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## **Master and Servant Law: Chartists, Trade Unions, Radical Lawyers and the Magistracy in England, 1840-1865**

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**Author:**

Christopher Frank

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James Jaffe

The activities of W. P. Roberts, the 19th-century 'miners' attorney-general', has long been a subject of great interest to labour historians. His significance for the history of British trade unionism was perhaps most clearly highlighted first in Raymond Challinor and Brian Ripley's history of the Miners' Association, published in 1968, and then Dr. Challinor's full-length biography, which appeared in 1990.<sup>(1)</sup> Roberts, a solicitor from Bath, traveled throughout northern England during the mid 19th century defending workers in numerous master and servant cases. His victories in many of these cases were feted by trade unionists and excoriated by local magistrates. When he died in 1871, the *Newcastle Courant* reminded its readers that Roberts' services had once been 'eagerly solicited' in all cases arising out of differences between employers and employed'. He was 'a bold advocate', the paper recalled, 'and his frequent collisions with the bench became, in his prime, almost a feature of newspaper reading'.

In Christopher Frank's new book, Roberts' activities are examined once again although this time through the lens of a compendium of cases he fought against the summary jurisdiction of magistrates over disputes involving the law of master and servant. These legal battles occurred not only against the background of a more general debate over the efficacy, extent and legitimacy of the summary jurisdiction of magistrates, but also against the background of the Chartist movement during the 1840s. Given this confluence of events,

there was thus ample enough legal and political space for someone of Roberts' characteristic pertinaciousness?, as the *Newcastle Courant* characterized it, to help successfully maneuver many of his clients through the mid-century judicial system.

The legal terrain of 19th-century master and servant law has been well-documented thanks most notably to the earlier work of Douglas Hay and Robert Steinfeld, among others. The 1823 Master and Servant Act provided for criminal sanctions of up to three months imprisonment for a variety of breaches of the employment contract. Although it is not exactly clear why, protests against these penal sanctions were relatively muted for the two decades following the passage of the Act.<sup>(2)</sup> However, as Steinfeld notes, the legal terrain shifted in the 1840s and 1850s. At that time, common law courts adopted much more expansive interpretations of the law not only to cover more workers but also to limit employers' obligation to fulfill employment contracts.

These new circumstances found Roberts at the center of the trade unions' legal struggle against both masters and magistrates. In a series of cases, his most common tactic was to apply for writs of certiorari and habeas corpus in an attempt to bring the cases before the Queen's Bench. As Frank ably demonstrates, before the passage of the Jervis Acts in 1848<sup>9</sup>, which standardized many legal forms, the courts held magistrates to a very high standard when they issued warrants of commitment and declared convictions. Very often, Roberts was able to secure a review of these cases based upon mistakes, omissions, or other 'technicalities' and to thereby quash the magistrates' convictions and sentences.

The author's focus upon the active role of trade unions and solicitors is therefore complemented by a discussion of the response of magistrates to the courts' actions in striking down many summary convictions. Drawing heavily upon the weekly journal *Justice of the Peace*, Frank illustrates the degree to which local magistrates registered their confusion and annoyance over the uncertainties surrounding the extent of their jurisdiction in master and servant cases and the requirements necessary to secure a conviction.

In a broader context, the author's analysis of Roberts' cases rests less upon any significant revision of the received legal history of the Master and Servant Act than upon the specific legal and rhetorical tactics that were deployed during the fight against them. Here Frank shows that the resistance to the Act drew upon a variety of shared beliefs, many of which were counted as among the rights and liberties of freeborn Englishmen. Foremost among these was the right to a trial by jury, but labour's litigation efforts also brought into sharp relief questions about the impartiality of the law and the composition of the magistracy. Moreover, labour's campaign against the Act coincided with the Chartist movement of which Roberts was a leading figure. He was arrested, imprisoned and hounded by the authorities throughout the early 1840s, ran as a Chartist candidate for MP in the 1847 general election, and was a close associate of both John Frost, the leader of the 1839 Newport Rising, and Feargus O'Connor. Frank is certainly right therefore to draw direct links between Roberts' activism in legal cases and Chartist demands for the rights of labour. However, such an analysis may have been usefully expanded here to include some discussion of Roberts' role in the broader trade union movement of the period. Thus it remains unclear, for example, the extent to which Chartism's efforts to promote the nationwide affiliation of local unions were reflected either rhetorically or tactically in Roberts' legal efforts.

It is perhaps a bit hyperbolic to argue, as the author does, that organised labour's role in promoting and sustaining the legal attack upon the law of employment contracts during the 1840s and 1850s has gone largely unnoticed by previous historians. It is perhaps fairer to say that with the notable exception of Robert Steinfeld's work, labour and trade union historians have often avoided any sustained analysis of both the specific cases and the governing case law of this period. Therefore, Frank's account of the organised opposition to the 1844 Master and Servant bill, for example, provides an important corrective and the detailed recovery of several important employment cases is a welcome addition to the literature.

However, one must be careful not to too baldly overstate the case for the uniqueness of these events, especially since trade unions' resistance to the inequities of the employment law were noticeable across a very broad legal front and over a very long period of time. Indeed R. G. Kirby and A. E. Musson argued

very convincingly many years ago that the struggle for the repeal of the Combination Acts owed as much, if not more, to the organised pressure of trade unions than it did to the parliamentary tactics of Francis Place and others.<sup>(3)</sup> And, in this long struggle, legal counsel was not wanting. In London during the first decade of the 19th century, Francis Const and Mr. Knapp repeatedly appeared before both magistrates and sessions judges defending combinations of pressmen and compositors, tailors, carpenters, journeymen curriers, and boot-makers.<sup>(4)</sup> Moreover, it may also be suggested that not all of labour's legal struggles over the employment contract occurred before magistrates, petty sessions, or the common law courts. Other legal venues were equally accessible to both workers and employers and were equally the sites of conflict over these issues. In London, Birmingham and elsewhere, for example, courts of request tried many employment cases often in the guise of actions for debt. As with the combination laws, such litigation efforts were not new to the 1840s. Well before then, unions such as the London compositors of the 1820s and 1830s, encouraged and supported such legal action before the courts of request. Indeed, as Malcolm Chase rightly suggested some years ago, the study of the early decades of the law's impact is perhaps in much greater need of examination than its later years.<sup>(5)</sup> Therefore, while the extent and publicity of Roberts' actions may have been unique in the 1840s, he was indeed following in the footsteps of many who had gone before him and whose efforts have yet to be fully appreciated.

Although the book focuses on the efforts of Roberts, the author makes clear that during the 1840s Roberts' efforts were complemented by others who also took up employment cases. Attorneys and barristers in many parts of the country worked to defend employees from prosecution and free them from imprisonment. Whether this was the result of a surfeit of 'briefless barristers' or 'pettifogging attorneys' is not an important issue here although those charges were certainly hurled against Roberts and others who defended workers against their masters in the courts. Perhaps the most interesting of these men, however, were two London barristers, W. H. Bodkin and John W. Huddleston, both of whom regularly appeared before the Queen's Bench in actions initiated by Roberts. It is unfortunate that an explanation of this linkage is not developed further. It appears that both men were called to the bar by Gray's Inn and both were noted for their expertise in poor-law cases, as was Francis Const, incidentally. Bodkin was perhaps most well-known for his active participation in the Society for the Suppression of Mendicity and his actions there marvelously lampooned by Thomas Hood in his *Ode to H. Bodkin, Esq.* Perhaps even more interesting is the fact that both Huddleston and Bodkin served as Conservative MPs, Huddleston for Canterbury and Norwich and Bodkin for Rochester. Moreover, both received knighthoods under Conservative administrations: Bodkin under the Earl of Derby's administration in 1867 and Huddleston in 1875 during Disraeli's tenure as prime minister.

As the subtitle indicates, a fundamental argument of this book is that 'radical solicitors' were essential agents both in the efforts to fight the master and servant law in the courts and to educate trade unionists as to their inequitable status before the law. However, considering the political orientation of two of the most active barristers involved in many of these cases, perhaps the story presented here is a more complex one. Roberts was certainly an important and influential Chartist, but he also appears to have had many strange bed-fellows whose repeated participation in these cases merit further examination. Interestingly, as Mark Curthoys has pointed out, Huddleston was also one of the few Conservative MPs who campaigned in support of labour law reforms during the 1874 general election.<sup>(6)</sup>

Although followed by almost two decades of relative quiescence after the repeal of the Combination Acts, the master and servant law certainly eventually provoked some of labour's most grievous and vociferous complaints. Frank's detailed excavations of local press accounts adds a valuable dimension to this legal history and the author's efforts to contextualize Roberts' cases are, as I have noted, most welcome. That being said, however, those looking for a broader history of the laws and their effects may be somewhat disappointed. The focus upon Roberts and his activities necessarily directs attention to the application of the law in the industrial north: Lancashire, the West Riding, Staffordshire, and the north-eastern coalfield. This is a large area, of course, but it is also an area that witnessed significantly higher absolute numbers as well as rates of prosecution than much of the rest of the country.

One is therefore left to ask again a rather old question: Why was this form of coerced labour more popular

here than elsewhere? Many years ago, Daphne Simon suggested that the master and servant law was primarily the tool of the small master.<sup>(7)</sup> To some extent, this is true for portions of the industrial North, but it does not fully explain the law's equally extensive application in Durham and Northumberland during the 1840s where large capitalist enterprises dominated the coal industry. It also has been argued by many, including the author of this book, that the composition of the magistracy changed during the early nineteenth century when a new generation of magistrates with significant ties to manufacturing interests replaced the older landed and clerical elites. Yet in Durham and Northumberland, the trends are much more complex than that. On the north side of the Tyne, coal-owners appear to have been a constant presence on the bench throughout the early 19th century and there seems to have been no significant change in the composition of the magistracy during this period. In Durham, however, the composition and social function of the magistracy frequently was a source of conflict among the county elites. John Buddle, Lord Londonderry's colliery manager, for example, complained of the presence of clerical magistrates on the bench who, in the midst of the 1825 miners' strike, 'are really only fit for attending to the filiating of Bastard Children and other parish business; but quite unfit for carrying the Law into effect in times of commotion amongst turbulent bodies of Colliers'.<sup>(8)</sup> Robert Lee suggests that the turning point in the history of the Durham magistracy may not have come with industrialization, but instead came about with the curtailing of the Bishop of Durham's palatinate powers as *custos rotulorum* in 1836 and the subsequent appointment of Londonderry as Lord Lieutenant in 1842.<sup>(9)</sup>

Moreover, the extent to which master and servant law prosecutions were used as a method of intimidation in industrial disputes is still unclear.<sup>(10)</sup> There remains a significant gap in our understanding of why prosecutions for violations of the act were so high while imprisonments were relatively low. It is well-known that prosecutions under the Act numbered over 10,000 from the date at which national statistics became available in the late 1850s. However, a parliamentary return of 1856 lists 2,427 persons convicted and committed to prison for breach of contract in 1854 and 1,541 persons in 1855.<sup>(11)</sup> (Not surprisingly, the counties of Durham, Northumberland, Lancashire, and Staffordshire recorded the greatest number of imprisonment. In 1854, these counties accounted for almost 39 per cent of all of England's commitments and in 1855 approximately 32 per cent.) No one should diminish the significance of the numbers of convictions and commitments, but the discrepancy between the number of convictions and those of prosecutions bears further examination and analysis.

In conclusion, Frank offers an often useful and sometimes very valuable discussion of Roberts, his trade union litigation, and the summary jurisdiction of magistrates in master and servant case in several northern counties during the 1840s. The detailed recovery of these master and servant cases in the local press is to be much commended. However, broader questions concerning the impact of the law upon industrial relations more generally, the role of ideology, and the manifold differences in the regional and local application of the law still remain for others to answer.

## Notes

1. Raymond Challinor and Brian Ripley, *The Miners' Association: A Trade Union in the Age of the Chartists* (London, 1968); Raymond Challinor, *A Radical Lawyer in Victorian England: W.P. Roberts and the Struggle for Workers' Rights* (London, 1990).[Back to \(1\)](#)
2. Robert Steinfeld suggests that between the 1820s and 1840s trade unions were more focused upon the enforcement of contracts that secured a minimum amount of work, while they accepted the law's penal sanctions as a given. See Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge, 2001), pp. 123-4.[Back to \(2\)](#)
3. R. G. Kirby and A. E. Musson, *The Voice of the People: John Doherty, 1798-1854: Trade Unionist, Radical, and Factory Reformer* (Manchester, 1975), pp. 34-6.[Back to \(3\)](#)
4. Place Papers, British Library Add. Mss. 27799; *The Times*, 7 February 1803; 2 November 1804; 27 May 1806; 9 November 1810.[Back to \(4\)](#)
5. Malcolm Chase, *Early Trade Unionism: Fraternity, Skill and the Politics of Labour* (Aldershot, 2000), p. 111.[Back to \(5\)](#)

6. Mark Curthoys, *Government, Labour, and the Law in Victorian Britain: The Trade Union Legislation of the 1870s* (Oxford, 2004), p. 210.[Back to \(6\)](#)
7. Daphne Simon, 'Master and servant?', in *Democracy and the labour movement: essays in honor of Dona Torr*, ed. J. Saville (London, 1954).[Back to \(7\)](#)
8. Durham County Record Office, D/Lo/C 142(148), Londonderry Papers, Buddle to Londonderry, 20 November 1825.[Back to \(8\)](#)
9. Robert Lee, *The Church of England and the Durham Coalfield, 1810-1926: Clergymen, Capitalists and Colliers* (Woodbridge, 2007), pp. 144-6.[Back to \(9\)](#)
10. Malcolm Chase documents one such case in the Teesside iron trade in 'This Tremendous Conflict Now Raging Between Capital and Labour: Workers' Organisations on Teesside in the Mid-Victorian Period?', *Bulletin of the Cleveland and Teesside Local History Society*, 60 (Spring 1991), p. 25. Many thanks to Professor Chase for providing me with a copy of his article.[Back to \(10\)](#)
11. *Parliamentary Papers*, 1856 (441), 'Abstract of return of the number of persons summarily convicted and committed to prison in the several counties of England and Ireland, for breach of contract in neglecting work or leaving service, during each of the years 1854 and 1855'.[Back to \(11\)](#)

The author is happy with this review and does not wish to comment further.

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