

THE PERSISTENT SERVANT

Labor, Rules, and Social Hierarchies in France and Britain from the Seventeenth to the Nineteenth Century

In this book, I do not intend to develop a full and original analysis of labor relations and rules in Western Europe; a huge bibliography is already available on this. I only wish to recall recent new trends in the relevant historiography and question the conventional view against the backdrop of the equally revisited interpretation of Russian serfdom. My intention is to raise general questions on the relationship between capitalism, markets, and coercion, on the one hand, and on the analogies and differences between Russia, Western Europe, and some of Western Europe's colonies, on the other hand.

Until at least the mid-nineteenth century, the term *free labor* did not mean what we are now accustomed to it meaning;¹ it included indenture, debt bondage, and several other forms of unfree labor;² conversely, the official abolition of slavery did not see the disappearance of forced labor, but rather the emergence of new forms.³ In both cases, in legal terms, coerced labor was in fact “free labor.”

In this increasingly complex picture, the historical transition from slavery to emancipation has also been reassessed. For example, in French, as well as in British and Spanish, colonies, personal emancipation often took a long time, with years sometimes elapsing between the deed signed by the owner and the tax paid by the quasi-former slave. During those years the ex-slaves had an intermediate status between that of a slave and a freedman.⁴

A similar though less impressive shift has been taking place in the understanding of the evolution of free labor in Europe. For ancien régime

France, for example, it has been demonstrated that the division of society into old orders and corporative regulation had weakened greatly and, to some extent, even disappeared by the early eighteenth century.⁵ On the other hand, important status markers persisted under the liberal regime, for example in relation to the legal status of married women, children, and merchants.⁶

In a similar view, Britain is currently associated with the first historical proletarianization of the peasantry and the rise of a capitalistic labor market. While France, after long being considered a country in which guilds, heritage, and labor regulation had penetrated capitalism, has recently been associated with abolishing criminal punishment for breach of contract eighty years before Britain did so. This chapter reexamines these issues and shows the persistent importance of legal constraints on labor and of the legal inequalities between working people and their masters in nineteenth-century France and Britain.

Labor Constraints in England

We have already looked at labor laws in Britain when discussing Bentham's Panopticon, and it was in this context that I devoted a special section to the Poor Laws. We have now to complete this analysis by examining labor contract rules. The idea that capitalism and in particular the English Industrial Revolution was made possible thanks to institutions that facilitated free contracts and (according to some) a proletarianized peasantry is supported by a long tradition. It dates back to at least the nineteenth century and the classical economists (Smith, Marx), continuing through Tawney and Polanyi and through most works of historical sociology and economic history in the twentieth century. Even the world-system approach, while stressing the existence of mixed forms of labor and exploitation on the periphery and quasi-periphery, has always assumed that free wage labor typified the "core."⁷ However, in recent decades, several pieces of research have contested the impact of enclosure and the existence of a truly free labor market in industrializing Britain.⁸ I wish to further develop this view and connect labor law in Britain with the overall dynamics and rules of labor markets in Europe and Russia, as well as in certain European colonies. Thus, from the sixteenth to the nineteenth centuries, laws on runaway slaves and indentured servants were adopted not only in the colonial Americas, but also in Great Britain, where runaway workers, journeymen, and the like were subject to quite similar laws under the Master and Servant Acts and the Statute of Artificers and Apprentices of 1562. Apprenticeship, advances in wages and raw materials, and simple master-servant relations justified such provisions.

From the sixteenth to the end of the nineteenth century in Britain and throughout Europe, despite the existence of a contract, free labor was considered the property of the employer and a resource for the entire community to which the individual belonged.⁹

In chapter 2, I already mentioned the relationship between Bentham's Panopticon and the forms of labor constraints in Britain, the Poor Law in particular. Here I will remind the reader of only a few aspects of this story: Since the mid-seventeenth century, the Poor Law related relief directly to workhouses. Any person lacking employment or permanent residence was no longer considered a "poor" person, but became a "vagrant," and as such was subject to criminal prosecution. Anti-vagrancy laws did not decline but became stricter in the nineteenth century, particularly after the adoption of the New Poor Law, in 1834. Between this year and the mid-1870s, there were about 10,000 prosecutions for vagrancy.¹⁰ Unlike prosecutions carried out under the Master and Servant Acts, they were conducted on the initiative of public authorities and did not respond to economic trends, but to political and social-order interests.

The workhouse system was far from marginal: it has been estimated that in periods of crisis during the eighteenth and nineteenth centuries, about 6.5 percent of the British population was in a workhouse at any given time.¹¹ Many have seen a strong influence of Bentham in the New Poor Law (adopted in 1834), and certainly there was. The language of the law was similar to what Bentham had developed since the late eighteenth century. At the same time, after the initial favorable reception of the Panopticon ideas in the early nineteenth century, central British authorities were skeptical about adopting a generalized Benthamian system. The commission in charge of the New Poor Law insisted that workhouse labor would be applied for discipline rather than profit.¹² Thus the years following the adoption of the new rules saw increasing number of paupers committed to workhouses for offences: the number of committals rose from 940 in 1837 to 2,596 by 1842, while over 10,500 committals for breach of workhouse discipline were recorded during this same period.¹³

Yet many local authorities did not abandon Bentham's original idea and still hoped to cut their costs with workhouse labor,¹⁴ but this was by no means easy, for the organization of labor met huge difficulties, to start with, the massive presence of the occasionally poor—those who spent some hours in the workhouse. Such workers were mostly set to simple tasks such as carrying or breaking stones; however, they were entitled to claim their food before working, which created several conflicts with the workhouse authorities, who tended to provide food after the work had been accomplished, arguing that otherwise the occasional poor would not perform their task anymore. Paupers and inmates increasingly resisted

the Poor Laws and the workhouse principle, resorting to petitions, sabotage, and, in particular among women, self-mutilation.¹⁵ If one adds the massive protests against the Poor Laws in the 1830s, one would have a complex picture in which different central government orientations faced equally various local elites' attitudes and popular protests.¹⁶ Yet this complexity cannot hide the outcome: the workhouse system was never profitable as Bentham had hoped, and it ultimately worked as form of social control aiming at influencing deviance and the broader labor market. Indeed, the history of workhouses has been one-sidedly linked to that of prisons, while the link with "normal" labor has been ignored.¹⁷ Indeed, this link was strong over centuries not only for the forms of discipline and rights, but also for the way wages and assistance were related. The Statute of Laborers (1350–51) was enacted two years after the Ordinance of Laborers had been put in place¹⁸ and was followed by a set of laws gathered under the umbrella of the Master and Servant Acts, which multiplied in the sixteenth century and accompanied the Statute of Artificers and Apprentices (1562). During the term of service, the labor of servants was legally reserved for their masters. Even at the expiration of the term of service, servants were not allowed to leave their masters unless they had given "one quarter's warning" of their intention to leave.¹⁹ Beginning in the second half of the sixteenth century, the tradition that viewed the master's legal control as property based became an important constituent of the new market society. Workers could be imprisoned until they were willing to return to their employers to complete their agreed-upon service. Any untimely breach of contract on the part of the servant was subject to prosecution. The word fugitive was clearly employed for apprentices and servants who left without giving notice. More generally, servants' hirings were seen as agreements to do something in the future. As such, the labor of servants was considered the legitimate property of the master. In fact, in early-modern Britain, resident servants were like wives and children: all were members of the household and all were the legal dependents of its head. This implies, on the one hand, that servants, children, and wives were entitled to be maintained by the head of the household; on the other hand, all of them were supposed to be under his authority, the family head benefitting from a higher legal status and more legal entitlements and rights than his dependents and family. Both marriage and labor contracts were actually status contracts: they gave rise to a different legal status for wives and servants, on the one hand, and for masters and husbands on the other. Dependency was a normal part of a differential system of rank and degree in which everyone, adult and child, man and woman, had and knew his or her place. In general, labor

was seen as akin to domestic service, with the employer purchasing the worker's time.²⁰

Careful attention should be paid to the definition of servant. Like many lawyers, Macpherson refers to all forms of wage labor,²¹ while Peter Laslett limits it to domestic servants.²² However, the word servant took on different meanings at different times, and the labor relationship did not consist of a single homogeneous legal status. For example, between the fourteenth and sixteenth centuries, contemporaries limited the word servant to particular wage workers who resided with their master, so laborers and artificers were not included under this rubric. However, from the sixteenth century on, the word servant was increasingly used to define any sort of wage earner and thus included journeymen, artificers, and other workmen.²³

Confusingly, from the late eighteenth century on, judicial decision excluded domestic servants from the scope of master and servant statutes—at least in England; although in the colonies they usually were included.²⁴ Special varieties of contract existed for mining, where an annual “bond” was in use, and for shipping, where seamen's labor agreements were widespread. As the leading British legal doctrine of that time put it, by owning slaves and war captives you owned things, whereas labor services meant that you owned a certain person's time.²⁵ It was a lease of labor in which the borrower had the right to benefit from all the time and capacities of his labor force. As long as contracts for the hire of labor continued to be understood as conveyances of property in labor, contractarian individualism would continue to furnish support for unfree labor. Criminal proceedings accompanied the emphasis placed on contractual free will as a foundation of the labor market. Criminal sanctions were provided for because labor was free and the worker freely agreed to them. The measures were also applied to journeymen, unskilled workers, and in general, whenever short-term contracts to improve output were involved. Insubordination or failure to comply with workshop production rules were also considered a breach of contract without notice and as such were liable to criminal sanctions.²⁶ Worse still, the measures of the Master and Servant Acts grew stricter starting in the 1720s, when penalties against servants who broke their contracts were reinforced. The first Industrial Revolution was backed by constraints on labor mobility that were tighter than ever. Between 1720 and 1792, ten acts of Parliament imposed or increased the term of imprisonment for leaving work or for misbehavior. Almost all these acts were a new departure: the Master and Servant Acts not only attempted to provide for social and political stability but required tighter control of workers by their masters while

guaranteeing “fair” competition among masters (that is, they should not try to entice away other masters’ working people). Specific groups promoted these changes: tailors, shoemakers, leatherworkers, mariners, and lace makers. Monetary or raw material investments made by the employer were used to further justify such sanctions against wage earners who left their jobs.²⁷ Employers strongly supported this legal architecture; as late as 1844, in response to strikes and protests in mines, an attempt was made to extend the provisions of the Master and Servant Acts to all labor relations. Extremely widespread popular and workers’ reactions against the bill stopped it from being approved.²⁸

Thus employers also penalized outworkers, who received work to be done and then returned it to the employer when completed, if they retained the work too long. Starting in the mid-eighteenth century, magistrates rendered legal interpretations that were increasingly favorable to masters. This trend had its basis in the huge expansion of the putting-out system in the eighteenth century, which added to the mounting need for agrarian labor.²⁹ Competition between sectors and the intense seasonality of labor strongly buttressed these new labor laws.³⁰ The idea that high wages were necessary to encourage technological creativity, as expressed by Habakkuk and many others,³¹ is based on the false assumption that technological progress was primarily a choice between equivalent alternatives and that these choices depended on factory prices.³² However, there is no persuasive evidence that technological progress emerged as labor-saving in the eighteenth and the first half of the nineteenth century. Agricultural innovations in particular tended to be labor-using rather than labor-saving: the new techniques of husbandry demanded more labor, not less.³³ Recent analyses come to the same conclusion: labor and labor intensity are identified as the main source of agricultural growth before 1850, with human and physical capital playing a secondary role.³⁴ Long after steam had become the dominant form of power employed in manufacturing, the major sources of energy available to farmers continued to be men, animals, wind, and water.³⁵ Labor-intensive techniques linked to the diffusion of knowledge and attractive markets (with increasing agriculture prices) were dominant between the seventeenth and last quarter of the nineteenth century, when this trend reversed (decreasing agricultural prices and increasing wages).³⁶ In Britain as in France, in agriculture, only 15 percent of the increase in worker output between the mid-eighteenth and mid-nineteenth centuries can be attributed to technical progress. The rest was owed to reduced leisure time and more intense work.³⁷

This trend was not limited to agriculture. Casting doubt on traditional views³⁸ based on neoclassical models,³⁹ recent analyses seem to show that the rate of capital intensification in British industry was relatively limited

until the mid-nineteenth century. Christine MacLeod has discovered that the most frequently declared goal of innovation was either improving the quality of the product or saving on capital, not labor.⁴⁰ Feinstein's estimations show that in Britain, the growth rate of domestic reproducible capital stock increased steadily, rising from 1 percent a year in 1760–1800 to 1.5 percent a year in 1800–1830 and to 2 percent a year in 1830–60. The labor force increased just less than 1 percent per year from 1760 to 1800 and just under 1.5 percent from 1800 to 1860. Thus capital and labor grew at about the same rate from 1760 through 1830, with no effective change in the capital-labor ratio during these seven decades. In the last three decades, the ratio did rise, as capital per worker increased at a rate of about 0.5 percent per year.⁴¹ The rate of capital formation in Britain was relatively slow until the mid-nineteenth century; up to this time, the rate of labor/capital increased, and this tendency was reversed no earlier than the end of the nineteenth century.⁴² By 1850, there were relatively few workers employed in factories; only a small proportion worked in technologically advanced industries such as cotton, iron and steel, and metalworking; the full impact of steam power in transport and production was yet to be felt.⁴³

In cotton textiles, the number of machines per worker varied remarkably from region to region—by amounts as large as or larger than variations observed in agriculture.⁴⁴ Such variations were even more significant in other industries.⁴⁵ The unmechanized, subcontracted work of the sweating system surely played a greater role in the intensification of work than did mechanization.⁴⁶ Annual household earnings rather than the daily wages of individuals became the key variable, the participation of wives and children being crucial. De Vries's notion of an "industrious revolution" explains this trend perfectly. Participation of all the members of the household in the labor market and increasing incomes despite falling nominal (and sometimes real) individual hourly and daily wages justified both increasing budget expenditures, the growing labor effort, and the persistent high demand for labor before, during, and after the first Industrial Revolution.⁴⁷

Yet this solution did not always prove to be effective or ensure a stable workforce for industry, because first of all, the unions strongly protested against the employment of children and women and therefore sustained the strategies of those entrepreneurs who introduced long spinning mules, for which only skilled men were required. Seasonal needs in agriculture were the crucial variable here. In Russia, but also in Britain, France, Germany, and the Netherlands, seasonal local shortages of manpower were overcome by interregional migration and—only later in the nineteenth century—by a transformation of hand-harvesting techniques

and tools.⁴⁸ In fact, the labor requirements of harvesting were particularly important since labor output peaked sharply at the harvest. The critical factor affecting the proportion of families assigned to agriculture was the degree of seasonality of labor requirements, because seasonal workers were necessary, but only for short intervals of time.⁴⁹ Yet detailed data show a strong regional and gender differentiation. Throughout the eighteenth and into the mid-nineteenth century, male employment in agriculture experienced a peak in the summer and a low in winter. Conversely, women moved progressively from a seasonal situation similar to that of men to growing employment in spring farming activities, these being associated with livestock.⁵⁰ All this showed a clear link between agriculture and organizational forms of industrial labor. English labor markets had a great seasonality, since the labor requirements of grain production (still dominant in Britain and France) were far more contingent on the season than were those of the other major agricultural products of the era (animal products, wood for fuel or timber, and cleared land) and because agriculture was a major sector. In turn, this provided a rationale for the putting-out system that was still common in England (and even more so in France, as we will see) into the late nineteenth century. It was important not only in skilled industries such as pottery, but also in textiles.⁵¹ Indeed, the extent of seasonality was crucial, because the flexibility of cottage manufactures that was based in workers' ability to choose the time and circumstance of their work gave this form of manufacturing organization a relative advantage in the use of part-time or seasonal labor.⁵² From this perspective, cottage manufacture could compete with the technically more efficient manufactories, because it was more effective at harnessing a part-time or off-peak workforce whose opportunity cost was low. Fluctuations depended on the relative strength of manufacturing, agriculture, and proto-industry; in most of the countries concerned, and even in some British areas, agriculture and proto-industry until the 1850s dictated labor availability to industry and not the reverse. Until the mid-nineteenth century, double employment (mostly in rural and urban areas) was the rule rather than the exception not only in Russia and France, but in Britain, as well.⁵³ Of course, as our evidence shows, this trend was much stronger in textiles than in other industries such as metallurgy, where stable workforces and increasing mechanization existed since the early nineteenth century. Yet instead of refuting our main argument, this issue confirms it: the leading industries of the first Industrial Revolution were much more labor-intensive than usually assumed, at least until the mid-nineteenth century. After that time, mechanization accelerated with the second Industrial Revolution and the emerging of new, highly capital-intensive industries.

All this helps explain the main features of labor contracts. The labor market did not operate as an “auction market”⁵⁴ for several interrelated reasons: there was no unlimited supply of labor, in particular of skilled labor; the peasant-worker and unskilled workforce were the leading actors; and the Master and Servant Acts aimed at providing a tool with which masters could discipline the labor force and fix wages outside the market mechanism.

By the eighteenth century, an oral or written contract for workers other than day laborers was presumed to last a year, particularly in husbandry, unless specific terms had been explicitly negotiated. A one-year contract was the rule for skilled workers, but they were relatively widespread among unskilled labor as well during strong economic upswings. Such a general hiring was presumed to continue unless three months’ notice was given on either side. The requirement of advanced notice was intended to afford employers enough time to replace departing workers and avoid sudden stoppages. Day laborers were often employed at random for some weeks. However, the frequency of departures, mostly in connection with the harvest, proved the relatively limited impact of the law on workers’ behavior. Masters therefore looked for other solutions, such as the possibility of workers subleasing looms and tools and finding a substitute.⁵⁵ This solution was particularly widespread in textile mills, where family members who received a family wage usually worked small spinning mules.⁵⁶

Up through the mid-nineteenth century, the demand for seasonal harvest labor was met mainly by local sources of supply; and long-distance migrants, often from pastoral regions or towns, were not able to easily adjust to random fluctuations in local labor demand.⁵⁷ In general, short-term contracts allowed employers to lay off workers when there was a sudden downturn of trade or if workers became troublesome. Workers were not liable to criminal punishment and could leave immediately. A positive trend in business, with little unemployment, made short-term contracts favorable to workers; the reverse was true when unemployment rose. Even if some firms in Lancashire had developed alternative strategies of “fair wages” since the mid-nineteenth century,⁵⁸ they seem to have been a tiny minority. Most masters and employers waged war on wage laws and exacted criminal punishment to obtain the required amount of labor. This had its basis in the idea that the poor tended to shirk hard work and that higher wages would produce the opposite effect: reducing the supply of labor.

Were these rules enforced?

Historians who have studied criminal sanctions in late eighteenth- and nineteenth-century Britain have depicted them as anomalous rules in a

market society with a large population of proletarians. Detailed analyses have recently been carried out on the rate of penalty enforcement in the courts of Great Britain.⁵⁹ Coercion took different forms: the obligation to work under the New Poor Law and the anti-vagrancy laws; penalties for violating the factory regulation; and penalties for infringing the Master and Servant Acts.

We have already looked at the first form of coercion, its meaning and high degree of enforcement, which responded to public order goals and was enforced in response to social and political dynamics. Factory discipline was also extremely widespread; most masters preferred to mobilize these rules instead of using wage incentives to obtain punctuality and respect for the company's organizational and technical rules.⁶⁰ In most cases, masters sought to convert infractions of factory discipline into Master and Servant offences. The county and police-district records for the years 1857 to 1875 show that some 10,000 people were prosecuted each year for Master and Servant offences. Of those, 7,000 were convicted; 1,700 served sentences in a house of correction; 2,000 were fined; and 3,300 received other kinds of punishment (wages were abated and costs were assessed). Whipping was extremely rare (11 people in 1857; 2 in 1858 and 1859; 1 in 1860; and 1 in 1866).⁶¹ Overall, 5–8 percent of servants were prosecuted, but the percentage reached as high as 17 in some areas and even 20 in London, in certain years. There were no significant differences between the prosecution rate under the Master and Servant Acts in rural areas as opposed to urban counties, or between agricultural, putting-out, and manufacturing areas.⁶² Instead, the response to changing economic trends and the rate of prosecution was stronger in the countryside than in town,⁶³ most likely because of the major impact of seasonal labor shortages on agriculture.

The eighteenth century saw sharp increase in the number of prosecutions, and within this time period were shorter trends that appear to have significantly correlated with the rate of activity and employment. Thus the higher the rate of employment, the higher the rate of worker prosecution. This was not because coercion was higher where people were fewer in number, but because labor markets were segmented and regionally based and because working people actually performed multiple tasks over the year. It also explains why employers did not want their workers imprisoned but rather back at work. Most of these conflicts were solved outside the courts, in particular disagreements between masters for practicing unfair competition, while prosecution of servants was exemplary. For the most part, masters wanted their workers and servants to return to work for them. Legal commentators were very clear that the purpose of the legislation was not so much to punish wrongdoing but to compel

work performance.⁶⁴ There is evidence that employers launched criminal procedures mostly against workers whom they did not want to return—just to set an example.

In addition to long-term trends and prosecutions linked to overall business activity, seasonality seemed to play a serious role. Douglas Hay has carefully quantified this phenomenon: most prosecutions were held in summer, during the harvest, while fewer prosecutions were recorded in the winter months and in October, when most contracts were renewed. At the same time, there were regional variations—depending on the importance of breeding (i.e., female labor in the springtime), of putting-out, of manufacture, and of the particular kind of agriculture involved. For example, in places where the silk industry dominated, the adjudication of disputes took the form of mutual adjustments within the existing structure instead of attacking that structure. This was the case either because (as in Coventry) common lands encircling the town prevented expansion and dilution of trade, or because (as in London) riots and sabotage were easy to carry out and difficult to repress.⁶⁵ Strong regional differences were observed: Worker initiatives account for about 40 percent of cases in Bedfordshire, in 1810–14; for 14 percent in Herefordshire, Gloucestershire, and Worcestershire, in 1801–13; but for only 4 percent in Buckinghamshire, in 1800–1807. Despite these differences, the success rate was almost 100 percent for masters and between 20 and 70 percent for servants in different counties.⁶⁶ These different rates of prosecution can be related to several factors: the economic trend, the local situation, the ideology of labor, and its judicial interpretation. Apprentices were placed under the general Master and Servant Acts. Hay's data show that for every apprentice who denounced a master for mistreatment or unpaid wages, three masters brought apprentices before a court for lack of respect, undue absence, etc. No masters were punished, while the number and percentage of children sent to prison increased in the 1830s and the 1840s. The percentage of convicted children sent to prison was around 30 percent in London, 26 percent in Gloucestershire, and 39 percent in Staffordshire. These figures did not fall until the 1860s.⁶⁷

In contrast, masters and employers were not subject to these measures; the first rulings in this sense occurred in 1844, at the precise time that the Poor Law was eliminated.⁶⁸ Until that point, masters were never threatened with imprisonment for breach of obligations,⁶⁹ but after that, it is unclear whether official statistics included worker-initiated actions. Steinfeld says they did not; however, archival inquiries show that a certain percentage of prosecutions under the Master and Servants Acts were initiated by workers against their employers, mostly for back wages or wrongful dismissal.⁷⁰ As noted above, the different rates of prosecution

can be related to several factors: the economic trend, the local situation, the “ideology” of labor, and its judicial interpretation. For example, most judges aimed at social and political stability, this last being identified with wage stability and fair competition between employers in periods of labor shortages and/or increasing economic activity. This was true in particular for skilled and long-term servants. For day laborers, the rate of prosecution was not significantly different from workers in manufacturing, and it was also seasonally determined—highest in periods of heavy agricultural work, when people shuttled between town and countryside. This corresponded to the terms of contract for agricultural laborers, who were paid only at the end of their contract, precisely to avoid this kind of problem during the harvest season. The masters frequently prosecuted servants engaged in occupations that were half agricultural and half trade and who, in their eyes, had failed to perform the entire promised service; from this standpoint, the enforcement confirms what our discussion of rules has already evidenced—that the Master and Servant laws were tools for reducing employment=turnover costs.

New evidence on the rate of prosecution over time suggests that increasing labor demand was strongly associated with prosecution for breach of contract. Out of these periods, the rate of prosecution was lower in industries and districts where employment was more stable.⁷¹

Thus the long-term movement of labor and its laws in Britain hardly confirms the traditional argument that early labor freedom in the country fueled the Industrial Revolution. On the contrary, the Industrial Revolution was accompanied by increasingly tough regulations and criminal sanctions on workers. Master and Servant Acts were a powerful tool in the hand of masters/employers in filling the increasing demand for labor in the eighteenth and nineteenth centuries. Criminal law became harsher for workers during the Industrial Revolution, and the prosecution rate increased as well. The new Master and Servant Acts were not vestiges of feudal times but a clear response to the new industrializing context. They fit the ambition of judges and British political elites to secure social and political order through laws addressing the poor, vagrancy, and labor. In fact, without this support, the attitudes of the masters would probably not have sufficed to ensure this progressive enlargement of criminal law. Masters criticized unreliable servants and workers, but they also did not hesitate to entice away other employers’ workers. Competition was particularly strong in towns but also existed between urban and rural activities. For the reasons mentioned above, economic growth from the seventeenth through the mid-nineteenth century was often labor intensive, and even when more capital was demanded, it led to greater employment of the labor force. This trend was a response to the persistent attitude

of most employers (not only industrial ones, but also heads of family, especially in the countryside) and public officers, who considered labor a service. We now better understand Bentham's attitudes as discussed in chapter 2. The legal status of labor provided the common ground for the organizational concerns of the firm (or estate) and the poor relief system. From an economic perspective, the Master and Servant Acts responded to a market in which labor was the most important resource; these rules therefore offered masters a solution to guarantee the desired labor force, in particular during periods of shock demands on the labor market. At the same time, criminal penalties were mostly enforced in areas and industries where mobility was greater. From this perspective, contract enforcement was a substitute for higher wages: masters used it as long as they could, in order to secure labor. Unfortunately, this choice did not solve the problem, for many workers were peasant-workers and wished to go back to the countryside during the harvest or at times of major agricultural activities. Given the strong family ties between the town and the countryside, only persistently increasing earnings would have encouraged permanent residence in town. But most masters preferred to use coercion rather than attractive wages to keep the labor force, and they thus ultimately encouraged "fugitive" workers. The situation could change only with accelerating technical progress in both agriculture and industry, creating a capital-intensive path of growth. As we shall see, this occurred only after 1850, with the second Industrial Revolution and the increasing expulsion of the working force from agriculture.

We may now ask to what extent British laws found their parallel elsewhere in Europe. In particular, we will be looking at France, since current legal-historical analysis often presents this country as a partial exception to the British path, in that criminal sanctions against breach of contract were precociously abolished. We may ask whether this is true and, if so, for what reasons and with what implications for wider social and economic dynamics.

A French Exception?

From a historical perspective, the institutional status of labor in France can be divided into two main topics, both of which have generated debate over continuities and breaks with the past. On the one hand, there was the legacy of the guilds and how they were abolished, and on the other, there was the long-term process of ending slavery and its legacy in the colonies. In each case, the object of analysis has been unjustifiably restricted. The analysis of labor in France has overlooked work outside of guilds and, above all, in agriculture; and in the analysis of labor in the colonies,

slavery has received far more attention than other forms of bondage. My aim is to readdress the issues surrounding the institutional status of labor and its practices, as well as how they were passed on over time, by focusing on agricultural laborers and *engagés* and ultimately on the historical relationship between these two groups.

In the past, historians have been fond of opposing the persistence of guilds and the corporatist spirit in French labor law to the free market of Anglo-Saxon labor.⁷² This contrast is no longer relevant and the regulation of labor in France is no longer viewed as being in opposition to market growth.⁷³ From this standpoint, what is important is that France appears to be the first country to have abolished lifelong domestic service as well as criminal penalties in labor disputes.⁷⁴ The chronology of these developments requires further explanation.

As late as the eighteenth century, France's leading legal experts considered labor to be a service provision.⁷⁵ Moreover, French case law made no clear distinction between hiring a person for services and "hiring" a thing. Similarly, apprenticeship contracts and domestic service contracts of longer than a year obliged individuals to place all of their time in the service of their employers,⁷⁶ which prompted the writers of the *l'Encyclopédie méthodique* to denounce such contracts as "slavery."⁷⁷

Although the French Revolution eliminated lifelong domestic service, it retained both forms of contracts from earlier periods: hiring for labor (*louage d'ouvrage*) and hiring for services (*louage de service*). While the former brought the status of the wage earner more in line with the independent artisan, the latter represented an important legacy from earlier forms of domestic service. Cottreau has emphasized the importance of hiring for services in nineteenth-century France and its ability to protect wage earners. Such contracts and the overall attitude of *prud'homme* law courts strongly protected workers.⁷⁸ This argument, while not false, is restricted to the fields studied, i.e. the textile industry and certain urban milieus. But what about the other sectors, especially agriculture?

Both before and after the revolution, legal text classified working people in agriculture as laborers or "task workers" (*tâcherons*), or still as servants in husbandry.⁷⁹ In the eighteenth century, servants in husbandry were by far the largest group of wage earners in French agriculture, as well as in Great Britain.⁸⁰ In the nineteenth century, official statistics reported by Mayaud show that day laborers were commonly found in the southern Mediterranean, Alsace-Lorraine, the Île-de-France, and Picardy. It is estimated that in 1862 about half of the 4 million agricultural wage earners were day laborers; thirty years later, that figure dropped to 1.2 million. The trend was linked in large part to a sudden reduction in the number of small landowners, between 1862 and 1892; by contrast, servants

in husbandry made up an increasingly high percentage of agricultural laborers.⁸¹

The problem with this analysis is that these statistical classifications and categories fail to convey the fluidity of institutional definitions of agricultural (day) laborers (*journaliers*), pieceworkers (*tâcherons*), and domestics (*domestiques*) or how these actors used these definitions. Prior to the revolution, penalties were imposed on all laborers, pieceworkers, or servants in husbandry who quit their jobs before the end of their contract or without the employer's authorization. A variety of contractual arrangements to limit mobility existed at the time (bonuses for hardworking laborers, payment by task) along with general provisions.⁸² Thus from the sixteenth to the eighteenth century, agricultural laborers and servants were free to move about and change employers only at certain times of year—that is, according to the critical periods in the agricultural calendar. In some regions, mobility was permitted around the feast of Saint Martin (11 November), i.e., between the end of the harvest and the beginning of winter; in others, it was around the feast of Saint Jean (summer solstice) or at Christmastime.⁸³ The seasonal nature of agricultural labor gave rise to a significant amount of regional mobility, which was already considerable in the seventeenth century and remained high until around the end of the nineteenth century.⁸⁴ This mobility, together with the notion of labor as service in the legal and economic culture of the time, is precisely what helps to explain the harsh penalties imposed on laborers and servants. They were not allowed to leave their masters until the end of their contract, and if they left prematurely, they were subject to heavy penalties as well as the loss of their earnings. The master, on the other hand, could discharge them at any time.⁸⁵

Little research has been done using legal sources to study agricultural labor in the postrevolutionary period—like the work Cottureau did on certain select industries. One of the exceptions is the thesis of Yvonne Creboux,⁸⁶ which is based on local customs recorded in France during the last quarter of the nineteenth century. Indeed, when studying institutions and labor standards in the countryside we can make use of two main sources, both of them considerable, although they have seldom been used until now: local customs and the archives of the justices of the peace. Practices were inventoried and published in great numbers during the second half of the nineteenth century in response to two parliamentary investigations. The first was launched in 1848, the second in 1870.⁸⁷ This reflected a more general trend under the Second Empire to codify local customs in trade, labor, land ownership, etc.⁸⁸

Several groups (chambers of commerce, landowners associations, local elected officials) originated this request for codification of customs;

indeed, as it appears from records of local meetings and the occurrence of disputes, there was no longer a consensus about the content of one or another local custom. Publishing those practices was an attempt to compose a certain picture of these customs at the very moment when they were beginning to fragment. The anthologies of customs, which were quite numerous,⁸⁹ along with the aforementioned parliamentary investigations and revolutionary archives,⁹⁰ constitute important and easily accessible sources on labor relationships in agriculture.

These sources can be compared with the archives of the justices of the peace available in departmental archives (series U4), keeping in mind that the legal statistics indicate that in the nineteenth century, many more labor disputes were brought to justices of the peace than to the industrial tribunals (*prud'hommes*).⁹¹ This can be explained in part by the fact that justices of the peace had exclusive jurisdiction in lieu of industrial tribunals, which were often not present in rural areas. Unlike the British justice of the peace, the French *juge de paix* was a trained lawyer. Thus even where industrial tribunals were present, justices of the peace decided all cases concerning limited amounts of money. Disputes over the wages (*gages*)⁹² of “servants in husbandry” and laborers was one of the areas reserved for justices of the peace,⁹³ especially because masters were taken at their word (until 1868), unlike their dependents, regarding any issue concerning *gages*, wages, or advances (art.1781 of the French Civil Code).

In the event of a dispute, a justice would above all try to identify the kind of case involved, attempting to ascertain whether it involved a daily laborer, domestic servant, or pieceworker; however, it was by no means easy to distinguish among them. For example, the wage unit for laborers was a single day, this corresponding to a unit of work. The length of the workday was the same throughout a given region; it took into account meals, travel time, and rest periods, but it differed from one season to the next, and wages changed along with the length of the workday. Unlike the payment for those hired for a specific task, the daily laborer’s workday was paid at an agreed price, regardless of the amount of work performed; this led farmers to seek out pieceworkers.

A daily laborer could leave his employer at any time or be discharged without prior notice—and without providing or claiming any compensation. In practice, however, the need to ensure hands for urgent labor had an obvious corrective effect on this rule. For example, a laborer paid by the day might be kept on for one or two weeks, or even a month or two, in the summer and autumn. In some regions, incidentally, there were forms of journeyman contracts for six months or a year. In any case, the journeyman as well as the employer could go back on his word without prior notice.

Indeed, laborers remained free to propose their services to several farmers, if their schedules permitted. Yet as Crebeuw notes, both the wage earner and the master paid for this freedom: the journeyman's employment status was precarious and he ran the risk of seasonal unemployment, while the employer faced a possible shortage of hands during peak seasons.

Was this reason enough to prefer officially declared piecework?

Indeed, this mode of hiring created a few reciprocal obligations: the laborer was supposed to finish the task he undertook, and the employer was not to discharge him without serious reason until its completion. But many exceptions were made to this rule, for example in the Nord, Cher, and Marne *départements*, and as a result, the difference between the commitments of pieceworkers and laborers remained vague in practice and difficult to determine in the event of a dispute. In essence, the two contracts were often combined, thus leaving the parties the possibility of emphasizing one or another aspect of the relationship depending on the particular situation.⁹⁴

Lastly, domestic servants were most closely tied to their masters. This was not due to the work they performed (e.g., domestic chores), but rather to their residence and commitments. In the anthology of local customs in Châtillon-sur-Seine, a domestic servant was defined as a person who hires out his labor; is committed to serve someone; belongs to the household; takes part in the master's work; lives with the master; and who receives wages from him, which are designated as *gages*.⁹⁵ In the Orléans region, domestic servants were "wage-earning servants [*à gage*] who helped the master in agricultural labor and were housed and lived in his home."⁹⁶ The length and continuity of the commitment were also commonly mentioned in the anthologies of customs.⁹⁷

What defined domestic servants and differentiated them from other agricultural wage earners was the nature of the contract, i.e., the content of the commitment, which was almost always tacit and which could not be broken "except for the most serious reasons." Domestic servants were subject to their master's will, which meant they "owed all [their] time to the master for any labor demanded." This subordination to the master's will resulted in making the promised *gages* in a lump sum. Of course, the master did not know the value of the service on which he could count, but "the servant cannot know the amount of work that will be required of him, nor the quality of the benefits in kind that he will be granted." These mutual uncertainties were the source of numerous cases of "infidelity" (on the part of the domestic servant) or of "exploitation and bondage" by the master, as they were described to justices. The master could discharge the domestic servant without notice or compensation

for “dishonesty,” “disobedience,” “forgetting duties,” cursing, or acts of violence. The domestic servants, for their part, complained of poor or inadequate food.⁹⁸

In any event, problems arose most often with regard to the *gage*. Most practices allowed the master to withhold wages equivalent to the amount of work due from the wage earner. This led to the proposal, renewed in 1848, to extend the worker’s booklet (*livret ouvrier*)⁹⁹ to agricultural laborers; however, the measure failed to pass. On the other hand, if the domestic servant demanded compensation, he had no other recourse but the justice of the peace. Such a threat was frequently brandished but far less frequently carried out. Bills were presented in 1848, 1849, and 1850 to change the situation of domestic servants, which the bills’ promoters viewed as a throwback to domestic service under the Old Regime or even as slavery. However, these bills also failed to pass, and the counterargument that “the domestic servant voluntarily subordinates himself to the master” prevailed.¹⁰⁰

The situation changed during the second half of the century, when the rate of disputes went up¹⁰¹ and the demand for agricultural wage earners and domestic servants increased due to emigration to the cities. Employers accused the justices of the peace of being “on the side of laborers and domestic servants”¹⁰²—just as manufacturers during the same period accused the magistrates on industrial tribunals of being biased against them.¹⁰³

In short, before the revolution, the status of French laborers and domestic servants resembled bondage; considerable limits on mobility and high service requirements were the norm, along with pronounced inequalities of status between working people and their masters. Labor was assimilated to service provision. In the nineteenth century, although domestic servants and laborers were held far more accountable than their employers for breach of contract, they were no longer governed by criminal constraints, but merely by civil law. This marked a fundamental difference from the pre-revolutionary period.¹⁰⁴

Conclusion

Our study has revealed surprising continuities in the space and time of labor institutions and practices. Continuities are important in Western Europe between the seventeenth and the mid-nineteenth century, and similarities between Western Europe and Russia are also striking. In Europe, between the sixteenth and the end of the nineteenth century, the barrier between freedom and bondage was not only moveable and negotiable, but it was also thought of in a manner different from how we

are used to thinking of it today. In fact, labor was submitted to serious legal constraints, including in relation to apprenticeship, wage advances, land, raw materials and seeds, and so on. Runaways included not only slaves in the colonies, but also servants and apprentices, and all of them could find themselves subject to criminal, as well as civil, penalties. Laboring people in Western Europe were neither economic actors freely choosing their activity as entrepreneurs or workers (as in neoclassical and liberal economic theory), nor were they proletarians in the Marxist sense. Instead they were legally considered servants or *domestiques* (in France), and, from a social and economic perspective, the peasant-worker was the leading actor. The evolution of institutional and social order interacted and gave rise to a complex chronology that hardly corresponds to those we are used to (the passage from feudalism to capitalism, from bondage to freedom, from self-sufficient to market societies). Throughout the period studied here, free and unfree forms of labor were therefore far more concurrent than opposed to one another, and many forms of unfree labor were actually still considered free engagements. Coercion was not incompatible with market and capitalism, rather it was fully integrated into it.¹⁰⁵

This was so for several interrelated reasons: in Russia as in Europe, between the seventeenth and the mid-nineteenth centuries, labor was legally considered a service. These institutional concerns interacted with economic trends; during the period under consideration, all over Eurasia, unprecedented labor-intensive economic growth occurred. In most European and Russian areas, agriculture did not turn into a simple supplier of produce and workforce for industry; quite the contrary, estates and peasants took part in the development of local and national markets, for both wheat and proto-industrial products. In this context, our conventional images of agrarian capital have also changed; in traditional historiography, England supposedly had higher livestock densities than other European countries and even higher in comparison with Asia. Indeed, in many parts of England, livestock densities were stable throughout the modern period until the mid-nineteenth century;¹⁰⁶ conversely, there was more livestock in Asia and Eastern Europe at the time than is commonly believed.¹⁰⁷ The gap in livestock density is therefore not so important and hardly explains growth. In England, the increase in yields that occurred before 1800 cannot be explained by rising livestock numbers.¹⁰⁸ On the rest of the continent as well, the long-term trend of rising wheat prices (roughly between 1680 and 1815) led to a reduction of the surface area devoted to livestock and livestock feeding while increasing the acreage of wheat cultivation. Mechanization was therefore a relatively unimportant component of the changes in agriculture technology up to the mid-nineteenth century,¹⁰⁹

when the appearance of commercial fertilizers and the development of mechanical harvesting equipment began to significantly affect methods of production.¹¹⁰ Until the machine age, i.e., until 1850, much of the rise in productivity resulted more from the intensive use of known technology than from novel methods. So-called new husbandry was indeed not so new¹¹¹ and it required more labor, not less. Only in agricultural systems like those in the United States, characterized by the high opportunity cost of labor, did economic pressure to mechanize come to resemble that experienced by some sectors of industry. On the contrary—in Russia and France as well as Prussia, from the seventeenth century through the second half of the nineteenth century, not only was labor the major input in agriculture, either directly or embodied in land improvements, but its importance became even greater.¹¹²

Labor and labor intensity were the main source of agriculture growth before 1850, with human and physical capital playing a secondary role.¹¹³ Such labor-intensive techniques linked to the dissemination of knowledge and attractive markets (with rising prices for agricultural products) were widely used between the seventeenth century and the last quarter of the nineteenth century, when—as we see in the last chapter—this trend reversed (agricultural prices went down and wages went up).¹¹⁴

However, increasing demand for labor in agriculture had to compete with similar processes in proto-industry and manufacturing. From the end of the seventeenth century proto-industry developed in Western, Central, and Eastern Europe, in response to market demand and demographic pressure,¹¹⁵ and it retained its central position all over Europe until at least the mid-nineteenth century. Only after this time did some areas begin to decline and manufactures and industries start to replace the putting-out system.¹¹⁶ However, the shift was by no means complete, and in many European areas and districts, proto-industry continued to play a leading role during the second half of the nineteenth century and even in the twentieth century.¹¹⁷ In many areas of Russia and Western Europe, increases in agricultural output and income led to a growth in demand for manufactured goods, which was met by an expanding rural industry using labor-intensive technology. The resulting growth in rural nonagricultural activity in turn generated increased incomes for rural households and hence greater demand for agricultural output. The persistent, global strength of agriculture and proto-industry had an unanticipated effect, however. Urbanization and the supply of labor for urban manufacturing were mostly seasonal. Until the mid-nineteenth century, double employment (rural and urban) was the rule rather than the exception not only in Russia and France,¹¹⁸ but in Britain also. Here, the census and statistical error margins for the larger occupational groups such as agriculture,

commerce, and manufacturing trades, are probably within the range of minus 40 to 66 percent!¹¹⁹ These activities were extremely problematic for rising manufacturing and industry, which, like the other parts of the economy, mostly relied upon labor. Because the price of capital was still high, urban employers sought to cope with labor shortages by putting legal pressure on laborers, who were not allowed to leave before the end of their terms, as well as on competitors, through strong penalties for unfair competition, etc.

But this persistent and global strength of agriculture and proto-industry had an unanticipated effect: urbanization and the supply of labor for urban manufacture were mostly seasonal. The huge demand for labor within the family, in the village, on the estate level, in agriculture, and in town was accompanied by persisting constraints on labor mobility. Local variations within a global labor-intensive trend produced intense interaction between economies, societies, and institutions, all stressing the role of labor and the institutional constraints on it.

Demand and labor-intensive growth were global features of societies and economies between the seventeenth and the mid-nineteenth centuries. In Russia (as well as in Poland and Prussia), legal constraints took a more severe form than in many Western European areas because of the political strength of estate owners, on the one hand, and because of their ambition to penetrate new industries, on the other hand. Contrary to traditional views, many estate owners were not against “progress”; they just wanted to keep urban merchants and producers out of the market, and they succeeded. This issue and not bondage or legal constraints on labor were the peculiarities of Eastern Europe.

This entire complex set of global dynamics helps to explain why Russia looks like an extreme variant of the European model instead of its opposite. Russia took part in the same process of growth, led mostly by demand and by being anchored to small units and labor-intensive technical solutions. Russian agrarian elites were not always opposed to the market and technical improvements, just as Russian peasants and their European counterparts were far from being hostile to the market. Of course, beyond analogies, differences among Russia, Britain, and France are important. In Britain the Glorious Revolution and the first Industrial Revolution did not establish a free market but reinforced the Master and Servant Acts and legal inequalities between masters and workers. At the same time, trade unions were precociously recognized since the early nineteenth century as political and social actors on the labor market. This went along with a slow transformation of the agrarian social landscape, in which landlords did not necessarily turn into capitalists; enclosures progressed at a very slow path until the mid-nineteenth century; and as a consequence, peasants went

on moving between the town and the countryside. The putting-out system and, above all, the enlarged manufacturing sector entered a general Smithian growth that persisted longer than Smith or Marx had argued it would, i.e., until the mid-nineteenth century.

In France, the revolution abolished criminal punishment for breach of contract but did not put an end to the prohibitions against unions. This meant that masters and employers could not sue workers under criminal penalties but made large use of monetary fees. Workers could not rely upon unions, but found an ally in the *prud'hommes* courts. From this perspective, the French labor market was closer to a competitive market than the British one was. Yet this trend had to confront the institutional supports given to the peasantry and small rural estate owners, which encouraged the persistent peasant-worker and proto-industry and added regional and sectorial rigidities to the labor market, thereby compensating for competitive rules that existed on the urban and industrial market. However, the importance of the peasantry was not synonymous with self-subsistence. Quite to the contrary, it expressed a strong proto-industrial development. The peasant-worker was much more important in France than in Britain, but despite this, criminal punishments for breach of contract were never reintroduced. Control of wages passed through the interdiction of unions and the industrial law courts. As in Britain, old agrarian aristocracies survived the transient passage from the old regime to the new one. As Arno Mayer correctly stated many years ago, the end of the old regime in Europe—not only in Austria and Prussia, but also in Britain and France—was a consequence of World War One, not of the Industrial or the French Revolution.

If this is so, then, the Russian specificity consisted in adopting extreme variations of Western solutions. Estate owners entered the proto-industrial and cereal markets at the expense of urban merchants and producers and occasionally to the detriment of new “bourgeois” estate owners. This outcome was politically relevant and specific in that it expressed an extreme defense of old agrarian aristocracies in a context of progressive transformation of the peasantry. In terms of economic growth, this solution was far from catastrophic and confirms that markets and capitalism do not necessarily stand upon democracy and free labor. In tsarist Russia, tensions rose, as we will see in the last chapter, because of the irruption of the second Industrial Revolution and the disintegration of the peasant household. Both these processes introduced a radical instability in the countryside and in Russian society as a whole.

These comparisons in national and area dimensions are valid only as a rough approximation. No doubt, legal rules (civil, tax, and customs laws) and political hierarchies refer to the national dimension of these

phenomena, yet these rules were only one of the components of economic action, along with symbolic, cultural, and political aspects. At the same time, we cannot ignore the importance of local components and the great differences between the dynamics of different regions within a single country. The forms of forced labor—the existence of bondage or even slavery alongside free labor—often varied from one city to the next and from one place to another. This observation is especially relevant in our case, because the institutions and economic activities we are studying were extremely fluid, multiple, and locally based, from the eighteenth to the early twentieth century. Several institutions coexisted on the local level; even when a process of national unification took place, institutional pluralism continued. Local practices and customs played an important role, and they were recognized in nineteenth-century Russia with regard to property and in England and France with regard to work discipline. These elements account simultaneously for common phenomena (restrictions on labor mobility), the diverse ways they were expressed, and their source (worker's booklet, Russian serfdom, criminal punishment in the British Empire). They also explain the differences in the dynamics of Lancashire, the south of France, and western Russia, as well as those between individual English or French factories. As we have seen, in Russia, as in Britain and France, different solutions were adopted within a few miles of each other, and similarities developed more frequently with factories and estates in distant regions than with those nearby. These results confirm the similarities between certain Chinese regions and English districts, which have been the subject of recent research,¹²⁰ just as much as those between proto-industrial districts within Europe.¹²¹ The major importance of local specificities transcends nation-state boundaries and perspectives, and suggests two major insights: between the seventeenth and the mid-nineteenth century, local dynamics and market stickiness encouraged global connections, on the one hand, and legal constraints on labor markets, on the other. Regional variations in the labor markets were associated with multiple activities and residences in labor-intensive economies. In such economies, seasonal and local fluctuations in labor markets were linked with constraints on mobility and unequal rights. At the same time, as the circulation of knowledge and practices between Russia and Europe shows, the importance of the local level (the estate, the firm, the village), did not oppose, but enhanced, global connections. National markets still lagged far behind local and international markets. This link between local and global markets, on the one hand, free and unfree labor on the other hand, is even more evident when one considers Western countries and Russia not as nation-states but as empires. In the following pages, I introduce this dimension to our analysis.

Notes

1. Tom Brass and Marcel van der Linden, eds., *Free and Unfree Labor: The Debate Continues* (Berne: Peter Lang, 1997).
2. The amount of recent work on these subjects is immense, so I will give only a few examples. For servants and indenture, see Steinfeld, *The Invention of Free Labor*; David Galenson, *White Servitude in Colonial America: An Economic Analysis* (Cambridge: Cambridge University Press, 1981); and Northrup, *Indentured Labor*.
3. Pieter C. Emmer ed., *Colonialism and Migration: Indentured Labor Before and After Slavery* (Dordrecht, Boston, Lancaster: Martinus Nijhoff Publishers, 1986); Engerman, *Terms of Labor*; and Cooper, Holt, and Scott, *Beyond Slavery*.
4. On France, see François Régent, *La France et ses esclaves* (Paris: Grasset, 2007).
5. Michael Sonenscher, *Work and Wages: Natural Law, Politics and the Eighteenth-century French Trades* (Cambridge: Cambridge University Press, 1989); Nathalie Zemon Davis, "A Trade Union in Sixteenth-century France," *Economic History Review* 19 (1966): 48–69; Kaplan, *La fin des corporations*; and William Sewell, *Gens de métier et révolution. Le langage du travail de l'Ancien régime à 1848* (Paris: Aubier, 1983).
6. Willibald Steinmetz, ed., *Private Law and Social Inequality in the Industrial Age: Comparing Legal Cultures in Britain, France, Germany, and the United States* (Oxford: Oxford University Press, 2000).
7. Wallerstein, *Modern World-System*. For a critique, see Marc Steinberg, "Capitalist Development, the Labor Process, and the Law," *American Journal of Sociology* 109, 2 (2003): 445–95.
8. Among others, Steinfeld, *The Invention of Free Labor*; Robert Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press, 2001); Deakin and Wilkinson, *The Law of the Labor Market*; Hay and Craven, *Masters, Servants, and Magistrates*.
9. Steinfeld, *The Invention of Free Labor*, especially chapter 3; Michael Postan, "The Chronology of Labor Services," *Transactions of the Royal Historical Society* 20 (1937): 169–93.
10. Sureh Naidu, Noam Yuchtman, "How Green Was My Valley? Coercive Contract Enforcement in Nineteenth-century Britain," NBUR working papers, 2009.
11. Derek Fraser, *The Evolution of the British Welfare State*, 4th ed. (London: Palgrave Macmillan, 2009), 67.
12. British Parliamentary Papers, *Report from the Commissioners for Inquiring into the Administration and Practical Reform of the Poor Laws, 1834*, XXVIII, appendix A.
13. David Green, "Pauper Protests: Protests and Resistance in Early Nineteenth-century London Workhouses," *Social History* 31, 2 (May 2006): 141.
14. Crowther, *The Workhouse System*, 28.
15. Green, "Pauper Protests," 137–59.
16. Felix Driver, *Power and Pauperism: The Workhouse System, 1834–1884* (Cambridge: Cambridge University Press, 1993).
17. On this link, see Crowther, *The Workhouse System*.
18. Ann Kussmaul, *Servants in Husbandry in Early Modern England* (Cambridge: Cambridge University Press, 1981).
19. Steinfeld, *The Invention of Free Labor*, 32.
20. Postan, "The Chronology of Labor Services."
21. Crawford B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962).
22. Peter Laslett, *The World We Have Lost* (New York: Methuen, 1965).
23. Steinfeld, *The Invention of Free Labor*, 17–22.
24. Hay and Craven, *Masters, Servants, and Magistrates*, 7.

25. William Blackstone, *Commentaries on the Laws of England*, 4 vols. 4 volumes, (London: Strahan, Woodfall, 1793–95), booklet 2: 402.
26. George Barnsby, *Social Conditions in the Black Country* (Wolverhampton, England: Integrated Publishing Service, 1980).
27. Donna C. Woods, “The Operation of the Masters and Servants Act in the Black Country, 1858–1875,” *Midland History* 7 (1982): 93–115; Mark R. Freedland, *The Contract of Employment* (Oxford: Oxford University Press: 1976); David Galenson, “The Rise of Free Labor: Economic Change and the Enforcement of Service Contract in England, 1361–1875,” in *Capitalism in Context: Essays on Economic Development and Cultural Change in Honor of R.M. Hartwell*, ed. John James and Mark Thomas (Chicago: University of Chicago University, 1994), 114–137.
28. Christopher Frank, “Britain: The Defeat of the 1844 Master and Servants Bill,” in Hay and Craven, *Masters, Servants, and Magistrates*, 402–21.
29. Richard Rudolph, ed., *The European Peasant, Family, and Society: Historical Studies* (Liverpool: Liverpool University. Press, 1995); Gay Gullickson, “Agriculture and Cottage Industry: Redefining the Causes of Proto-industrialization,” *The Journal of Economic History* 43, 4 (1983): 831–50.
30. Douglas Hay and Nick Rogers, *English Society in the Eighteenth Century: Shuttles and Swords* (Oxford: Oxford University Press, 1997).
31. Hrothgar J. Habakkuk, *American and British Technology in the Nineteenth Century* (Cambridge: Cambridge University Press, 1962).
32. Joel Mokyr, *The Lever of Riches* (Oxford: Oxford University Press, 1990), 165.
33. Charles Timmer, “The Turnip, the New Husbandry, and the English Agricultural Evolution,” *Quarterly Journal of Economics* LXXXIII (1969), 375–95.
34. George Grantham, “Agricultural Supply during the Industrial Revolution: French Evidence and European Implications,” *Journal of Economic History* 49, 1 (1989): 43–72; Giovanni Federico, *Feeding the World: An Economic History of Agriculture, 1800–2000* (Princeton: Princeton University Press, 2005).
35. Patrick O’ Brien, “Agriculture and the Industrial Revolution,” *Economic History Review* 30, 1 (1977): 166–81; Gregory Clark, “Productivity Growth without Technical Change in European Agriculture before 1850,” *The Journal of Economic History* 47, 2 (June 1987): 419–32.
36. F. M. L. Thompson, “The Second Agricultural Revolution, 1815–1880,” *Economic History Review* 21 (1968): 62–77.
37. Grantham, “Agricultural Supply.”
38. Phyllis Deane and W. A. Coale, *British Economic Growth, 1688–1959* (Cambridge: Cambridge University Press, 1962); Peter Temin, “Labor Scarcity and the Problem of American Industrial Efficiency in the 1850s,” *Journal of Economic History* XVI (Sept. 1966): 277–98.
39. Kenneth Arrow, Henri Chenery, B. Minhas, and Robert Solow, “Capital-labor Substitution and Economic Efficiency,” *Review of Economics and Statistics* XLIII (Aug.1961), 225–50.
40. Christine MacLeod, *Inventing the Industrial Revolution* (Cambridge: Cambridge University Press, 1988).
41. Charles Feinstein, “Capital Formation in Great Britain,” in *The Cambridge Economic History of Europe*, vol. VII: *The Industrial Economies: Capital, Labor, and Enterprise*, ed. Peter Mathias and Michael Postan (Cambridge: Cambridge University Press 1978), 28–94.
42. Nicolas R. Crafts, *British Economy during the Industrial Revolution* (Oxford: Clarendon Press, 1985); Jeffrey Williamson, “Why Was British Growth So Slow during the Industrial Revolution?” *Journal of Economic History* 44, 3 (1984): 687–712; Charles Knick Harley, “British Industrialization before 1841: Evidence of Slower Growth during the Industrial Revolution,” *Journal of Economic History* 42, 2 (1982): 267–89; Deane and Coale, *British*

- Economic Growth*; Charles Feinstein and Sidney Pollard, eds., *Studies in Capital Formation in the United Kingdom, 1750–1920* (Oxford: Clarendon Press, 1988).
43. Deakin and Wilkinson, *The Law of the Labor Market*, 20.
 44. Gregory Clark, “Why Isn’t the Whole World Developed? Lessons from the Cotton Mills,” *Journal of Economic History* 45 (March 1987): 141–74.
 45. Richard Biernacki, *The Fabrication of Labor: Britain and Germany, 1640–1914* (Berkeley: California University Press, 1995).
 46. Duncan Bythell, *The Sweated Trades: Outwork in Nineteenth-century Britain* (London: Batsford Academy, 1978); James Schmiechen, *Sweated Industries and Sweated Labor: The London Clothing Trades, 1860–1914* (Urbana, IL: University of Illinois Press, 1982).
 47. De Vries, *The Industrious Revolution*.
 48. E. J. T. Collins, “Migrant Labor in British Agriculture in the Nineteenth Century,” *Economic History Review* 29, 1 (1976), 38–59; Gilles Postel-Vinay, “The Dis-integration of Traditional Labor Markets in France: From Agriculture and Industry to Agriculture or Industry,” in *Labor Market Evolution*, ed. George Grantham and Mary MacKinnon (London and New York: Routledge, 1994), 64–83. For Germany: Melton, “Population Structure,” 297–324.
 49. George Grantham, “Divisions of Labor: Agricultural Productivity and Occupational Specialization in Pre-industrial France,” *The Economic History Review* 46, 3 (1993): 478–502.
 50. K. D. M. Snell, “Agricultural Seasonal Unemployment, the Standard of Living, and Women’s Work in the South and East, 1690–1860,” *The Economic History Review* 34, 3 (1981): 407–37.
 51. Charles Sabel, Jonathan Zeitlin, eds., *World of Possibilities* (Cambridge: Cambridge University Press, 1997).
 52. Kenneth Sokoloff and David Dollar, “Agricultural Seasonality and the Organization of Manufacturing in Early Industrial Economies: The Contrast Between England and the United States,” *The Journal of Economic History* 57, 2 (1997): 288–321; Maxine Berg, *The Age of Manufactures, 1700–1820* (London: Routledge, 1994); George Boyer, *An Economic History of the English Poor Law* (Cambridge, Cambridge University Press, 1990); Simon Kuznets, *Seasonal Variations in Industry and Trade* (New York: NBER, 1933).
 53. Postel-Vinay: “Dis-Integration.”
 54. Michael Huberman, “Invisible Handshakes in Lancashire: Cotton Spinning in the First Half of the Nineteenth Century,” *The Journal of Economic History* 46, 4 (1986): 987–98.
 55. Biernacki, *The Fabrication of Labor*.
 56. Michael Huberman, *Escape from the Market: Negotiating Work in Lancashire* (Cambridge: Cambridge University Press, 1996).
 57. Grantham, “Divisions of Labor.”
 58. Huberman, *Escape from the Market*.
 59. Paul Craven and Douglas Hay, “The Criminalization of Free Labor: Masters and Servants in Comparative Perspective,” *Slavery and Abolition* 15, 2 (1994): 71–101.
 60. Gregory Clark, “Factory Discipline,” *The Journal of Economic History* 54, 1 (1994): 128–63.
 61. *Judicial Statistics, England and Wales, 1857–1875*, 19 vols. London, 1858–1876. Also, Steinfeld, *Coercion*, 73–78.
 62. Douglas Hay, “England, 1562–1875: The Law and Its Uses,” in Hay and Craven, *Masters, Servants, and Magistrates*, 67.
 63. Naidu and Yuchtman, “How Green Was My Valley?”
 64. Steinfeld’s *Coercion* brings several examples.
 65. Douglas Hay, “Master and Servant in England: Using the Law in the Eighteenth and Nineteenth Centuries,” in Steinmetz, *Private Law*, 227–64.
 66. For the most complete data, see Hay “England, 1562–1875,” table 2.1.
 67. *Ibid.*, 93–94.

68. Hay, "England 1562–1875," 59–116, in particular, 67.
69. Ibid.
70. Woods, "Operations," 102.
71. Naidu, Yuchtman, "How Green Was My Valley?"
72. Emile Coornaert, *Les corporations en France* (Paris: Gallimard, 1941); Edward P. Thompson, *The Making of the English Working Class* (London: Vintage Books, 1963); and Sewell, *Gens de métier et révolution*.
73. Sonenscher, *Work and Wages*; Minard, *La fortune du colbertisme*.
74. Alain Cottureau, "Droit et bon droit. Un droit des ouvriers instauré, puis évincé par le droit du travail, France, XIXe siècle," *Annales* 57, 6 (2002): 1521–57; Deakin and Wilkinson, *The Law of the Labor Market*.
75. Jean Domat, *Les lois civiles dans leur ordre naturel*, first edition 1697, reproduced in *Œuvres* (Paris: 1835), vol. 1; and R. Pothier, *Traité du contrat de louage* (Paris: Bugnet, 1861).
76. Sonenscher, *Work and Wages*, 75.
77. "La domesticité est une sorte d'esclavage." See the *Encyclopédie méthodique*, vol. 9: "Jurisprudence," 15 (Paris: 1789). Sara Maza, *Servants and Masters in Eighteenth-century France* (Princeton: Princeton University Press, 1983); Jean-Pierre Gutton, *Domestiques et serviteurs dans la France d'ancien régime* (Paris: Aubier, 1981).
78. Cottureau, "Droit et bon droit."
79. Jean-Marc Moriceau, "Les Baccanals ou grèves des moissonneurs en pays de France, seconde moitié du XVIIIe siècle," in *Mouvements populaires et conscience sociale*, ed. Jean Nicolas (Paris: Maloine 1985), 420–33.
80. Hoffman, *Growth*.
81. Jean-Luc Mayaud, "Salariés agricoles et petite propriété dans la France du XIXe siècle," in *La moisson des autres*, ed. Jean-Claude Farcy and Ronald Hubscher (Nice: Créaphys édition, 1996): 29–56.
82. Philip Hoffman, *Growth in a Traditional Society. The French Countryside, 1450–1815* (Princeton: Princeton University Press, 1996), 45–46.
83. Abbé Rozier, *Cours complet d'agriculture ou Dictionnaire universel d'agriculture*, vol. 8: "Domestique" (Paris: Clouzier 1789), 353. I thank Gilles Postel-Vinay for this reference.
84. Collins, "Migrant Labor"; Postel-Vinay, "The Dis-integration."
85. Rozier, *Cours*, 353.
86. Yvonne Creboux, *Salaires et salariés agricoles en France, des débuts de la révolution aux approches du XXe siècle* (Lille: ANRT, 1986); Yvonne Creboux, "Droit et obligations des journaliers et des domestiques, droits et obligations des maîtres," in Farcy and Hubscher, *La moisson*, 181–200.
87. Parliamentary inquiries of 1848 (Archives Nationales, henceforth AN C, 844–858) and 1870, in AN C 1157–61.
88. Jean Hilaire, *Introduction à l'histoire du droit commerciale* (Paris: LGDJ, 1986), 107–11.
89. See *Usages locaux ayant force de loi dans le département de la Meuse* (Bar-le-Duc: Imprimerie Contant-Laguerre, 1900); Louis Bertrand, *Usages locaux du département de la Haute-Loire* (Le Puy: Imprimerie de Marchesson 1865); Aimé Dumay, *Usages locaux du département de la cote d'or* (Dijon: Imprimerie E. Jobard 1884); Raphaël Mosse, *Les usages locaux de l'arrondissement d'orange* (Orange: P. Martin, 1914); J. M. P. Limon, *Recueil des usages locaux en vigueur dans le Finistère* (Quimper: Imprimerie de Lyon, 1852); Hyacinthe Watrin, *Département de l'Euve-et-Loir: usages des quatre arrondissements et notions de droit usual* (Chartres: Lester 1910).
90. AN F 12 1516 à 1544; AN F 10 451–2.
91. Gilles Rouet, *Justice et justiciables au XIXe et XXe siècles* (Paris: Belin, 1999).
92. In French legal and economic language, the wages of servants and servants in husbandry are called *gages*; this designated the monetary component of their remuneration as distinct from food and housing provisions. Thus *gages* are clearly distinguished from wages, which

- were given only for wage labor. It will be interesting to study when and why the English language adopted the word *wages* to indicate both configurations—this despite the evident legal, economic, and social differences between a domestic servant and a wage earner.
93. Jean-Claude Farcy, *Guide des archives judiciaires et pénitentiaires, 1800–1958* (Paris: CNRS éditions, 1992).
 94. AN F 10 452 “Fixation des salaires agricoles,” an II, an III; Henri Clément, *Essai sur les usages locaux du Pas-de-Calais* (Arras: Topino 1956); and AN C 1157–61.
 95. Crebouw, “Salaires.”
 96. Louis Carrier de Ladeveze, *Notice sur les usages locaux* (Villefranche de Périgord: Dordogne, Sarlat: 1908).
 97. Crebouw, “Salaires,” 185.
 98. *Recueil des usages locaux en vigueur dans le département de la Vienne* (Poitiers: Bertrand: 1865); *Recueil des usages locaux du département d’Indre-et-Loire* (Tours: Guiland Verger, 1863); Antoine Pages, *Usages et règlements locaux, servant de complément à la loi civile et topographie légale du département de l’Isère* (Grenoble: Baratier frères, 1855). See also the 1870 parliamentary enquiry in AN C 1157–61.
 99. The *livret ouvrier* was a discharge certificate; it had to certify being hired for a specific job and its completion (*quittance*) or acknowledge that the worker had not yet paid off advances received as wages and that his debt remained to be deducted from future wages by the new employer.
 100. AN C 846–860.
 101. Crebouw, “Droit.”
 102. Cottereau, “Droit et bon droit.”
 103. Cottereau, “Droit et bon droit.”
 104. Alain Dewerpe, *Le monde du travail en France, 1800–1950* (Paris: Colin, 1989); Yves Lequin and Pierre Delsalle, *La brouette et la navette: tisserands, paysans et fabricants dans la région de Roubaix et de Tourcoing, 1800–1848* (Lille: Westhoek, 1985); and Jacques Le Goff, *Du silence à la parole* (Rennes: Presses Universitaires de Rennes, 2004).
 105. Steinfeld, *Coercion*; Steinberg, “Capitalist Development,” 445–95.
 106. Robert Allen, *Enclosures and the Yeoman* (Oxford: Clarendon Press, 1992)
 107. Pomeranz, *The Great Divergence*.
 108. Robert Allen, “Tracking the Agricultural Revolution in England,” *Economic History Review*, LII, 2 (1999): 209–235.
 109. O’ Brien, “Agriculture.”
 110. Grantham, “Agricultural Supply.”
 111. Federico, *Feeding the World*.
 112. Clark, “Productivity Growth.”
 113. Grantham, “Agricultural Supply”; Allen, *Enclosures*; O’Brien, “Agriculture.”
 114. Thompson, “The Second Agricultural Revolution.”
 115. Hagen, *Ordinary Prussians*.
 116. Ogilvie, Cerman, *European Proto-industrialization*.
 117. Sabel and Zeitlin, *World of Possibilities*.
 118. Postel-Vinay, “The Dis-Integration.”
 119. Peter Lindert and Jeffrey Williamson, “Revising England’s Social Tables, 1688–1867,” *Explorations in Economic History* 19, 4 (1982): 385–408; Peter Lindert and Jeffrey Williamson, “English Workers’ Living Standards During the Industrial Revolution: A New Look,” *Economic History Review* 36, 1 (1983): 1–25.
 120. Pomeranz, *The Great Divergence*.
 121. Cerman, Ogilvie, *European*.