Master and Servant in England: Using the Law in the 18th and 19th Centuries

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Master and Servant in England Using the Law in the Eighteenth and Nineteenth Centuries

DOUGLAS HAY

Introduction

'Private law' in English usage means the civil law, 'those relations between individuals with which the State is not directly concerned', but such definitions concede, however reluctantly, that issues of public policy always arise that involve the state. A central issue of public policy for most regimes is that of sustaining, stabilizing, explicating, and defending existing social relations in conditions of great social inequality. In the workplace, in England, the law that did so was termed, well into the twentieth century, 'the law of master and servant'.

This large corpus of law was based on medieval, Tudor, and Stuart legislation, reinforced in the eighteenth and nineteenth centuries by new enactments, and glossed in a large number of reported cases. The servants described and circumscribed by master and servant law constituted a large and variable class of people. The old terms servant, servant in husbandry, covenant servant, servant on a general hiring, recur in statute, case law, and court records. The unwritten, verbal 'general hiring' of the 'servant in husbandry', usually at Michaelmas, for a year, was the root category, derived from the Statute of Artificers and Apprentices (5 Eliz. I c. 4, 1562), and refined in the case law.

Other forms of service were fitted into the regime from the beginning, embedded in case law, occasionally modified, extended, or confirmed by statute. There was apprenticeship, with substantially similar requirements, but within the framework

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1 Earl Jowitt, Dictionary of English Law (London, 1959), tit. 'Law', from which the quotation comes. The research for this essay was supported by the Social Sciences and Humanities Research Council of Canada, and assisted by Chris Frank and Doug Harris.
of indentured service and instruction for a period of years. 'Covenant' servants were similarly engaged for longer than the year envisaged by the law of general hirings, but for adult occupations and with wages and other conditions instead of apprenticeship obligations. Both came within the jurisdiction of the same courts as did servants in husbandry. Many of the terms of the general hiring on verbal or written contract were extended by Parliament and the judges and magisterial practice to skilled workers in a wide variety of other trades, and indeed (for much of these centuries) to unskilled labourers working by the day or week, and to pieceworkers, and to domestic servants, and even to tradesmen contracting for particular jobs. Thus the coverage of 'master and servant' was very wide, but shifting over time in both definition and enforcement; several of the categories mentioned came to be excluded from the ambit of some of the statutes. Although the theoretical coverage of the law at any particular time can be determined, the numbers involved are conjectural. We can say that a large but unknown proportion (probably a majority) of working people fell under this body of law in the eighteenth and nineteenth centuries.

For those governed by it, the law defined much of the nature of employment. There were modifications of detail, sometimes significant detail, but a broadly similar model was in force over much of the period. There was the obligation for the servant to work faithfully, diligently, and obediently; for the master to maintain the servant in sickness and pay wages when due; for a quarter's notice on either side. There emerged clearly in the nineteenth century the legal doctrine of the 'entire' or complete contract, by which all wages could be forfeited if all the work contracted for was not completed. (There were continuing exceptions based on custom, as in London, where a month's notice sufficed.) The servant could sue in higher courts for unpaid wages (highly unlikely) but the judges had also given summary judgment to justices of the peace or other magistrates, which is where servants customarily turned for cheap law; and legislation through the eighteenth and nineteenth centuries confirmed and extended the practice. A substantial body of legislation gave similar summary remedies to masters for absenteeism, misbehaviour, unfinished or shoddy work, or failing to enter on contracted work. Masters' remedies were a combination of penal and pecuniary
sanctions: imprisonment of the servant for one to three months for breach of contract, possibly with a whipping; and/or a proportional loss (abatement) of wages; or the termination of the contract and, as we have seen, possible loss of all wages.2

The provision of penal sanctions for breach by the servant, but not the master, became the most contentious part of the law. The worker in breach was often treated as a criminal; the master rarely was. Employment contracts were associated with criminality, unlike other agreements. In an 1813 case in which the owner of a carding mill tried to use the terms of a century-old statute in a claim against a clothier, the Lord Chief Justice objected. "The penal provisions of this act shew strongly that it is not applicable to the adjustment of debts between parties of equal rank in trade: the person who shall refuse ... to pay the costs and damages adjudged against him, is liable to be committed to the county gaol or house of correction."3 Equally fundamental was the fact, already mentioned, that this body of law was enforced almost entirely in summary hearings before propertied laymen: borough magistrates and county justices of the peace. Only in the nineteenth century do professional paid (stipendiary) magistrates begin to act outside London, and there are not many of them.4

In mentioning these remedies I have made an elision from the terms of the Statute of Artificers (which mentions only one month's imprisonment and no orders for wages) to the case law and to a number of statutes, dating largely from the early to mid-eighteenth century, which provided for longer incarceration, in the midst of a host of terms defining lawful practices in a range of stated occupations, some from the great Statute, others not.4 Such statutes not only covered breaches by the worker, but "regulated the trade" with clauses dealing with apprenticeship, maximum (and sometimes minimum) wages and wage-setting, combination, embezzlement of materials, and indeed any of the common

2 On the statutes see below.
3 R. v. Heywood (1813), 1 M. & S. 624, at 628, a rare instance of equality in 13 Geo. I c. 23 s. 5. Penal sanctions for breach by the master were enacted explicitly in 1844, when masters of ships could be imprisoned for refusal to pay seamen's wages (7 and 8 Vic. c. 112). After 1848, other masters refusing to obey a justice's order for wages could be imprisoned on failure of distress (11 and 12 Vic. c. 43). In 1851 mistreatment of apprentices became punishable by imprisonment (14 and 15 Vic. c. 11). The only earlier instances of penal sanctions against masters of which I am aware were offences against public policy: paying excess wages, as in 5 Eliz. c. 4 (1562) and 7 Geo. I st. 1 c. 13.
4 See below, n. 35.
points of conflict in particular trades. That conflict could be between masters and journeymen, or between those who had served a full apprenticeship and those who had not, or between large capitalists who wanted to hire the latter in opposition to small masters who wanted the older structures of the trade respected. All such clauses depended on the Statute of 1562 for the interpretative structure, often the spirit, and sometimes direct inspiration. For London tailors, for example, it was an offence to refuse to enter a contract, if one was not employed, by an enactment of 1720, a recapitulation of the enforced labour clauses of the great Statute.

The term servant, then, was ambiguous in both legal and demotic usage. The classic, paradigm instance of the 'servant in husbandry' turns out not to have been paradigmatic at all, and assuming that it was leads easily to the genetic fallacy, the assumption that a putative origin explains the later development. I shall return to the importance of diversity in master and servant law in England, and the social and economic origins of the diversity. Here, let me simply emphasize that justices of the peace, high court judges, and the general public all used the term 'servant' with a series of overlapping connotations, and probably had done so for centuries.

Occasionally (and increasingly) this bothered the high court judges, and they inconvenienced everyone else by trying to nail the term down, sometimes amplifying it, sometimes narrowing its import for particular kinds of cases. But in general, in the eighteenth and nineteenth centuries, the answer to the question of who was the servant envisaged by the law of master and servant was given by the magistrates entrusted with the summary administration of the law. We must look in the jails, and in justices' hear-

5 For the general context, see D. Hay and N. Rogers, English Society in the Eighteenth Century: Shuttles and Swords (Oxford, 1997), chs. 6–9.


ings, to see who servants and masters were, and the use they made of this distinctive body of law.\(^8\)

In this essay I present some preliminary evidence suggesting a change in the nature of summary justice, including the use of the penal sanctions, between 1750 and 1850. Unenforced law may still generate social meanings, but it is less likely to do so than law which brings people before courts. My argument is that from the mid-eighteenth to the mid-nineteenth century, the law as it was applied became more identified with the interests of employers. Imprisonment became more common, and harsher, and in general outcomes became more favourable to employers; the advantages of the law for servants diminished, and remedies against masters became more difficult for them to use.\(^9\)

In constructing this (or any) argument about the use of the law there are two large problems: the specific and often local nature of the law, and the incompleteness with which its enforcement was recorded. The specific and local nature of the law was based on the fact that its precise terms were often defined, by statute, for particular trades, but how both statute and case law were enforced depended also on the structure of local industry and indeed on ‘the custom of the trade’, which had the force of law when recognized in the high courts.\(^10\) The remedies that the law gave to both masters and servants were therefore embodied in local, often highly specific legal cultures, which legitimized their claims. Such bodies of law were not static. In the eighteenth century they were the product of trade organization, social structure, legislation, and continual renegotiation. Because they differed from region to region, even from parish to parish in some cases, the way in which


\(^9\) Although important issues surrounded the status of apprentice, and the justices were much involved with them, in what follows it has not been necessary to distinguish them from other workers, except where noted.

\(^10\) See below.
the law was used, what law was used, how often it was formally enforced, differed greatly. We can see that variability in the national statistics after 1858, but it undoubtedly characterized the eighteenth-century use of the law as well. Unfortunately our records of the pre-statistical period are very uneven, and rarely directly comparable; even after 1858 the national statistics are often misleading. Our inferences about the variations of local practice must be based on scattered and often idiosyncratic sources.

Before the 1850s we have widespread local evidence, but no national statistics; before the 1790s the evidence for most parts of the country is even thinner. Broadly speaking, we can assess enforcement from three sources: the records of justices (sitting alone and, increasingly from the early nineteenth century, in petty sessions); the registers of houses of correction and other prisons and jails where they distinguish master and servant offences; and contemporary statistical series, notably the annual parliamentary returns of summary convictions from the late 1850s. Each provides details about different aspects of enforcement, making long secular trends a matter of argument, but comparisons of some points are possible across all three sources. It is worth noting that the cases that appear in the Law Reports are highly unrepresentative, in many ways, and especially as guides to enforcement, although important for an understanding of both judicial thinking and political conflict.

The work of the justices, 1700–1825

Because master and servant hearings were overwhelmingly summary rather than in courts of record, they are only preserved by the rare survival of the personal notebooks of some conscientious justices who recorded their cases, or where (usually not before the nineteenth century) records of petty sessions and borough courts are preserved. There was enormous variability in the diligence of justices: typically, a handful of men did as much business as a hundred of their less active colleagues. The few records of justices’ activity must therefore be interpreted with caution.

Some eighteenth-century JPs’ notebooks show very little adju-
dication of employment disputes. A busy Kent justice living near Chatham, Gabriel Walters, who acted in over 300 cases of official business in a period of twenty-four months, dealt with only five disputes between masters and servants.\textsuperscript{11} William Brockman, another Kent justice, dealt with about eight cases a year, a fifth of his total business.\textsuperscript{12} Ralph Drake Brockman, a Kent justice in the 1770s, dealt with an average of nine cases a year, a third of which were master and servant disputes.\textsuperscript{13} In Kent there was also a steady run of such cases at petty sessions, where more than one justice sat; where the records survive, the numbers are comparable for those recorded by single justices.\textsuperscript{14}

Such variations in activity are found everywhere in the country, because of the enormous differences in social and occupational geography, and in individual justices’ zeal. When we look more closely at the work of five individual magistrates who left fuller records we can begin to discern some patterns. Devereaux Edgar was an active Suffolk JP in parishes just north-west of Ipswich for a number of years between 1700 and 1716. In most years he recorded about 200 instances of legal business: committals, examinations, warrants, etc.\textsuperscript{15} About 10 per cent of his entries involved labour disputes brought before him by masters or servants: in these years he dealt with over 300 such cases. About half (149) were complaints by masters, usually against servants who had deserted (89 cases) or misbehaved (25). But almost as many cases (121) were brought by servants against their masters for unpaid wages (117 cases), mistreatment (9), or to ratify a mutually agreed parting (8). Almost all the cases involved farmers and their servants, with a few disputes brought by rural tradesmen like blacksmiths or bricklayers, and by gentlemen.

In the cases brought by masters we know that in over 10 per cent of the cases Edgar committed the servant to the house of correction (17 cases). Probably a high proportion of the proceedings for desertion resulted in the return of the servant to work, with the threat of prison in the background. In the case of servants bringing complaints for non-payment of wages, he made

\textsuperscript{11} Norma Landau, \textit{The Justices of the Peace, 1679–1760} (Berkeley, 1984), 177.
\textsuperscript{12} Ibid. 178.
\textsuperscript{13} Ibid. 178, 195.
\textsuperscript{14} Ibid. 222, 224–5. See also 247 for evidence of the continuing concern of some Kent justices for wage regulation as late as 1732.
\textsuperscript{15} Suffolk RO, qS 347.96, vol. i.
wage orders in almost every case (113). Masters and servants, then, used his services in about equal numbers, and probably when there was a high expectation of success, although Edgar does not record the outcome of most cases.

The notebook of William Hunt, who was a justice in the heart of rural Wiltshire in the 1740s, does provide that information. He recorded almost 600 acts of a wide variety that he performed as a ‘single justice’ over a period of five years, a high level of activity for a rural magistrate. Yet in that time Hunt, administering the law in a deeply agricultural setting, heard only seventeen complaints under the master and servant statutes, a third the number Edgar in Suffolk would have expected. Five were brought by masters: against a thatcher, a labourer, and two farm servants for leaving work without leave, and one woman for working for a new master without giving notice to the first.16 Some of these cases came before Hunt on summons, some on a warrant of arrest, but in all the dispute was resolved by the servant returning to the master, usually by agreement, and sometimes paying the cost of the proceedings or the time lost to the master. All these cases took place before the Act of 1747 (which extended imprisonment) came into effect, but imprisonment was none the less an option in each; it is notable that that was not the course taken.17 More often, Hunt was the recourse of turned-out or unpaid servants. He noted a dozen cases, probably all of them brought by farm labourers or servants in husbandry, in each of which he ordered payment or the parties agreed after the servant obtained a summons or warrant from Hunt. The sums ranged from £1 to £1 1s.; in one case a labourer who complained of unpaid wages and clothes held by the master who dismissed him was admitted again to his service.18

Thus the statutes were by no means a dead letter, but the number of cases in a few rural parishes, if they were overwhelmingly agricultural, was usually small. In rural Wiltshire, in the 1740s, the penal clauses of the Master and Servant Acts were

17 On the statutory basis for imprisonment, see below.
18 Justicing Notebook of William Hunt, entries 102, 246, 250, 251, 323, 345, 385, 386, 423, 433, 449, 469. One other case, entries 451 and 453, was a dispute within a family, ultimately dismissed. Cases for unpaid wages of course were often ways of trying cases of unfair dismissal, an issue on which the justices had an extensive but changing separate jurisdiction.
hardly used at all against workers, and summary justice was used twice as often by servants seeking the payment of their wages. Imprisonment was never necessary: the justice was able to secure agreement between the parties (although the threat of imprisonment was undoubtedly part of the equation).

To explain the evident differences between these examples from Suffolk and Wiltshire (more masters’ cases and greater use of imprisonment by the justice in Suffolk) requires detailed local work. The explanations may be a more attractive market for labour in the area of Ipswich (encouraging desertion), the convenience of a house of correction there (and another was built at Woodbridge in these years), or a range of other factors that influenced the local culture of labour relations (some of them discussed below).19

The activity of Richard Wyatt, a justice of Chertsey in Surrey, dates from the 1760s and 1770s, and has some new elements. He charged 2s. for orders, and 1s. for the copy served.20 Of some 224 cases of all kinds over nine years, there were four complaints by masters, three of them for quitting without notice or without consent, and one for disorderly conduct. Two of the four accused servants were imprisoned. One was an iron worker in a works at Weybridge, committed to the house of correction for a month, but subsequently released, as Wyatt ruefully noted, ‘upon a writ of habeas corpus, no adjudication appearing on the mittimus which is necessary to be inserted in all committments upon penal statutes’.21 In the same period, eleven workers came before Wyatt to begin legal proceedings for unpaid wages (sometimes also alleging violence by their employers).22 Almost all of these were servants in husbandry under a general (yearly) hiring, but a few were men employed on piecework, such as broom-making or brickmaking. The willingness of magistrates to hear pay claims by pieceworkers, and by men in a wide range of industrial trades not explicitly mentioned

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22 Entries 70, 84, 118–19, 120, 130–1, 161, 168, 176, 181, 301, 309. No outcomes are noted.
in the statutes, was paralleled, for the eighteenth century and at times in the nineteenth, by sanction for the practice in the high courts.

In the same years Sir Thomas Ward was an active magistrate in rural Northamptonshire, and here we begin to see a marked contrast to the largely agricultural pattern described above. First, master and servant business bulked much larger in his caseload: about 25 per cent of the business for which he charged a fee, compared to the 10 per cent of Edgar's work, 7 per cent of Wyatt's hearings, and the mere 3 per cent of Hunt's in rural Wiltshire. The reason is suggested by the occupations: 11 masters were farmers (and another 6 'Mr.'), but 13 were weavers or wool-combers. There was a similar proportion of textile workers among the servants. The setting was still rural, but Ward was dealing with a clientele found in many parts of the countryside in the eighteenth century. Rural production was the dominant form of industry. Parishes where the putting-out system and/or artisanal home production produced cloth, nails, scythes, or the hundreds of other products were populous, lively places where men and women in the trade had many reasons to appeal to a country gentleman justice of the peace as an adjudicator. Whereas a justice like Hunt heard mainly wage and leaving-service cases, Ward also dealt with charges of neglecting work, refusing work, leaving work unfinished, misbehaviour, and embezzlement brought by masters. Most cases brought by servants were still for wages (or pay for piecework), but also for mistreatment and wrongs to apprentices. Although servants brought most cases, the ratio was not so high as in the Hunt and Wyatt diaries: 37 of 66 cases. Unfortunately Ward's diary does not give outcomes of the hearings (it is a record of process issued) but it does tell us that he issued a mittimus to commit a worker to bridewell on only one occasion. Ward charged fees of 1s., usually, compared to Wyatt's 2s.: for most poor labourers this represented about a day's wages.

Finally, a magistrate in an almost entirely industrial setting. Macclesfield in Cheshire was one of the most important sites of silk-weaving outside London, the trade having been established there since the 1740s. We have the record of one active borough

23 Based on 1767 and 1768 cases: twenty-nine master plaintiffs, thirty-seven servant plaintiffs.
24 And seven other trades.
justice in the 1820s, Thomas Allen. By then the town had a population of almost 18,000, and there were said to be 10,000 silk weavers working there (presumably the estimate includes those in some nearby parishes.) Wages were 11s. a week for an average of sixty-two hours’ work making ribbons, squares, shawls, and handkerchiefs. In one year (April 1823 to March 1824) Allen dealt with 100 master and servant cases, out of about 1,000 hearings of all kinds. (The ratio is lower than Ward’s because borough magistrates dealt with a much larger number of petty thefts, and public order offences, than rural justices.) Masters brought 60 of the cases, servants (including apprentices) 40. Apart from the predominance of masters as plaintiffs, the patterns are similar to those in Ward’s industrial parish a half-century before: the masters complaining largely of servants who were absent or leaving service (40), or not completing work in time (13). Most of the servants’ complaints were for wages (35 cases).

Allen’s notes suggest how cases were decided, and the pattern is similar to that in other sources. About 42 per cent of cases with known outcomes were ‘settled’: the parties, aided by the magistrate, came to an agreement that did not require him to make an order. Where an order was made, servants won in 53 per cent of the cases they brought (92 per cent if settled cases are included); masters won in 59 per cent of their cases (94 per cent if settled cases are included). In other words, both masters and servants had substantial success in Allen’s court, both in making settlements, and in winning where a settlement was not possible. Indeed, it is often the case that either party might have brought the case before the court, since disputes in such summary hearings, over the entire period, often revolved around a common set of facts: dispute about quality of work, dispute about wages, or both, with one party able to bring charges of disobedience, poor work, or absenteeism, and the other party able to bring charges of being turned off, or unpaid wages. This interlocking nature of master and servant disputes makes generalizations about the behaviour of employers, or workers, derived solely from summary

25 Notebook of Thomas Allen, JP and Mayor, 5 Mar. 1823 to 24 June 1825, Cheshire RO, D 4655. The volume was rebound at some time, with signatures misplaced; the pages have been reordered chronologically for the following account.
statistics, often misleading in a jurisdiction (like England) where both can have recourse to the law.

Of course, litigants choose to act only where there is a reasonable chance of success. And we should not assume that Allen was seen to be giving satisfaction to both sides of the trade equally often. An important reason was a new emphasis on imprisonment, caused partly by the predominance of master plaintiffs, partly by willingness to use the most drastic part of the law. Commitments to the house of correction were made in 8 per cent of cases (13 per cent of those brought by masters). The charges were for leaving service, leaving work unfinished, absenteeism, being a disorderly apprentice. The sentences were one month (3 cases) or three months (5 cases) in prison. The ‘settlement’ of masters’ complaints against servants was made in the shadow of the prison, and it is highly likely that many conformed to the pattern seen so often, and emphasized in all accounts of the nineteenth-century law: forced return to work, usually with the comment that the master ‘forgave’ the offender. And it is clear that the silkmasters of Macclesfield were more actively using the law than the farmers of rural parishes in the eighteenth century.

The pattern of magisterial activity in the first half of the nineteenth century, during a period of very rapid population growth and concentrating industrial production, can be traced in detail in a much larger number of petty sessions and other records than exist for the eighteenth. Greater activity by masters, a greater recourse to the more penal sanctions, appears to be common in the petty sessions records I have examined for the nineteenth century. By the mid-nineteenth century, with more highly organized petty sessions (several justices sitting together for the regular transaction of business), bigger jails, more stipendiary magistrates and policemen to assist them, and regular reporting of such cases in the press, the taint of criminality ran through master and servant proceedings from the initiation of process. Servants were almost always brought before the court on arrest warrants, in custody; masters were almost always summoned. Petty sessions registers begin servants’ cases with the words ‘brought up in custody’, and the defendant is usually referred to as ‘the prisoner’, the language of the criminal courts. In rural petty sessions,

28 I am currently working on a large sample of such records.
29 e.g. Berkeley (Gloucs.) petty sessions 1866–71, Gloucs. RO, PS/BE Mt/1.
where the participants were almost all farmers and farm servants, it appears from my work to date that there had been significant change from the eighteenth century in the distribution of cases. There are fewer claims for wages. In some areas the business of the magistrates is dominated by the penal proceedings brought by masters; young servants are often committed to prison for very minor offences. But some of these patterns can also be inferred from more continuous runs of records available in some parts of the country: the registers of houses of correction.

The evidence of penal sanctions

Most of the explicitly penal legislation was enacted in the eighteenth century, and only consolidated thereafter. The Statute of Artificers, which was the general governing statute for judges and for Parliament until the early nineteenth century, provided imprisonment, fine, or loss of wages for leaving work, misbehaviour by the worker, and a few other offences. It justified a practice which often had little more specific content.30 We have convincing evidence that a very expansive attitude to their own powers, not often restrained by the high court judges, probably informed magistrates in the ensuing centuries, or at least by the beginning of the eighteenth century. The erection of houses of correction in the late sixteenth and early seventeenth centuries provided means of enforcing the penal sanction more systematically.31 Where statutory justification was sought, in the seventeenth and early eighteenth centuries it was undoubtedly found in the very wide received interpretation of the words ‘idle and disorderly’ in 7 James I c. 4.32

The early eighteenth-century practice, at least in London, was for committals to the house of correction of runaway, absent,

30 Although Shoemaker's suggestion that it emphasized private resolutions seems doubtful; the words 'according to the equity of the case' were to become common as a description of the kind of lawfully binding adjudication lay judges could employ; Robert B. Shoemaker, Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex c.1660–1725 (Cambridge, 1991), 83.
31 Innes, 'Prisons for the Poor', 42–122.
32 Shoemaker, Prosecution and Punishment, 37–9, 54–5. In this it was a counterpart to the wide interpretation of 'servant' and of the wage-setting clauses of the Statute of Artificers, for the benefit of the servant: Hay, 'English Judges'.

recalcitrant, or rude servants to be short but severe. Almost three-quarters of committals were for less than two weeks; about half of those committed were whipped and put to hard labour. The chastened servant or apprentice was then released to her or his master; new misbehaviour meant a return to the house of correction. In Middlesex and Westminster, essentially London (outside the City), 7 per cent of all committals in 1663–4, 1690–3, and 1721 were for master and servant offences. In 1721 they amounted to 56 out of a sample total of 711 committals for a wide variety of petty offences. But, to reiterate, they were committals made under the heading of idle and disorderly behaviour.

Then between 1720 and 1792, ten Acts of Parliament specifically provided imprisonment for leaving work and/or misbehaviour. Two of the four earliest ones, in the 1720s, marked an important departure: two and three months in the house of correction, rather than the traditional maximum of one month derived from one of the clauses in the Statute of Artificers. Moreover, almost all the eighteenth-century master and servant statutes introduced significant new language: all but one specified that the imprisonment was to be with 'hard labour'; and two, an important Act of 1747 and another of 1792, introduced with Proclamation Society backing, added that the prisoner, once in the house of correction at hard labour, was ‘to be corrected’, that is, whipped.

Some of these statutes were clearly responses to the increasing activity of the high courts, notably King’s Bench, in scrutinizing justices’ committals and convictions. It can be argued that in many respects these Acts put on a firm statutory base what had

33 Shoemaker, *Prosecution and Punishment*, 174–5, 188–9. My survey of early 18th-century provincial houses of correction shows (so far) very few committals, but the sources are extremely patchy.
34 Ibid. 89, table 2.
35 9 Geo. I c. 27 (1722); 12 Geo. I c. 34 (1725); 7 Geo. I st. 1 c. 13 (1726); 2 Geo. II c. 36 (1729); 13 Geo. II c. 8 (1740); 20 Geo. II c. 19 (1747); 22 Geo. II c. 27 (1749); 6 Geo. III c. 25 (1766); 17 Geo. III c. 56 (1777); 32 Geo. III c. 57 (1792).
36 12 Geo. I c. 34 (1725, woollen trade); 7 Geo. I st. 1 c. 13 (1726, tailors).
37 6 Geo. III c. 25 (1766).
38 20 Geo. II c. 19 (1747); 32 Geo. III c. 57 (1792). The society was named after, and intended to implement the reforms of, a proclamation by George III against vice and immorality, 1787. The proclamation itself was the product of moral entrepreneurship.
39 Hay, ‘English Judges’.
formerly been possible informally when justices' actions were less likely to be reviewed by the high courts. But the cumulative effect of enactment, combined with the cumulative effect of the provision of new places of incarceration, produced a real change: from being a place of quick if painful correction (hard labour and a whipping), houses of correction became places where sentences were much longer, and where the words 'hard labour' (and, possibly, 'correction') were also transformed.

The sentences of a week or two characteristic of London in the early eighteenth century can be contrasted with those of houses of correction in industrial and agricultural regions of the provinces 100 years later, where the average sentence passed, and served, was about a month for most master and servant offences (absconding, absence, refusing to work, neglecting work, disorderly apprentices), although individual sentences ranged from one week to three months. For the offence of refusing to enter into work on an agreed contract, the average sentence served was two weeks.40

It is probable that rates of imprisonment for breach of contract were in part dependent on the relationship between the number of places in a house of correction or jail, and the demand. An instance is Gloucestershire, where the importance of the woollen industry made the penal provisions of the statutes of considerable importance. John Howard's survey of the Gloucestershire bridewells in the 1770s found that fewer than 100 prisoners a year had been held in all of them, and given their state it is highly unlikely that so many could have been accommodated.41 (Only a proportion of these, it will be seen below, would have been master and servant offences.) From 1791 the four new houses of correction in that county had 160 separate cells, and an average annual rate of committals of 242.42 While the number of imprisoned workers in the eighteenth century may (or may not) have been limited by the capacity of the very insecure and unhealthy bridewells, that was certainly not the case in the early nineteenth century. Gloucestershire was over-equipped: up to 1807, the four

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40 Calendars which show all committals (rather than simply how many prisoners were incarcerated at the times the courts sat), where they survive, are our most complete source.
new houses of correction never had more than half their cells occupied.

Sir George Onesiphorus Paul, the justice of the peace who was architect of the new system in Gloucestershire, argued in that year that a further crucial influence on the numbers committed was the distance of the bridewell from the committing magistrate’s residence. Using the example of a magistrate punishing an apprentice who slept away from home, he suggested that a sentence of fourteen days’ detention would only be passed if the bridewell was nearby. If it were 40 miles away, involving expense and delay in getting the apprentice back to work, the magistrate would choose a different penalty. Paul pointed out that most committals were from parishes relatively near the bridewells.43

The Gloucestershire bridewells began filling up, however, in the ensuing decades, and a high proportion of those imprisoned were workers in breach. In seventeen years between 1790 and 1810, they amounted to 835, which was 32 per cent of all cases, and an average of 49 a year.44 The increase in the numbers imprisoned in an agricultural region of Gloucestershire to 1828 was about twenty times greater than what might be expected from population growth;45 a similar pattern can be seen in Staffordshire (Fig. 1). In that rapidly industrializing county (including the Potteries and much of the emerging Black Country), between 1792 and 1814, 930 men and women were incarcerated under master and servant statutes, an average of 40 a year, and 39 per cent of all cases resulting in incarceration in the house of correction.46 Between 1792 and 1798 master and servant cases in Staffordshire never accounted for more than a third of the incarcerations in the bridewell, and often for far fewer, and the total number ranged

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43 Ibid. 106. Paul also deplored the fact that magistrates in the Forest of Dean, near Gloucester city, continued to commit cases properly meant for houses of correction to the county prison there. These observations suggest that a comparison of committals per capita has not much meaning, unless for small jurisdictions close to houses of correction. It also may account for some of the variation in the decisions and sentences found in the notebooks of different magistrates in different parts of any given county, as well as different parts of the country.

44 Gloucs. RO, Q/Gli 16/2, Q/Gn4.

45 For the reasons cited in the previous paragraph, the population at risk cannot be accurately estimated, but the county population increased by 51% between 1801 and 1811: Phyllis Deane and W. A. Cole, British Economic Growth 1688–1959 (Cambridge, 1969), table 24. 103.

46 Staffs. RO, D(W) 1723/1, 2.
between 2 and 23 a year. A marked change in 1799, 73 cases, or almost 60 per cent of the total, was thus unusual, but it also was the beginning of a longer period of generally higher totals, in which every year except 1801 was higher than all the years before 1799, often by a large margin.

Analysis of the published mid-nineteenth-century Staffordshire statistics has shown that in broad terms, the use of master and servant increased during periods of strong economic growth, and greatly declined in periods of depression. Although the economic indicators for the late eighteenth and early nineteenth centuries are less complete, the same pattern appears to hold, especially if individual trades are considered. (In the Midlands, for example, war stimulated the iron and depressed the pottery industries.) Preliminary analysis also suggests that areas with concentrations of particularly high-wage industries with a multiplicity of shops (notably in the Black Country) showed most use of master and servant.

How far the detailed evidence modifies the conclusions drawn by Simon in her pioneering article about the typical employer using

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master and servant (marginal men in small shops) in the mid-nineteenth century remains to be seen; at the least, the evidence suggests a more complex picture. There does seem to be a strong similarity to the use of master and servant in early twentieth-century Africa: the use of the law in circumstances where low-wage employers were trying to prevent the siphoning off of labour by high-wage employers. 49 The Midlands was an area of high wages in many of the new industries, but also of small workshops where there were probably large numbers of marginal employers, competing against precisely such high-wage competition. The contract of employment is, like all contracts, an attempt to limit the constant reallocation of resources in a free market, limiting that freedom for other ends, notably the security of existing contracts. Workers' interest in unilaterally ending disadvantageous contracts to make better ones is one of the problems that the law of master and servant (or the damages of more ordinary contract law) is designed to limit. One can expect recourse to the law where the economic inducements to breach, and the damage caused by breach to the first employer, are high. Where employers are able to agree on fixing wages, there will be less need to resort to legal compulsion: the compulsion of wage labour will act equally beneficially (assuming equal costs) for all employers. But where employers actively compete against each other then we can expect a lot of prosecutions. Many employers, of different sizes and economies of scale, can be expected to produce a pattern of high prosecutions. Those prosecutions will tend to occur in high-wage years, that is, years where there is insufficient labour (particularly skilled labour) to supply all employers at a low wage. But there will be different, sometimes contradictory, cycles for different industries.

Changes in lengths of sentences provide another long-term comparison. In the seventeenth and early eighteenth centuries, 60 per cent of the Middlesex and Westminster workers in the house of correction had sentences of less than two weeks. A hundred years later in Staffordshire, only 7 per cent of all sentences were this short; the average length was over forty days, the most common sentence was one month, and there were many of two and three months, reflecting the penalties enacted in the eighteenth-century statutes. (To keep our perspective, we should note

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49 See the studies in a forthcoming volume, edited by Paul Craven and myself, dealing with the use of master and servant throughout the British Empire.
that the average length of sentence for petty larceny was six months, and for an unwed mother, 10.3 months.) But something else had also changed. At the beginning of the eighteenth century most of the imprisoned servants in London were also whipped. By the early nineteenth century, at least in Staffordshire, no such sentences are recorded. It also appears that few were whipped in at least some other parts of the country in both the early eighteenth and early nineteenth centuries. The very full notebook of Edgar cites only three cases, one of them an incorrigible apprentice of 11 years of age; in Gloucestershire, the house of correction records record only one adult whipped (for embezzlement, not breach of contract) and several apprentices, again juveniles, for running away. 50

Yet we know that in some places, in some circumstances, whipping was used in a most exemplary way. It was provided for in the general statute of 1747, under the rubric ‘correction’. 51 That statute was judicially explained in a case which made abundantly clear how much it was still part of the law; how much whipping was actually used needs further local study.

**Hoseason** was a prosecution of a Norfolk JP of that name who had heard and decided the case of one of his own servants under the 1747 Act. His bailiff brought before him a labourer of 18 named Generel Batterbee who worked on Hoseason's farm, and Hoseason convicted him for misconduct and refusal to do his work. Batterbee had been in the midst of his dinner after a morning of loading wheat, and refused to cut short his hour’s rest at the demand of the bailiff. The bailiff kicked and punched him, knocked him down, kicked him while on the ground. The servant went to Hoseason (whether as his magistrate or employer is unclear) to complain. Hoseason struck him in the face and immediately made out the warrant for his committal to the house of correction for one month at hard labour, and to be whipped at its conclusion. 52 Before the month expired a neighbouring gentleman appealed to Hoseason (on behalf of Batterbee’s father) to have the labourer discharged without the whipping, and commented that ‘the law will not allow a Man to act as a Judge in Cases in

50 Above, nn. 17, 46, 48.
52 R. v. Hoseason, 14 East 605; Battersby in the report.
which he is interested’, a common sentiment (and an echo of Lord Mansfield). Hoseason was unrepentant:

My warrant does not of course express one third of the complaints made against him for frequent disobedience of orders, neglect of duty, contempt to his master, etc etc. for which he had been frequently called before me, and admonished without effect. At the time this last complaint was made to me upon oath, there was no other magistrate in Marshland, and I felt it my indispensable duty conscientiously so to punish him. Feeling I have done my duty, I never shall regret having committed him to Swaffham Gaol to be corrected for a month.

Nor did he, as it turned out. Batterbee served his month, and before release was whipped twenty lashes on his bare back, with a cat of three cords; he was ‘severely whipped and was much cut and bruised’.53 In his judgment (largely devoted to an analysis of just which statute justified whipping, a point of confusion) the Lord Chief Justice criticized Hoseason, saying, ‘it was a most abusive interpretation of the law for a man to erect himself as a criminal judge over the servants on his own farm for an offence against himself’. None the less, Lord Ellenborough concluded that the JP acted from an ‘error of judgement’ rather than ‘any bad motive’ and he refused to grant a rule for an information against him. He made no comment on the appropriateness of the penalty to the offence.54 We do know that he was enthusiastic about the virtues of imprisonment: in another case he had observed that the 1747 Act gave ‘masters an easy method of correcting trifling misdemeanours and ill behaviour in their workmen and labourers’.

How common whipping was as an ultimate deterrent, and whether it increased in the early nineteenth century, remains to be shown. It is clear that imprisonment became more important. The huge increase in custodial capacity of the English state, both in county prisons and in houses of correction, as well as penitentiaries, has been remarked by many historians of the period 1790 to 1850. The opening of a large number of local prisons in England and Wales greatly increased the options of magistrates to make committals in master and servant cases. Perhaps less atten-
tion has been directed to their use for short-term sentences of workers, but contemporaries were often quite clear about it. Bedford's second new prison, opened in 1820, was built to accommodate the usual range of petty offenders, but the second category mentioned, after poachers, was 'servants in husbandry and other labourers for misbehaviour in their employment'.

If the legislating of longer sentences in the mid-eighteenth century, and the provision of more cells in the late eighteenth century, both increased the bite of the penal legislation, so too did changes in the organization of prison and house of correction discipline. Hard labour, prescribed by most of the new eighteenth-century statutes, became transformed by the length of sentences, but also, eventually, by the development of treadmills and other more organized punishments in the third and fourth decades of the nineteenth century, replacing the haphazard provision of work that Joanna Innes has shown characterized the early modern workhouse.

In these circumstances older workers as well as younger ones found themselves serving sentences in particularly humiliating conditions. Although the great majority of prisoners were young men and women, the laws were by no means limited to younger workers and apprentices (Fig. 2). Women constituted 15 per cent of committals to prison on master and servant offences, and were the majority of those identified as cotton workers or 'servants', which usually meant servants in agricultural labour: general labour, dairy work, and so forth. There was a marked periodicity in prosecutions for some offences, notably running away, being absent, absconding from service. Fig. 3 reflects regional variations and the lack of winter work in agriculture and sometimes in industry (due to weather conditions), the greater demands made by farm labour around harvest time when their bargaining position was best (July, August), and the fact that so many annual hirings concluded and began in October, leading to prosecutions when servants abandoned oppressive masters early in the contract, when few wages were owing.

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55 Beds. RO, Q/S rolls 1820/69. 56 Innes, 'Prisons for the Poor'.
57 'When the spring of the year came and labour bore a high price... a great number of agricultural labourers found themselves in consequence the inmates of a gaol because they attempted to break their contracts with their masters.' Simon, 'Master and Servant', 191, citing Hansard. Fig. 3 suggests the crucial period was harvest.
Diversity

There was always much regional distinctiveness in the direct use of master and servant law, as we see from the evidence of the justices’ notebooks and petty sessions, as well as the mid-nineteenth-century statistics. Diversity, but not a simple pattern of differences between large geographical areas. There were some such large areas, some of them enduring into the twentieth century: hiring fairs in east Yorkshire, for example, continued to place adolescent farm servants, as horsetrainers, within a structure of legal expectations still largely defined by the tradition and terms of the general hiring. But the principal variations in master and servant law in practice, a diversity that sometimes almost seems to ignore the unifying force of legal decision in the high courts, arose from the unique structures of different trades, and the sometimes covariant, sometimes independently determined, nature of the magisterial bench.

In places like Macclesfield, or anywhere a trade was still organized in the eighteenth and early nineteenth centuries within an older structure of legislated protections, mutual adjustments, and

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negotiation between masters and men, the adjudication of their disputes took on a different flavour. Such structures continued in several important silk-weaving centres: Coventry, because (it has been argued) common lands encircling the town prevented expansion and dilution of the trade; London because riot and sabotage were easy to conduct and difficult to repress, and Parliament bought peace by giving workers and small masters much of what they wanted, and large mercers had to accede. The justices in Spitalfields in London administered a complex system of wage-rates disguised as piece-rates, given the force of law by parliamentary sanction, until well into the nineteenth century. In other centres, outside the so-called ‘Spitalfields Acts’, it none the less appears that magisterial activity was largely the ratification of understandings that obtained throughout the trade.

The silk industry, of course, was a highly specialized craft, but one point that must be made in considering the diversity of experience of master and servant law is that dozens of trades in England had their own version of the law.59 That is, a set of values,

claims, negotiated positions, distinctive to the trade, and called the custom of the trade, both shaped and was shaped by the statute and case law. Tudor and Stuart legislation in the woollen industry created expectations, for example, about apprenticeship, about fair working, and about fair wages. Those expectations determined what conflicts, what issues, would come before magistrates considering unpaid wages, unfair dismissal, incompetent weaving, or unfinished work. The force of such expectations, given greater resonance (or diminished) by legislation got by riot or by lobbying, was great in part because of its antiquity. Perhaps half of adult male labour was primarily agricultural in about 1700, but the figure understates the importance of industrial work, due to the extent of women’s work and dual occupations, well into the eighteenth century. And this pattern was very old. Social and labour historians have pushed the history of large-scale industrial production, in putting-out networks to home-workers, or in artisan home production, back further and further into the seventeenth, sixteenth, fifteenth centuries. It was the antiquity of trade custom which gave it so much force in the eighteenth century, in a society that until about 1800 valued antiquity, particularly as a source of law.

The destruction of the traditional claims recognized by local legal cultures around particular trades is a large story that cannot be recapitulated here, but its main elements are the legislative and judicial erasure of apprenticeship, wage-fixing, protection from new machinery, and most of the other most-cherished parts of the larger ‘law of master and servant’ that operated in the interests of skilled and semi-skilled labour. That change took place between about 1770 and 1820, with an acceleration in the first decades of the nineteenth century. The new perception of master and servant law, in terms of complaints from workers, is consequent upon these changes.

Collective protest and master and servant

It may be in these years also that master and servant law came increasingly to be identified with the suppression of trade union

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60 For a survey see Hay and Rogers, English Society, chs. 6–9.
activity. Most accounts of master and servant law quote a contemporary argument by Gravener Henson and George White on the usefulness of the laws in breaking strikes. Because in many trades the work was never fully completed, the result of a strike was a prosecution for leaving work unfinished. They expressly compared the effects of master and servant law to the far more notorious Combination Acts:

Very few prosecutions have been made to effect under the Combination Acts, but hundreds have been made under this law, and the labourer or workman can never be free, unless this law is modified. The Combination Act is nothing: it is the law which regards the finishing of work which masters employ to harass and keep down the wages of their workpeople; unless this is modified nothing is done, and by repealing the Combination Acts you leave the workman in ninety-nine cases out of a hundred in the same state you found him—at the mercy of his master.  

It was also easy for the master to prosecute on the grounds of being absent from service, general ‘misconduct’, and other offences under the Acts. Obviously the tactic was limited by the size of the strike. During a colliers’ strike on Tyneside in 1765, a correspondent of the Earl of Northumberland explained why the 1747 statute had not been used:

this is very well, where two or three or a dozen men desert their service, and has been many times properly executed with good Effect, but where there is a general Combination of all the Pitmen to the Number of 4,000, how can this measure take Effect? in the first place it is difficult to be executed as to seizing the men, and even if they should not make a formidable Resistance which scarce can be presumed, a few only can be taken, for upon the Face of the thing it is obvious that the whole persons guilty can not be secured, so the punishment of probably twenty or forty by a month’s confinement in a House of Correction, does not carry with it the least Appearance of Terror so as to induce the remaining Part of so large a Number to submit, and these men that should be so confined would be treated as Martyrs for the good Cause, and be supported and caressed, and at the end of the time brought home in Triumph, so no good effect would arise.

But such massive solidarity was (as always) the exception. The use of the Master and Servant Acts to break smaller strikes was undoubtedly common. Such cases typically surface in the court or prison records in the form of several convictions by the same magistrate, on the same or succeeding days, of men with the same occupation. Using those criteria, Table 1 shows the number of multiple prosecutions in the Staffordshire committals. Thus between 10 and 21 per cent of those committed probably arrived in jail as a result of a collective dispute, according to the criteria used. This was almost certainly the case with the eight miners whom Justice Sneyd committed for a month in March 1797 (all were ‘very quiet and orderly’ in the house of correction) for leaving service; or the four potters committed by the Reverend

63 The result may be to miss some strikes, since strikers may have been committed several days apart, or by different magistrates, or men with different occupational descriptions may be in the same strike; on the other hand, many of these committals may represent no more than a master deciding to take action against several men at once, under more ordinary circumstances. This is particularly likely to be the case when only two are committed.

64 The higher figure if a committal of two men is considered to be a labour dispute. See n. 63 above.
Justice Powys in 1807 (one on 20 April, three more on 25 April) for absconding (they too were ‘orderly’, two for two months, two for one month). But of course it is quite possible that a much higher percentage of those incarcerated were leaders of strikes, or at least men victimized to make a salutary example for others; an unknown proportion of ‘single committals’ must fall into this category.

One other approach to this question of the ‘collective’ versus the ‘individualized’ uses of master and servant law for employers using the penal clauses is to compare the incidence of multiple committals to all committals for different occupations. It is remarkably high for colliers, men noted for their solidarity and successful strikes (not least because they could disappear underground when pursued by troops). It is moderately high for potters (many in the trade were very skilled men), and for a number of other trades in which workers with special skills ranked high in the hierarchy of labour, and attempted to maintain their position in these years. It was very low for labourers and servants in husbandry. The last two, one unskilled and the second a mixture of unskilled and semi-skilled workers in low-wage occupations, were very unlikely to strike, and the small proportions of collective committals in those trades, and large numbers of single committals, suggests that employers used the law against such men as an individual discipline. What was probably the largest group of industrial workers in Staffordshire, nailers, are notable for very few prosecutions (thirteen), and nil collective ones. These were among the poorest workers in an industrial trade, and many were for the most part self-employed, buying rod iron as they could afford it, and selling the product to nailmasters. There may, therefore, have been few in a contractual master–servant relationship; in any case, the chronic oversupply of labour in the trade made it unlikely that any master would be bothered to try to enforce a contract with an unsatisfactory worker.

One final, remarkable fact about prosecutions under these statutes can be seen in the house of correction statistics. In these

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65 For an example about which there can be no doubt, see the case of the single carpenter committed for the offence of combination, below.
67 In this sample, 4 were prosecuted for embezzling iron, 7 for neglecting or being absent from work, and 1 for refusing to obey his master.
twenty-two years, when over 900 men and women were prosecuted for master and servant offences, many of them in the course of collective struggles with their employers, only seven men were summarily convicted for the actual offence of ‘combination’. Three of these were hatters, prosecuted in 1795, under 17 George III c. 55 (1777). The other four appear to be the only men convicted on the Combination Act of 1800 in the fourteen years after its passage. One was a carpenter, sentenced by a JP to one month, but released after two weeks; another was a collier committed by two JPs for two calendar months but released after less than two weeks; the remaining two were both colliers sent to the house of correction by the same two JPs (Clare and Haden), ‘For unlawfully attending Meetings held for the purpose of obtaining an advance of wages & for prevailing on divers Colliers to leave their employment against the form of the statute’. They were committed for three calendar months but were released after thirty-seven days.

There is, then, overwhelming evidence from this Staffordshire source to substantiate the observation of Gravener Henson and George White that the Combination Acts were much less important to workers than the master and servant laws. M. D. George made that contrast to support her argument that the Combination Act of 1800 was entirely unimportant. E. P. Thompson showed that Henson and White in fact argued that the Combination Act of 1800 was ‘a tremendous millstone round the necks of the local artisan, which has depressed and debased him to the earth’. But citing contemporary opinion in these matters, particularly the language of political pamphlets, is probably in the end not very useful as a guide to actual practice; and, as Thompson has argued, the symbolic significance of the Combination Act of 1800 was great. In any case, Henson and White went on, for

68 Providing for three months’ imprisonment on conviction before two JPs, which is the circumstance in this case. They were released after a month. On this legislation, see John Orth, ‘English Combination Acts of the Eighteenth Century’, Law and History Review, 5/1 (spring 1987), 192.


70 Thompson, Making, 555; the passage appears in White’s 1824 edn. at 89. In a critique of George’s influential article, Orth shows that George, arguing for the unimportance of the Act, ignored this passage, and cited only another asserting that the Combination Act was no threat to the travelling trades with houses of call: John V. Orth, ‘The English Combination Laws Reconsidered’, in Snyder and Hay (eds.), Labour, Law and Crime, 134.
reasons we have seen, to describe the Master and Servant Act of 1766 (6 Geo. III c. 25) as 'the most cruel, unjust, and oppressive statute in the code'.

Why was the Combination Act of 1800 used so seldom in Staffordshire? Undoubtedly because master and servant was flexible, easily used, and in most cases the offence would be much easier to prove than combination. There was an appeal to quarter sessions under the Combination Act of 1800; there was no appeal in case of committal under the statutes of 1747 and 1766. There is also the possibility that the petitioning campaign against the 1799 Act, and the immense resentment over the passage of both it and the 1800 Act, so weakened their legitimacy that employers and magistrates found them likely to worsen disputes rather than cure them. Master and servant prosecutions, in contrast, were based on statutes many decades old, statutes which were not recent innovations and which, unlike the Combination Acts, offered workers a quid pro quo of some value in the form of proceedings for wages and, until the early decades of the nineteenth century, some protection against arbitrary discharge by a master on his own authority. The only advantage the Combination Act purported to offer workers was the chance to prosecute masters for combination, a meaningless clause that was unenforceable and nugatory.

An increasing inequality?

The greatest politicization of master and servant takes place in the years after 1820, and apparently accompanied harsher enforcement of the penal provisions. The change seems to have been most pronounced between about 1830 and 1850. This development toward a more employer-oriented law was not limited to

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71 White, Digest, 94.
72 It may have been used more often to accuse rather than convict: one report from the west of England in 1802 suggests that magistrates in search of sedition used the pretext of a hearing to examine 'suspected persons' on oath: Thompson, Making, 551.
73 Ibid. 553 on the difficulties.
74 Ibid. for a contemporary comment on the difficulties appeals posed to employers; above, n. 35.
75 Thompson suggests some other reasons: ibid. 552.
76 The following paragraphs are based on unpublished work.
industrial areas. Scattered soundings in petty sessions registers from deeply rural areas also show a degree of punitiveness, and use of the law by employers rather than workers, that sharply contrasts with the balanced paternalism of eighteenth-century country gentlemen justices. It is not uncommon in the mid-nineteenth century to find servant girls prosecuted by farmers for not milking the cow, or otherwise neglecting work, and not only being brought up before the magistrates from custody, but returned to the prison to serve seven or fourteen days.

After the turn of the century there are also increasing complaints about the difficulty of using the summary procedure for recovery of wages. Even in the eighteenth century commentators noted difficulties in using the 1747 statute:

This statute is extremely inconvenient for the recovery of the wages of servants or labourers by allowing the space of twenty-one days after the order of payment, thereof, before distress can be made, which gives the Master time to make away with his effects, and particularly in the case of haymakers and artificers, having finished their work, and removing to a distant part, to be obliged to wait three weeks, and possibly not receive their wages at last, is troublesome and vexatious, and makes many poor labourers go home without their wages, or accept an iniquitous composition. Therefore the distress ought to be immediate, upon refusal to pay according to the order.

This kind of ‘iniquitous composition’ was noted in some of the case law. Problems like these were probably most often circumvented when a magistrate could impose, through his social prestige and local influence, practical rather than purely legal solutions. Thus Devereaux Edgar, the Suffolk magistrate active near Ipswich between 1700 and 1716, noted that in instances of complaints by servants ‘against masters present and masters lately gone from, the first by misusage either in diet or beating and the latter from not paying of their wages when gone away’ he did not always grant warrants. His motive, he said, was to save the complaining servant the cost: instead of a warrant, he wrote a note to the master asking that he do justice. He added that a further advantage to the servant was that it avoided the disgrace of arrest.

77 20 Geo. II c. 19, Burn’s Observations, 288, as quoted in John Huntingford, Laws of Masters and Servants Considered (London, 1790), 92. Huntingford was secretary of the Society for Encouragement and Encrease of Good Servants.
for the master, a disgrace which led often to revenge at a later date.

If this practice was at all general, it suggests that the ratio of wage cases to discipline cases may be even higher for the eighteenth century than I have suggested. But it is also a reminder that when a JP was a gentleman, in a social structure that gave him real authority and a credible if partial role as paternalist, a note from the justice might well be effective, without the need for further enforcement proceedings.

A century later, however, sharp complaints are heard about the difficulties in using the legislation to assist workers in getting unpaid wages:

there is redress, by summoning the master before the magistrate, but he may refuse to come forward, and supposing he does come forward, they may order payment of the sum agreed for, and he may refuse paying the sum. On refusal, they may grant a warrant, and after granting the warrant, he may appeal to the sessions, then it becomes so expensive, I am not able to follow him there, or few poor workmen I believe.

Q. When you are so treated, do you apply to the magistrate, or do you rest contented with the loss? — We generally rest contented with the loss, knowing the expense would be too heavy for us to follow.78

As magistrates were increasingly likely to be employers in the same trade, and as masters used lawyers to make points such as these, resolutions that a country gentleman might have imposed in a spirit of paternalism (or simple dislike of men in trade) were less and less likely.

Longer trends

We know something of the broad outlines of enforcement in the period after 1854, and especially after 1858, when statistical series become available, and work by Daphne Simon, David Woods, and others has shown its dimensions.79 Briefly, there continues to be

78 Thomas Thorpe, weaver, examined by Mundell, lawyer: *Hansard* 1802–3, viii. 896–7. I owe this reference to Ramneek Pooni. The appeal to quarter sessions allowed to masters in wage disputes (until 1823) was explicitly denied to workers who had been committed to the house of correction. Acts of 1747, 1766; 4 Geo. IV c. 34 s. 5.
79 Simon, 'Master and Servant', and Woods, 'The Operation of the Master and Servants Act'. 
strong evidence of diversity in a very disproportionate use of the penal clauses of master and servant (and probably of master and servant by master plaintiffs, in general) in certain counties and boroughs: Staffordshire (Walsall, Wolverhampton, the Potteries) and Sheffield in Yorkshire are among them. Certain trades, coal mining and potting and the small metal trades, to be found in those areas were particularly likely to generate prosecutions. There is also some evidence of a continuing increase in unequal impact of the law. The current estimates we have for the use of the penal parts of the law for the 1860s suggest that where it was most used, workers brought less than 20 per cent of claims, and masters brought at least 80 per cent. Moreover, probably 20 per cent of all prosecutions by masters not only resulted in conviction, but in imprisonment. If so, there thus had been the growth, in parts of the country most actively organized by trade unions, of a sharp imbalance in the impact of what, in earlier periods, had been a body of law legitimized by the remedies it offered to workers as well as employers. But before considering why the law appears increasingly so sharply tilted toward the employer by the nineteenth century, I want to return to the issue of diversity in meaning, and in enforcement, over the longer period.

The connections between the early nineteenth-century use of master and servant and its significance in the 'statistical period' from the 1850s to 1870s are still largely unexplored. There are problems with the nineteenth-century returns that can only be resolved by very detailed local work in archival materials. They confound proceedings brought by masters with those brought by servants; they are itemized by administrative units that are often combinations of very different regional economies and different groups of trades; they do not identify, for such units, the outcomes of summary hearings of master and servant cases. Finally, I believe that they are quite incomplete because of how the returns were prepared, and incomplete in different ways in different places. That said, they suggest some distinctive patterns.

First, a unique Parliamentary Return of numbers in one house...
of correction ties the nineteenth-century statistics to a house of correction register (see Fig. 4). It suggests that the great increase in master and servant imprisonments stabilized for the first half of the nineteenth century: the numbers in one (only partly used) house of correction in Gloucestershire are about the same in the mid-1850s as in the first two decades of the nineteenth century.

Secondly, an apparent great increase in summary hearings of master and servant cases in the last years before repeal in 1875, a point made by a number of historians, may be in part spurious. In absolute terms there was certainly growth, but a more useful gauge of relative importance of master and servant hearings is a comparison with summary criminal prosecutions for all offences, of which master and servant always represented less than 3 per cent. Fig. 5 shows that the peak years of 1872 and 1873 (a period of booming employment) were no greater, in proportional terms, than the earlier peak of 1860, and that there is no upward trend overall. The greater numbers of prosecutions in the early 1870s were part of a general increase in the use of summary powers before justices, and probably reflect increased policing, more stipendiary magistrates, and other administrative and systemic changes in enforcement of all penal law, rather than a change in attitudes to the use of master and servant law. Of course, the

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82 e.g. Simon, ‘Master and Servant’, 190 n. 1, who attributes it to the exceptional boom, and hence large numbers of workmen employed, in 1872.
statistical evidence of a growth in absolute numbers contributed to the pressures to change the law.\textsuperscript{83}

The great number of master and servant cases in Staffordshire, Lancashire, Yorkshire, and several other counties has always been remarked. In these cases it is clear that the law bulked larger in the caseload of magistrates than in other counties. Yet there is no correlation of master and servant cases simply with the industrial areas in which union militancy generated most protest about the law (and generated much of the statistical record, as employers used master and servant law against strikes and other work stoppages). Berkshire and Staffordshire were very different counties in the nineteenth century, but both benches made much use of master and servant, in terms of total caseload, although at different times (Fig. 6).

A comparison of the most deeply agricultural and most deeply industrial areas of England in the later nineteenth century, again in terms of the percentage of summary cases of all kinds that master and servant cases represented, shows a similar relative importance in magistrate's caseloads (Fig. 7). It also shows a difference in their periodicity, which is replicated across jurisdictions. The influence of the business cycle, noted in several studies, is part, but not all, of the explanation, and its influence is not a simple one.

\textsuperscript{83} A question I consider elsewhere.
FIGURE 6. Master and servant as percentage of all summary cases, Berkshire and Staffordshire

FIGURE 7. Master and servant prosecutions in industrial and agricultural regions of heavy enforcement

Note: Counties included are those with high proportional rates, and more than 1,500 prosecutions; see text.

Some of the influences determining these patterns are suggested when we compare the patterns of an industrializing with a de-industrializing county. Taking two of the counties for which earlier statistical information also exists (in the form of house of
correction registers), we can make some longer-range comparisons also. Staffordshire was one of the heartlands of the nineteenth-century Industrial Revolution, in both the Potteries and the Black Country. Gloucestershire, on the other hand, had an ancient textile industry that survived into the nineteenth century, with some cycles of prosperity, but of increasingly marginal importance. Those broad trends can be seen in the slight increase in trend in Staffordshire, and the more marked decrease in Gloucestershire, of the percentage of master and servant cases heard before the magistrates of each county (Fig. 8). At the beginning of the statistical era (1858) such cases were twice as important in the caseload of both counties as they were in the nation as a whole. By 1875 they were even more important in Staffordshire, but from the late 1860s Gloucestershire echoed the lower national pattern almost exactly, and from the early 1860s its pattern bore very little relationship to that of the more industrialized county.

These very impressionistic uses of the national statistics do no more than raise questions, questions that can be answered only through detailed work in local archival records. The great differences in use of the law in different parts of the country, in different areas of the same county, means that most generalizations will

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**Figure 8.** Industrial change and master and servant prosecutions, Staffordshire and Gloucestershire

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be unsafe until the texture, incidence, and outcomes of prosecutions in a large sample of places and times are established. But the patterns of the nineteenth century in many ways do appear to replicate structures of conflict, paternalism, and accommodation also found in the eighteenth, even if other evidence suggests that a paternalist administration of the law by gentlemen justices of the peace was, by the middle of the nineteenth century, largely in the past.

Conclusion

This essay has presented some preliminary findings on the incidence and variations of the use of master and servant law in eighteenth- and nineteenth-century England. For the purposes of the argument I have largely ignored the great changes in statute and case law over the period, the changing nature of trade union organization and its use of the law, the rise of factory production, and its contribution to legal change. Significant changes in local government, the administration of justice, and the role of lawyers have also, for the most part, been ignored. All of these are important for understanding the political significance of master and servant law, as well as its practical application.

It is difficult, however, to assess those changes without a fuller understanding of how important the law was in the daily relations of capital, labour, and the local state. We have seen that master and servant law constituted a large part of the activity of the most active justices in many parts of the country; that the history of the law's penal sanctions is intimately related to the history of prisons and crime and trade union organization and the nature of the bench in the nineteenth century; and that all generalizations about the significance and incidence of its remedies must take account of an enormous variability in its application, according to region, trade, and the state of the economy.

Further work will explore all those connections, but even in the state of our present knowledge, it seems clear that between about 1750 and 1850 there was a marked change in the application of the law. Sentences became longer, and were increasingly likely to be served in the prisons and jails of the new carceral regime prescribed by reformers of criminal punishments. Between about
1790 and 1820 there was a marked per capita increase in the use of penal sanctions, probably followed by stability (with fluctuations around the trend) for much of the rest of the century. Finally, in its emphasis on penal sanctions and in its relative neglect of remedies for workers, by the mid-nineteenth century the law of master and servant appeared far more significant in the creation of great social inequalities than it had a century before.