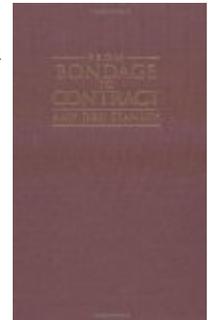




Amy Dru Stanley. *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Era of Slave Emancipation.* Cambridge: Cambridge University Press, 1998. xvi + 277 pp. \$65.00, cloth, ISBN 978-0-521-41470-8.



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In his 1909 article on "Liberty of Contract" in the *Yale Law Journal*, Roscoe Pound argued that an emerging judicial notion of freedom of contract which assumed equal bargaining power between the parties was "a fallacy to everyone acquainted at first hand with industrial conditions." Pound asked "why then do courts persist in the fallacy? Why do so many of them force upon legislation an academic theory of equality in the face of practical conditions of inequality." Pound argued that this approach was due to "an individualist conception of justice, which exaggerates the importance of property and of -- contract [and] exaggerates private right at the expense of public right..." For some legal historians, most particularly and most importantly Morton Horwitz, Pound's article other more technical challenges to existing contract doctrines that emerged in that era, represented a watershed point in the history of contract. In this analysis, Pound, anticipating Legal Realism, mounted an "internal critique of late-19th century contract doctrine that initially undermined the foundations of Classical Legal Thought." [1]

Amy Dru Stanley tells a different story and a highly persuasive one. In her important new book she finds that the first sustained critique of the foundations of classical laissez-faire conceptions of contract began not with Pound and later the Realists, but instead in the aftermath of the Civil War. As she tells it, abolitionists were able during the war to use free market contract ideology to undermine chattel slavery. After the war a society that had argued over the meaning of slavery and emancipation "drew on contract to describe the changes in their world and to distinguish between the commodity relations of freedom and bondage." (ix) Stanley find that in the postbellum era different groups, most particularly freed slaves, Yankee hirelings, and married women each questioned "the moral boundaries of market relations," and used the problem of contract as a way to "reconsider the meaning of freedom." (xi) She finds that a free market ideal of contract based on voluntary exchange by individuals who were formally equal and free came under searing scrutiny and criticism in the 1870s and 1880s. This ideal, which "defined commerce in free labor as emancipation" competed with alternative radical

ideals advanced by industrial wage-workers that "in selling their labor they were no more self-owning than slaves." (xiii) Stanley has exhaustively mined postbellum debate over contract and shows us that the twentieth century challenge to the professed neutrality and equality of contract doctrine was built upon an important historical tradition.

Stanley's book, however, is significant not only for the way it provides antecedents to the Realists and complicates the periodization of critiques of contract doctrine. In her view, antislavery forces, by connecting ideas of contract with ideas of freedom, set in motion a fundamental debate over the proper role of the market and political economy -- debate that was framed explicitly in contract terms. Stanley looks at the way freedmen and freedwomen, wage laborers, and married women each took up contract ideology and shaped it to quite different and fascinating ends. Once slavery was assaulted on contract grounds, other groups had a powerful weapon with which to challenge the more coercive elements of nineteenth century liberalism.

Diverse actors seized upon this weapon after the Civil War to reveal the contradictions of coercion and legal dependence that still existed in the face of professed free labor. Methods and strategies and goals differed from group to group, but taken as a whole, their critiques and analysis forced a fundamental reconsideration of political economy, wage labor, home life and ultimately of the definition of self-ownership and the meaning of freedom. Stanley's analysis is elegant, ambitious and powerful, and helps provide a new understanding of the ideological consequences of emancipation. *From Bondage to Contract* is a major contribution to nineteenth century legal history and should become a necessary companion to the work of Eric Foner as an analysis of the central role of labor ideology and the shifting contours of liberalism in the Civil War era.

The book is divided into five chapters that proceed thematically rather than chronologically. She begins with a theoretical exploration of the ideal of contract freedom in the postbellum period. Here Maine's famous maxim that progressive societies move "from status to contract" is contextualized and Americanized by Stanley. Drawing on the work of William Graham Sumner, James Kent, Theophilus Parson and dozens of their contemporaries, Stanley explores the way American legal theorists took Blackstone and Smith, Hobbes and Locke and applied them in the 1860s and 1870s to America's labor market and American households.

Beginning with extensive discussion of *Leviathan*, *The Second Treatise of Government*, *The Wealth of Nations*, and Blackstone's *Commentaries*, we move by chapter's end from seventeenth and eighteenth century England to post-Civil War America. Methodologically this is a striking and also subtle achievement --the transition from high intellectual history to an on-the-ground application of political theory is seamless and effective. Drawing on Enlightenment thinkers, Stanley shows how contract, in postbellum America, "reconciled human autonomy and obligation, imposing social order through personal volition rather than external force." (2) Contract thus was "premised on self-ownership," and parties "had to be sovereigns of themselves, possessive individuals entitled to their own persons, labors and faculties." (3) At the same time the postbellum view of contract as synonymous with personal autonomy was explicitly gendered, and led to an "asymmetry between rules of voluntary exchange that assumed equality in the marketplace and that assured subordination in the household." (17) This asymmetry between equality and subordination in the free market at home is the focal point of Stanley's book and it is this tension that drives her narrative.

There are two distinct stages to this narrative, one pre-war and one post-war. The first part is

dominated by the abolitionists, who seized upon the debate over emancipation to bring discussion of ideals of contract freedom to the fore. For Stanley "the conflict over slavery infused the principles of self-ownership, consent and exchange with new ideological urgency." (17) It was the inability to enter into contract -- to be forced into obligation without consent or exchange -- that best defined slavery for abolitionists. This line of argument led to the conclusion that a voluntary contract obligation to sell one's labor was by definition synonymous with freedom -- a point of view patently at odds with notions of wage slavery and one that would draw fire from hirelings after the war. For antislavery forces, however, "legitimizing wage labor was a central part of the abolitionist project" (21) and activists had "reshaped the meaning of contract freedom by dissociating wage labor from relations of personal dependency." (18) For the abolitionists a right of property in the self, represented by the sale of one's labor, was the essence of contract freedom, and of freedom generally.

The abolitionist embrace of contract was not solely an elaboration of abstract natural rights, but focused also on contracts inside the family, particularly the marriage contract. Abolitionists succeeded in "placing the contract between husband and wife at the forefront of the debate over slavery and freedom." (18) The right to self-ownership was quite literally embodied by the capacity to enter into a voluntary marriage contract. Slavery, in taking away control over one's body, represented the denial of self-ownership symbolized by the inability to enter into formal, legally enforceable marriages. In particular abolitionists focused on the abuse suffered by slave women as evidence that slavery denied this most basic form of self-ownership. Female slaves "served as the symbol of the dispossessed self." (27) "Dishonored, stripped bare, the bondswoman literally embodied the denial of property in the self." (27)

In arguing that slavery denied female self-ownership of their bodies, and in defining freedom "through the negative of the female slave's subjection," abolitionists had unwittingly "opened to question the right of women to own themselves." (28) This innovation "held the potential to challenge the categories of sex difference embedded in classical liberalism and Victorian scientific theory." (28) This challenge to gender categories was, Stanley reminds us, an unintended outcome for a majority of abolitionists, who for the most part reasserted the validity of distinctions based on sex. For Stanley, "the dominant abolitionist position was that slave emancipation would convert freedmen into sovereign, self-owning individuals," and "property in women would simply be converted from slaveholders to husbands." (29)

Stanley finds that the inconsistency of this position was fiercely challenged by black women writers, most particularly by Ellen Watkins Harper. Taking up the logic of the abolitionist position, Harper argued in the late 1850s before the American Antislavery Society and elsewhere that the "husband's claim to property in his wife violated inalienable rights much as did the slave master's claim to his chattel property." (31) Stanley examines Harper's arguments, along with those of Harriet Jacobs and Sarah Parker Redmond, and concludes that among abolitionists "it was black women who most unequivocally asserted a woman's right to herself" (33) and "transformed the meaning of contract freedom" by demanding self-ownership within the marriage contract itself.(34)

In exposing this fissure in the abolitionist movement, Stanley begins the second part of her narrative. After the War the abolitionist faith in free wage labor and the rights of marriage was subject to contestation and critique as different groups and constituencies advanced alternative visions of contract. With the onset of emancipation the abolitionist vision was initially put into action, as "the North began the project of establishing voluntary wage labor on southern soil and

guaranteeing the marriage rights of former slaves."(35) Stanley vividly describes how agents from the Freedmen's Bureau sought to put the abolitionist program into place by introducing a system of labor contracts and attempting to bind freed slaves into legally recognized marriages. No sooner was this program undertaken, however, when it met with ideological resistance from those who felt coerced by the new contract regime, not liberated. Simply put, perhaps too simply put, once the contract genie was out of the bottle it could alight on different actors interested in expanding notions of freedom and self after the Civil War. New ideas of contract and freedom were articulated to challenge the connection of freedom with wage labor contracts and marriage. It is the exploration of these alternative visions of contract freedom, and their critique of the coercive elements of the liberal abolitionist vision of contract, that takes up the rest of the book.

Stanley first turns to critiques of contract articulated by northern hirelings, making provocative and fruitful connections between slavery, emancipation and industrial wage work. Stanley makes the interesting point that "only in the United States did full-scale industrial capitalism develop simultaneously with, and literally alongside, the consolidation and overthrow of chattel slavery."(60) In the wake of emancipation, American wage workers framed their situation in terms of slavery and freedom, and argued that the freedom to contract to sell one's labor on the market did not amount to freedom in any meaningful sense at all. Hirelings rejected the equation of the voluntary sale of labor with freedom, and asked instead "whether the buying and selling of their labor as a market commodity rendered them like or unlike chattel slaves." (62)

At the heart of the hireling critique was the notion that one's labor could not be separated from one's self, and that to sell one's labor on the market was in essence to sell one's self into a form of slavery. The market, far from providing con-

tract freedom as a corrective for slavery, instead commodified labor to the point where it sanctioned the creation of a new slave class. For many hirelings "the inequality of power underlying the voluntary rituals of offer and acceptance" belied the professed mutuality of labor and capital and amounted instead to the forced sale of the self for a wage. (69) Workers decried the "new slavery," (86) and raised again "the question of buying, selling and owning human property." (96) The link between wage slavery and chattel slavery is expertly drawn by Stanley, and she makes a powerful case that Gilded Age labor issues and emancipation were intimately, perhaps inseparably linked.

Stanley makes equally fascinating links between the issues raised by emancipation, wage labor and marriage bonds. After the Civil War feminists, who had long underscored the link between slavery and common law coverture laws, "claimed that marriage belonged at the very center of public debate over the outcome of slave emancipation," and led the attack on "domestic slavery." (180) Marriage, which law writers had been careful to distinguish from other forms of contract relations, was attacked as another form of legal subordination. Feminists more and more "invoked contract as a model for equality in marriage," (184) demanding that a relationship based on status be replaced by a contract relationship based on self-ownership and voluntary exchange in which a wife could buy and sell in the market, make contracts herself, and own property. Marriage should thus mirror other contracts at law, a claim quite different from hireling assertions that wage labor was distinct from all other forms of contract. Feminists were of course not wholly successful in dismantling the coverture regime, but instead "brought to light a new set of contradictions" in which a wife was left "without clear title to herself and her labor." (217)

Hirelings and married women drew a neat distinction between the ability of the free market

to either provide freedom or to take it away. Married women demanded access to the market and to wages as the benchmarks of freedom and self-ownership. Hirelings argued, almost conversely, that the commodification of labor amounted to the sale of the self. In both cases the free market was the foil for competing conceptions of contract freedom.

But what about groups that operated totally outside the free market, either by choosing not to contract their labor or by selling something that was not recognized as a saleable commodity? If the free market provided freedom, should everything be for sale? Stanley poses and then explores these fascinating questions by looking at the treatment of beggars and prostitutes in postbellum America.

In the aftermath of slave emancipation, northern states enacted harsh new vagrancy laws. These penalties against idleness obliged former slaves and others to enter into wage contracts, "forcibly inculcating the habits of free labor" and forming a "conjunction of coercion and contract." (99) Ironically a nation recently purged of chattel slavery established a new regime of forcible pauper labor. The justification for forcing beggars to work was based on the "natural law" of free market economies. (121) Beggars by refusing to contract their labor upset the social order based on mutually bargained exchange. Vagrancy laws "were represented as the guarantee -- not the nullification -- of voluntary transactions." (121)

Stanley is quick to point out that even the most devoted supporters of these new laws recognized the contradiction that "a society priding itself on having abolished slavery was forcibly extracting labor from dependent persons." (133) The way out of this contradiction was to frame vagrancy laws in terms of contract and exchange -- and so they borrowed idioms from the marketplace to define the treatment of beggars. In exchange for alms the beggar provided labor -- this was the *quid pro quo*, and became a primary justi-

fication for involuntary labor. Charity, formerly the "very essence of a paternal relationship," was translated into free market exchange. (135) In this way "the state enforced the sale of labor -- through an involuntary exchange -- whenever beggars contrived to avoid the natural sanctions of hunger and cold." (137) Stanley thus uses the case of beggars to show how legal coercion and enforced exchange could be framed and understood as part of the operation of the free market.

Stanley also examines the relationship between free market contract ideals and prostitution, observing that "in the eyes of the law the streetwalker was the beggar's double; their common crime was roving about and soliciting in public." (219) But in a culture that celebrated market exchange, the sale of sex posed a contradiction and was potentially "threatening [to] the legitimacy of contract as a model of freedom" Prostitution seemed at once to be a form of both voluntary and involuntary exchange and "the streetwalker was so disturbing a presence precisely in her ambiguity -- a figure who conspicuously blurred the difference between free and unfree commodity relations, who could be seen as both the essence of contract freedom and a vestige of slavery." (219)

This ambiguity was reflected in the controversy over the proposed legalization and licensing of prostitution in the 1870s. Bills of this type were introduced, Stanley writes, in almost all of the nation's cities, including Philadelphia, the District of Columbia, Chicago and San Francisco. The justification for these laws were similar to vagrancy laws, namely to promote public health by keeping roving persons off the street and to impose state control over free market exchange. Despite support from doctors and police, these bills were "defeated by anti-licensing coalitions led by former abolitionists, feminists, and ministers who called themselves 'new abolitionists.'" (251)

These 'new abolitionists' took up the language of the old abolitionists, arguing that prostitution

amounted to the commodification of the self, and that state could not legitimize this form of commerce any more than it could protect chattel slavery. While wage laborers and married women had sought to make similar arguments about the ways in which the commodification of labor and the laws of coverture were themselves forms of slavery, anti-licensing reformers alone were able to successfully equate prostitution and slavery. Stanley closes the chapter with the trenchant observation that for postbellum Americans concerned with the operation of the market, it was "not labor but sex [that] represented the human essence whose sale as a commodity transformed its owners from free persons into slaves." (263)

Taken individually, Stanley's treatment of hirelings, married women, freed slaves, beggars and prostitutes are each highly original, surprising and informative. What seems at first blush a mostly doctrinal analytical framing device -- the application and contestation of ideas of contract -- becomes in this book a way of making connections between a remarkable number of historical sub-fields. Stanley's book is a rare find, a monograph that is at once particular and rich in detail yet also genuinely synthetic. Contract becomes a way of examining not only labor, but also intellectual history, gender, race relations, home life, legal culture, and political theory. This book will allow historians from vastly different fields to talk with one another, and successfully puts ideas of contract at the center of a striking number of different historical questions and debates.

Taken as a whole this book forces us to reevaluate the notion that the Gilded Age was an era marked by the embrace of laissez-faire political economy and untrammelled individual freedom in the market. Instead of unfettered acquisitive individuals, Stanley instead traces the widespread use of state power to shape a particular social order. The role and limits of a free market in the postbellum market was, Stanley shows, not only up for grabs but subject to violent debate

framed explicitly in terms of slavery and freedom. Stanley has discovered that emancipation set in motion a debate over what constituted the illegitimate sale or commodification of human beings. Chattel slavery? Wage labor? Coverture? Prostitution? She reminds us that freedom defined as free entry into the marketplace was but one definition of freedom that competed with several others. By book's end Stanley has made us aware, as historical actors in the 1870s and 1880s were all too aware, of the contradiction of framing emancipation in terms of market exchange. We are left with that contradiction still, or, as Stanley closes her book, "there still exists the paradox that slavery embodies the sale of human beings while freedom is imagined as commodity exchange." (268)

Note

[1]. Morton Horwitz, "Freedom of Contract and Objective Causation," in *The Transformation of American Law* (1992), p.34.

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