# Introduction: Towards a Comparative History of Europe's Labour Laws, c.1350–1850

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## Approaches to wage labour

In his pioneering study from 1886 on living standards in the past, the economic historian James Thorold Rogers delivered a harsh verdict on the labour laws that governed employer–worker relations in England between 1563 and 1824. Rogers described this body of labour legislation as nothing less than a 'conspiracy' aiming 'to cheat the English workman of his wages, to tie him to the soil, to deprive him of hope, and to degrade him into irremediable poverty'.[1] This characterisation of English labour legislation as a socially selective and oppressive body of law that resulted in low wages, immobility and poverty was informed by Rogers' liberal ideological stance. In their design, the English labour laws were indeed completely antithetical to the principles of free trade that Rogers advocated as a politician. Of most significance here, however, is that the quotation illustrates that the founders of economic history paid ample attention to the legal framework in which labour was mobilised, supervised and remunerated. The material realities of work and wages that Rogers sought to reconstruct could not be dissociated from the legislative framework of work and wages that characterised English society between the late Middle Ages and the early nineteenth century. Other pioneers of English economic history followed in Rogers' footsteps. On the eve of the First World War, Richard Tawney published a lengthy article on the periodic assessment of wages by Justices of the Peace – one of the key elements of early modern English labour laws.[2] This interest in the history of pre-industrial economic relations would expand beyond England. In his opus magnum on the history of economic development in Europe, the Russian historian Maxim Kowalewsky devoted more than 200 pages to the early history of labour laws in late medieval Europe.[3] In

1 J. T. Rogers, *Six Centuries of Work and Wages: The History of English Labour* (London, 1884), p. 398.

2 R. H. Tawney, 'The Assessment of Wages in England by the Justices of the Peace', *Vierteljahrschrift fur Sozial- und Wirtschaftsgeschichte*, 11 (1914), 307–37, 533–64.

3 M. Kowalewsky, *Die ökonomische Entwicklung Europas bis zum Beginn der kapitalistischen Wirtschaftsform*, vol. 5 (Berlin, 1911), pp. 208–445; M. Kowalewsky, 'La législation

his view, late medieval labour legislation was an elite response to the breakdown and demise of serfdom in many parts of Europe. Kowalewsky identified labour laws as a characteristic feature of the transition from feudalism to capitalism in late medieval Europe. Nor was this interest in the history of labour legislation restricted to economic historians. In Germany in particular the history of the legal status of servants attracted much attention. During the late nineteenth and early twentieth centuries numerous – and sometimes lengthy – studies were published that retraced and reconstructed the vast regional bodies of labour laws that governed master–servant and employer–worker relations in the past.[4] All these historians shared the belief that labour laws were more than a footnote in the economic history of Europe; in their design, operation and enforcement, labour laws exposed the social, economic and legal realities and hierarchies of work in the pre-industrial past.

In the second half of the twentieth century, this perspective was gradually abandoned. Economic historians produced a wealth of new data on wages and earnings in the past, but the potential impact of legal labour regimes on the operation of the labour market was rarely researched or acknowledged. In contrast, it was social historians who from the 1970s onwards stressed the fundamental role of labour, poor and vagrancy laws in creating a disciplinary environment for the different categories of pre-industrial workers.[5] With particular reference to England, economic historians sketched a narrative of labour markets that were seemingly immune to the impact of labour laws. This was due to the focus on the settled male day labourer as the preferred unit of analysis, combined with a relative neglect of different forms of labour organisation, such as service or migrant labour. Yet, work performed by living-in servants still accounted for the majority of waged work in the agricultural sector in England until the 1770s.[6] The privileged attention of economic historians on male day labourers produced a skewed and incomplete picture of the lived realities of waged labour in the pre-industrial countryside. Arguably, immobile married adult male labourers were the category of workers that were the least affected by labour, poor and vagrancy laws. The vast body of labour laws predominantly targeted other categories of workers: the young, the unmarried,

ouvrière aux XIIIe et XIVe siècles', *Annales Internationales d'Histoire* (1900), 173–212.

4 For example, R. Wuttke, *Gesindeordnungen und Gesindezwangsdienst in Sachsen bis zum Jahre 1835* (Leipzig, 1893); H. Platzer, *Geschichte der ländlichen Arbeitsverhältnisse in Bayern* (Munich, 1904); E. Lennhoff, *Das ländliche Gesindewesen in der Kurmak Brandenburg vom 16. bis 19. Jahrhundert* (Breslau, 1906); O. Könnecke, *Rechtsgeschichte des Gesindes in West- und Suddeutschland* (Marburg, 1912).

5 See, for example, C. Lis and H. Soly, *Poverty and Capitalism in Pre-Industrial Europe* (New Jersey, 1979) and A. Beier, *Masterless Men: The Vagrancy Problem in England 1560–1640* (London, 1985).

6 C. Muldrew, *Food, Energy and the Creation of Industriousness. Work and Material Culture in Agrarian England, 1550–1780* (Cambridge, 2011), pp. 223–4.

the mobile and the property-less. Also, recent research on England has shown that young women were disproportionally affected by late medieval and early modern labour laws. Late medieval compulsory service, for example, targeted women in particular.[7] The reconstruction of women's wages in the long run by Humphries and Weisdorf indicates that legal wage ceilings imposed by the labour laws effectively held down the earnings of women employed on annual contracts.[8] Importantly, the relative lack of information and detailed studies on these categories of workers compared with male day labourers produces an unrealistic picture of the impact of labour laws in pre-industrial England and other parts of Europe. As we show, numerous studies have unearthed a substantial body of late medieval and early modern labour legislation that actively shaped labour markets and had a direct impact on substantial parts of the pre-industrial rural workforce.

From 1349 onwards, in the aftermath of the Black Death, laws to control waged work multiplied across Europe. Some were local by-laws, others national statutes; some sought to regulate wages and contracts, others sought to control mobility and force potential workers into employment. What these laws demonstrate is a shared belief that hired workers could not be left unregulated. Thus, although waged work became a common form of labour across much of the continent during the late medieval and early modern period, this wage labour was not necessarily 'free'. That is to say, receiving payment in return for work does not necessarily mean that a free labour market existed, where workers and employers met on equal terms and bargained to create a labour contract. Instead, governments and local elites sought to control those social groups that provided wage labour – particularly the young, the relatively poor, and the mobile – and create terms of employment that favoured the employer. In many regions, service was preferred over day labouring as a means of exercising greater control over wage workers. Many laws contained provisions for unemployed or casually employed people to be forced into compulsory service. What we observe, in many parts of Europe, is a selectivity in how labour markets were organised resulting in the restriction of freedom for some categories of workers. The timing, nature and enforcement of such restrictions on the operation of a 'free' labour were subject to important variations. However, as the chapters in this book indicate, labour laws cannot be isolated from underlying economic, social, political and cultural structures.

This book is largely concerned with rural workers, the most common form of wage labour in late medieval and early modern Europe. It concentrates on Western Europe, the region where free wage labour is imagined to have

7 J. M. Bennett, 'Compulsory Service in Late Medieval England', *Past and Present*, 209 (2010), 7–51.

8 J. Humphries and J. Weisdorf, 'The Wages of Women in England, 1260–1850', *Journal of Economic History*, 75 (2015), 423–4.

developed. While recent histories have rightly characterised the late medieval and early modern economies of many European regions as dynamic and highly commercialised, this does not mean that free labour markets necessarily existed. The book explores the variety of legal and regulatory regimes that existed to control labour and how workers experienced those controls. As such, it views labour not just as a relationship between worker and employer but as one between worker, employer and the state. The rest of this section briefly explores the wider implications of wage labour and its regulation for our understanding of this period. Part two of the introduction provides an overview of the context and motivations of labour regulation in different regions, while part three summarises the laws enforced. The final section explains the structure of the book.

Building on the ground-breaking articles of Samuel Cohn and Catharina Lis and Hugo Soly, this book aims to place the development of Europe's labour laws in comparative perspective.[9] Viewing labour regulation comparatively across geographical regions demonstrates both the range of ways labour was organised and the variety of means used to control hired workers. While there were many similarities across regions – for instance, the division of the hired workforce into three main groups, servants employed on annual contracts, day labourers and skilled craftsmen – there were also important differences. Robert Brenner's description of rural economic development in medieval and early modern Europe envisaged workers either as subject to serfdom or as free peasants or wage workers.[10] Yet wage labour did not necessarily entail freedom of action for workers within labour markets. Instead labour was controlled in a variety of ways: sometimes by types of taxation and forms of tenancy (late medieval Italy),[11] sometimes by guild regulations (Germanic regions),[12] sometimes using by-laws created by local elites (southern Low Countries),[13] and sometimes by national and regional laws (England and Scandinavia).[14] These regulations could be all-encompassing and tightly enforced (as in eighteenth-century Sweden, nineteenth-century Iceland and parts of early modern

9 S. Cohn, 'After the Black Death: Labour Legislation and Attitudes towards Labour in Late Medieval Western Europe', *Economic History Review*, 60 (2007), 457–85; C. Lis and H. Soly, 'Labor Laws in Western Europe, 13th–16th Centuries: Patterns of Political and Socio-Economic Rationality', in M. van der Linden and L. Lucassen (eds), *Working on Labor: Essays in Honor of Jan Lucassen* (Leiden, 2012), pp. 297–321.

10 R. Brenner, 'The Agrarian Roots of European Capitalism', *Past and Present*, 97 (1982), 16–113.

11 See the chapter of Cristoferi in this volume.

12 S. Ogilvie, *State Corporatism and Proto-Industry: the Württemberg Black Forest, 1580–1797* (Cambridge, 1997).

13 See Lambrecht in this volume.

14 See Whittle, Østhus and Uppenberg in this volume.

Germany),[15] or unevenly enforced (early modern England).[16] But, wherever they existed, they demonstrate that the holders of political power conceived of wage workers not as 'free' but as subservient and in need of control – economic, social and moral. Workers were seen not as choosing to labour but instead as having a duty to work, and to work in a particular way.

Wage labour is an important aspect of how historians envisage economic change in late medieval and early modern Western Europe. Large farms worked by wage labourers are seen as characterising agrarian capitalism and as more economically advanced than large farms worked by labour services under serfdom, or small farms that relied predominantly on family labour.[17] Similarly, the proportion of the population who were wage earners is seen as a measure of overall economic development and dynamism.[18] Yet, typically, these schema leave unexplored the range of types of wage labour and the nature of markets in which labour was offered for wages. This not only overlooks the human experience of work but risks misrepresenting the context of economic change. We imagine labour markets emerging 'naturally' and operating smoothly according to supply and demand. Yet both Karl Marx and Adam Smith recognised that worker and employer did not meet as equals in the labour market: the employer benefited not only from ownership of capital but also from the support of legislation.[19]

Historians of labour regulation have developed a parallel account of the development of wage labour in Western Europe that draws very different conclusions. Historians including Robert Steinfeld, Douglas Hay and Paul Craven, and Alessandro Stanziani argue that wage labour was not 'free' until reforms in master–servant laws in the second half of the nineteenth century.[20] Before that time laws and litigators conceived of wage workers not as free agents

15 See Uppenberg and Vilhemsson in this volume. For Germany: S. Ogilvie, 'Married Women, Work and the Law: Evidence from Early Modern Germany', in C. Beattie and M. Stevens (eds), *Married Women and the Law in Northern Europe c.1200–1800* (Woodbridge, 2013), pp. 213–39.

16 See Mansell in this volume.

17 L. Shaw-Taylor, 'The Rise of Agrarian Capitalism and the Decline of Family Farming in England', *Economic History Review*, 65 (2012), 26–60.

18 T. de Moor and J. L. van Zanden, 'Girl Power: the European Marriage Pattern and Labour Markets in the North Sea Region in the Late Medieval and Early Modern Period', *Economic History Review*, 63 (2010), 12–13.

19 A. Smith, *Wealth of Nations*, vol. 1 (London, 1776), pp. 97–9; K. Marx, *Capital*, vol. 1 (London, 1887), chapter 28.

20 R. J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350–1870* (Chapel Hill, 1991); D. Hay and P. Craven (eds), *Masters, Servants and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill, 2004); A. Stanziani, *Bondage: Labor and Rights in Eurasia from the Sixteenth to the Early Twentieth Centuries* (New York, 2014).

entering into contracts as equals but as servants and as subservient.[21] Not only were servants (workers employed on longer contracts, often living with their employer) numerically dominant, they were also the normative conception of a wage worker and were assumed to be subservient – that is, of inferior social status and possessing inferior legal rights. In this conception, the late medieval and early modern period was not one of free wage labour markets, but instead was characterised by varied forms of wage labour, typically dominated by live-in service and heavily regulated by laws. Most of these forms of labour were less than free.

Implicit in this 'less than free' wage labour approach is another important observation. Wage labour is not a self-evident concept; instead, like slavery and serfdom, it consists of a bundle of rights that might or might not be extended to different workers and types of worker. For instance, Marcel van der Linden argues for an approach to all forms of labour that examines the entry, conduct and exit from employment arrangements separately in order to discern the degree of freedom allowed to the worker.[22] Lists of possible freedoms or rights, used in comparative histories of slavery, can also be applied to wage workers.[23] The argument here is not that wage labour was equivalent to slavery or serfdom but rather than each form of labour is made up of characteristics that varied and need to be identified and considered in each particular case. As a consequence, it is helpful to think of many varieties of late medieval and early modern wage labour as 'less than free' rather than 'free' or 'unfree'.

The integration of the 'less than free' wage labour perspective into interpretations of economic and social change in Western Europe (and elsewhere) has a number of important implications. The first is that the development of capitalism (or highly commercial and market-orientated societies) does not depend on the dominance of free wage labour. This point has been made repeatedly by historians of early modern slavery,[24] and is implicit in the continued existence of slavery and other forms of coercion in the modern world.[25] But it is also true that the development of capitalism between the fourteenth and eighteenth century, and during the Industrial Revolution, often depended on 'less than free' labour within Western Europe. Thus the second important implication is that

21 This issue is explored in Sarti, this volume.

22 M. van der Linden, 'Dissecting Coerced Labor', in M. van der Linden and M. Rodríguez García (eds), *On Coerced Labor: Work and Compulsion after Chattel Slavery* (Leiden, 2016), pp. 293–322.

23 For example, R. E. Wright, *The Poverty of Slavery: How Unfree Labor Pollutes the Economy* (London, 2017), pp. 25–7.

24 See, for example, B. L. Solow, 'Capitalism and Slavery in the Exceedingly Long Run', in B. L. Solow and S. L. Engerman (eds), *British Capitalism and Caribbean Slavery: The Legacy of Eric Williams* (Cambridge, 1988), pp. 51–78.

25 D. Eltis *et al*. (eds), *The Cambridge World History of Slavery. Vol. 4: 1804–2016* (Cambridge, 2017).

the presence of markets in labour indicate neither the presence of capitalism nor the absence of unfree labour. Markets and capitalism are not synonymous, and the absence of serfdom or slavery does not imply freedom for all workers.

The third point, following from this, is that wage rates do not necessarily reflect market forces (i.e. supply of and demand for labour or the productivity of the worker), but may reflect the freedom of workers to negotiate contracts and the balance of power within wider society. Workers' freedoms could be constricted not only by laws that sought to set wages but also regulations that impeded mobility, created harsh punishments for breaking contracts and forced the unemployed into work. Lack of social status and political power reduced the ability to demand higher wages, as studies of women's work demonstrate.[26] This leads to the fourth point: to understand restrictions to workers' freedoms we need to look beyond the regulation of wages to not only other aspects of labour legislation but also vagrancy laws and the poor laws, to which the labour laws were closely related. Vagrancy laws constricted mobility and punished unemployment. Poor laws could force the able-bodied into work, but, perhaps more significantly, they also sanctioned moral and social interference by economic and political elites in the lives of the relatively poor, undermining freedom in other ways.[27] A final, perhaps rather obvious, point is that the labour laws make it very clear that the legal system was not socially or politically neutral. While laws occasionally offered rights to workers, for instance to reclaim unpaid wages or challenge broken contracts, they were predominantly used to empower employers and enforce workers' subservience. In that sense, labour laws created, reproduced and amplified social and economic inequalities in pre-industrial Europe.

## Motives and context

A large number of European studies have exposed the emergence and existence of various legal measures and mechanisms that intervened in the operation of rural labour markets in pre-industrial Europe. In general terms, these legal interventions – commonly referred to as labour laws – were a reaction to the 'problem of labour'. This problem – real or perceived – manifested itself through anxieties and concerns about the labour supply, wage levels and worker subservience.[28] As this section will show, these challenges often prompted different and divergent responses from those who sought to address the problem of labour.

26 E.g. Humphries and Weisdorf, 'The Wages of Women', 419–30.

27 S. Hindle, *On the Parish? The Micro-Politics of Poor Relief in Rural England c.1550–1750* (Oxford, 2004); see also Johnsson and Vilhelmsson, this volume below.

28 C. Lis and H. Soly, 'Policing the Early Modern Proletariat, 1450–1850', in D. Levine (ed.), *Proletarianization and Family History* (Orlando, 1984), pp. 163–228.

Existing research illustrates that European elites resorted to an impressive and varied arsenal of formal legal measures to bring labour under their control. Labour laws were a pan-European phenomenon during most of the medieval and early modern period, but were equally characterised by substantial differences in the nature of the measures that were adopted.

The variety of responses recorded in pre-industrial labour laws defies any logic at first sight. With respect to the timing, institutions, targeted worker populations and disciplinary measures, the European countryside displays significant differences. Following the outbreak of the Black Death, many regions throughout Europe resorted to some kind of labour control.[29] In some regions these interventions were either short-lived or failed to produce the desired effects. For example, historians have been sceptical about the effects of the labour laws introduced in the region of Paris and the county of Hainaut to combat the mid- fourteenth-century inflation of wages and labour costs.[30] In other regions the measures introduced during the 1350s proved more resilient and marked the starting point of centuries of labour and wage control. For example, in England, northern Italy and some German regions labour laws following the demographic catastrophe of the late 1340s and 1350s initiated interventions in the labour market in the longer term. In contrast, some regions remained untouched by top-down labour market intervention following the Black Death. In the Low Countries most rural regions did not introduce labour legislation in the fourteenth century. Here, the second half of the sixteenth century witnessed an upsurge in local and regional initiatives to deal with the 'problem of labour' following a number of mortality crises.[31] Other regions did not introduce labour laws until the seventeenth century. In large parts of Central and Eastern Europe the demographic downturn triggered by the Thirty Years War (1618–48) marked a new starting point of decades of active labour market intervention.[32]

There was more uniformity with respect to the demise of efforts to control the rural labour market via legal means. In the course of the nineteenth century

29 For an overview of post-Black Death interventions in European rural labour markets see R. Schröder, *Zur Arbeitsverfassung des Spätmittelalters. Eine Darstellung mittelalterlichen Arbeitsrecht aus der Zeit nach der grossen Pest* (Berlin, 1984), pp. 74–104 and R. Braid, 'Et non ultra: politiques royales du travail en Europe occidentale au XIVe siècle', *Bibliothèque de l'Ecole des Chartes*, 161 (2003), 437–91.

30 G. Fourquin, *Les campagnes de la région parisienne à la fin du Moyen Age* (Paris, 1964), p. 258 and G. Sivery, *Structures agraires et vie rurale dans le Hainaut à la fin du Moyen Age*, vol. 2 (Lille, 1980), pp. 429–30.

31 C. Verlinden and J. Craeybeckx, *Prijzen- en lonenpolitiek in de Nederlanden in 1561 en 1588–1589. Onuitgegeven adviezen, ontwerpen en ordonnanties* (Brussels, 1962).

32 W. Abel, *Agrarkrisen und Agrarkonjunktur. Eine Geschichte der Land- und Ernährungswirtschaft Mitteleuropas seit dem hohen Mittelalter* (Hamburg–Berlin, 1978), pp. 160–1; S. Simon, *Die Tagelöhner und ihr Recht im 18 Jahrhundert* (Berlin, 1995), p. 258.

rural labour laws were either abolished, simplified or reformed to bring workers and employers onto an equal legal footing. Labour market intervention in England remained in force until the third quarter of the nineteenth century but after the 1720s targeted the industrial sector in particular. In contrast to previous centuries, the impact of labour laws in eighteenth-century rural England was limited.[33] In France, the revolutionary period marked the end of Old Regime rural labour laws. Although there were temporary measures to deal with rural labour shortages and wage inflation during the Revolution (see below), legal measures during the nineteenth century were restricted to the prevention of worker coalitions (to obtain higher wages) and breach of contract.[34] There is an overall impression of a gradual relaxation of legal means to control the rural workforce during the second half of the nineteenth century. Labour laws were increasingly undermined by the growth of industry and rapid urbanisation in the nineteenth century as large sections of the rural population were offered an alternative to agricultural employment. Liberal governments throughout Europe deliberately deregulated rural labour markets to facilitate internal migration and inter-sectoral mobility.[35] However, the disappearance of labour laws did not necessarily imply that rural elites lost their overall grip on the local labour market. In England, for example, the (old and new) poor laws offered ample opportunities for employers to gain formal and informal control over the working lives of the labouring population. Poor laws and labour laws had worked for centuries in tandem to discipline and control England's rural workforce.[36] The growing poverty of the rural workforce from the middle of

33 W. E. Minchinton, 'Wage Regulation in Pre-Industrial England', in W. E. Minchinton (ed.), *Wage Regulation in Pre-Industrial England* (Newton Abbot, 1972), pp. 10–36; M. Roberts, 'Wages and Wage-Earners in England: the Evidence of the Wage Assessments, 1563–1725', unpublished PhD dissertation (University of Oxford, 1981); J. Innes, 'Regulating Wages in Eighteenth and Early Nineteenth-Century England: Arguments in Context', in P. Gauci (ed.), *Regulating the British Economy, 1660–1850* (Farnham, 2011), pp. 195–216.

34 Y. Crebouw, 'Les salariés agricoles face au maximum des salaires', in *La Révolution française et le monde rural* (Paris, 1989), pp. 113–22; Y. Crebouw, 'Droits et obligations des journaliers et des domestiques, droits et obligations des maîtres', in R. Hubschner and J.-C. Farcy (eds), *La moisson des autres. Les salariés agricoles aux XIXe et XXe siècles* (Ivry-sur-Seine, 1996), pp. 181–98. Crebouw notes that – at least in theory – French law placed farmers and their workers on an equal legal footing.

35 See the case of German territories in T. Keiser, 'Between Status and Contract? Coercion in Contractual Labour Relationships in Germany from the 16th to the 20th century', *Journal of the Max Planck Institute for European Legal History*, 21 (2013), 32–47.

36 See the examples in A. L. Beier, 'A New Serfdom. Labor Laws, Vagrancy Statutes and Labor Discipline in England, 1350–1800', in A. L. Beier and P. Ocobock (eds), *Cast Out. Vagrancy and Homelessness in Global and Historical Perspective* (Athens, 2014), pp. 55–6; T. Wales, 'Living at Their Own Hands: Policing Poor Households and the Young in Early Modern Rural England', *Agricultural History Review*, 61 (2013), 33.

the eighteenth century onwards made the poor laws a more effective tool of labour market control for rural elites.[37] The impact and use of labour laws might have receded, but rural elites found other ways to gain control over the local labour market.

In addition to differences in timing, European labour laws also tended to target different categories of workers. As noted, there was an important element of selectivity in labour laws. In most Scandinavian countries, for example, labour laws targeted unmarried adolescents who were brought under the control of employers through the institution of service. Swedish, Norwegian and Icelandic labour laws were a response to the low population densities that characterised these countries. Service became the favoured strategy to hire workers because it assured the employers of year-round access to labour.[38] In late medieval and early modern France labour laws were primarily designed to facilitate the recruitment and supply of day-labourers. These laws were mainly constructed to avoid labour shortages during peak agricultural periods. The grain and grape harvests in particular were at stake and these required the availability of labourers that could be hired for shorter periods. These differences can also be observed within countries. As the examples of England and the Low Countries indicate, labour laws – in either their design or their enforcement – targeted workers selectively. The specific nature of agricultural production and the associated logic of labour deployment (servants, day labourers and/or migrant workers) largely determined the type of labour that was targeted through the labour laws. Labour laws, therefore, clearly built on pre-existing patterns of labour demand and targeted those categories of workers that were essential to agricultural operations. Labour laws largely mirrored the specific demographic and agricultural characteristics of a region and were not designed with the aim of introducing radical changes in either the supply or the recruitment of labour.

Thirdly, there are also substantial differences in the institutions that enacted labour laws, which could range from national parliaments to local lords. National labour laws that were enacted in a uniform manner throughout a large territory flourished in particular in regions characterised by early forms of political and territorial centralisation. Late medieval and early modern England is the best example of this situation. Here, national labour laws were enacted by parliament from 1351 onwards and – in theory – a set of identical labour laws

37 K. Snell, *Annals of the Labouring Poor. Social Change and Agrarian England, 1660–1900* (Cambridge, 1985), p. 124. For examples from the Low Countries, see Lambrecht in this volume.

38 See the overview in A. Imhof, 'Der Arbeitszwang für das landwirtschaftliche Dienstvolk in den nordischen Ländern im 18 Jahrhundert', *Zeitschrift für Agrargschichte und Agrarsoziologie*, 22 (1974), 59–74 and Østhus, Uppenberg, Johnsson and Vilhelmsson in this volume.

applied to all English regions and villages. The English case, however, is exceptional in late medieval Europe. Although in many other European countries and principalities some form of 'national' labour law can be encountered, these national initiatives often operated in tandem with legislation enacted by other political entities.[39] In early modern France, for example, there was national labour legislation concerning work during the harvest period, but local and regional authorities could supplement these laws with additional measures. For example, the provost of Paris introduced maximum wages in 1601 for the Parisian countryside, including harvest work. Whereas the national labour laws of the sixteenth century stated only that able-bodied rural dwellers should hire themselves for 'reasonable' wages during harvest, local and regional magistrates could complement this labour legislation by setting maximum wages for harvest operations. The body of labour laws that controlled harvest work in early modern France was thus the result of a dialogue between the national and local level.[40] This can also be witnessed in the case of work regulation in the production of wine. During the fourteenth and fifteenth centuries the French monarchy did not issue any top-down labour regulations for this important rural sector, but endorsed and ratified labour regulations solicited and enacted by local and regional authorities.[41] Such a pattern can also be observed in the German principalities. In the sixteenth century the so-called *Reichspolizeiordnungen* of the Holy Roman Empire instructed the different territories to draft labour legislation to halt the inflation of wages and introduce measures to control the mobility of servants, but was silent on how this should be achieved in practice. It was up to the states and regions to design tailor-made labour laws suited to their specific social and economic contexts. As the *Reichspolizeiordnungen* explicitly acknowledged, labour market conditions within the Holy Roman Empire were too diverse to be captured by a uniform set of labour laws.[42]

Finally, labour laws also differed with respect to the economic interests they served. Although many labour laws frequently invoked the 'common good' to justify measures, in most preambles of labour laws a rhetorical strategy hides the true beneficiaries of these policies. In the case of northern Italy, numerous studies have shown that the urban interest was the primary driver of labour legislation. Labour laws for rural workers were the logical complement of an

39 See the case of the Danish state in Østhus, this volume.

40 J. Jacquart, *La crise rurale en Île-de-France, 1550–1670* (Paris, 1974), pp. 266–7; H. Heller, *Labour, Science and Technology in France, 1500–1620* (Cambridge, 1996), pp. 50–1, 186.

41 M. Delafosse, 'Notes d'histoire sociale. Les vignerons d'Auxerrois, XIVe–XVIe siècles', *Annales de Bourgogne*, 20 (1948), 22–34; D. Stella, 'Un conflit du travail dans les vignes d'Auxerre aux XIVe et XVe siècles', *Histoire et Sociétés Rurales*, 5 (1996), 221–51.

42 M. Weber, *Die Reichspolizeiordnungen von 1530, 1548 und 1577. Historische Einführung und Edition* (Frankfurt am Main, 2002), pp. 152, 159, 200–1, 255.

economic policy that was aimed at political domination and economic exploitation of the countryside by urban elites. Although some late medieval labour laws in German regions also partly served the urban interest, this was nowhere as explicit and dominant as in northern Italy.[43] Here, it was in the interest of urban landowners to have access to large, cheap and docile reservoirs of rural labour to work their estates in the hinterland of large cities.[44] There is marked contrast with other highly urbanised areas in Europe, where large cities did not seek to expand their control over the surrounding countryside by way of stringent labour laws.[45] Urban dwellers in the Low Countries, for example, primarily resorted to commercial leasehold to exploit their rural estates. In contrast to sharecropping or direct management, this did not necessitate direct interference in the rural labour market.

In England, on the other hand, late medieval labour laws were crafted with other stakeholders in mind. Here, labour laws served the interests of both manorial lords and tenants with holdings that depended on wage labour. In the mid-fourteenth century many manorial demesnes still depended partly on the supply of cheap labour provided by unfree tenants through a range of labour services.[46] The demographic haemorrhage of the Black Death resulted in labour shortages that threatened the supply of both labour services and waged labour on these demesnes. The English labour laws of the fourteenth century contained provisions that directly benefited manorial lords. For example, lords enjoyed a preferential right to hire workers within their manors.[47] The gradual demise of the demesne sector in fifteenth-century England meant that other actors became the main beneficiaries and the labour laws facilitated the recruitment of workers to medium-sized and large farms that depended heavily on wage labour. This benefited the lesser gentlemen, yeomen and tenants farmers who ran large farms.[48] In late medieval and early modern France these groups were the exclusive beneficiaries of royal and local intervention from the onset. In many regions, labour services had been either abolished or severely restricted

43 For example, in 1423 the nobility and some twenty cities in Westphalia issued labour laws for rural servants and labourers. See E. Kelter, 'Das deutsche Wirtschaftsleben des 14. und 15. Jahrhunderts im Schatten der Pestepidemien', *Jahurbücher für Nationalökonomie und Statistik*, 165 (1953), 168.

44 G. Piccinni, 'La politica agraria delle cita', in R. Mucciarelli, G. Piccinni and G. Pinto (eds), *La costruzione del dominio cittadino sulle campagne. Italia centro-settentrionale, secoli, XII–XIV* (Siena, 2009), pp. 601–25. See also Cristoferi in this volume.

45 See the case of Marseille explored by Michaud in this volume.

46 See the recent overview in M. Bailey, *The Decline of Serfdom in Late Medieval England. From Bondage to Freedom* (Woodbridge, 2014).

47 B. Putnam, *The Enforcement of the Statutes of Labourers During the First Decade After the Black Death, 1349–1359* (New York, 1908), p. 71.

48 J. Whittle, 'Land and People', in K. Wrightson (ed.), *A Social History of England 1500–1750* (Cambridge, 2017), pp. 156–65. See also Whittle in this volume.

in the twelfth and thirteenth centuries. Some lords could claim labour services within their seigneuries until the end of the eighteenth century, but these so-called *corvées* were severely restricted by both custom and the intervention of royal courts.[49] In addition, because most lords had resorted to leasing their demesne farms in the later Middle Ages, their direct interests were not the object of labour legislation. Rather, labour laws in late medieval and early modern France met the needs of arable farmers with large holdings in particular.[50] This focus on the interests of larger farms was also the main characteristic of labour legislation in the Low Countries. Legal interventions in the labour market emerged only where large holdings occupied the majority of the land. In regions dominated by peasant agriculture that relied predominantly on unpaid family labour, local officials saw no need to intervene in the operation of labour markets.[51] In addition to the different groups sketched above, the state itself could also benefit directly from labour market intervention. In regions where territorial princes or states exploited substantial demesne farms, it was in their direct interest to control labour through the machinery of law. For example, the labour laws of Hainaut from 1354 benefited the count directly, as he was still employing large numbers of agricultural workers on his rural estates during the fourteenth century.[52] In a similar way, the sixteenth-century Swedish labour laws would also have benefited the more than one hundred royal demesnes that were largely dependent on wage labour.[53]

Although the myriad local, regional and national interventions in labour markets defies any pan-European logic, they nevertheless share a common characteristic. Most fundamentally, the overwhelming majority of labour laws in pre-industrial Europe favoured employers. Although labour and contract law undoubtedly offered labourers some protection against abuse and fraud

49 For a survey of these restrictions see M. Gransagne, *Les corvées sous l'Ancien Régime* (Saarbrucken, 2015).

50 L. Vardi, 'Construing the Harvest: Gleaners, Farmers and Officials in Early Modern France', *American Historical Review*, 98 (1993), 1424–47; T. Lambrecht, 'Harvest Work and Labor Market Regulation in Old Regime Northern France', in T. M. Safley (ed.), *Labor Before the Industrial Revolution. Work, Technology and Their Ecologies in an Age of Early Capitalism* (Abingdon, 2019), pp. 113–31.

51 T. Lambrecht, 'The Institution of Service in Rural Flanders in the Sixteenth Century: A Regional Perspective', in J. Whittle (ed.), *Servants in Rural Europe, 1400–1900* (Woodbridge, 2017), pp. 50–4.

52 G. Sivery, 'Le Hainaut et la peste noire', *Mémoires et Publications de la Société des Sciences, des Arts et des Lettres du Hainaut*, 79 (1965), 441–3.

53 On labour organisation of the Swedish Crown estates see C. Pihl, 'Gender, Labour, and State Formation in Sixteenth-Century Sweden', *Historical Journal*, 58 (2015), 685–710. On sixteenth-century Swedish labour laws see T. Kotkas, *Royal Police Ordinances in Early Modern Sweden. The Emergence of Voluntaristic Understanding of Law* (Leiden–Boston, 2014), pp. 43–4, 62.

by employers (for example, in the case of premature dismissal or refusal to pay wages), interventions in the labour market during this period cannot be characterised as precursors of worker protection. Indeed, what most labour laws have in common is an implicit or explicit bias towards the interests of those who employed workers, whether these were manorial lords, urban landowners, large farmers or states. Labour laws shaped this inequality in the face of the law by creating a deliberate asymmetrical relationship between employers and various categories of workers. As illustrated below, this asymmetrical relationship was expressed through a wide range of legal norms and rules. These measures share a common feature: they shaped and defined the boundaries of the bargaining arena for labourers and in doing so constrained the choices and freedom of some workers in offering their labour to the market. Labour laws forced large sections of the rural population into an unequal bargaining position. Admittedly, some aspects of labour law targeted employers as well. For example, employers who paid wages to labourers and servants in excess of those provided by statutes risked and faced prosecution. In addition, employers could be fined and punished if they failed to honour their contractual obligations. Although labourers and employers were treated equally by some parts of the law, the complete body of law governing relations between workers and employers gravitated unequivocally towards the interests of the latter. Taken as a whole, legal provisions concerning rural labour were far from balanced between interested parties.

Of course, the existence of such unequal legal provisions does not imply that all workers were subject to the effects of labour laws all the time. As the case of England has shown, there were marked chronological and geographical differences in levels of enforcement throughout the medieval and early modern period. The enforcement of labour laws was contingent upon a number of factors. The English case shows that rural elites enforced the labour laws when a real or perceived need presented itself. The option to enforce labour laws constituted a powerful tool in the hands of these elites to control large sections of the rural population. As long as rural populations were periodically reminded of this option – either through formal prosecution or face to face with an employer – labour laws would have a direct impact on the outcome of the bargaining process. Formal constraints influence individual and group behaviour because they raise the costs and involve risk.[54] In the case of labour laws, it can be argued that their very existence raised the cost of some actions (through fines or other forms of punishment) and consequently might have deterred some people from pursuing these actions altogether.

54 S. Ogilvie, 'Choices and Constraints in the Pre-Industrial Countryside', in C. Briggs, P. M. Kitson and S. J. Thompson (eds), *Population, Welfare and Economic Change in Britain, 1290–1834* (Woodbridge, 2014), p. 298; Humphries and Weisdorf, 'The Wages of Women', 422.

## Contents of labour law

The vast body of labour laws and regulations in the countryside also displays significant variation with respect to the specific measures adopted by rural elites to bring the workforce under their control. In many cases a number of elements dominate these laws and regulations, the most common of which were provisions about maximum wages, breach of contract and compulsory work. Although these three elements are important ingredients of pre-industrial labour laws, they do not cover the complete gamut of labour policing efforts. To the extent that poor and vagrancy laws had an impact on the labour supply choices of individual rural workers, they can also be considered labour legislation. Although the vast number of poor and vagrancy acts are rarely exclusively concerned with labour and labour relations, in practice they often operated in tandem with the formal labour laws. As the next section shows, labour laws and poor laws either mutually enforced or supplemented each other. Additionally, demographic policies were often linked to efforts to control the labour market and people without property. In parts of southern Germany, for example, adolescents had to obtain community consent to enter marriage. Although there were many facets to this type of marriage legislation, it also served as a strategy to maintain a large reservoir of unmarried servants within the community.[55]

### *Controlling wages*

The earliest statutory interventions in the operation of 'free' labour markets in the countryside concern wage levels. Already from the twelfth century cities and states tried to regulate the wages of the rural workforce. The oldest examples of such policies can be traced to northern Italy. An undated twelfth-century statute from the city of Pistoia, for example, imposes maximum wages for the rural workforce ('laboratores terrarum') in neighbouring villages. Maximum wages are listed for different types of rural activity and for the summer and winter months. The statute also contains penal sanctions for employers who paid wages in excess of the rates provided by the statute. The aim of this statutory intervention was to halt the rise of wages and inflation in labour costs.[56] In the course of the thirteenth century an increasing number of rural and urban communities included wage regulation in their statutes. Maximum wage rates were not only restricted to agricultural work but also included other activities.

55 On marriage prohibitions and labour market policies in early modern Germany see J. Nipperdey, *Die Erfindung der Bevölkerungspolitik: Staat, politische Theorie und Population in der Frühen Neuzeit* (Göttingen, 2012), pp. 441–64.

56 M. Ascheri, *The Laws of Late Medieval Italy (1000–1500). Foundations for an European Legal System* (Leiden, 2013), pp. 150–1.

In particular, large infrastructural works (canals and ports) and maintenance of fortifications and defensive city walls in northern Italy were subject to rural wage control.[57] These interventions in the rural economy paralleled the penetration of urban capital in the countryside. As urban citizens expanded their landed estates in the rural hinterland, they also used their political power to exert economic control over the rural workforce. In this part of Europe, urban economic and political interests were the main driver of wage (and labour) regulation in the countryside.[58]

This context is markedly different from that of other European countries. In the English countryside wage regulation does not appear until the mid-fourteenth-century. English harvest bylaws from the thirteenth century already contain indications about the remuneration of harvest workers, but these bylaws cannot be equated to early forms of wage control because they do not set maximum wages. Importantly, the Ordinance of June 1349 did not introduce wage uniformity throughout the territory, as it instructed only that wages should be reduced to their pre-Black Death level. After 1388 England predominantly switched to a policy of national wage rates, but with the Statute of Artificers (1563) English wage policy reverted to the regional level:[59] English magistrates set wages periodically taking into account the local demographic and economic context. As a result, maximum wages could differ substantially between regions in early modern England. The range of occupations and tasks targeted by these wage assessments was impressive and illustrates an ambition to subject large sections of the labouring population to wage control. In the early seventeenth century, for example, English wage assessments regulated the remuneration of some sixty different occupations and tasks.[60]

The same principles guided German wage assessments (called *Lohntaxen*). The *Reichstagordnung* of 1530 instructed local and regional authorities (or so-called *Obrigkeiten*) to actively police the workforce in their jurisdictions. An important part of this policing consisted of curtailing labour costs through the setting of maximum wages. These top-down instructions were reissued in 1548 and 1577 and would become one of the institutional backbones of early

57 For an exploration of local labour legislation in the exceptionally rich Italian sources see P. Toubert, 'Législation du travail et salariat agricole dans les statuts communaux italiens (XIIIe–XIVe siècles)', in A. Mazzon (ed.), *Raccolta di studo offerti a Isa Lori Sanfilippo* (Rome, 2008), pp. 849–57. See also G. Pinto, *I lavoro, la povertà, l'assistenza* (Rome, 2008), pp. 19–20.

58 On labour legislation as part of the agrarian policies of late medieval Italian city states see Piccinni, 'La politica agraria', pp. 601–25. On the legal domination of hinterlands by north Italian cities see the many examples in M. Knapton, 'Land and Economic Policy in Later Fifteenth-Century Padua', in M. Knapton, J. E. Law and A. Smith (eds), *Venice and the Veneto during the Renaissance: the Legacy of Benjamin Kohl* (Florence, 2014), pp. 197–258.

59 See Whittle in this volume.

60 Roberts, 'Wages and Wage-Earners', p. 107.

modern labour law in German territories.[61] Wage assessments were also issued periodically by states and regions and adjusted wages to new demographic and economic realities. During the seventeenth century in particular local magistrates issued numerous *Lohntaxen* as a response to the labour shortages during and after the Thirty Years War. The many and frequent complaints of farmers about the excessive wages demanded by servants in particular resulted in intensive wage supervision and control during the first half of the seventeenth century.[62] As in England, German wage legislation targeted both servants and day labourers and introduced maximum wages for a range of rural occupations and tasks.

In contrast to England and German territories, French magistrates were not required to assess the wages of rural labourers in any structural and permanent way. In the early seventeenth century employers from the region of Troyes petitioned for the periodic setting of maximum wages by local magistrates, as was the case in English counties, but these demands were ultimately not met.[63] During the first decades of the eighteenth century there were numerous complaints about labour shortages in the countryside and the 'excessive' wages demanded by rural labourers, but these did not translate into a policy of maximum wages.[64] Only when discord between labourers and farmers resulted in violence and social upheaval did regional and national authorities step in to regulate wages. For example, during the eighteenth century magistrates intervened in northern France to set the wages of itinerant harvest workers following repeated conflicts and tensions between local labourers and employers.[65] The only region where wage assessments were issued in a more or less systematic way was Alsace. This region had inherited a labour policy inspired by the German tradition of *Lohntaxen* and continued this practice

61 Weber, *Die Reichspolizeiordnungen*, p. 152, 159, 201 and 255.

62 Shortages of servants are frequently recorded in mid-seventeenth-century German farmers' diaries and memorandum books. See the examples in J. Peters, 'Dahingeflossen ins Meer der Zeiten. Über frühmoderne Zeitverständnis der Bauern', in R. Vierhaus (ed.), *Frühe Neuzeit-Frühe Moderne? Forschungen zur Vielsichtigkeit von Übergangsprozessen* (Göttingen, 2012), p. 187; B. von Krusenstjern, 'Der teure Frieden. Aus den Aufzeichnungen eines hessichen Bauern nach dem Dreissigjährigen Krieg, 1648–1651', *Sozialwissenschaftliche Information*, 28 (1999), 253.

63 Y. Durand, *Cahiers de doléances des paroisses du bailliage de Troyes pour les Etats Généraux de 1614* (Paris, 1966), p. 63.

64 M. Marion, 'Un essai de politique sociale en 1724', *Revue Du Dix-Huitième Siècle*, 1 (1913), 31–2; J. Meuvret, *Le problème des subsistances à l'époque Louis XIV. La production des céréales dans la France du XVIIe et du XVIIIe siècle* (Paris, 1977), pp. 180–1.

65 J.-M. Moriceau, 'Les "Baccanals" ou grèves de moissonneurs en pays de France (seconde moitié du XVIIIe siècle)', in J. Nicolas (ed.), *Mouvements populaires et conscience sociale, XVIe–XIXe siècles* (Paris, 1985), pp. 421–34; J. Bernet, 'Les grèves de moissonneurs ou "bacchanals" dans les campagnes d'Ile-de-France et de Picardie au XVIIIe siècle', *Histoire et Sociétés Rurales*, 11 (1999), pp. 153–86.

after incorporation into France in 1648.[66] Only at the end of the eighteenth century was nationwide wage control introduced in France to deal with galloping inflation and labour shortages (as a result of conscription) in the early 1790s. Throughout France, all districts were required to introduce maximum wages that also targeted rural labourers and servants. This nationwide wage control, however, was the result of exceptional circumstances and remained in effect for only a short period. This pattern was also characteristic for the early modern Low Countries. Following instructions from the central government in 1588, regional magistrates were ordered to introduce maximum wages in their territories to halt wage inflation and dampen labour costs. Some rural districts took action and drafted ordinances containing maximum wages for servants and labourers, but this did not lead to structural or long-term government intervention in assessing wage rates.[67]

With the exception of England and German states structural wage control in the long term was rare in Europe. To some extent this can probably be explained by the state of the labour market. In regions where labour was allocated through other systems than the market, there was no need to intervene. In northern Italy, for example, wage control was gradually abandoned in the course of the fifteenth and sixteenth centuries as sharecropping expanded. As most farms in northern Italy ran almost exclusively on family labour, there was simply no market for waged work. In many sharecropping contracts, waged work by sharecroppers was explicitly forbidden.[68] Landlords calibrated the size of the family group with farm size so there were no labour shortages or surpluses at the level of the holding. In such a context, wage control was simply redundant.[69] The absence of wage control cannot only be explained by the relative weakness of competitive labour markets, however. Regions that were highly dependent on wage labour were also characterised by the absence of market interventions. For example, in the Low Countries the coastal regions opposed wage control. The coastal provinces relied heavily on seasonal migrant workers that were recruited from more distant inland regions.[70] Traditionally, these regions attracted workers by offering high wages to meet peak labour demands.

66 G. Livet, *L'intendance d'Alsace sous Louis XIV, 1648–1715* (Strasbourg, 1956), pp. 321–5.

67 C. Verlinden, 'Economic Fluctuations and Government Policy in the Netherlands in the Late XVIth Century', *Journal of European Economic History*, 10 (1981), pp. 201–6.

68 See the examples in P. Jones, 'From Manor to Mezzadria: a Tuscan Case-Study in the Medieval Origins of Modern Agrarian Society', in N. Rubinstein (ed.), *Florentine Studies: Politics and Society in Renaissance Florence* (London, 1966), pp. 193–241; F. McArdle, *Altopascio. A Study in Tuscan Rural Society* (Cambridge, 1978), pp. 72, 111; J. Laurent, 'Patterns of Agrarian Control in Fourteenth-Century Ferrara', *Peasant Studies*, 9 (1982), 190.

69 R. J. Emigh, 'Labor Use and Landlord Control: Sharecropping and Household Structure in Fifteenth-Century Tuscany', *Journal of Historical Sociology*, 11 (1998), 37–73.

70 J. Lucassen, *Migrant Labour in Europe, 1600–1900* (London, 1987), pp. 131–70.

Employers in the coastal regions opposed the introduction of maximum wages in the Low Countries because it would harm their economic interests.[71] As in northern Italy, the specific dynamics of labour recruitment explain why the Low Countries did not resort to wage control.

Comparisons between the maximum wages prescribed by wage ordinances and actual wages paid to servants and labourers indicate that employers frequently paid wages in excess of what the statutes ordered. On the estates of the count of Hainaut, higher wages were paid than the maximum wages set by the ordinance from 1354.[72] Evidence for early modern England also shows that employers sometimes paid wages in excess of the official maximum national and regional rates.[73] Moreover, there were ample opportunities to circumvent official wage rates. Most wage ordinances focused on the cash wages only and were silent about any additional recompenses for labourers. These could take different forms, from food and drink to clothing allowances and crops. Indeed, as the Statute of Artificers stated, it was not unlikely that employers and workers concocted 'secret ways and meanes' to pay and receive wages above the official rates.[74] In theory, there were opportunities to navigate official maximum wage rates through various payments in kind that raised the overall compensation of workers. However, infringements and evasion of statutory wages should not be taken as firm evidence for the failure of wage assessments. To the extent that wage control managed to slow down and dampen wage inflation and rising labour costs they can be labelled successful from the viewpoint of the legislator and employers.

### *Breach of contract*

A second common and widespread characteristic of European labour laws was the so-called contract clause. This particular element of labour legislation sought to enforce the contractual agreements between employers and workers. The contract clause was multifaceted. It not only specified the conditions of entry and exit of the work relationship but also contained penalties for employers and workers for breach of contract. The contract clause contained

71 Verlinden and Craeybeckx, *Prijzen- en lonenpolitiek*, pp. 101–2. See also B. J. P. van Bavel, 'Rural wage labour in the sixteenth-century Low Countries: an assessment of the importance and nature of wage labour in the countryside of Holland, Guelders and Flanders', *Continuity and Change*, 21 (2006), 37–72.

72 Sivery, *Structures agraires*, p. 430.

73 Tawney, 'The Assessment', p. 564; R. K. Kelsall, 'Wage regulations under the Statutes of Artificers', in W. Minchinton (ed.), *Wage Regulation in Pre-Industrial England* (Newton Abbot, 1972), pp. 116–17; A. Kussmaul, *Servants in Husbanry in Early Modern England* (Cambridge, 1981), p. 36; J. Whittle, 'A Different Pattern of Employment: Servants in Rural England *c.*1500–1660', in Whittle (ed.), *Servants in Rural Europe*, pp. 71–3.

74 Roberts, 'Wages and Wage-Earners', p. 225.

specific measures to deal with premature departure and dismissal of servants and the non-execution of work by labourers. An analysis of the treatment of breach of contract in labour legislation is particularly instructive because it illustrates how labour laws deliberately and progressively transformed a private conflict into a public and punishable offence. Moreover, the selective penalisation of contract breach was one of the main characteristics of most late medieval and early modern labour laws. In essence and originally, breach of contract was a private labour dispute. When servants or labourers reneged on their contractual obligations and left employment before the end of their term or before the contracted work was completed, the wronged employer could claim damages through a civil court procedure. And, vice versa, the premature dismissal of a servant or labourer could expose the employer to court proceedings where workers could claim compensation for the loss of income they had sustained.[75]

In contrast to maximum wage clauses, legal provisions about breach of contract were not necessarily detrimental to the interests of those working for wages. On the contrary, contract clauses could offer both workers and employers legal protection. Clauses on breach of contract protected employers against premature departure by workers or non-execution of work. If this breach of contract resulted in economic or financial damage, the employer could sue for damages in court. Equally, such clauses could safeguard workers against non-compliance by employers. In the case of labourers and servants, premature dismissal could result in loss of income, unemployment and in some cases even temporary homelessness. In regions where a large part of the work was executed by free wage labourers and based on contractual agreements, contract clauses were probably instrumental to guarantee the smooth operation of the labour market. However, as we will illustrate below, contract clauses in European labour laws were frequently skewed towards the interests of the employers. Importantly, laws did not consider all forms of contract breach as problematic. In many regions marriage constituted a valid reason to end service prematurely.[76] Also, unjust treatment by the employer (for example the withholding of food) or the 'scandalous' lifestyle of the employer justified the premature rupture of the contact by the worker. Employers could sometimes invoke insubordination, sickness and lack of skills to justify the premature dismissal of a worker.

The labour laws that emerged throughout Europe from the second half of the fourteenth century introduced two important and significant changes

75 For English examples see A. Musson, 'Reconstructing English Labor Laws: A Medieval Perspective', in K. Robertson and M. Übel (eds), *The Middle Ages at Work: Practicing Labor in Late Medieval England* (New York, 2004), pp. 121–2.

76 This was the case in the Low Countries and Germany. See Lambrecht, 'The Institution', p. 51 and Könnecke, *Rechtsgeschichte*, pp. 751–5.

in how rural societies dealt with breach of contract. First, breach of contract was no longer treated exclusively as a private dispute. Employers and workers could still claim damages and compensation in court, but those who reneged on their contractual obligations were also exposed to public prosecution. The penalisation of breach of contract from the late medieval periods onwards is illustrative of the growing interventions of European legislators in labour relations. What was considered a private conflict before the labour shortages of the fourteenth century was thereafter increasingly treated as an offence that could undermine the 'orderly' operation of the labour market and which required state intervention. The penalisation of breach of contract, however, was far from uniform throughout Europe. In the early modern Low Countries, for example, breach of contract was in most regions actively discouraged through fines.[77] In England and large parts of Germany sanctions for breach of contract included harsher punishment such as imprisonment.[78] In these latter labour laws, breach of contract was most radically transformed from a private conflict to a criminal offence.

Second, the contract clauses of labour legislation also introduced an important asymmetry in labour relations. As examples throughout Europe amply illustrate, workers in particular were subject to punishment in the case of contract breach. The English late medieval and early modern labour statutes punished unlawful and premature departure of servants and labourers with imprisonment. In contrast, English employers who laid off their workers before the end of their term risked only a fine of forty shillings at most.[79] These distinct and deliberate inequalities between employers and workers in the punishment of contract breach are also encountered in other European countries. In many German regions, workers found guilty of contract breach not only forfeited their wages but could also be imprisoned or subjected to corporal punishment. In some regions workers – servants in particular – could also be temporarily excluded from the labour market when found guilty of contract breach. In this particular case, local magistrates could order employers not to hire workers that had been found guilty of contract breach. Employers, by contrast, did not suffer such harsh punishment for breach of contract in German law. In most cases they were ordered to pay full (or partial) wages, but did not suffer any additional corrective measures.[80] The unequal position occupied by employers and workers with respect to the punishment of contract breach indicates that labour laws were designed with the interests of employers in mind. Regions

77 J. W. Bosch, 'Rechtshistorische aanteekeningen betreffende de overeenkomst tot het huren van dienstpersoneel', *Themis*, 92 (1931), 405–9.

78 Könnecke, *Rechtsgeschichte*, p. 770.

79 J. Whittle, *The Development of Agrarian Capitalism. Land and Labour in Norfolk 1440–1580* (Oxford, 2000), p. 280; Kelsall, 'Wage Regulations', p. 132.

80 Könnecke, *Rechtsgeschichte*, pp. 769–805, 814–32.

where contract clauses tended to treat workers and employers on an equal footing – such as parts of the late medieval Low Countries – were exceptional.

In many European countries, therefore, rules and regulations concerning breach of contract actively discouraged workers from reneging on their contractual obligations and leaving employment in search for higher wages or better remuneration. The penalisation, and in some cases criminalisation, of such behaviour would probably have deterred workers from breaching their contract. The asymmetric character of the penalties, however, indicates that these regulations were far from neutral labour market instruments. On the contrary, the penalties for employers who breached contract were low. This privileged position allowed employers to dismiss workers without great costs or consequences. For workers, the implications of breach of contract were often far more substantial, both in absolute and relative terms. The level of asymmetry and inequality in clauses concerning breach of contract, therefore, can reveal in a very direct way whose interests legislators had in mind when drafting such legislation.

However, the absence of specific regulations concerning the breach of contract in labour laws does not mean that employers were powerless when confronted with servants and workers who left – or threatened to leave – employment before the end of their contractual term. In early modern France control over the unwanted mobility of workers was achieved through work certificates. From 1565, servants – both in town and countryside – were expected to carry written documentation detailing their employment history. The legislation was enacted to prevent servants and workers leaving employment before the end of the contract and without the consent of the employer. Only a written and signed declaration of the employer could release them from their contractual obligations. Servants and workers that could not produce such written details about their employment history could also not be hired by new employers. Importantly, servants who failed to produce such documentation were considered vagabonds and were subsequently punished under the harsh vagabond laws.[81] The certificate system, therefore, was intended to empower employers and weaken the legal and economic position of workers.[82]

81 J. P. Gutton, *Domestiques et serviteurs dan la France de l'ancien regime* (Paris, 1981), pp. 136–7 and Heller, *Labour*, p. 151. The national regulations concerning work and employment certificates were integrated in local and regional labour laws. See the wage ordinance of the provost of Paris from 1601 in A. Miron de l'Espinay, *François Miron et l'administration municipale de Paris sous Henri IV* (Paris, 1885), p. 355.

82 Rural elites were aware of the power the certificate system gave them to control the unwanted mobility of their workers. See Durand, *Les cahiers*, pp. 107, 144.

*Compulsory work*

Compulsion could be a temporary measure to deal with peak demands for labour. For example, in small urban textile centres French magistrates devised strategies to ensure the labour supply during the harvest period. The harvest by-laws of the small city of Guines from 1341 stated that wage labour in the textile sector was to be suspended during the harvest season.[83] Although there was no formal obligation to hire oneself to work as a harvest labourer, the high fines imposed on non-compliance with this statute suggest that the magistrates of Guines expected textile labourers to temporarily seek employment in the agricultural sector. These strategies continued to exist after the Black Death, sometimes with a more compelling character. In Normandy, for example, the city of Falaise temporarily ordered the suspension of work in the textile sector in the summer months of 1369 to ensure sufficient labourers were available to bring in the harvest. The textile workers were constrained to hire themselves to farmers for 'reasonable' wages.[84] The late medieval customs of Poitou contain similar provisions. Those who did not abandon their non-agricultural activities between mid-July and the end of the harvest period risked a hefty fine.[85] These local and regional measures aimed at ensuring sufficient hands during the harvest period would ultimately also influence the royal ordinance on gleaning from 1554. This ordinance contained the provision that all able-bodied labourers were forced to hire themselves during the harvest period against reasonable wages.[86] The English labour laws contain a similar clause that compelled rural craftsmen to work in the harvest from the late fourteenth century onwards.[87]

Whereas compulsion was largely restricted to harvest work and casual labour in late medieval and early modern France, compulsory work could take different forms in other parts of Europe. The labour laws of late medieval and early modern England most notably contain specific provisions on compulsory service. The labour statute of 1349 compelled unemployed and able-bodied individuals under the age of sixty to find employment as a servant. These measures were largely repeated in the Statute of Artificers of 1563. The

83 G. Espinas, *Le droit économique et social d'une petite ville artésienne à la fin du moyen-âge: Guines* (Lille–Paris, 1949), p. 35.

84 M. Arnoux, 'Les effets de la peste de 1348 sur la société normande: à propos d'un jugement de l'Echiquier de 1395', in E. Lalou, B. Lepeuple and J.-L. Roch (eds), *Des châteaux et des sources; Archéologie et histoire dans la Normandie médiévale. Mélanges en l'honneur d'Anne-Marie Flambard Héricher* (Rouen, 2008), pp. 79–80.

85 R. Filhol, *Le vieux coustumier de Poictou* (Bourges, 1986), pp. 245–6 (art. 732). The customs of Poitou are not dated, but were compiled during the middle of the fifteenth century.

86 Vardi, 'Construing the Harvest', 1432–4; Heller, *Labour*, pp. 50–1.

87 E.g. Statute of Cambridge 1388 and Statute of Artificers 1563.

Elizabethan statute enabled magistrates to compel single persons between the age of twelve and sixty to serve in agriculture. These measures targeted the poorer sections of the population in particular, as they excluded those with property and work in trades. Importantly, those who were compelled to serve were entitled to compensation for their work. Research shows that these clauses did not remain dead letter. In the direct aftermath of the Black Death and during the sixteenth and seventeenth centuries employers and magistrates actively used the law to coerce young unmarried people into service.[88] In particular, during periods characterized by mortality crises and slow population growth magistrates activated the compulsory service clauses of the English labour laws. Once population growth accelerated in the eighteenth century compulsory service gradually disappeared from the rural elite's portfolio of disciplinary measures. Instead, the rural elite threatened to withhold welfare payments to parents whose children were deemed fit to serve.[89] Although the means differed, the effect was the same: children of poor and non-propertied parents in particular could still be coerced into service.

The English measures concerning compulsory service bear a number of similarities with the so-called *Gesindezwangsdienst* that characterised large parts of eastern Europe.[90] However, in contrast to Eastern Europe, early modern English labour laws were not designed within the context of a demesne economy but to meet the labour demands of farmers. This pattern is comparable to some parts of the Low Countries. Here, too, young people from humble backgrounds could be compelled to serve from the middle of the sixteenth century onwards.[91] With the exception of Scandinavia, coercive measures elaborated through labour laws were scarce in other parts of early modern Europe. This does not mean that employers and rural elites lacked the instruments to compel young people in service. Throughout the German territories there was an obligation to serve included in the poor and vagrancy laws. Moreover, young people could be pressured into service through targeted fiscal strategies. Young people living outside service were liable to either weekly or monthly taxes that substantially reduced their net earnings. German servant ordinances were quite explicit about the aims of such taxes: fiscal pressure was exerted to discourage young people from living on their own and to ultimately force them into service.[92]

88 Bennett, 'Compulsory Service'; Whittle, *Development of Agrarian Capitalism*, pp. 280–1; Wales, 'Living', 19–39.

89 Wales, 'Living', 33.

90 See, for example, W. Hagen, *Ordinary Prussians. Brandenburg Junkers and Villagers, 1500–1840* (Cambridge, 2002), pp. 399–408.

91 Lambrecht, 'The Institution', pp. 52–3.

92 See the examples in Simon, *Die Tagelöhner und ihr Recht*, pp. 131–2; R. Dürr, 'Der Dienstbothe ist kein Tagelöhner. Zum Gesinderecht, 16 bis 19 Jahrhundert', in U. Gerard

Whereas compulsory service in England waned after c.1700, coercive measures were still a signature mark of labour legislation in Scandinavian countries until the early nineteenth century.[93] Although compulsory service has its origins in earlier periods, coercion became the preferred instrument of a number of Scandinavian regions between the seventeenth and nineteenth centuries. In Sweden and Finland, for example, servant ordinances from 1686, 1723 and 1739 contained measures that pressured young people into service. Young able-bodied men, for example, could be prosecuted and punished as vagrants if they did not enter service. Young able-bodied women outside service risked imprisonment if they failed to produce evidence that they were actively searching for employment as a servant. In Iceland, Norway and Denmark, too, young unmarried people were equally targeted by the law when they were living outside service and authorities resorted to various legal and penal measures to bring these adolescents under the control and authority of a head of a household. The primary motives to resort to compulsory service varied regionally. In some cases, these were designed to deal with structural labour shortages in the countryside resulting from rural–urban migration and international emigration. In other regions compulsory service was viewed as an instrument to ensure an adequate distribution of surplus family labour throughout the sparsely populated territories. As this section indicates, compulsory service and coercion in labour relations were not unfamiliar to western and northern European labour regimes. These examples from England, France, Germany, the Low Countries and Scandinavia challenge the traditional narrative on agrarian dualism in pre-industrial Europe. Both east and west of the river Elbe rural elites resorted to formal and informal coercion of labour.

As the previous sections have illustrated, many European regions resorted to some form of legal control over the lives of rural workers in pre-industrial times. Our overview has shown that there were actually few regions in Europe where elites and employers could not resort to labour, poor or vagrancy laws to bring labour under their control. Indeed, the absence of formal legal measures to control, discipline or coerce rural workers seems to be the anomaly. Labour, poor and vagrancy laws were part of the standard institutional toolkit of elites and employers throughout pre-industrial Europe and were also interlocked. These tools allowed elites to control and dominate a subservient workforce.[94]

(ed.), *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart* (Munich, 1997), p. 127.

93 See the detailed and extensive discussion of compulsory service in Østhus, Uppenberg, Johnsson and Vilhelmsson in this volume.

94 As one historian observed: 'it was the laws against vagrancy which gave much of the labour legislation its teeth'. C. Given-Wilson, 'The Problem of Labour in the Context of English Government, c. 1350–1450', in J. Bothwell, P. J. P. Goldberg and M. W. Ormrod (eds), *The Problem of Labour in Fourteenth-Century England* (York, 2000), p. 88.

However, although legal labour regimes throughout Europe contained similar ingredients, their specific configuration and dynamics were always shaped by existing political, social, economic, demographic and agrarian structures.[95] There were significant national, regional and local differences in the solutions and responses to the – real or perceived – problems of labour shortages, excessive wage demands, unwanted mobility or work refusal of the rural workforce. Labour laws throughout Europe targeted different categories of workers, but in most cases, young, unmarried and unpropertied individuals were singled out as preferred targets of disciplinary actions.[96] Labour laws were also far from gender neutral. Although in theory they targeted both men and women, in practice unmarried women were disproportionately exposed to compulsory service, strict wage control and disciplinary action. Our overview has also shown that labour laws – in their design and enforcement – were not static but were characterised by dynamism in addressing the unwanted consequences of changing economic and social realities. Finally, although the existing historiography has certainly allowed us to identify a number of commonalities and differences in pre-industrial European labour laws and legal regimes, more research is required to expose and understand the actions and reactions of employers and workers to the 'problem of labour' in pre-industrial rural Europe.

## Structure of the book

This collection does not aim to comprehensively cover the history of labour regulation in Europe over more than 500 years, which would not be possible in a single volume. As a consequence, topics, time periods and European regions are not evenly covered. Instead the aim is to offer fresh perspectives and intensify discussion about the nature of wage labour across Europe between the late medieval period and the nineteenth century based on new research. The chapters of the book are divided into three sections. Part one examines different strategies of labour regulation created in the aftermath of the Black Death between the late fourteenth and sixteenth centuries. It shows that, depending on the structures of government and varying local circumstances, different parts of Europe chose very different paths. As Jane Whittle demonstrates, in England a centralised government dominated by the interests of the landed gentry and aristocracy led to the early and active use of national legislation to regulate labour. While laws were not always effectively enforced, the government never lost interest in finding more effective ways to regulate and discipline the

95 See also Lis and Soly, 'Labor Laws', pp. 319–21.
96 With particular reference to German labour laws see Keiser, 'Between Status and Contract', 44.

relatively poor and landless to provide a subservient workforce. In southern France, Marseille adopted a strategy close to a free-market solution to obtain an agricultural workforce, as Francine Michaud shows. On the one hand, it seems that the high status of Marseille's existing guild of ploughman mitigated against the harsh regulation of agricultural workers, while, on the other, the unregulated in-migration of workers from surrounding regions eventually undermined the Marseille ploughmen's high wages. Marseille benefited from being a prosperous and relatively peaceful enclave surrounded by regions that offered less favourable employment conditions.

The Italian city states of Tuscany also had to contend with the push and pull between neighbouring polities as well as regulation within them. Davide Cristoferi explores the similarities and differences between the strategies pursued by Florence and Siena. In both states, protecting the interests of wealthy citizens who had invested in landed property let on sharecropping agreements was paramount. Here taxation was the favoured form of regulation. By taxing wage earners and independent peasant farmers more heavily than sharecroppers, they both encouraged and protected sharecroppers, creating a market in which city dwellers could accumulate more land and lease it on favourable terms. By their nature, sharecropping contracts provided an agricultural labour force for tenancies. In the long term, the removal of alternatives allowed urban landowners to squeeze sharecroppers harder and bind them to the land. In late medieval England and Tuscany, the profitability of land for rentier owners was maintained using political power to undermine workers' economic advantage. Only in Marseilles, where conditions proved generally favourable to landowners, was increased regulation largely avoided.

Part two of the book turns to the development of labour laws and the classification of labour in the early modern period. Labour laws and other legal structures not only regulated workers but also described and classified different forms of labour relations – these classifications in turn shaping future regulations. Raffaella Sarti compares how slavery, service and other forms of dependent labour such as apprenticeship were understood by early modern commentators. She demonstrates how workers were seen as implicitly dependent and subservient, whether or not they were paid wages or coerced into providing labour. While historians draw sharp distinctions between service (as a form of voluntary wage work) and slavery (as a highly coercive removal of personal freedom), early modern jurists and other writers saw them as very similar types of labour: these views were found across Europe in Italy, France and England. Hanne Østhus, focusing on the Danish Empire, looks more specifically at the state as a vehicle for regulation and classification. The early modern Danish state ruled an empire that included Denmark, Norway, Iceland and a range of other territories stretching from northern Germany to the Caribbean and south-east Asia. Everywhere the large numbers of statutes attest to the importance with which labour regulation was regarded by the state.

As elsewhere, labour laws were intertwined with the regulation of vagrancy and provision for the poor, and it was taken for granted that the 'idle' who were not appropriately employed should be forced into work. Yet, despite an increasingly absolutist state, labour regulations remained local, shaped by local elites and tailored to particular circumstances.

In this sense, the Danish empire stood somewhere between the southern Low Countries and Sweden in its approach. Thijs Lambrecht shows that in Flanders national and regional labour legislation was absent but local by-laws concerned with labour were common. Unlike England, these showed little concern for wage rates and instead concentrated on the servant labour force by regulating service contracts and mobility. Regional differences are evident: areas of large commercial farms sought to force workers into compulsory service, while areas of peasant farming were more concerned with regulating contracts. In Sweden, Carolina Uppenberg demonstrates that successive national statutes built a system that aimed for near-total control of the rural labour force. The laws not only regulated workers, telling people what work to do and ensuring they did that work, but also controlled employers by proscribing how many workers farmers could employ. These regulations stretched into the family: the children of peasant householders could be forced into service as a consequence of parents being allowed to keep only a certain number of working children at home.

The final part of the book explores how labour regulation was experienced by those affected. Lack of evidence makes the experience of law enforcement hard to uncover before the nineteenth century. Charmian Mansell uses an ingenious approach to weigh popular attitudes to labour legislation in England from 1564 to 1641. Young people, seen as prone to idleness and possessing a duty of subservience, were the prime target of the laws. Evidence from 'exceptions' to the character of witnesses in the church courts allows attitudes towards young people to be tweezed from the documents. This shows that, while neighbours were concerned about the poverty and vagrancy of young people, they did not necessarily see entering service, as proscribed by the labour laws, as the solution to these problems. Theresa Johnsson examines the administration of vagrancy legislation, an essential element of the Swedish labour laws, in the early nineteenth century. She demonstrates how, despite an excessively controlling state, imprecision in the legislation and variations in enforcement created a state of uncertainty for the labouring poor. Her analysis of how people were caught up in a capricious system of state monitoring of livelihoods offers a critique to those who would place too much emphasis on the agency of those who were deliberately denied power by the legal system and its enforcers. Vilhelm Vilhelmsson offers another perspective, looking carefully at the unruly behaviour of servants as evidence of resistance rather than a rhetorical trope. In mid-nineteenth-century Iceland service was compulsory for young unmarried people and courts sought to control many aspects of their lives, yet also provided

arbitration in disputes between servants and employers. Cases in these courts demonstrate both the mistreatment of servants and servants' misbehaviour. Yet they also indicate that some servants used the courts and 'weapons of the weak' to renegotiate unsatisfactory situations.

Too often discussions of preindustrial European labour laws have remained restricted to particular national historiographies. Bringing these studies together illuminates three important propositions. First, legal interventions in the operation of labour markets can be witnessed across many different regions of Europe. Second, the combination of the importance of wage labour and a multitude of regulations that sought to ensure the subservience and control of wage workers were a distinctive characteristic of this period. Finally, the most common forms of wage labour in the countryside in this period cannot be considered fully free. Thus, neither the end of serfdom nor the appearance of large numbers of wage workers necessarily resulted in the rise of labour markets in which workers were free to negotiate contracts that suited them. It was not until the nineteenth century that political authorities across Europe, from the village to the nation state, abandoned the assumption that the interests of wage workers should be subordinated to the owners of property.