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Connecting Nineteenth-Century Antislavery and Labor Movements with Twenty-First-Century Workers' Rights

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Rebecca E. Zietlow, [A Positive Right to Free Labor](#), 39 *Seattle U. L. Rev.* 859 (2016).

In her article, *A Positive Right to Free Labor*, Professor Zietlow recounts the history of the working person's claim to free labor. Zietlow traces that history from its roots – in the antislavery and labor movements of nineteenth-century antebellum America – right through to the post-Title-VII era of today, showing us that there is much more work to be done.

Professor Zietlow begins by defining a positive right to free labor as including “the right to work for a living wage free of undue coercion and free from discrimination based on immutable characteristics. Not merely the negative guarantee against the state's infringement on individual equality and liberty, a positive right to free labor is immediately enforceable against state and private parties.” (P. 861.) From there, she states her thesis – a positive right to free labor cannot be found in the Fourteenth Amendment but is found in the Thirteenth Amendment, which is unique among constitutional provisions insofar as it applies to non-state actors and obliges the state to take positive action to ensure workers' rights. In Zietlow's view, by picking up this strand of positive rights that have been lost to history, the potential for progressive regulation of private employers' duties to employees is great.

Zietlow beautifully summarizes the history. In antebellum America, labor and antislavery activists worked in concert, albeit often separately, to “formulate[] the ideological basis for the positive right to free labor”:

Northern labor activists voiced their opposition to “wage slavery”: work under conditions and wages so unfavorable that it was tantamount to slavery. Free Soil, Free Labor activists insisted that *slavery should be abolished because it was an oppressive system of labor that harmed all workers by depressing wages and conditions of labor*. Other antislavery activists opposed the race discrimination that was also central to the institution of slavery.

(Pp. 861-62, emphasis added.)

Wage depression and increasingly poor working conditions were common ground for black chattel slaves, on the one hand, and white indentured servants and wage slaves, on the other. This common ground allows for comparison. Indentured servants (who were all immigrants) were bound to their employer for a period of several years; even white artisans were often bound by contract to work for a specific employer for a period.

Zietlow reminds us that during the nineteenth century, the nature of work changed from largely “agricultural and artisanal,” in which white American men were mostly “self-employed” and “enjoyed considerable autonomy in their working lives,” to largely industrial, in which white American men largely worked in urban factories. (P. 863.) At the same time that the North became increasingly urban and industrial, Southern slavery, which had been waning, began to pick up with the invention of the cotton gin.

Zietlow adds that, by mid-century, indentured servitude was outlawed and replaced with the idea that one's labor was a commodity to be bought and sold. The paradigm was shifting from status (slavery, servitude) to free labor, a shift that was accelerated by the Civil War and Reconstruction. But as all labor scholars know, this shift was an illusion:

"[S]ervants were no longer legally bound to their masters through indentures, but employers, not workers, still controlled the workplace. Longing for autonomy and control over their lives, many U.S. workers turned to the nascent labor movement." (P. 865.)

The discussion of the alliance between the labor and antislavery movements comprises one of the most interesting parts of the article. We labor scholars have all heard of organized labor's racist and sexist practices toward nonwhites and women during this time and well into the twentieth century. Zietlow recounts a subtler story, one in which many early-nineteenth-century labor activists were drawn to the antislavery movement: "Some labor activists saw slavery as part of the continuum of exploitative labor practices and viewed the abolition of slavery as an essential step to improve the conditions of workers throughout the country. They argued that the institution of slavery hurt all workers, including white workers, North and South." (P. 872.) Zietlow further explains that the "alliance between labor and antislavery activists led to the first major breakthrough in the success of the political antislavery movement, the Free Soil Party," which emphasized "the link between slavery and the exploitation of northern workers." (P. 873.) As Free Soiler Thaddeus Stevens explained, "laws which oppress the black man and deprive him of all safeguards of liberty, will eventually enslave the white man." (P. 874.) These attitudes ultimately influenced the newly minted Republican Party.

A positive right to free labor is the product of efforts to ratify the Thirteenth Amendment's ban on slavery and involuntary servitude, and its resultant legislation. Zietlow's discussion of the 1866 Civil Rights Act, whereby Congress sought to abolish race discrimination in economic transactions, is particularly interesting for once again drawing the link between that legislation and free labor:

The 1866 Civil Rights Act enforces all three prongs of the positive right to free labor. First, it empowered black workers to escape the unduly coercive conditions of labor to which they were subjected even after the end of slavery. Second, it enabled black workers to bargain for better wages and conditions of work. Without Black Codes and vagrancy laws, blacks could use the "labor shortage" to their economic advantage, and consequently, wages rose for southern blacks from 1867-1873, the period in which Reconstruction was enforced in the South. Finally, the 1866 Civil Rights Act outlawed race discrimination in contracts, including employment contracts, and guaranteed equality of the law to all people regardless of race. Thus, the 1866 Civil Rights Act, the very first Act of Congress using its Thirteenth Amendment enforcement power, established a positive right to free labor for freed slaves and all other workers in the United States.

(P. 884.)

The article's next few sections, which discuss the connection between labor and the progressive legislation associated with both the New Deal (1933–1937) and the Civil Rights movement (1954–1968), once again trace labor's contribution to achieving racial equality and justice. But as Zietlow points out, New Deal legislation often exempted agricultural workers and domestic servants – those whose work mostly closely resembled the work of former slaves. And thus, by the time of the Civil Rights Movement, "the positive right to free labor was removed from the canon of civil rights law, replaced by cases and statutes protecting social equality without economic rights." (P. 892.) As important as the Civil Rights Act of 1964 was, that statute sacrificed the black worker's economic security and well-being for a less ambitious goal – the negative right of equal employment opportunity – albeit extended to the private employer.

Along these lines, Zietlow characterizes the Civil Rights era – our second Reconstruction – as the historical period during which the positive right to free labor succumbed to this more social and less economic view of equality. It is this historical happenstance that, Zietlow argues, has resulted in decreasing union density by allowing the right-to-work ideology to weaken the labor movement. With this, Zietlow calls upon us to "revitalize the positive right to free labor." (P. 898.)

As this article shows, the Thirteenth Amendment and the positive right to free labor have been ignored in recent years, much to the labor movement's detriment. This article does a wonderful job of helping those of us committed to a more

egalitarian and just society to imagine such a world.

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