

Masters and servants: the American colonial model of child custody and control

MARY ANN MASON

University of California, Berkeley, U.S.A.

Introduction

In 1620, the Virginia Company complained to Sir Robert Naunton, principal secretary of James I, that London street children were unwilling to be sent to Virginia colony as apprentices.

The City of London have by act of their Common Council, appointed one hundred children out of their superfluous multitude to be transported to Virginia: there to be bound apprentices for certain years, and afterward with very beneficial conditions for the children . . . Now it falleth out that among those children, sundry being ill disposed, and fitter for any remote place than for this city, declare their unwillingness to go to Virginia, of whom the City is especially desirous to be disburdened, and in Virginia under severe masters they may be brought to goodness.¹

Children who came to America as indentured servants without parents in the seventeenth and early eighteenth century were an important part of the story of settlement of the American colonies. More than half of all personal who came to the colonies south of New England were indentured servants, most servants were younger than 19 years old. The average age was between 14 and 16, and the youngest was six.² By contrast, most children who emigrated to the New England colonies did so as a member of a family.

While most children were not forceably imported to the New World without parents, separation from parents and forced labor were common in all the colonies. Children were critical to the colonial labor force; after the age of ten children were often employed like adult workers, and many, if not most, did not remain in the custody of either parent until adulthood.³ While some

¹ Va. co. records, III (1933), p. 259. In Robert Bremner (1970) *Children and youth in America*, Vol I. Cambridge, p. 7.

² Richard B. Morris (1946) *Government and labor in early America*. New York, p. 391.

³ For a full discussion of the demographics for seventeenth century New England and the Chesapeake colonies, see R. W. Beales (1985) The child in seventeenth century America, in: Joseph M. Hawes and N. Ray Hiner (eds.), *American children: a research guide and historical handbook*. Westport Conn., p. 15-57.

came without parents, many others lost both parents through death or abandonment. Parents very often apprenticed or sent out their children to serve another family at around age ten. Children born out of wedlock were routinely separated from their mothers upon weaning and "bound out" to a master. Slave children, who comprised about one-fifth of all children by the end of the eighteenth century, could be sold away from their parents at any time. Finally, sentimentality about children and childhood, which bloomed in the nineteenth century, was nearly absent in this practical, struggling era.

Emphasizing the non-sentimental labor value of children in the colonial era, and the nearly unlimited authority given to fathers and masters, some contemporary historians have concluded that the law regarded children as a property right of their fathers, to be treated as chattel.⁴ This concept has been adopted by the general public and it has become commonplace to speak of children as their fathers' property when referring to that historical era. However, the relationship between fathers, masters and the children in their care was far more complex than these legal historians might have us believe. The head of a colonial household, almost always a man, might hold several different, often overlapping legal relationships to the children in the household. These might include: father to his natural children, master to children apprenticed to him voluntarily by the children's own parents, children apprenticed to him involuntarily as a result of the death or incapacity of their parents, and child slaves. The head of the household in his role as father and master of apprentices could not treat his children as property. There was in fact a clearly defined and firmly enforced framework of mutual obligations which the law applied to each party. While fathers had almost absolute control over their children, fathers also had considerable responsibilities, both to their own children and to children legally bound to them as apprentices. The father/master was obliged to provide adequate sustenance, vocational training, and, with some variation between the colonies, rudimentary education and religious training to all children (except the slave children) in his custody. The mother's rather shadowy legal role was to assist him in these tasks. Children were obliged to be obedient and to provide labor as fit their age and legal status.

Overall, the relationship between the head of the household and the children under his authority is better represented as a continuum of the master and servant relationship than that of owner and chattel. A master-servant relationship, although not equal, required that the master give something to servant in exchange for the servant's labor. In addition, a master could not injure the servant, while an owner theoretically might dispose of the his chattel in any manner, including extermination.

⁴ See, for example Michael Grossberg (1985) *Governing the hearth*. Chapel Hill, p. 235 and Andre P. Derdeyn (1976) Child custody contest in historical perspective, *The American Journal of Psychiatry* 133: 369.

Only with slavery did the master child relationship more closely resemble that of owner and chattel. However, even slavery represented a step on the continuum of the master servant relationship, and as we shall see, developed directly from the master/ apprentice model. This article will address the continuum of legal relationships, beginning with father and child, proceeding to voluntary indentures, involuntary indentures and finally slavery. This comparative examination will illustrate the complex web of mutual obligations, centered firmly on the child's labor and the fathers/masters responsibilities for maintenance and education.

Father and child

Fathers, without dispute, had almost unlimited authority of custody and control over their natural, legitimate children, leaving almost no room for maternal authority, at least during the fathers' lifetime. This authority was firmly established in the common law. A father's right to custody under English common law encompassed the right to the association and services of his legitimate children. Association was defined as physical custody as against all parties, including the mother, and services included not only the labor of the children for his own use, but their wages, if they worked for another. A father had the right to maintain an action for the seduction of his daughter or the enticement of a son who left home, since this deprived him of services or earnings.⁵

While fathers had almost absolute control over their children, fathers also had considerable responsibilities. The right to a child's labor therefore was seen as recompense for the father's obligation of support and education. This mutuality was a relatively recent development in the father-child relationship. The medieval English tradition initially required only that the father control the child's education and religious training. The Elizabethan Poor Laws, and later on, common law and statutes, added the duty of maintenance and support.⁶ Mutuality was contrary to Roman law where the father enjoyed absolute power, and in the early Roman republic, according to the historian Dionysius, "the atrocious power of putting his children to death, and of selling them three time in an open market, was vested in the father."⁷

Colonial America expanded and enforced these mutual obligations beyond the English tradition. The duty to educate and provide religious training was enlarged to include vocational training. In New England, local governments insisted that parents train their children to be literate, religious, and economically productive citizens. As an early Massachusetts law dictated:

⁵ Doris Foster and Henry Freed (1978) *Life with father: 1978*, *Family Law Quarterly* XI: 322.

⁶ Foster and Freed, *Life with father: 1978*, p. 322.

⁷ As quoted in William Forsyth (1850) *Custody of infants*. Philadelphia, p. 8.

This court [the court serving in its law-making function], taking into consideration the great neglect in many parents and masters in training up their children in learning, and labor, and other employments which may be profitable to the commonwealth, do hereupon order and decree that in every town the chosen men appointed for managing the prudential affairs of the same shall henceforth stand charged with the care of the redress of this evil, . . . especially of their ability to read and understand the principles of religion and the capital laws of the country.⁸

The New England father was responsible for making his child a productive member of the community, either by his own teaching or by apprenticing his child to another master for training. Fathers were not allowed to exploit their children by assigning them only menial work, such as tending livestock, but were expected to prepare them to perform skilled tasks. Laws instructed town officials to assign work to children that taught skills. "They are to take care that such are set to keep cattle be set to some other employment withal, as spinning . . . , knitting weaving tape, etc."⁹

Although the father was squarely at the head of the household, those elected or appointed by charter to enforce community standards carefully supervised the household. In New England, these town officials could enter the household, interrogate the children to determine the level of their education and skill, and remove the children from the home and apprentice them to another master if the father was found wanting the teaching of his children. According to an early Massachusetts law

The Select Men of every Town, may examine the Children and Apprentices, in any Family within their respective Towns, and if they find them Rude and Ignorant they shall admonish the Parents and Master, and in case of continued neglect, may with the consent of two Magistrates, or the next county court, take such children from them, and placed them with such other Masters as will reduce them to Government and Instruction.¹⁰

Following an unsatisfactory inspection by selectmen, the Suffolk County Court decreed, "William Scant of Braintree being bound over to this court to answer for his not disposing of his children as may be for their good education, and for refusing to consent to the Selectment of Braintree as the law directs; . . . doth leave it to the prudent of the Selectment of Braintree to dispose of his children to service so far as the necessity of his family will give leave."¹¹

⁸ Mass. records II (1853), pp. 8–9, in Bremner, *Children and youth in America*, Vol. 1, pp. 39–40.

⁹ Ibid.

¹⁰ Laws and ordinances of New England, p. 23.

¹¹ Samuel E. Morison (ed.) Records of the records of the Suffolk County court, 1671–1680, CSM Publications, XXX (1933), pp. 599, in Bremner, *Children and youth in America*, Vol. I, pp. 41–42.

In the Chesapeake colonies, intrusion by public officials into households was less frequent, although the expectations were similar, at least with regard to religious and vocational training. A series of Virginia acts from 1631 to 1645 required fathers and masters to provide compulsory religious education to all children and servants by sending them weekly to church. If the heads of households ignored the warning of ministers and failed to send the children, they were subject to a penalty of five hundred pounds of tobacco for the use of the parish, "unless sufficient cause be shewn to the contrary."¹²

Virginia, like New England worried about "sloathe and idelnesse wherewith such young children are easily corrupted." Beginning in 1646, the legislature passed a series of ambitious laws to create workhouses for "the relief of such parents whose poverty extends not to give them good breeding." Children would be taken from their homes to live in the workhouses where they would learn "spinning, weaving, and other useful trades."¹³ While there is no firm evidence that these workhouse were actually established, the laws clearly endorses the need for vocational training.

Fathers in New England were expected to exercise firm control over their children, and train them to be good citizens. If the father could not raise the child properly, and if, following the town officials' warning that the child (or servant) was found "rude, stubborn and unruly," the town officials had the right to remove the children from the parents and "place them with some masters for years . . . which will more strictly look unto, and force them to submit unto government according to the rules of this order."¹⁴

If fathers dealt with their children too harshly, however, they risked punishment or loss of custody of their child. The Ipswich Quarterly Court sentenced John Perry of Newberry Massachusetts "for abusive carriage to his wife and child, bound to good behavior and to sit one hour in stocks at Newberry next lecture day,"¹⁵ while in Salem, Massachusetts "Henry Phelps . . . was complained of at the county court at Boston, July 31, 1660 for beating his son, John Phelps, and forcing him to work carrying dung and mending a hogshead on the Lord's day, also for intimacy with his brother's wife and for entertaining Quakers."¹⁶ As punishment, his son John Phelps was to be taken away from him and given to his uncle to place him with a religious family as an apprentice. No mention was made of a mother.

Clearly, New England fathers walked a tight line between effective control and overbearing behavior. If they erred in either direction, their children could be removed from their custody and apprenticed to a more worthy master.

¹² W.W. Hening, statutes at large (Virginia) I, 156.157. 311-312, 336-337 (1823 ed.), as quoted in Marcus W. Jernegan (1931) *Laboring and dependent classes in colonial America, 1607-1783*. New York, p. 48.

¹³ As quoted in Jernegan, *Laboring and dependent classes in colonial America*, p. 151.

¹⁴ Ferrand (ed.), *Laws and liberties of Massachusetts*, p. 11.

¹⁵ Records and files of the quarterly courts of Essex county, Massachusetts, Vol. I, p. 188.

¹⁶ Records and files of the quarterly courts of Essex county, Massachusetts, Vol. II, p. 262.

Their children shared a mutual obligation to demonstrate obedience and respect or risk public whipping. As the Act of the General Court of Massachusetts decreed in 1646:

If a man have stubborn or rebellious son, of sufficient years and understanding, viz. sixteen years of age, which will not obey the voice of his Father or the voice of his Mother, and that when they have chastened him will not harken unto them: then shall his Father and Mother being his natural parents, lay hold on him, and bring him to the Magistrates assembled in Court and testify unto them, that their son is stubborn and rebellious and will not obey their voice and chastisement, but lives in sundry notorious crimes, such a son shall be put to death.¹⁷

Similar laws were enacted in Connecticut in 1650, Rhode Island in 1668, and New Hampshire in 1679.¹⁸

Two important facts should be noted regarding these laws, which were not based on English common law or tradition, but on the Old Testament, Deuteronomy. First, they do not authorize the father to unilaterally punish the child; rather, the child first must be judged by the court. Second, there is no evidence that the extreme punishment of death was ever imposed upon a rebellious child.

These laws reflect the intention of New England Puritans to live in a strictly governed moral community in order to satisfy the people's covenant with God. They also illustrate the seamless web between private and public life in the Puritan colonies. Defying one's parents was an offense against the community and against one's parents, and was therefore punishable by the community rather than by the father alone. While the community never imposed the ultimate punishment of death, it routinely meted out other forms of punishment, especially public whipping, to rebellious children.

In a Connecticut case, the court called Young Mistress How (age unspecified) who, witnesses testified, had turned over a page of the Bible and declared it not worth reading. The witnesses also testified that when her mother called her, she said, "a pox or the devil, what ails this mad woman." The court ordered that she pay ten shillings for swearing "and for her cursing speeches and rebellion to her mother, and profane speeches of the scriptures, tending to blasphemy," and further ordered that "she be corrected publicly by whipping suitable to her years, and if this be not a warning but that she go on it these course, it will come to a higher censure."¹⁹

¹⁷ Mass. records, III (1854), 101.

¹⁸ John R. Sutton (1981) Stubborn children: law and the socialization of deviance in the puritan colonies, *Family Law Quarterly* 15: 31-64.

¹⁹ Franklin B. Dexter (ed.) (1917) *Ancient Town Records*, I. New Haven, pp. 88-89, in Bremner, *Children and youth in America*, Vol. I, p. 38.

Outside New England, however, no strict supervision of child control existed. As we shall see, while the law protected indentured servants from abuse by their masters in all colonies, town officials outside of New England did not monitor the discipline of fathers over their own children. Nor were children outside of New England held to the Old Testament standard of obedience where infractions were theoretically punishable by death, and in practice punished by public humiliation.

Much has been made of a father's right to custody in the event of divorce. This right has been emphasized as proof that children were considered property of a marriage, and that their own best interests were not considered. The implication is that these interests would have placed children with their mother. While this is in some sense true, since, as we have seen colonial law was far more concerned about the family as an economic unit, and in that context the father played the role both of supporter and vocational instructor. Colonial fathers did perform many of the tasks which today are shared or handled only by the mother. The vast majority of seventeenth and eighteenth century fathers were farmers; the rest were mostly artisans or tradesmen who also worked at or near home. Thus, even at work, most fathers were not far from their children. According to historian John Demos, fathers were not only a daily visible presence, but also took charge of their children's education and moral supervision. Children turned to their fathers for guidance, not to their mothers. While mothers played a larger role with infants, and necessarily worked closer with their daughters, they were not the central figure in their children's life that they became in the nineteenth century when the father's work often took him away from home. Moreover, while the question of custody following divorce is certainly an interesting one, it affected relatively few fathers and children since divorce was rare and even forbidden in some colonies.

Masters and apprentices

A very large proportion of children in the colonial era did not spend their whole childhood under the custody and control of their own parents or stepparents. These children were put under the custody and control of masters (and sometimes mistresses), to whom they were indentured. "Binding out," "putting out" or "apprenticing" were all variations on the well-established English custom of placing children in the home of a master who was obliged to provide ordinary sustenance and some training in return for services. This training could be as specific as teaching a skilled craft, or it could be as general as instruction in basic reading and the catechism. Under common law, laws differed pertaining to articles of indenture for servants and for apprentices. In the New World the distinction between indentures for servants and apprentices was less clear. Binding out or apprenticing became a catch-all concept that both provided a controllable and skilled labor force to the new country and provided

parent figures to thousands of children who had no parents. Whatever the terms of the indenture contract, it was ratified and supervised by the local court.

The master servant relationship, established by the indenture contract and supervised by the local courts, closely reflected the parent-child relationship. Master and servant shared mutual obligations, as did parent and child, and for the most part these obligations were the same; courts often described the master as serving *in loco parentis*. While the affectional bonds between a father and his child may have been of an entirely different nature, the legal responsibilities of father and master were not. Many laws, such as the Massachusetts Bay Colony law referred to earlier, assigned identical duties to fathers and masters regarding the care and training of the children in their charge. In return, masters could expect labour from their charges, just as fathers could. Blackstone clearly supported this analogy. "The father has the benefit of his children's labor while they live with him and are maintained by him; and this is no more than he is entitled to from his apprentices or servants."²⁰

In a society where production relied on the economic services of children, the law strongly supported this master servant relationship. In the absence of social workers, children's protective services, and orphanages, the courts cooperated with poor officials in creating and supervising the indentures of orphaned or impoverished children. They also settled the disputes between parents and masters over the treatment of apprentices and ordered runaway apprentices back to their masters if they could not prove gross abuse. While courts rarely, if even, heard custody disputes following divorce judges every day struggled with problems relating to the "placing out" of children.

Colonial courts supervised a broad variety of indentures, roughly divided into two categories: (1) voluntary apprenticeships, where a parent entered a voluntary arrangement with a third party, usually to train the child in a specific trade in exchange for the child's services; and (2) involuntary apprenticeships, where the parents were dead or unable to properly raise their children and the town poor law officials placed them with a master, primarily in order to relieve the town of the financial burden. In the absence of the legal form of adoption, involuntary apprenticeships were also used to ratify the legal position of close relatives who took in a child upon the death of the child's parents. Both types of indenture contracts were under the jurisdiction of the county court and were usually not enforced by other courts if the master moved.²¹

Involuntary apprenticeships

Children who came to America as indentured servants without parents provided critical labour for the settlement of the colonies. More than half of all persons

²⁰ Blackstone, *Commentaries*, Vol. I, p. 453.

²¹ Wall, *Fierce communion*, p. 113.

who came to the colonies south of New England were indentured servants, and, most servants were under 19 years old.²² Whether these children who came alone to the colonies come as voluntary or involuntary servants is unknown. Certainly, some of the older children voluntarily signed their own indentures, as did adults, in hopes of a fresh start in an uncrowded country. However, many children were orphans, or children of the poor, and their indentures, like those of all impoverished children, were not voluntary.

In 1617 the Virginia Company actively solicited the Lord Mayor of London to send poor children to settle the colony. The Lord Mayor complied by authorizing a charitable collection to grant five pounds apiece for equipment and passage money, while the children were to be apprenticed until the age of 21, and afterwards to have fifty acres of land in the plantation to be held in fee simple at a rent of one shilling a year.²³ This arrangement apparently worked well, and was initiated again in 1619 for "one hundred children out of the multitude that swarm in that place to be sent to Virginia."²⁴

The children, like all settlers, did not survive long in deadly Virginia, and the London City Council once again complied with a request in 1622 for the transportation of another hundred children, "being sensible of the great loss which [the plantation] lately susteyned by the barbarous cruelty of the savage people there."²⁵

Other children, many of whom were not orphans or under the control of the poor law officials, were tricked into indentured servitude by "spirited" who gained a healthy profit for each suitable child (or adult) they could deliver to the colonies, where they sold their indentures. The custom grew out of hand by the middle of the seventeenth century; victims often were blatantly kidnapped and held prisoner for a month or so until sent off to sea. One father obtained a warrant to search the ship for his 11-year-old son whom he claimed had been spirited away. The search uncovered 19 servants, 11 of whom had been taken by "spirited," most against their will.²⁶

Given the circumstances of immigration, many children arrived with irregular indentures or none at all. The law required the would-be master to bring the child before the court to determine the terms of the indenture. Most common was the term set by Virginia legislature: "Such persons as shall be imported, having no indenture or covenant, either men or women, if they be above sixteen years old shall serve four years, if under fifteen to serve till he or she shall be one and twenty years of age, and the courts to be judges of their ages."²⁷ Other colonies fixed 18 or marriage as the termination date of indentures for girls.

²² Richard B. Morris (1946) *Government and labor in early America*. New York, p. 391.

²³ Smith, *Colonists in bondage*, p. 148.

²⁴ Great Britain, Privy Council, Acts of the Privy Council of England, 1619–1621 (London, 1930), p. 118, in Bremner, *Children and youth in America*, Vol. I, p. 8.

²⁵ As quoted in Smith, *Colonists in bondage*, p. 149.

²⁶ Smith, *Colonists in bondage*, p. 73.

²⁷ Va. statutes at large, I, 441–422. Bremner, *Children and youth in America*, Vol. I, p. 23.

The law did not require that masters teach these child immigrants a specific trade, but rather allowed them to put the children to whatever service they wished. At the termination of the indenture, however, the law required masters to provide the servant with a suitable wardrobe, and some provisions. A North Carolina law specified: "Every Christian servant shall be allowed by their master or mistress at the expiration of his or her time of service three barrels of Indian corn and two new suits of apparel of the value of five pounds at least or, in lieu of one suit of apparel, a good well-fixed gun, if he be a man servant."²⁸

In the New England colonies, and in colonies south of New England, following the first decades of intense immigration, children were most often involuntarily apprenticed when their parents were unable or unwilling to care for them properly. Adoption was not then a legal option, and orphanages and asylums for children were rare until the end of the eighteenth century. The town of the child's "settlement" was responsible for the child's welfare. Elaborate laws determined how "settlement" would be carried out, since no town was eager to take on an unnecessary burden. Generally, the child's place of the birth was its settlement if neither his mother nor father had one. However, if the father or the mother had a town of settlement, that was the child's, in that order of preference.²⁹ Bastards, however, as "filius nullius", or child of no family, had only the town in which they were born.

The officials of the child's town of settlement charged with administering the poor laws took charge of these children and, with approval of the court, "bound them" to an appropriate master who gained full custody and control of the child, but under continued court supervision. Once the child was bound out, the parents, if alive, lost any legal claim to its custody. In the case of orphans, the child was often bound out to a close relative; providing the legal custodial authority to the relatives that was not available by adoption. If the child was an infant, poor officials might pay a family to nurse the child until it was old enough to bind out. In this instance, poor officials maintained legal control of the child. These infants were often bastards. The records for one parish in Virginia between 1748 and 1753 indicate that fully half of the poor relief paid out went to families for the purposes of keeping a bastard child for a year.³⁰

An examination of the indenture records of two Virginia parishes in the mid-eighteenth century indicates the type of child that was involuntarily apprenticed and the nature of the indentures. Orphans constituted 38.1% of all child apprentices; 39.3% were classified poor children; 11% were described as illegitimate; and 12.6% were termed mulatto. Boys were most often apprenticed to learn

²⁸ Walter Clark (ed.) No. Car. records, XXIII (Goldsboro, N.C., 1904), 62-66, in Bremner, *Children and youth in America*, Vol. I, p. 116.

²⁹ Reeve, *The law of Baron and Femme*, p. 209.

³⁰ C. G. Chamberlayne (1940) *The vestry book of St. Paul's Paris*. Richmond, pp. 202-205, 324-327, 332-333, in Bremner, *Children and youth in America*, Vol. I, p. 263.

the trade of carpenter, shoemaker, blacksmith, planter or farmer. Girls were usually apprenticed as domestic servants with no trade mentioned. Out of 163 apprentices, all but 42 had some education requirement in their indentures. Of those 42 without educational requirements, 14 were mulatto children and four were children of free Negroes.³¹

Some aspects of the articles of indenture did indeed resemble a contract for chattels more than an employment contract. If the master died, the remaining years of the indenture were often counted in his estate. When the sheriff of Kent Country was ordered to seize the property of Ellis Humphrey to the extent of 10,000 pounds of tobacco for the benefit of the Lord Proprietary, the appraisers listed one servant boy with four years to serve, 11 poor, weak cows, a handmill and a grindstone. The servant boy was valued at 2800 pounds of tobacco.³² Many indentures, like that of Pennsylvanian Thomas Harper, noted above, specifically stated that the apprentice's time belonged to his heirs. Some indentures included even more elaborate estate planning. A Connecticut court bound John Gennings to Jeremiah Adams in 1661, ordering that Gennings would finish his term with Adams' widow if he died, with another relative if they both died, and if it became necessary to "otherwise dispose of Gennings the benefit is to return to Jer[emiah Adams] or his assignees."³³ On the other hand, many children were returned to their parents or to the charge of the poor officials upon the death of the master.

Although a master could devise the custody of his apprentice following his death to specified heirs, he could not assign his apprentice to another during his life without the consent of the poor law officials and the approval of the court. The assignment was made in consideration for payment by the second master, thereby constituting a form of child selling. Statutes regulating masters and servants in several colonies indicated that this approval was necessary. In many southern states, indentures forbade masters to move out of the original jurisdiction with their apprentices. Others allowed this only with the consent of the servant and the approval of two justices of the peace.³⁴ These restrictions represented effort on the part of the poor officials and the court to provide continuing supervision of the child's welfare.

The relationship between master and apprentice was set by statute and enforced by the courts. The law strongly supported the enforcement of indentures, since apprentices were a major factor in the labor force, and dealt harshly with apprentices who disobeyed their masters or ran away. The penalty for runaway apprentices was to extend their indentures from three to five times the number of days they were absent. Rewards were given for those who turned in runaway apprentices. According to a Pennsylvania statute, "whoever shall

³¹ Jernegan, *Laboring and dependent classes in colonial America*, pp. 165-170.

³² Maryland archives, vol LXX, p. 33.

³³ As quoted in Wall, *Fierce communion*, p. 113.

³⁴ James T. Mitchell and Henry Flaners, comps (1896) *The statutes at large of Pennsylvania from 1682 to 1801*, II. Harrisburg, pp. 54-55.

apprehend or take up any runaway servant, and shall bring him or her to the sheriff of the county, such person shall, for every such servant, if taken up within ten miles of the servant's abode, receive ten shillings: and if ten miles or upwards, twenty shillings reward".³⁵ Striking a master was a punishable crime, while when the master disciplined the apprentice, courts often gave the benefit of the doubt to the master. Even when masters treated their servants with unusual cruelty they were let off lightly. In Salem, for instance, Philip Fowler was accused of abuse his servant, Richard Park, by hanging him by his heels. The court determined that while any person was was justified "in giving meet correction to his servant, which the boy deserved, . . . they do not approve of the manner of punishment given in hanging him up by the heels as butchers do beasts for the slaughter, and cautioned said Fowler against such kind of punishment."³⁶ If the master actually killed his apprentice through cruel treatment, he could be appropriately tried and punished for manslaughter or murder, and could be executed, as was William Franklin of Boston in the Boston Square. Franklin, who "by sundry cruel stripes and other kinds of ill usage" caused a boy to die "under his rigorous hand, and that (by a strange providence of God and his own folly) at Boston, as if God meant to bring him on the stage for an example to all others."³⁷

Voluntary apprenticeships

Voluntary apprenticeships occurred when the parent or guardian entered into an agreement with a third party (master) for the apprenticeship of their child or ward. These agreements were approved by the local court. Voluntary apprenticeships occurred (1) when the parents or guardians themselves felt that they could no longer support or raise a child, and (2) when the parents or guardians sent the child to a master to receive specialized training in order to prepare him for a career as a skilled artisan. Edmund Morgan, in his study of the Puritan family, suggests that Puritan parents had a third reason: to prevent parents from loving their children too much and God less.³⁸ This final reason, however, is not evident in the testimony of the court records, while the first two are.

There was little practical difference between impoverished or incapable parents binding out their own children, or waiting until the poor officials took over the chore. Town Council proceedings are filled with pleas for parents to take this responsibility. For instance, Robert Styles of Dorchester Massachusetts was admonished for not attending public worship, neglecting

³⁵ Ibid.

³⁶ Records of Essex county, VIII (1921), pp. 302–303.

³⁷ Rev. John Eliot's records of the First Church in Roxbury, Massachusetts, in *Sixth report of Boston record commissioner* (Boston, 1881), p. 187.

³⁸ Morgan, *The puritan family*, p. 77.

his calling and not submitting to authority. He was ordered to "put forth his children, or otherwise the selectmen are hereby empowered to do it according to law."³⁹

The second type of voluntary apprenticeship was the more truly voluntary act of securing appropriate vocational training for a child. This practice stemmed from medieval practice, as institutionalised in the Statute of Artificers of 1562. In England, the purpose of apprenticeships was to control competition among trades by requiring all workers to have completed their apprenticeship. In labor-hungry America these requirements could not be enforced, and apprenticeships offered a general trade education, not a guild certificate. Boys usually entered their apprenticeship between the ages of 10 and 14 and served for seven years or until they were 21. Girls served until 18 or marriage. The apprentice lived in the master's household and saw his own family only with the master's permission.⁴⁰ The parent relinquished custody and control of the child under the indenture contract, and this right, as well as the responsibilities which adhered to the father, passed to the master.

The language of indentures for this formal training was very much like that of involuntary indentures, with the addition of the obligation to train the child in a specific trade. The major difference between voluntary and involuntary indentures, however, was that the indentures were entered into between the apprentice (if the apprentice were old enough, at least 12) and the master, with the consent of the parents. Therefore it was up to the parent, not the poor law officials, to supervise and enforce the indentures. The parents had lost the right to custody and governance of their children, but they could still pursue their child's welfare by suing for strict enforcement of the indenture contract.

Parents sued masters frequently: for abusing their child, for failing to teach their child a trade, for not instructing them, for having the child work on Sunday, or for not caring for the child when sick. Masters also brought actions against parents when their apprentice returned home, for interfering with business and for lost services. The standard of care expected from the master was not always clear. Certainly he had the right to punish an apprentice as a parent would, but the degree of punishment was unclear. Jan Van Hoesem of New York sued Joachim Wesselson for kicking his daughter, rendering her unable to work. Wesselson answered that van Hoesem's daughter "was admonished by his wife to mend her ways as she was a young maiden, whereupon she, making some retort, the woman was moved to chastize her."⁴¹ The court in Plymouth severely rebuked parents whose five-year-old son frequently wandered home, and ordered that if the parents "do receive him, if he shall again [depart] from his said master without his lycense, that the said Frances,

³⁹ Records of the Suffolk County court, 1671-1680, vol. XXX (1933), p. 915., in Bremner, *Children and youth in America*, Vol. I, p. 40.

⁴⁰ Bremner, *Children and youth in America*, Vol. I, p. 105.

⁴¹ Records of New Amsterdam, V, p. 243.

and Chrisian his Wyfe, shall be sett in the stocks every lecture day during the tyme thereof, as often as he or shee shall so receive him."⁴²

Children and slavery

When the War for Independence began in 1776, about one in five American children was a slave. While a good deal of scholarly attention has been paid to the role of slavery in the development of the colonial labor force, very little study has focused specifically on black children and their role in this labor force. There is, in fact, a clear continuum from indentured child servants and apprentices to child slaves. The continuum between indentured servitude and slavery is demonstrated in the laws for the gradual abolition of slavery, initiated by conscience-stricken legislators in the northern states during the last part of the eighteenth century. Recognizing the property interest of slaveholders, these statutes did not free the adults already in slavery, but set terms of freedom for their children which were like those of indentured servants. The first such law, passed by the Pennsylvania legislature in 1780, decreed that all children who would have been born into slavery then were required to serve their owner "until such child shall attain unto the age of twenty-eight years, in the manner and on the conditions whereon servants bound by indenture for four year are."⁴³ The designation of 28 years rather than the usual 21 placed these children of slaves in a middle ground between child apprentices and lifetime servants.

To emphasize the similarities between the condition of children in various forms of servitude does not detract from the central fact that, both legally and conceptually, slavery was a distinctly different condition than indentured servitude. The central legal distinction was that indentured servitude was a contractual employment arrangement with rights and obligations adhering to both master and servant, while slavery was a form of property ownership where the slave held a legal status most closely akin to chattel. This meant that, short of murder, the master could use or abuse him as he could a horse. The master of an apprentice, as we have seen, was limited in the degree of physical punishment he could inflict upon his servant and was required to provide adequate food and shelter, and in most cases, elementary literacy and training in religion.

Conceptually, indentured servitude had a built-in termination date, and while the condition of servitude may have lasted until adulthood, the child and the adults in control of the child both understood its limits. The child would someday become the legal equal of the adult. Another distinction is that the condition of slavery only adhered to black children, who were looked upon

⁴² Plymouth colony records, II, pp. 58–59.

⁴³ An act for the gradual abolition of slavery, 1780 – ch. 881, Pennsylvania statutes at large, X (Harrisburg, 1904), 68–69, in Bremner, *Children and youth in America*, Vol. I, p. 324.

as permanently inferior. While an apprentice might sit at the same table and be treated the same as the natural children of the master's household, a slave child would almost never be treated with such respect.

Race, of course, played a central and complicated role in this continuum of child labor arrangements in the colonies. Not all back children were born to slave mothers. There was always a sizable number of free blacks in the North, and smaller numbers in the southern colonies. Even in the southern colonies, the children of free blacks were not automatically "put out" unless their parents could not support them. As a Kentucky court observed: "The mere fact that these are colored persons does not put them out of the protection of the law, nor subject them to be dealt with or disposed of with a view merely to the interest of individuals. There must be some ground of necessity, in view of the requirements of the law, to authorize the binding out of these children."⁴⁴

Mulatto children were automatically determined to be slaves if their mothers were slaves, but if their mothers were free white women, they were often placed in a "twilight zone" between normal indentured servitude and slavery. Mulatto children of white mothers were treated more harshly than free black children, since there was a widespread fear and loathing of miscegenation. As noted earlier, it was possible, at least in one state for a period of time, to consider the offspring of slave fathers and free white mothers as servants for life. There was a great increase of illegitimate mulatto children in the eighteenth century which the law attempted to curb by punitive means. Generally, the law in the southern colonies dictated that all mulatto children, whether born of free or servant white women, must be bound out to service, usually until 30 or 31 years of age.⁴⁵ The punishment did not stop with the child of the offender: it was extended to future generations.

Where any female mullato, or indian, by law obliged to serve 'till the age of thirty or thirty-one years, shall during the time of her servitude, have any child born of her body, every such child shall serve the master or mistress of such mullato or indian, until it shall attain the same age the mother of such child was obliged by law to serve unto.⁴⁶

American Indians offered yet a another classification problem. Some Indians were taken as slaves following their capture in war, but they proved unsatisfactory. Nor only could they slip back into the wilderness and survive, but they could also inspire their tribe to undertake a bloody revenge attack.⁴⁷ Although

⁴⁴ *Baker (of color) v. Winfrey*, 15 B. Mon 499 (1855) in Bremner, *Children and youth in America*, Vol. I, p. 390.

⁴⁵ *Jernegan, Laboring and dependent classes in colonial America*, pp. 187-188.

⁴⁶ Va. Statutes at large, IV (Richmond, 1820), p. 433 in Bremner, *Children and youth*, Vol I, p. 54.

⁴⁷ Winthrop Jordan, *White over black: American attitudes toward the negro, 1550-1812* (Chapel Hill, 1968), p. 89.

they were discriminated against in many ways, few of their children were raised as slaves, and for most of the same reasons that they were not suitable for slavery, they did not make reliable apprentices. Therefore, Indian children were far more likely than black or mulatto children to be raised by their own parents outside white settlements. At least in some states, when Indians were indentured, they were placed in the same twilight zone of 30 to 31 years of service along with mulatto children.⁴⁸

Conclusion

The mutual obligations of a master servant relationship, rather than a property relationship, or a parent child relationship in the modern sense, best describes the legally enforceable bonds between the adult who held custody and control of the child, and the child who held rights similar to those of an employee. The head of the household, whether he wore the hat of father, or master of indentured servants, had complete rights to the labor of the children in his custody but also had strictly enforced obligations as to their training and education. When the children in his custody were slaves, the master held further rights, including the unconditional right to sell them, and was burdened with few responsibilities. Only with slavery could children be considered chattel, and even within this institution, as we have seen, there was a continuum of legal relationships, based mainly on variations of color, that placed some children between slavery and indentured servitude.

⁴⁸ Va. Statutes at large, IV (Richmond, 1820), p. 433 in Bremner, *Children and youth*, Vol I., p. 54 inuc.