. 379 (1937).

⁶³ E.g., the "maternal welfare state" in *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States*, ed. Theda Skocpol (Cambridge, MA: Belknap Press of Harvard University Press, 1992).

⁶⁴ *In Re Morgan*, 428.

⁶⁵ *Ibid.*, 419.

⁶⁶ Paul Brest et al., *Processes of Constitutional Decisionmaking: Cases and Materials*, 4 ed. (Boston: Little Brown, 2003), 344–45.

⁶⁷ *Allgeyer v. Louisiana*, 165 U.S. 578, 589 (1897).

overturning the maximum hours law was not that contractual freedom produced efficient market outcomes, as some at the time and subsequently have argued.⁷⁴ Instead, the decision was grounded in a conception of freedom.⁷⁵ Peckham's concern was with the violation of workers' independence. But the connection between independence and republican citizenship is barely mentioned, perhaps because these connections were assumed, but also because the voluntaristic emphasis on freedom of contract was reemerging as its own principle, loosening its connections to republican foundations. Independence had become non-interference, one in which private freedom was less and less connected to any wider view about self-government as a generalized experience. If at its origins the defense of contractual freedom was saturated with republican ideas about free labor, it had now acquired a classically liberal cast.

Republican Origins of Freedom as Non-Interference Reconsidered

The identification of wage-labor with free labor was a momentous shift. Once we acknowledge the republican origins of this intellectual reorientation, we are able to appreciate two important features of modern political thought. The first is that it is not quite accurate for neo-republicans such as Philip Pettit and Quentin Skinner to argue that "we have inherited two rival and incommensurable theories of negative liberty."⁷⁶ In fact, the laissez-faire republican view of free labor made a liberal and republican theory of liberty commensurable, and it did so in one of those areas – economic relations – in which neo-republicans have suggested their theory is importantly distinct from the liberal view.⁷⁷ Although they have said the liberal theory remains "tied to the sector of interest and opinion that first gave it prominence and currency," the same "sector of interest" was, in this case, able to appeal to republican ideas to defend its economic and political project.⁷⁸ Nor is the incommensurability claim made any stronger if, like Michael Sandel, one reads history through the neo-Aristotelian approach to republican liberty. Sandel contrasts those republicans who insisted "that wage labor was inconsistent with freedom, and sought to reform the economy along lines hospitable to republican ideals" and those anti-republicans who "sought to reconcile wage labor with freedom by revising the ideal" in the direction of "voluntary agreement."⁷⁹ As we have seen, the view of freedom as voluntary agreement or noninterference found strong support from a certain interpretation of the republican theory of liberty

itself. On this interpretation, being *sui juris* meant having a legally constituted condition of self-ownership and then being free to use that property as one saw fit. The self-owning individual exercised control over his own labor in the way that "control" could be understood in an industrial capitalist economy: the control of a property-owner. The assimilation of labor to a form of property-ownership was the conceptual move making the republican theory of free labor consistent with a condition of permanent wage-labor. This was no mere, or at least not merely, cynical appropriation of republican language. It was also a response to the need to make sense of the new relations of power in a modern labor market.

As far as the history of political thought goes, the development of laissez-faire republicanism accords better with those scholarly attempts to show the inner connections, rather than external oppositions, between republican and liberal ideas. Historians have occasionally noted ways in which the ideal of independence could be marshalled to defend liberal conceptions of freedom and equality of opportunity, especially by fusing the classical agrarian ideal of independence with a defense of commerce and natural rights.⁸⁰ As Joyce Appleby once argued, while recognizing that the republican and liberal conceptions of liberty are "distinct and potentially contradictory concepts," nevertheless, among Jeffersonians, "these two meanings could and did merge with one another."⁸¹ Two other scholars, Andreas Kalyvas and Ira Katznelson, have forcefully advanced a "liberal beginnings" thesis, which holds that republicanism has provided fertile territory for the development of liberal theory and practice: "[L]iberalism as we know it was born from the spirit of republicanism, from attempts to adapt republicanism to the political, economic, and social revolutions of the eighteenth century and the first decades of the nineteenth."⁸² Neo-republicans have failed to give the "economic, and social revolutions" their due, which is why they present the relationship between liberal and republican liberty as stark and static. They see liberal voluntarism and freedom of contract as alien to the republican view, rather than recognizing the degree to which the modern economy posed important challenges for the interpretation of republican liberty itself. If any "revision of the ideal," as Sandel puts it, was an abandonment of it, then the only option available for republicans appeared to be an increasingly romantic agrarian radicalism and a vestigial yearning for petty proprietorship.⁸³ This way of thinking about the relationship between republican liberty and the modern economy cedes far more than neo-republicans should, and mischaracterizes the historical challenge posed by

⁷⁴ A tradition of interpretation that started with Holmes making this claim in the dissent to *Lochner*: "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." *Lochner v. People of State of New York*, 75.

⁷⁵ Benedict, "Laissez-Faire and Liberty."

⁷⁶ Skinner, "A Third Concept of Liberty," 262.

⁷⁷ Pettit, *Republicanism*, 131–33.

⁷⁸ *Ibid.*, 133.

⁷⁹ Sandel, *Democracy's Discontent*, 184.

⁸⁰ Appleby, "The 'Agrarian Myth' in the Early Republic," 253–76, 51–105; Foner, *Free Soil, Free Labor, Free Men*, 29–39.

⁸¹ Appleby, *Capitalism and a New Social Order*, 18.

⁸² Ira Katznelson and Andreas Kalyvas, *Liberal Beginnings* (Cambridge: Cambridge University Press, 2008), 4.

⁸³ Judith Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, MA: Harvard University Press, 1991), 64–5.

the modern economy. If, as William Forbath has suggested, "Gilded Age class conflict found cultural expression in a struggle to define and claim title to the republican legacy and the republican constitution,"⁸⁴ then we must approach the intellectual creativity of this period with the same willingness to identify and appreciate those moments of conceptual change that historians of political thought have brought to bear on earlier periods.

This brings us to the second important point regarding the development of modern republicanism. Recognizing that republicanism could lend support to the development of liberal ideas is not somehow a weakness or a problem for the republican revival. Instead, that recognition is a condition of possibility for understanding the kinds of questions about power, inequality, and dependence that modern capitalism raises for the interpretation and application of republican ideals to new conditions. There was an alternative possibility for thinking about free labor and wage-labor. But this possibility lay not with the petty-proprietor ideal of the individuated, property-owning citizen, so much as with the development of a labor republican defense of the cooperative organization of work. To appreciate the full force of labor republican ideas, we have first had to reconstruct the historical conditions as well as laissez-faire republican theory to which they reacted. To argue that wage-labor was servile, labor republicans had to find a way of arguing that legal self-ownership was inadequate to prevent workers from becoming subject to their employers. Equally important and novel was their proposal for universalizing republican liberty: cooperative ownership and control of productive property. We are now in a position not only to reconstruct these ideas, but to appreciate their originality and vitality.

⁸⁴ Forbath, "Ambiguities of Free Labor," 769; Fink, *Workingmen's Democracy*, 8.

"The Sword of Want"

Free Labor against Wage Labor

a very numerous race of poor men;
of unfortunate human beings;
without resources of property; and, therefore, dependent,
even for their very existence, upon the pleasure,
the caprice, the tyranny, or the folly of others

Thomas Skidmore¹

On August 14, 1828, a group of workers crowded into the first floor of Commissioner's Hall, a sturdy, two story brick building in the Southwark district of Philadelphia, to listen to a speech called, "Principles of Aristocratic Legislation."² The speaker, William Heighton, was a radical cordwainer, founder of the Working Men's Party of Philadelphia, and editor of the party's journal, the *Mechanics' Free Press*, the first labor press ever published in the United States.³ In his speech, Heighton criticized the United States for living up to its revolutionary promise in political form but not economic practice:

we all acknowledge that the *foundation* of our independence was laid in the establishment, by our forefathers, of this inestimable right [of universal suffrage], and that in

¹ Thomas Skidmore, *The Rights of Man to Property! Being a Proposition to Make it Equal among the Adults of the Present Generation: And to Provide for its Equal Transmission to Each Individual of Each Succeeding Generation, on Arriving at the Age of Maturity* (New York: Alexander Ming, 1829), 249. Hereafter *The Rights of Man to Property!*

² William Heighton, *The Principles of Aristocratic Legislation Developed in an Address Delivered to the Working People of the District of Southwark, and Townships of Moyamensing and Passyunk* (Philadelphia: J. Coates Jr., 1828). Hereafter *The Principles of Aristocratic Legislation*.

³ For biographical information on Heighton, see Schultz, *The Republic of Labor*, 224-32; Philip Sheldon Foner, *William Heighton: Pioneer Labor Leader of Jacksonian Philadelphia* (New York: International Publishers, 1991); Louis H. Arky, "The Mechanics' Union of Trade Associations and the Formation of the Philadelphia Workingmen's Movement," *The Pennsylvania Magazine of History and Biography* 76, no. 2 (April 1952), 142-76.

How Did they
connect the dots from
class struggle to
wage slavery?
Explain how the
Early Republican
critique of wage
labor
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