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Modernizing slavery : investigating the legal dimension

Reviews the laws devised by the imperial government to dismantle the slave labor system in the period 1823-38 in order to locate the moment of articulation between chattel and wage slavery. According to the author, the distinguishing feature of these new laws was that the workers lost the right to labor bargaining. Abolition brought free status and civil rights, but the new labor system was not less rigorous.

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MODERNIZING SLAVERY: INVESTIGATING THE LEGAL DIMENSION

The transition from chattel to wage slavery was effected in the British Caribbean by restructuring colonial labor laws.¹ The process began in 1823; under pressure from abolitionists inside and outside parliament and with support from the West India lobby, the imperial government made an unprecedented attempt to alter existing owner and slave laws and prepare the slaves for freedom. It marked the seriousness of its intention by promising slave owners £20 million compensation for their property losses when abolition finally took place. Dismantling the slave laws, in the event, took fifteen years: between 1823 and 1833 laws were framed to prepare the slaves for the “civil rights and privileges” of other classes of His Majesty’s subjects² and from 1833 to 1838 when the slave status was abolished and a master-apprentice system was substituted as a preliminary to wage work.

Dismantling slavery was the imperial government’s first direct intervention in British Caribbean labor laws. In the representative colonies founded in the seventeenth century (Jamaica, Barbados, Bahamas, St. Kitts, Nevis, Antigua, Montserrat), or acquired in war (Dominica, St. Vincent, Grenada) elected Assemblies drew up their own legislation for confirmation by the Crown. And in the Crown Colonies, captured during the Napoleonic wars, (Demerara-Essequibo and Berbice, united to form British Guiana in 1831, Trinidad, St. Lucia) existing slave codes had been left in tact, or modified by local ordinances issued by the governor, again confirmed by the Crown.

Statute law was complemented over the decades by customary laws. Customary laws embodied practices acknowledged by owners and slaves

1. An early version of this paper was presented at the “Master and Servant in History” Conference at York University, Toronto in 1996. I want to thank Douglas Hay, Bridget Brereton, and David Eltis for their comments.

2. Public Record Office (PRO), London, Colonial Office (CO) 854/1, Circular Despatch, Bathurst to the Governor of Jamaica, May 28, 1823.

which made the slave labor system flexible, capable of adapting to the economic needs of developing colonial societies. By custom slave workers accumulated *de facto* certain rights, forms of civil rights which were acknowledged by statute only belatedly, or not at all. These rights originated, in some cases, in workplace disputes where slaves made claims their owners found convenient, or necessary to concede and which subsequently gained society-wide recognition.

Slave workers claimed the right to bury their own dead, they traveled (despite pass laws) to market, to church, or to visit wives and families on neighboring plantations. As small producers, with gardens or provision grounds, they traded their own produce at market, dealt in small coins, and acquired inheritance claims to provision grounds as family land. The slaves' contribution to the internal economy of the colonies within this framework was widely acknowledged by contemporaries.

The slaves' most important single customary right, the right which was capable of initiating what became new society-wide customs and helped to maintain those existing, was their right to labor bargaining at the workplace. Slave workers used their labor power as a bargaining tool to contest and shape their terms of work. Verbal protests, covert withdrawal of labor, outright absenteeism, sabotage and, most importantly, collective withdrawal of labor – strike action – were used to make informal contracts which modified the terms on which their labor was extracted. They contested excessive punishment, increased or excessive work loads and work hours, inadequate rations and/or lack of time for the provision grounds, inadequate clothing, removal from one property to another, tyrannical overseers, and roll-backs on their customary work terms.

Slave owners and managers were actively involved in labor bargaining procedures. Slave workers, individually or collectively, carried their grievances over the heads of overseers to attorneys and owners, or to neighboring planters and magistrates; owners in turn, faced by strike, invited neighbors and magistrates to mediate. And where labor was in short supply, where sugar production was interrupted, where the permanently resident slave workers' case against a temporarily employed overseer was strong, concessions were made and overseers sacked.³

These procedures, most readily observed on the agro-industrial sugar estates, were costly for the slaves to establish and maintain. Action always risked and often earned punishment for both leaders and their followers; but workers who "took flog" as part and parcel of producing labor, as well as for infractions of work discipline were prepared to put their bodies on the line to give themselves and their labor political weight. Labor bargaining

3. Johnson 1995:165-70; Turner 1995a:34-36, 39-44; Turner 1995b:1-13; Wood 1995:79-82.

procedures, variously calibrated and sanctioned by custom, can be traced throughout slave colonies in the Americas. The extent to which statutory law afforded the slaves any form of legal redress of grievances, however, varied considerably. In British Caribbean representative colonies there was scant provision. The 1816 Jamaican Slave Code, for example, gave slaves the right to appeal to the magistrates only “wanton” punishments, or workplace punishments in excess of the legal maximum. But in the Crown Colonies taken over from the Spanish and the Dutch, the system for legal redress was more advanced. A government official, the *fiscal* in the Dutch mainland colonies and *procurador fiscal* in Trinidad, included the administration of the slave laws in their duties. This involved dealing with slave grievance cases within the parameters the law allowed.

The system of legal redress was underpinned, however, as the records of the fiscals in Berbice make clear, by labor bargaining procedures. This government official usually provided a court of last appeal for the slaves and, under the Dutch system, was expected to do so. Owners and managers paid a fee of twelve guilders (£8.5) for every slave who appeared before the fiscal which made collective protests particularly expensive; it put a premium on settling disputes at the workplace.⁴

Dismantling the slave labor laws impacted, consequently, on statute and customary law, including labor bargaining procedures, throughout the British Caribbean. This article reviews the laws devised by the imperial government to dismantle the slave labor system in the period 1823-38 in order to locate with some precision the moment of articulation between one system of labor extraction and another: from chattel into wage slavery. Laws devised to make workers and their progeny servants in perpetuity are first modified and then replaced by a new labor code devised “to promote the industry of the manumitted slaves.”⁵

The review concretizes exactly what changes in the terms of work accompanied the workers’ upgraded legal status. It reveals the continuities and the disjunctions between reforming slavery and implementing wage labor in terms of both aims and methods and considers the impact of the restructuring process on the workers’ well-established labor bargaining procedures. It allows us in short to reassess the emotive designation “free labor.”

4. Turner 1999:41. Parliamentary Papers (PP), House of Commons (HofC), London, 1828, XIII, no. 577, Commissioners of Civil and Criminal Justice in the West Indies and South America, Second Report, Second Series, Demerara, Essequibo, Berbice, Appendix A, 90.

5. Public General Statutes 1833, An Act for the Abolition of Slavery throughout the British Colonies; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves, 3 and 4 Wm. IV. c.73.

DISMANTLING THE SLAVE LABOR SYSTEM: STAGE ONE, 1823-33

The legal changes considered necessary to prepare the slaves for freedom inevitably curtailed the owners' rights and expanded those of the slaves; opposition from resident planters was only to be expected. The imperial government, however, was prepared at first to override such opposition and, if colonial Assemblies proved recalcitrant, impose the new laws by parliamentary authority (Ragatz 1971:412-13). A tremor of slave revolts and conspiracies combined with planter opposition, however, induced a return to traditional constitutional practice: influencing the Assemblies through colonial agents in London, the parliamentary based Committee of West India (absentee) Planters and Merchants, local governors and appeals to the resident planters' perceived best interests. Such influences, activated by the critical onslaught of the anti-slavery movement and illegalization of the slave trade, had prompted most Assemblies to make occasional changes to their slave laws. And by the 1820s the increasingly vociferous free trade lobby made it highly desirable for the West Indies to keep its privileged position in the British sugar market whatever the cost. But colonial responses to imperial government initiatives were often hostile and the resulting laws ineffective, leaving the Colonial Office with only one recourse: disallowance on the advice of its legal counsel.

In the Crown Colonies, by contrast, where governors exercised both legislative and executive power on behalf of the Crown, laws were routinely imposed, either directly by proclamation, or adapted by appointed legislative councils into local ordinances. The imperial government's blueprint for dismantling the slave system is consequently most clearly and succinctly formulated in the Orders in Council drawn up by the Colonial Office for application or adaptation by the Crown Colonies. The Orders in Council for March 10, 1824 and November 2, 1831, discussed here, marked the parameters of the first stage in the dismantling process.⁶

The 1824 Order strengthened the administration of the slave laws. The office of Trinidad's *procurador fiscal* became a salaried appointment for a non-slave holding official acting full-time as Protector and Guardian of Slaves. The protector had a limited brief in slave criminal trials: to attend cases of slaves accused of felonies (punished by death or transportation),

6. PP, HofC, 1825, XXVI, Papers in Explanation of Measures Adopted by His Majesty for Amelioration of the Condition of the Slave Population in the West Indies and South America, pp. 124-38; 1830-31, XVI.I, no. 230, Papers in Explanation of Condition of the Slave Population in H.M. Possessions in the West Indies, South America, Cape of Good Hope and Mauritius, pp. 93-138.

cases of cruelty to or murder of slaves, and manumission and property trials in the capacity of prisoners' friend and report them to the Colonial Office. The primary purpose of the appointment, however, was to implement in person and through the supervision of the local magistrates, the innovative imperial labor laws.

The 1824 Order changed the legal terms for slave labor extraction. It made the use of the whip to coerce labor in the field illegal. The whip – a focus of slave protests and anti-slavery propaganda – symbolized the physical brutality, the barely restricted personal power owners exercised at the workplace, and the archaic nature of the chattel slave system. To limit its use was a first step to introducing modern labor extraction methods and it was recognized as such by the Committee of West India Planters and Merchants who suggested the change (Ragatz 1971:411). The whip embodied the brutality of the system and no less importantly, its perceived inefficiency – much advertised in contemporary debates on free labor and cheap East Indian sugar.

Persons superintending slaves in the fields were prohibited from carrying “a whip, cat, or other instrument of a like nature for the purpose of impelling, or coercing any slave, or slaves to perform any labour of any kind,” or of carrying it as an emblem of authority. Overseers, bookkeepers, and slave drivers were sent into the field disarmed. The Order proposed no alternative method of inducing labor although Colonial Secretary Earl Bathurst, in a confidential despatch to the West Indian governors, recommended the introduction of task work complemented by wages for work done over and above the task (Ragatz 1971:415). Such arrangements already featured in informal contracts established by labor bargaining.

Illegalizing the whip to coerce labor was complemented by regulating workplace punishments by flogging. The existing slave laws all defined such rules: the number of lashes to be administered in any one day (the range was from one to thirty-nine), the interval to elapse between the offense and the lashing, and specified the need for the worker to recover between punishments. But there was no secure means of implementing them (Stephen 1824:40). The owners' and managers' right to punish at will had only been effectively challenged in a piecemeal way by the slave workers themselves. It was overseers who breached customary punishment norms, or inflicted cruel and unusual punishments who were most likely to provoke strike action.

The 1824 regulations went far beyond anything the slaves might have bargained for. Women, who formed 50 to 70 percent of sugar estate workers (Higman 1984:585-602) and were commonly regarded as more “troublesome,” were entirely exempted from flogging. They were to be put in the stocks or imprisoned. Removing some 50 percent of the slave work force

from the lash was a substantial innovation aimed to promote reproduction among a steadily declining workforce. Flogging for male workers was limited to a maximum of twenty-five lashes.

To implement these laws the Order introduced a form of self-policing by owners and managers, supervised by the protectors and their assistants, and backed up by fines and criminal prosecutions. All punishments of female slaves and of men given more than three lashes were to be recorded within two days by the managers in a Plantation Record Book. The record was to specify the offense: time, place, nature, and extent of the punishment and who had authorized and witnessed (one free person or three slaves) it. The record had to be sworn on oath every quarter when it was deposited with the local assistant protector (penalty £10-100 fine) and sent within fourteen days to the protector (penalty £5-100). Falsification of the record was a misdemeanor, punishable by a £50-500 fine and/or one to six months in prison.

Exceeding punishment limits led to prosecution in the criminal court for cruelty and the slave allegedly so punished was allowed, if traces of the punishment remained, to testify on his own behalf. If the court found against the owner, he was guilty of misdemeanor and the slave forfeit to the Crown. The Order did not attempt to define what constituted workplace indiscipline, but the records returned to the Colonial Office in due course established current norms.

Limits on workplace punishments were complemented by limits on working hours, again sanctioned by fines. The six-day week (already customary outside crop/sugar harvest) was to allow an eighteen-hour break from sunset on Saturday to sunrise on Monday, domestics and slaves engaged in "necessary work" (e.g., tending stock) excepted.

All these laws diminished the slave owners' and managers' authority. To countervail this practical diminution, however, the Order promoted the slaves' ideological formation and provided opportunity for them to learn (like English agricultural laborers subjected to parson as well as squire) that Christian duty meant obedience to God and their masters. To create a space outside the working week for this, the Order cut back on the slaves' customary right to Sunday trading and decreed the market must close by 10 a.m., before Divine Service began. Plans were already in hand for the imperial government to invest money and personnel (including two bishops) to revivify the Anglican church in the West Indies, make it partner with the colonial state. The regulation, however, also prepared the way to wage work by increasing the slaves' dependency on their owners' wages in kind.

Religious teachers were few and comprised mostly dissenting missionaries. But the right to go to church was a right some slaves claimed even when managers contested it – as often happened in Jamaica, for example (Turner 1998:78-80, 132-44) – so a legal right to public worship had sig-

nificance. For the majority, however, limits on Sunday marketing cut into living standards and social life.

Incentives to slave churchgoing were written into the new code which also extended the slaves' range of personal rights into new areas. Slaves who were certified by licensed ministers and duly registered with the protector as capable of understanding the meaning of an oath were allowed to give evidence in court. Other provisions legalized the slaves' customary right to own property and introduced the right to marry, to be sold (in specific circumstances) in family groups, and for slaves willing and able to pay for it, a legal route, supervised by the protector and sanctioned by the High Court, out of bondage by manumission.

The protector and his magistrate assistants improved the slaves' access to legal redress in labor disputes and the new laws extended the forms of redress available to them. In Berbice, for example, the protector more than doubled the number of cases the fiscal had dealt with and recorded them more systematically. More importantly, however, the new laws in no way impinged on the slaves customary bargaining procedures which in effect were sanctioned by the protector. In every case he dealt with direct negotiations between workers and managers had already taken place; appeal to the protector remained a last recourse. The retention of this customary right was of course all the more important since the protectors dealt with comparatively few cases (Turner 1999:50, 54-56).

The new owner and slave laws proved contentious even in the Crown Colonies. In Trinidad where the changes were imposed directly, the governor chose the existing *procurador syndic* – a barrister from a slave owning family and already a pluralist – as protector. Only two slaves in Trinidad were certified as capable of giving evidence on oath (1824-29) and very few owners were ever prosecuted for breaches of the Order. On the other hand, more than four hundred slaves, in a slave population of some twenty thousand, one-third of them domestics, took advantage of the new manumission mechanism (Brereton 1981:60-61, 69). In the other Crown Colonies the Colonial Office chose to use the threat of change by Order in Council to prompt legislative councils into action. Demerara held out against any reforms until 1825 and contested some provisions until 1828; Berbice and St. Lucia complied in 1826 (Mathieson 1967:154-58). In the representative colonies, where the reform measures were outlined in a circular despatch and laid before the Assemblies, adequate versions of the proposed reforms characteristically took even longer to achieve: 1829 in Tobago, 1830 in St. Vincent and, most spectacularly – despite eight model drafts sent by the Colonial Office, two disallowances and the presence in the Assembly of a significant group who advocated cooperation with the

imperial policy – 1831 in Jamaica, the largest single slave labor unit in the British Caribbean (Ragatz 1971:418-19; Turner 1998:120).

Where reforms which conformed to imperial standards were implemented some improvements in the slave workers' conditions of employment are discernible. Analysis of the Protector of Slaves reports for Berbice between 1827 and 1830 show that the maximum number of lashes inflicted on men for disobedience and insubordination fell from seventy five to twenty-five. By 1830 two-thirds of male slaves were punished by the stocks or imprisonment. Maximum punishments for women for the same offenses were also reduced from seventy-one hours in solitary confinement to four hours in the public stocks (1829-30), an improvement which also minimized work time lost. The removal of the whip from the field also reduced the number of complaints about punishment for protesting work loads and tasks; these fell from one in every three to four cases to one in every nine to ten.⁷

However inadequately implemented, the laws marked an imperial government policy decision which the opposition of resident planters did nothing to change. And as Colonial Office experience of planter recalcitrance and slave worker conditions accumulated, determination tended to harden. This was more particularly the case since the Colonial Office staff included James Stephen (son of James Stephen the abolitionist), as legal adviser and Henry Taylor, as senior clerk. Both were committed to the dismantling policy. They strongly influenced decision making under two notably indecisive colonial secretaries (Sir George Murray and Lord Goderich). Outside the Office, while the Reform agitation eclipsed all others, it also embraced and intensified them. Public pressure for emancipation made a qualitative leap forward in 1830-31 and the Anti-Slavery Society switched its campaign from a demand for gradual, to a demand for immediate abolition. And the newly elected Whig government was committed to reform in general. These political circumstances were all reflected in the radical content and decisive handling of the November 2, 1831 Order in Council.⁸

The 1831 Order repealed all the slave laws enacted since 1824, but built on the progressive elements in them. The colonial secretary, Lord Goderich, introduced the new package in a despatch which spelt out what had been stated only in general terms in 1824: that the legal changes were a "measured and cautious, but ... decided advance toward the ultimate extinction of slavery." He attributed the impending threat of West Indian bankruptcy⁹

7. PP, HofC, 1829, XXV, no. 335, Protector of Slaves Reports, List of Offences 1 July-31 December 1827, pp. 38-39; 1830-31, XV, no. 262, Protector of Slaves Reports, Abstract of Offences, 1 July-31 December 1829, pp. 103-9, 1 January-14 May 1830, pp. 119-20.

8. PP, HofC, 1830-31, XLVI.I, no. 230, pp. 93-138.

9. The economic decline of the West Indies provoked two Select Parliamentary committee enquiries in 1831 and 1831-32.

and the danger that slave revolt might destroy the sugar industry to a system where "the people are not dependent on their own voluntary industry for their support; in which labour is not prompted by legitimate motives and does not earn its natural reward." It was time the slave owners acknowledged that the colonies consisted for the most part of slaves: that West Indian property was the direct fruit of their labor and that to refuse the slaves legal protection and adequate subsistence was unreasonable. He emphasized that, in the long term, the dismantling of the slave labor system was inevitable; "it would be a fatal illusion to suppose ... the ultimate extinction of slavery, by cautious and gradual means, can be averted" and resistance could only bring the planters to disaster. The written warning was underlined by the fact that months before, in August 1831, slaves belonging to the Crown had been liberated.¹⁰

The November 2 Order firmed up the protector's position by making the assistant protectors Crown appointments. At the same time both protectors and the new assistants were also empowered to take both criminal and civil proceedings in response to slave complaints. They could summon witnesses and accused (both slaves and owners) on twenty-four-hours notice, arrest them for failure to attend, and jail them for refusing to be sworn until they agreed to be examined. They were also given free access to plantations and slave villages to collect evidence and to obstruct them was a misdemeanor. Their protective powers in short expanded to encompass prosecution of breaches in the slave labor laws.

The distinguishing feature of the 1831 Order, however, was that it set out the mutual obligations of slaves and owners: how much work for how much food, clothing, and medical care supplied. It defined contract terms for both parties. The six-day working week was complemented by a standard working day, limited to daylight hours – 6 a.m. to 6 p.m. – with two breaks, from 8 to 9 a.m. and from 12 to 2 p.m. – making nine hours in all. Within this time frame the Order also legalized task work, as suggested in 1823. Nightwork was allowed in manufacturing, but only when slaves worked one nine-hour shift in every twenty-four. The workday was reduced to six hours for slaves under fourteen or over sixty and for pregnant women, and nightwork was prohibited. The standard nine-hour day for a six-day working week made fifty-four hours in all with fines of £1-10 for each slave illegally employed.

These regulations which systematized meal breaks, nightshifts, and classified workers as eligible for full and two-thirds time were more stringent than any applying at the time in industrial England. While some infor-

10. All quotations above are from PP, HofC, 1830-31, XLVI.I, no. 230, Circular despatch, Goderich to the Governors of British Guiana, Trinidad, St. Lucia, Mauritius and the Cape, November 5, 1831, pp. 59-88.

mal contracts limited hours still further – allowing slaves a mid-week half-day break in addition to Sunday – the regulations improved overall standards.

More innovatively, the Order set the rates for slave worker wages in kind. This new level of intervention was robustly justified by Lord Goderich: “The fact is that the food of the slaves constitutes the largest part of his wages; and it can scarcely be required that the employer should judge in his own cause without appeal of the amount of remuneration which he is to supply to his labourer” – a comment which reflected both the role English magistrates had traditionally played in setting annual wage levels and Parliament’s more recent investigation of industrial wages paid in truck.¹¹ It also marked an innovation in West Indian vocabulary; the slave codes used the terms “allowances,” as if food was a gift, or “provision grounds,” as if the ground of itself produced the provisions. The term wages reinforced cognizance of the basic contractual element fundamental to the slave system, the exchange of food for work.

The method by which owners and managers were to pay the wages in kind had to be registered by the first week in January each year at the protector’s office, on pain of a cumulative fine (£2 for the first week’s delay, £4 for the second, etc.). Any change of method required the protector’s permission and a month’s notice. Provision grounds, on suitable land situated no more than two miles from the slave village, had to comprise half an acre for each person over fifteen years old and a quarter acre for each child. Seeds and tools for cultivation were to be supplied and time for cultivation (forty days in forty successive weeks) allowed in the workweek. The slaves had sole ownership of the crops and use of the land until the crops were harvested.

These terms, in particular the time for cultivation, were more generous than the existing slave code maximum of twenty-six days a year and many slaves’ informal contracts as well. The scale of existing provision grounds varied; in Jamaica with its internal frontier the slaves cultivated “in a straggling sort of way” as much as an acre or more, a scale comparable with family holdings in pre-famine Ireland, but on the empoldered land of British Guiana one-fifth of an acre was more typical (Higman 1984:209; Turner 1998:43). The price of this (prospective) material gain was the loss of the slaves’ customary right to cultivate their grounds unsupervised; under the new law work on the grounds, like work on the estate, was subject to the rules for slave labor.¹² More significantly, slave cultivators lost owner-

11. PP, HofC, 1830-31, XLVI.1, no. 230, Circular despatch, Goderich to the Governors of British Guiana, Trinidad, St. Lucia, Mauritius and the Cape, November 5, 1831, pp. 59-88.

12. This affected some territories and some slaves within those territories more than others. In British Guiana, for example, many of the slaves were supplied from grounds cultivated as part of estate production. Some proprietors leased crown land for this purpose. PP, HofC, 1831-32, XX, no. 721, Report from the Select Committee on the Extinction of Slavery throughout the British Dominions, q.2249 Rev. J. Austen.

occupancy and inheritance rights. The Order affirmed the landlords' right of ownership, pointing the way to rents and landlessness for wage workers. Sunday markets, already much curtailed, were totally prohibited cutting off estate workers from participating in the cash economy.

Subsistence rates for ration-fed slaves were significantly improved. The standard for persons over ten years old was 21 pints of corn, or wheat flour, or 56 lbs. of plantains, yams, or cocas, plus 7 herring or shad, with half rations for children under ten, all to be of good quality and delivered during the workweek. Owners were fined for non-fulfilment. These allowances were significantly larger than either previous slave laws, or informal contract terms had secured. Corn allowances could be as little as 9 pints a week; 14 pints a week, or 28-35 lbs. of ground provisions was considered symptomatic of management generosity (Ward 1988:118; Turner 1991:96-98). For clothing slave workers each had a hat and a blanket; the men a cloth jacket, two cotton check shirts, and two pairs of osnaburg trousers; the women two gowns, two cotton check shifts, and two osnaburg petticoats. The men also had a knife and a razor and the women a pair of scissors. The official allowance improved on the recommendation made for slaves in mid-seventeenth-century Barbados – a rug, a hammock, 2 petticoats, or 3 pairs of trousers – and added shoes which at that time had been supplied only to indentured servants (Ligon 1970:115).

To improve slave health a medical practitioner was also required to attend all work units with more than forty slaves systematically once a fortnight and record the sick, their diet and medicine in a journal open to inspection by the protector and his assistants. To the same end bedsteads, a luxury occasionally enjoyed by the most privileged slaves, and cooking pots were also to be provided.

Workplace punishments were further limited to a maximum of fifteen (not twenty-five) lashes in any twenty-four-hour period and other punishments were to be limited by governors' proclamation. No definitions were supplied, however, as to what constituted workplace indiscipline, although the protectors' reports revealed that punishments were meted out for indecent language, uncleanly habits, and quarrelling. Wanton punishments, that is "punishments without cause" were prohibited, together with punishments that were "more than adequate to the fault," unusual, or more severe than used in the common jail.

The day-to-day implementation of these rules depended, as in 1824, on owners and managers whose detailed accounts were to be kept in a more plainly titled Punishment Record Book. Breaches of punishment regulations exposed owners and managers to prosecution for cruelty and the forfeit of the slave, or slaves involved; additional convictions could result in

the sequestration of all slaves in the criminals' possession and his disqualification as a slave manager in addition to fines and imprisonment.

The right to give evidence in court was extended to the whole slave population. This narrowed the gap in terms of civil rights between slave and free status. The opportunity for religious instruction opened in 1824, became the right for non-domestics to attend day-time Sunday, Christmas, and Easter services by ministers licensed by the governor within a six-mile limit of their plantation. The limited number of churches not only made the law largely ineffective, but severely curtailed the slaves' customary right to freedom of movement outside the constraints of the workday.

The Order's most significant single innovation, however, was to affirm and enhance the slave workers' right to seek legal redress from the protector and his assistants. "Each and every slave" was authorized "at all times" to take their cases to the nearest protector. In colonies with pass laws this right overrode the need for a pass, should the manager refuse one, and managers who punished slaves for making complaints committed a misdemeanor. The slaves risked punishment all the same, however, since complaints judged to be malicious earned thirty-nine lashes, or up to three months hard labor. No less importantly, the slaves' customary right to labor bargaining at the workplace was not prohibited.

The political circumstances which radicalized the 1831 law also prompted an effort to short circuit colonial obstruction. Crown Colony governors were to put the order in force by proclamation within one month of receiving it and Assemblies were instructed to incorporate it by Declaratory Act, under threat of being denied financial aid worth half their respective revenues promised by the West India Relief Bill being drawn up by the Colonial Office.

Reception throughout the West Indies was hostile: slave owners protested reform of the system (Ragatz 1971:441-2) while the Jamaican slaves used mass strike action and attempted armed revolt, in December 1831, to end it. They erupted in rebellion to demand free status and wage work (Turner 1998:148-60). They rattled their cage and fuelled the abolitionists' cause. The Commons marked its sympathies in May 1832 by appointing a Select Committee to consider measures for the extinction of slavery. The Colonial Office, for its part, concluded that the government must either bow to the colonists, or move to abolition. Its views were circulated to Cabinet immediately after the December 1832 election for the reformed House of Commons (Murray 1965:194). Under pressure once more from the abolitionists, whose supporters in the reformed Commons had increased, the government committed itself to emancipation in March 1833.

DISMANTLING THE SLAVE LABOR SYSTEM, STAGE TWO, 1833-38

To this point efforts to restructure British Caribbean labor laws had been directed to improving the slaves' terms of work, and their statutory civil rights, including the right to take grievance cases unresolved by customary labor bargaining procedures to the authorities. The process had reduced the slave owners' power and increased the functions of the colonial state and the supervisory role of the Colonial Office. The Trinidadian owners' definition of the 1831 Order as a "121 pronged scourge" accurately summated the political thrust of imperial policy (Brereton 1981:61).

The decision to abolish slavery dramatically re-ordered government priorities. Once the slaves had free legal status the ex-slave owners, transformed into employers, became natural allies and the colonial state an instrument to ensure labor extraction. The government's decision to abolish slavery was in fact contingent on winning the consent of a "considerable part" of the colonial proprietors (Murray 1965:199). And this alliance determined both the terms of abolition and its method of implementation.

To implement changes in the slave labor laws the government in 1823 had been prepared, initially, to use parliamentary authority and in 1831 it had attempted to impose Order in Council's reforms uniformly across the British Caribbean. In 1834, however, parliamentary authority was used sparingly to put in place only what the government considered the fundamentals of the scheme; vital areas relating to the labor laws, the apprentices terms of work, labor discipline, and even the powers of the special magistrates were left in the hands of colonial Assemblies (Burn 1970:118 n.1). The imperial government, over and above its power to disallow colonial legislation commanded only one additional means of influence: compensation payments were contingent on colonial acts meeting its approval. But the fact that colonial laws had to be on the books before August 1, 1834, the date set for emancipation, severely limited its utility.

The abolition scheme itself, outlined to the Commons in May 1833, was a product of the imperial government's new formed alliance. It outlined a terminal dismantling stage for slavery which maximized the planters' workforce and stabilized both numbers and wage rates for more than a decade. Slavery as a legal status was abolished, but only children under six years were to be free. The rest of the ex-slaves were to be registered as apprentices without indenture and work forty-five hours a week for their former owners. The ex-slave owners' hold on young apprentices extended until they were twenty-four and twenty for men and women respectively. Adult field slaves served for twelve years and artisans and domestics for six at the same wages for their forty-five hours compulsory labor in terms of food,

land, clothing, and medical attendance they had received as slaves.¹³ Apprenticeship instituted a new form of tied labor to compensate the planters over and above their financial compensation.

This scheme was battered and dented by debate in the Commons. A motion to reduce apprenticeship to one year (the standard period of a Master and Servant contract) was lost by just seven votes and forced the government to reduce the length of service for all categories of apprentices to six and four years (Burn 1970:117). But the resulting Act¹⁴ reflected the government's new priorities. It gave detailed attention (twenty-five of fifty-four clauses) to how the compensation money was to be raised and distributed, set in place new mechanisms to discipline labor, but left the apprentice's terms of work unregulated. In essentials it was an employers' charter.

Following the precedent set by the introduction of protectors in the Crown Colonies, labor discipline became wholly and solely the responsibility of Magistrates with Special Commissions, appointed by the Crown, or the colonial governors. The act ruled: "it shall not be lawful ... to authorise any person ... other than Justices ... holding Special Commissions to punish any apprenticed Labourer for any offence." Stipends of £300 were allocated for one hundred appointees, all to be named each year to parliament. The stipendiaries took the application of the labor laws out of the hands of employers. But their limited numbers necessarily limited the efficiency of the system and the award of special commissions to colonists to hold in conjunction with general commissions further weakened the provision.

More crucially, however, the laws the special magistrates were to administer were to be devised in the representative colonies by the employers sitting in the Assemblies. The terms and methods of labor discipline, the focus of detailed regulation in the 1824 and 1831 Orders in Council, were simply listed in clause 16 of the Abolition Act as topics which required legislation. The apprentices' terms of employment in terms of food, lodging, clothing, and medicine were also unspecified. The language of the Abolition Act repeated the language of colonial slave laws and required, for example, that provision grounds should be "adequate" in quality and quantity and a "reasonable" distance from the slaves' living quarters. Generalities substituted for the specifics of the 1831 Order in Council. The

13. The government originally proposed to fix cash wages paid for additional work in credit at a rate determined by the price which employers as owners put on the slave at the beginning of the twelve-year apprenticeship. Each year's work would pay one-twelfth of this price so twelve years of paid labor would buy them out of apprenticeship. The government also attempted to scale down the £20 million planters' compensation promised in 1823 to a £15 million loan. Mathieson 1967:233; Burn 1970:115.

14. Public General Statutes 1833, An Act for the Abolition of Slavery throughout the British Colonies; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves, 3 and 4 Wm.IV c.73.

abolitionist leader Thomas Fowell Buxton calculated that no less than twenty-nine vital issues affecting Master-Apprentice contract terms were placed in the hands of colonial Assemblies which had consistently opposed slave law reforms (Mathieson 1967:244).

Given the lack of detail in this innovative and important law it is particularly interesting to review the Colonial Office interpretation proposed for the Crown Colonies and as a model for the colonial Assemblies.¹⁵ Its provisions confirm in relentless detail the dramatic shift in imperial policy which followed the award of free status to the slaves.

The Order gave first priority to establishing a police force. "An effective police establishment," Lord Stanley ruled, "is of the very essence of the whole measure": a perception sharpened by his experience (1830-33) as Chief Secretary in Ireland, when recently emancipated Irish Catholics conducted a tithe war. The colonies were to be divided into judicial districts and a bit of Crown land set aside in each to establish a police settlement near the largest body of population in the district. Manned by ten privates and a sergeant supplied with "such weapons ... as may best be adapted to the service in which they are engaged," each settlement was to have a house of correction regulated by the governor, inspected and reported on monthly by the special magistrate. Prisoners were to be classified, separated by sex, kept clean and sober, given religious instruction, and promptly punished for rule breaking.¹⁶

The police settlements were there to back up the special magistrates one of whom was appointed to each district. Their terms of employment and their duties were closely modelled on those of the protectors. The protectors' right to visit the estates, however, became a duty: estates with more than ten apprentices were to be visited at least once a fortnight.

Strengthening the colonial state's regulatory and repressive powers was, of course, necessary to replace the slave-owners' authority and secure the workers' new contract terms. But the Colonial Office interpretation of the Abolition Act rolled back as well as improved the terms proposed in 1831. The apprentices wages in kind remained the same: this meant an apparent improvement since the hours of labor were shorter and the act specified that

15. PP, HofC, 1835, L no. 177, Papers in Explanation of Measures adopted by His Majesty's Government for giving effect to the Act for the Abolition of Slavery, Pt. 1, Jamaica, Circular dispatch, Stanley to Governors of His Majesty's Colonial Possessions not possessing Local Legislatures, enclosing the Draft of a proposed order in Council for carrying into effect the Act for the Abolition of Slavery, October 19, 1833, pp. 14-24.

16. PP, HofC, 1835, L no. 177, Papers in Explanation of Measures adopted by His Majesty's Government for giving effect to the Act for the Abolition of Slavery, Pt. 1, Jamaica, Circular dispatch, Stanley to Governors of His Majesty's Colonial Possessions not possessing Local Legislatures, enclosing the Draft of a proposed order in Council for carrying into effect the Act for the Abolition of Slavery, October 19, 1833, pp. 14-24.

cultivation time for the provision grounds was to be deducted from the forty-five-hour week. But their gain was off-set by paying allowances to workers, but not to children over twelve. This guaranteed employers' their traditional children's gang and provided a practical demonstration of the "work or want" principle. Parents who failed to support their children committed an offence against the state and they were hired out, sent to the public works so they could pay for child support monthly and in advance.

Classification by function eliminated categorization by age and capacity so the six-hour day and thirty-six-hour week specified in 1831 for pregnant women, the over sixty-year olds and children under fourteen as slaves, increased to forty-five hours for free persons bound apprentice. The work-day and the workweek were deregulated. Hours of labor were no longer confined to daylight (out of crop) and could be spread across a six-day workweek, Sundays still excluded. This gave employers flexibility and in British Guiana, for example, resulted in many slaves working six seven-and-a-half-hour days – minimizing their free, or cash-earning time.

New standards were set for workplace discipline. The act defined indolence, neglect and improper performance of work, injury to the employers property, insubordination, and disobedience as the "principal dangers" at the workplace. The vagueness of definitions such as "disobedience" and "insolence", used to justify punishments in the protectors' reports, had been strongly criticized by the Colonial Office in 1831; to whip males and put females in the stocks "upon such vague and loose charges" invited the abuse of the slave owners' authority.¹⁷ Once the workers had free status, however, the boot was on the other foot; what had by all means and methods to be restrained was not the abuse of power by the employers, but by the workers. So the use of "vague and loose charges" continued.

The punishment schedule had some new features. The act prohibited the renewal, or prolongation of apprenticeship; but, using a provision found in the 1563 Statute of Artificers, it countenanced extra work for absenteeism. For every hour of absence the apprentice served two additional hours up to a limit of fifteen hours a week, making a seventy-five-hour week, twenty-one hours more than the legal limits set for slaves in 1831. Indolent, careless or negligent work was penalized on the first offense in the same way and it was part of the punishment for careless use of fire, injury to property or stock, and disobedience. Apprentices could be held to serving out time up to seven years after apprenticeship ended.

Flogging at the order of the magistrates was retained for male apprentices. Absenteeism was punished by two weeks hard labor and fifteen lashes for one or two days, a month's hard labor and thirty lashes for three to

17. PP, HofC, 1830-31, XVI.I, no. 230, Circular, Goderich to Governors of the Crown Colonies, November 5, 1831, pp. 59-88.

six days. Seven days absence meant either three months in jail with hard labor, or thirty-nine lashes. Careless work on a third conviction got up to two weeks hard labor and twenty lashes. Insolent and insubordinate behavior, however, together with drunkenness and fighting were punished by up to a week in jail with hard labor, or fifteen lashes. Flogging for forms of workplace indiscipline, albeit at the behest of a magistrate, degraded free status workers with slave status punishment and marked the reversal of the modernization process set in train by the 1824 Order in Council.

Pass laws found in the earliest slave codes were revived to police movement off the estates for any purpose other than churchgoing, or marketing – exceptions customary under slavery. And to leave the colony apprentices required a passport issued by the governor on the written consent of his employer.

Restrictions on freedom of movement were combined with restrictions on freedom of settlement. Marronage, defined as prolonged, habitual absence from the estates by laborers who consistently neglected “to perform the duties imposed on them by law” and formed their own settlements, remained, as under slavery, a crime. The special magistrates were to destroy these communities and sentence inhabitants to hard labor (up to six months) with flogging (up to thirty-nine lashes). And to deter apprentice laborers more generally from unlawful occupation of Crown, or private, land they could destroy buildings and confiscate crops and cattle for the benefit of the landowner, or the public funds.

The apprenticeship scheme was characterized by labor coercion and punishment schedules. Free status apprentices, like chattel slaves were treated like criminals for absenteeism, or for undefined forms of workplace indiscipline and while flogging for men was administered only on the order of special magistrates, the law actually increased the number of lashes allowed over the standard set in 1831. It gave new sanction to old restrictions on freedom of movement and, by implication, of association. Wage levels in terms of food, clothing, and medical attention for their bonded working week remained, at best, the same.

The most significant components in the master and apprentice laws proposed in 1833, however, affected both legal and customary terms for labor bargaining. The Abolition Act recommended regulations to punish “combined resistance” and “riot”; the Colonial Office interpreted “combined” to mean three or more workers; if such a group agreed, for example, to dispute workloads, or if they actually “defied the lawful commands of their employers” by combined and open resistance, its members could be charged with unlawful conspiracy and get six months in prison with hard labor and up to thirty-nine lashes. The expressions of organized protest sanctioned by custom for labor bargaining at the workplace and as prelim-

inary to legal redress, or mediation were prohibited out right. The punishment risked by workers as slaves became a legal certainty for apprentices. And if a protest by three, or more apprentices became “tumultuous” and failed to disperse after a ten-minute warning, punishment was increased to twelve months in prison with hard labor. The pass laws, intended to prevent larger-scale inter-estate combinations, backed up these rules. No equivalent laws prevented employer combinations.

The apprentices, as persons with free status, enjoyed the right to seek legal redress which the 1831 Order had awarded to slaves. But as persons with free status, they were denied their customary right to use their labor as a bargaining tool. Their terms of work were to be defined by the colonial state’s labor laws and mediated by the Crown’s appointees, the special magistrates. Employers no longer had to endure challenges to their authority by their work force, or negotiate with them face to face; they had simply to invoke the law and the law enforcement agencies. The web of legal prohibitions which restrained their English counterparts was beginning to enmesh Caribbean workers.

The spirit in which these regulations were interpreted is well illustrated by employer reactions to the first flicker of collective protest in British Guiana where the proposed 1833 Order was incorporated with few modifications by Ordinance on March 8, 1834.¹⁸ On August 4, 1834, just three days after the emancipation celebrations had passed off without incident, apprentices along the Essequibo coast questioned the new contract terms and declared they would not work more than half a day without wages. The local magistrates (only five of the twelve stipendiaries allotted to British Guiana were in the colony at this time) panicked and called for martial law. The governor, Sir James Carmichael Smyth, a soldier by profession with a year’s experience of the local ruling class, refused and when the protests continued he went himself with a few constables, explained the forty-five-hour rule and warned the apprentices that continued resistance would put them in court. But protests continued and in the upshot, the supposed ring-leaders were rounded up and tried, not by a stipendiary applying the punishments the Ordinance laid down, but at the Supreme Criminal Court in Georgetown under an indictment for riot and sedition. The leader, Damon, was sentenced to hang, four were to be transported, and thirty-two flogged. Smyth, who considered that flogging could only harden the victims’ resistance, pardoned these prisoners. A vicious newspaper campaign against the governor ensued and when he sued for libel and lost Georgetown made high holiday.

18. School of Advanced Legal Studies, University of London, British Guiana Ordinances, Ordinance no. 43, March 8, 1834.

The Supreme Criminal Court judgement was upheld, moreover, by the Crown Law officers. Damon was hanged and the three surviving of the four apprentices sentenced to transportation, began their journey to New South Wales (Australia). They were eventually pardoned, but only because James Stephen persistently argued to successive colonial secretaries that their crime was riotous assembly and their legitimate punishment no more than twelve months in jail with thirty-nine lashes. They returned to British Guiana in time to serve out the balance of their apprenticeship term (Green 1969:49-51).

Little attempt in fact was made to regulate colonial abolition acts. Colonial Secretary Lord Stanley, in charge in the crucial few months (March 1833-May 1834) when the acts were being reviewed and compensation money awarded, took a strictly pragmatic view of the laws submitted for approval. He set aside the critiques by James Stephen which had customarily informed decisions about West Indian legislation in order to get the new system in place. He viewed apprenticeship as a temporary measure to secure law, order, and production while "all classes" gradually fell into "relations of a state of freedom" (Burn 1970:169; Green 1976:124). Colonial Assemblies fully exploited this latitude; their abolition acts failed to determine the distribution of the apprentices forty-five hours of unpaid labor, left wages unregulated, retained punishment schedules which went beyond the parameters set in 1833, condemning women to flogging and the chain gang, and cut down the powers and obstructed the operation of the special magistrates. And the Jamaica Assembly's Police Act stripped its special magistrates of their exclusive right to adjudicate all cases between masters and apprentices by transferring jurisdiction for praedial larceny (one of the commonest offenses) to the local magistrates.

Imperial parsimony aggravated the situation. The special magistrates responsible for implementing the labor laws comprised at best a skeleton staff, very variously recruited, of whom only forty-nine were available on August 1, 1834. The number originally allotted throughout the region had to be substantially increased: in Jamaica, for example, from thirty-three to sixty-three and in Trinidad from six to eleven (Burn 1970:197 n.1).

In the upshot, the inadequacies of the apprenticeship scheme and its maladministration became public knowledge and prompted a parliamentary campaign for its abolition launched in February 1838 by the anti-slavery veteran Lord Brougham. In response the government made a last minute effort to prop up apprenticeship by using parliamentary authority to override colonial legislation. The Act to Amend the Act for the Abolition of Slavery in the British Colonies¹⁹ passed in April 1838 was to be put into

19. Public General Statutes 1838, An Act to amend the Act for the Abolition of Slavery in the British Colonies, 1. Victoriae, c.19 1838.

effect, like the Orders in Council by proclamation. It was too little and too late. The West Indian Assemblies, alerted by the Parliamentary debates to the threatened abrogation of their constitutional rights, took pre-emptive action. They sacrificed two further years of bonded service from field and factory workers on the altar of constitutional privilege and between March and July 1838 terminated apprenticeship.²⁰

Apprenticeship was invented to add to the slave owners' compensation package by ensuring them, for a limited period, a secure labor supply. But the contract terms it set out for workers with free status had widespread and long-term consequences in the British Caribbean and throughout the empire. The terms for apprenticeship adumbrated in important ways the terms on which imported immigrant contract workers were subsequently employed. Planters began to pursue new sources of labor as soon as abolition was decided on and by 1838 Indian workers bound by contract began arriving in British Guiana. India became the largest single source of immigrant contract labor for the British Caribbean and the supply continued until 1917. Used primarily to exploit the sugar frontier in the Crown Colonies Trinidad and British Guiana, they kept wage levels for the whole population at bare survival rates. By mid century the scheme was well established and tailored to employer requirements with five-year standard contracts renewable to ten, for a nine-hour day, five-and-a-half or six days a week. Workers required a pass to move more than two miles from their plantation and absence from work was a criminal offense punished by fines or imprisonment. The workers only legal vent for grievances was appeal to the magistrates. The employers reestablished apprenticeship and this time made it renewable.

The immigrant contract labor scheme developed in the teeth of opponents in Britain who passionately believed that the standard one-year contract characteristic of Master and Servant law was essential to preserve the freedom of free labor. One of the politicians who did most to facilitate its development, however, was Lord Stanley.

The labor laws' key to modernizing the slave system reviewed briefly here reveal that the imperial government's efforts to improve workplace conditions for workers terminated with the abolition of slave status: apprenticeship regulations tended to roll back terms sanctioned for slaves by Orders in Council. At the same time the methods of coercion characteristic of the slave system take their place in the free labor system beside new methods of coercion. Chattel slavery was characterized by the pervasive use of life threatening physical force as an instrument of labor discipline. Flogging was not abolished; its role was reduced and regulated as alternative methods of physical punishment, the treadmill, imprisonment, and the stocks, were increasingly used. Absenteeism, criminalized by the slave codes, remained a crime and new punishments characteristic of wage work, fines,

20. Monserrat, which had rejected wage work by only one vote in 1834, decided in January 1838. Mathieson 1967:300; Marshall 1971:1-21.

and evictions were added to the battery of labor discipline techniques in a more sophisticated legal network implemented by magistrates and police.

The distinguishing feature of the new labor laws, however, was that they sent the workers into this new battlefield disarmed: labor bargaining was made illegal. The laws attempted to deny ex-slaves the customary right they had fought to establish as slaves. Abolition brought free status and civil rights, but denied the workers what was arguably their most vital and sole political right: to use their labor power as a bargaining tool to shape their terms of work. But traditions forged by slave workers proved adaptable to combat a no less rigorous, but differently calibrated system.

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