



GLOBAL DYNAMICS OF SOCIAL POLICY

Constructing Worlds of Labour

Coverage and Generosity of
Labour Law as Outcomes of
Regulatory Social Policy

Edited by
Ulrich Mückenberger
Heiner Fechner
Irene Dingeldey



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Global Dynamics of Social Policy

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PREFACE AND ACKNOWLEDGEMENTS

The volume *Constructing Worlds of Labour* aims to break new ground in presenting results on different types of labour standards around the world as regulatory social policy. The specific topic is to make visible that, and to explain why, employment law worldwide not only has a protective role but also a segmenting role—creating social differentiation based on status, gender and/or race. We conceptualised this role of law as *legal segmentation* and identified various historical and power-related reasons for it. We also want to identify how segmenting employment law interacts with segmentative implications of other (current and/or historical) legal institutions—such as social law, family law, tax law, but also legislation based on slavery, gender, race and ethnicity. As explanations, not only path-dependent institutional developments are the subject of in-depth investigations but also colonial influences, international organisations and epistemic communities including postcolonial thought. The research outcomes are comprehensively discussed in order to derive propositions on how to overcome the described situation in the different worlds of labour. Hence, not only applying a global perspective but also treading new paths in interdisciplinary co-operation—both theoretically/normatively and empirically—makes this book outstanding.

The volume is edited by the Postdoc Heiner Fechner (labour law, law and development, and human rights) and the Principal Investigators Ulrich Mückenberger (labour and social security law and political science) and Irene Dingeldey (political science and labour market sociology) from the project Worlds of Labour (WoL), and is based on the work of former and present project members, namely Marina Carlino, Jean-Yves Gerlitz,

Jenny Hahs and Andrea Schäfer. Within the conceptual and methodological framework of the Collaborative Research Centre (CRC) 1342 *Global Dynamics of Social Policy* at the University of Bremen, Germany, since 2018 the A03-WoL project has studied and systematised coverage and generosity of individual labour law in most countries of the world. The contributions to the volume present a comprehensive view on our approach to measuring generosity and coverage of labour law and will deepen the historical and theoretical foundations and explanations of legal segmentation.

In methodological terms, in addition to hermeneutical and qualitative critical historical methods, the WoL-project made use of quantitative analytical methods for analysing the worldwide diffusion of protecting and segmenting employment rules. We took recourse to *leximetric* measurement as introduced by the Cambridge University's Centre for Business Research Labour Regulation Index (CBR-LRI) team for the protective role of employment law, which was complemented by the WoL-team for the segmentative role of employment law. The enlarged WoL dataset facilitates innovative quantitative analyses, be they on standard-setting law, distinguishing SER and Non-SER regulation; be they on the European colonisers' employment law forced upon colonies in Africa; be they on worldwide diffusion of standard-setting and privileging employment law. These quantitative studies were accompanied by qualitative studies on the regional and global diffusion of segmenting employment law via colonialism.

The volume also intends to encourage a discussion of the concept, the methodology and the results among members of the scientific community. Chapters by Tzehainesh Teklè and Simon Deakin discuss the use of *leximetrics*. Ludger Pries and Kerry Rittich also widen the scope of the analysis—the former towards a sociological view on the international arenas of and actors in labour regulation, the latter towards a critical perspective on legal segmentation executed by legal factors beyond labour markets, beyond labour law and beyond the international institutions traditionally dealing with labour. We value these *external views* on our work as an enrichment and thank the authors for their contributions and their critical discussion of earlier versions of the manuscript.

Moreover, the research team acknowledges the support of the wider CRC-team for critical discussions of our work during the entire project period. We owe special thanks to the student assistants dedicated to the project over the years, without whose contributions of time and

enthusiasm the construction of the WoL dataset would have been impossible—namely to Jan-Christopher Floren, Kristina Walter, Irina Kyburz and Tarek Mahmalat for their remarkable commitment to creating the WoL dataset. But also Max Anders, Julia Bode, Jessica Bonn, Daniel Euler, Maxime Fischer, Jennifer Götte, Eliko Hagen, Désirée Hoppe, Alexandra Kojnow, Oguz Mermut, Karolin Meyer, Johanna Nold, Tanusha Pali, Johannes Ramsauer, Max Sudhoff and Caroline Zambiasi contributed to the success of the project. Fabian Gierke and Felix Bernshausen were responsible for editing and formatting the book. Last but not least, we are grateful to Katherine Bird who did a wonderful job with proof-reading.

Finally, we would like to thank the German Research Foundation (Deutsche Forschungsgemeinschaft, DFG) for funding our research since 2018 till 2025 as project A03 of the CRC 1342—Project No. 374666841.

Bremen, Germany
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Ulrich Mückenberger
 Heiner Fechner
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CHAPTER 1

Introduction: Constructing Worlds of Labour in the Context of Social Policy Research

Irene Dingeldey, Heiner Fechner, and Ulrich Mückenberger

1 EMPLOYMENT LAW AS REGULATORY SOCIAL POLICY

When Gøsta Esping-Andersen (1990) wrote his seminal work *The Three Worlds of Welfare Capitalism* 35 years ago, not only was the regional focus limited to selected OECD countries, but the scope of policy instruments considered was also restricted. In order to highlight the decommodification effects of welfare policies, the analysis focused on cash transfers

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(relating to risks such as old age, sickness and unemployment).¹ Coverage and generosity of transfer payments in combination with the public-private mix of welfare provision were used to indicate the stratification effects of different welfare regimes. Although it was recognised that social policy and the labour market were interwoven and mutually interdependent institutions (p. 149), neither the analysis of commodification and decommodification² nor the analysis of stratification made major reference to employment regulation and labour law. The general neglect of the role of regulatory policies as part of welfare policies has been heavily criticised since then (Levi-Faur, 2014). This neglect of labour law as a relevant form of regulatory social policy seems to be even more surprising when we acknowledge that social security is predominantly labour-based (Schnabel, 2000, p. 86; for the Global South see Patel et al., 2023) and that labour regulation structures labour market segmentation—thus also being a driver for social inequality (Deakin, 2013; Fudge & Mundlak, 2022; Grimshaw et al., 2017).

This interlinkage of the different fields is highlighted by Dukes (2019), who refers to the historically given ensemble of conditions—social, economic, political, legal—governing the relations of workers to their employers and to other parties. In line with this understanding, a stream of research called ‘Arbeitspolitik’ (policy, polity and politics of labour) has developed in Germany as part of social policy that indeed deals with both individual and collective labour law as a central element of social policy (Jürgens & Naschold, 1982; Keller, 2014; Syrovatka, 2022). Within comparative research, however, this understanding does not prevail, as the field is subdivided into different research streams with different references to labour law. One exception is Lutz Leisering (2023), who emphasises as the first institutional model of social protection around the world: “Social Insurance—labour-centred and gendered” (pp. 80–84).

In contrast to Esping-Andersen’s Worlds of Welfare, the varieties of capitalism approach draws on individual and collective labour regulation as being decisive to human resource management and innovation strategies within firms, in order to distinguish liberal and coordinated market

¹Only later did he also add the supply of services as policies for defamilialisation and opportunities for commodification (Esping-Andersen, 1996).

²Esping-Andersen analysed the share of employment influenced by welfare state policies, labour supply and labour market exit, focusing on how pension policies and paid leave options, regulated by social law, play a role. Moreover, he also discussed the attainment of full employment (commodification) and the role of wage policy.

economies (Hall & Soskice, 2001). Overall collective labour law forms part of industrial relations analysis (for many: Deakin et al., 2014; Hyman, 1995). More recently, labour law has been investigated in terms of the impact of different origins and strengths of its protective content on economic performance (Deakin et al., 2007; Deakin, 2018), albeit not with a systematic reference to its social policy function or possible segmentative effects inherent to legal protection. This is rather to be found in the ‘dualisation’ literature that addresses labour market segmentation in the context of economic performance, i.e. the level of unemployment or economic growth and efficiency (Deakin & Sarkar, 2008; Prosser, 2016). Most of these publications, however, differentiate between standard and non-standard forms of employment only (for many: Barbieri & Cutuli, 2016; Emmenegger, 2014)—thus using a rather limited indicator for the diverse forms of labour regulation that influence labour market segmentation. This, however, might be relevant to further developing its connection to social security policies and stratification.

While the discussion on more than ‘three’ worlds of welfare (Powell & Barrientos, 2015) has already been spurred (Aspalter, 2005; Kuitto, 2016; Gough et al., 2004) and a further diversity of ‘varieties of capitalism’ has been suggested (as a summary see Feldmann (2019)), the purpose of our research is not to identify welfare state types or varieties of capitalism around the globe. Our focus lies on the identification of ‘worlds of labour’ (WoL) with respect to individual labour law, namely how the law of the employment contract and its variations distribute legal advantages among working people, in a historical and global perspective. This implies that the purpose of this book—or at least of some articles—is to enhance the knowledge and the empirical foundation relating to the protective but also the segmentative and equalising functions of individual labour law as a decisive element of social policy, in the past and at present.

In this context it also has to be mentioned that labour regulation in modern welfare capitalism is intrinsically linked to regulations beyond the state, namely collective agreements and international and supranational rules (Pries, 2019). Trade unions’ policies or rather their inclusion and exclusion strategies have been critiqued since it was suggested that protecting the core workforce provided leeway for a dualisation of labour markets (Rueda, 2014; Pulignano & Doerflinger, 2018). Accordingly, coverage by collective bargaining agreements and institutions of workers’ interest representation at the enterprise level often indicate relevant differences in employment conditions (Hayter & Weinberg, 2011; Keune,

2021). Also within the supranational and international arena, the social policy function of labour regulation becomes very obvious. Core labour standards formulated by the International Labour Organization (ILO) are at the heart of international social policy and may be regarded as the most generally acknowledged principles of social policy around the world. Recently, it was even argued that “social policy in the global arena has effectively been collapsed into labour market policy” (Rittich, 2008, p. 267)—albeit as a critique of the flexibilisation and deregulation of employment protection legislation proposed by the international financial institutions and inspired by the neo-liberal paradigm.

When we acknowledge—in the tradition of the integrative approach of ‘Arbeitspolitik’—that labour law is a genuine element of social policy that, in combination with other social policies and regulative levels beyond the national state, unfolds strong effects on social stratification, then we need a more stringent analysis of labour law in a comparative and global perspective. Or to say it with Rittich’s words: “And if work is indeed central to the realization of social and distributive justice, then tracing the path of the labour market institutions which now shape the world of work should provide an important window on the character of the emerging social world” (Rittich, 2008, p. 237).

With the theoretical perspective outlined in this volume we view labour law from a dual perspective, not only protecting workers but also distributing (dis-)advantages among them by either privileging better-off workers or by setting entitlements to equal treatment. The novelty of the research presented is that it investigates both sides of the coin—the protecting and the segmenting side, highlighting the aspect of legal segmentation (Mückenberger & Dingeldey, 2022).

Legal segmentation in a strict sense can be considered a new research topic in the interdisciplinary area of labour relations and social policy. In a wider sense, legal segmentation refers to a broad spectrum of research topics in the fields of law, political economy and sociology. It is combining, newly arranging and methodologically reconsidering research in legal discrimination and anti-discriminative law, post-colonial and feminist perspectives on law, theoretical studies on the functions of law, as well as insights into labour market segmentation, including unpaid and informal work, and explanations concerning its emergence.

Using qualitative methods such as comparative legal research and legal sociological interpretations, we overall highlight the historical roots and context of legal segmentation. Similarities and differences around the

world are explained through the disseminating modes triggered by international (inter)dependencies, exemplarily highlighting the influence of the International Labour Organization (ILO) and colonialism.

Applying leximetrics, or the coding of norms, in a number of articles, both the protective and the segmentative sides of labour law become ‘measurable’. With the creation of the Worlds of Labour (WoL) dataset, partly drawing on the already existing Cambridge University’s Centre for Business Research Labour Regulation Index (CBR-LRI), and integrating it into the much larger *Global Welfare State Information System (WeSIS)*, we can also use a broad range of quantitative methodological frameworks, such as time series or fuzzy-set ideal-type analyses. Thus, we can identify groups of countries on a global scale that adhere to different types of legal segmentation, deduced by the combination of the protective, segmenting or equalising functions. Moreover, we can mirror long-term developments in these functions worldwide and exploratively test different theoretical approaches on a quantitative basis to explain the emerging patterns. Since the application of leximetrics is not undisputed, we present a critical discussion, highlighting not only advantages, but also limitations and shortcomings of this approach to ‘coding and quantifying legal norms’. Thus, we want to inspire a reflective debate and a critical assessment of our approach and methods within the interdisciplinary academic community.

We consider it a merit of this volume that, for the first time, it addresses the complex historical and theoretical foundations of legal segmentation as an essential element of welfare state regulation and its induced inequalities on a global scale. Our approach theorises and systematically distinguishes between the standard-setting, the privileging and the equalising function of employment laws worldwide, and their development over time. This allows us to assess *de jure* coverage and generosity of regulative social protection engrained in labour law. The results will be essential for further social policy research, as they provide leeway for analysing the stratification effects of social transfers related to status differences created by the legal shape of different forms of employment contracts and derived social rights, applying a historical and global perspective.

Beyond these considerations, the difference between *de jure* labour law and its *de facto* implementation has to be highlighted. Even if we do not go into depth with the empirical analysis of labour market segmentation in this book, the influence of *de jure* legal segmentation on *de facto* labour market segmentation is of major interest. So far, theories on labour market segmentation name a variety of influences (Rubery & Piasna, 2016;

Grimshaw et al., 2017), labour law being only one of several. When the discussion on dualisation emphasised the difference between SER and non-SER employment relationships in the Global North (GN) (Emmenegger et al., 2012; Emmenegger & Marx, 2020), it was criticised as being too simplistic (Barbieri & Cutuli, 2016; Kalleberg, 2011; Dingeldey, Grimshaw, & Schulten, 2021). Equally, the simple divide between formal employment and ‘informality’ (Chen & Carré, 2020a) cannot be upheld, as it totally ignores legal segmentation as well as the variety of forms of informal employment. Hence, terms such as ‘precarity/precarioussness’ or ‘precarious work’ indicating different zones of protection and risk (Bourdieu, 1998; Castel, 2003a, 2003b) better describe the respective phenomena in the Global South (GS) as well (Julián Vejar, 2017). Although in this volume we may not follow up on the implementation of labour law, we do address whether particular forms of regulation may encourage precarious employment in the GN and even more so in the GS³ (Howe, 2017). This may provide new insights, as all these concepts have in common that they typically do not look further back than WWII (Mosoetsa et al., 2016); hence, they provide only limited understanding of historical origins and long-term developments.

Finally, our findings on the different forms and explanations of legal segmentation should spur critical discussions on labour law and regulatory social policy both in social science and political arenas. We therefore invited contributions that study new institutional and regulatory trajectories to overcome segmentation and the selectivity of regulation as elements relevant to precarity in order to inspire a more egalitarian labour constitution both on a national and a global level.

After this brief introduction to the topic and purpose of this book, we enter into more detail by elaborating our understanding of the connection between labour law and legal segmentation while hinting at differences between the GN and the GS. Moreover, we provide deeper insight into existing research gaps by presenting our own research approach and previous work by the project Worlds of Labour.

³Of course, we are aware that using the terms ‘Global North and South’ (GN and GS) disguises rather heterogeneous regional and local developments.

2 LABOUR LAW AND THE STANDARD EMPLOYMENT RELATIONSHIP AS A PARTICULAR FORM OF LEGAL SEGMENTATION

Labour law was a critical response to the inherent ‘flexibility’ of labour, which arises from the legal principle of freedom of contract. It involves a realisation that the freedom to conclude employment contracts does not mean real freedom for wage earners, and that the right of the employer to direct labour under the contract legitimises the exercise of power (Mückenberger & Deakin, 1989, p. 157). Labour law originates from the structural inequality of employers and employees, but goes far beyond the intent of levelling contractual power. At its core, as Kahn-Freund puts it, the labour relation “[i]n its inception [...] is an act of submission, in its operation it is a condition of subordination”, and therefore large parts of labour law can be seen as ‘protective legislation’ in “an attempt to infuse law into a relation of command and subordination” (Kahn-Freund, 1983, p. 18). In addition to the opportunities for maintaining and developing physical and mental forces, it guarantees basic economic safety as well as the institutional design of labour markets and their administration (Bauer, 1923, p. 402).

The regulation of the employment relationship accelerated with the commodification of labour in the age of industrialisation. Since then, different patterns of legal regulation have emerged around the world. Particularly in the Western world after WWII, the Standard Employment Relationship (SER) as a specific pattern of labour protection became an ideal type and a reference point for much legislation (Stone & Arthurs, 2013). As a set of norms protecting and promoting an ideal type of ‘work’ and ‘worker’, the SER was built around a permanent, full-time remunerated employment relationship with a single employer and a single workplace—with many varieties in specific regulation according to national legal systems. While the ILO and trade unions supported the implementation of high labour standards in the form of the SER all around the world, employers and their organisations as well as—after WWII—the OECD, the International Monetary Fund (IMF) and the World Bank highlighted the ‘cost’ of labour regulation and its negative consequences on employment creation (Dingeldey et al., 2022).

However, across countries, ‘coverage’ of legal protection is not universal but related to, for instance, particular firms and branches. ‘Generosity’ of dismissal protection or guaranteed paid leave is—especially in the

SER—linked to seniority. In particular, contribution-based social security systems designed both coverage and generosity of transfers in line with the SER. In consequence, these regulations opened up full protection only to those meeting the respective requirements of the SER. All those who were unable to meet these requirements—due to care responsibilities, for example—faced eligibility problems or received lower benefits from social security systems (Mückenberger & Deakin, 1989; Mückenberger, 1985; Sainsbury, 1994). As the SER was closely linked to the full-time norm and seniority, it systematically excluded women, but also other labour market ‘outsiders’ from full protection. Therefore, especially feminists and critics of ethnocentrism assessed the SER regulation as ‘privileging’ (male) full-time workers in large industrial enterprises and thus also supporting the male breadwinner model (Mückenberger, 1985; Vosko, 2010; Stone & Arthurs, 2013; Fudge, 2017; Sainsbury, 1994).

Since the 1970s, this fuelled a quest for equity—particularly in the European Union, but also in many other countries of the world (Mückenberger, 2022). The anti-discrimination and equal treatment legislation that was introduced added what we call the equalising function of labour law. This was directed towards both gender and racial equality and equal treatment of different employment forms. Since the global economic crisis of the 1970s, which was accompanied by low economic growth and high unemployment, national governments and various international organisations have strongly supported the flexibilisation of labour markets. This included both the loosening of legal protection for the SER and the promotion of non-standard forms of employment (NSER) such as fixed-term, part-time and agency work (Mückenberger & Deakin, 1989), fuelling discussions on an insider-outsider divide (Rueda, 2005; Rueda et al., 2015) and ‘the age of dualisation’ (Emmenegger et al., 2012; Davidsson & Naczyk, 2009). Despite this criticism, international organisations such as the IMF or the European Union promoted similar policies as a remedy to the 2008 financial crisis (Heyes & Lewis, 2013). However, equal treatment regulatory policies backed up defamilialising policies (childcare, elder care, parental leave policies), which were emphasised since the 1990s, and thus formed an essential contribution to activating labour market policies that especially helped to commodify female labour as a result of the GN’s welfare state policies.

The rich SER debate was focused on highly industrialised Western countries and displayed certain analytical limits with regard to global labour policy. However, analyses by the WoL-project show that the legal

construct of the SER can be found in almost all labour codes of the world (Mückenberger & Dingeldey, 2022; Dingeldey et al., 2022), although obviously, in many countries of the GS it covers only a minority of employees, especially relatively privileged groups in the public sector. In the GS, where labour markets are particularly marked by the divide between formal and informal employment (ILO, 2018), the status of the SER as a point of reference for labour law is contentious in settings where the large majority of workers do not have access to regular employment—although there are large differences with respect to work in the informal economy and/or in informal employment according to region (Teklè, 2010; Chen & Carré, 2020b; ILO, 2018; Mückenberger & Dingeldey, 2022). However, to speak of SERs is counterfactual where most workers do not have access to regular employment (Deakin, 2013). This may explain why, as yet, comparative intercontinental studies that deal with the development of labour law in (regions of) the GS and especially with questions related to the SER are rare (e.g. Blanpain & Hendrickx, 1977–2020; Teklè, 2010; Marshall & Fenwick, 2016). Accordingly, it still has to be verified which impact the European paradigm of employment law, though differing in kind—as a variety of SERs—has had on the legal paradigms in the GS—despite and even contradictory to the diverging *de facto* labour statuses in these territories.

Obviously, SER-oriented protection systems cover fewer working people than in the GN, namely only few privileged groups in the formal sector (Finkin & Mundlak, 2015; Veneziani, 2014; ILO, 2014). Deregulatory flexibilisation often takes place abruptly under pressure from multinational corporations and international institutions (such as the World Trade Organisation [WTO], World Bank and IMF). At the same time, however, globalisation-critical development programmes are implemented to ensure equality, universal protection and basic provision (Pries, 2019). Thus, the contest between the segmenting and the equalising functions of employment law—as well as the problems of generosity and coverage they create overall in combination with contribution-based social security systems—can also be assumed in the GS—albeit in a different shape. With respect to the state of research, however, we may say that the different regulations supporting the different functions of labour law have not been assessed and analysed sufficiently, neither in a systematic manner nor from a global social policy perspective. Here we step in.

3 LEGAL SEGMENTATION: OPERATIONALISATION AND MEASUREMENT ACCORDING TO THE WORLDS OF LABOUR RESEARCH APPROACH

Our understanding underlines three different functions of labour law as social policy, namely standard-setting (S), privileging (P) and equalising (E)—and thus overcomes a unidimensional reflection of only the protective function of labour law, downplaying differentiation between levels of protection and restricted coverage for various groups of workers (Dingeldey et al., 2022). The SPE typology is deduced according to this approach and outlines different combinations of the ‘strength’ of each function as different types of legal segmentation. This assumption of the different functions of legal regulation stems from a particular understanding of labour law in (mainly capitalist) market societies. This law is not ‘external’ to the market system, helping those who are in need of protection; it rather forms part of the market system by simultaneously constituting and strengthening the ‘commodification’ of labour. It assigns different—and competing—values to different commodities by distributing advantages and disadvantages among workers. In this book, we shall demonstrate that this distributory role of labour law as a regulatory social policy in earlier periods had strong segmenting properties, whereas in recent periods more egalitarian properties have come to the fore.

Contrary to existing indicator databases such as the OECD’s Employment Protection Indicators (EPI), the World Bank’s Rigidity of Employment Index (REI), the ILO’s Employment Protection Legislation Index (EPLex) and the Cambridge University’s Centre for Business Research Labour Regulation Index (CBR-LRI), our measurement model differentiates between the protecting, the segmenting and equalising norms of labour law and suggests indicators for the three functions. These are ‘measured’ by different codes, as a popular method of leximetrics, to map the varieties of legal segmentation. This approach is brand new: until now coding, i.e. the quantification of legal norms, has not been applied to identify legal segmentation in individual labour law on a global and historical basis. Even if the attempt to quantify legal norms comes with some challenges (see Dingeldey et al., 2022), we provide a comprehensive indicator-oriented database named ‘Worlds of Labour (WoL)’.

The WoL database covers 151 countries, including data partly going back to 1880. It goes far beyond existing datasets—conceptually, geographically and historically. For the first time it is possible to systematically

measure legal segmentation in a historical and global perspective and provide new insights into the historical development of the particular functions of labour law and the specific patterns of change in terms of the increase or decrease in protection and coverage on the legal level for most countries of the world. Our theoretical and methodological approach in combination with the new WoL dataset allows us to empirically assess which country can be slotted into any of the identified types of legal segmentation—or worlds of labour—with different levels of coverage and generosity of employment protection regulation (Dingeldey et al., 2022).

Our previous studies (see Mückenberger & Dingeldey, 2022) indicate that, from a purely legal perspective, there is no clear north-south divide, confirming previous research that, in formal normative terms, labour regulation in the GS is not generally less protective than in the GN (Deakin, 2016). However, regional commonalities are particularly strong between European states, reflecting the history of high, but selective labour protection in combination with equalising regulation—particularly within EU member states. In contrast, we find a weak relevance of equalising regulations in combination with diverging levels of protection and privileging in the GS, particularly in Asia and Africa. Also pronounced are historical-ideological commonalities, since we see the least segmenting labour regulation in countries with some degree of communist past, while liberal market economies of the GN and Japan stand out among the regulation types with the lowest values for protection in combination with diverging levels of selectivity and equity regulations (see Mückenberger & Dingeldey, 2022 and the contributions to the special issue). These results engendered various challenges to be addressed in this book:

- As the regulations under investigation not only show differences in spatial terms but have also changed constantly with long periods of expansion and, especially since the 1980s, modifications amounting to precariousness (Finkin, 2014), it is interesting to identify patterns of change over time and explain them. This may provide new insights for the broad discussion on labour market flexibilisation and welfare state change.
- The identification of quite different countries adherent to our theoretically deduced types of legal segmentation is a challenge to existing theories, such as the legal origin theory (Deakin et al., 2007) or theories drawing on membership in transnational regional or international organisations (Börzel et al., 2015; Kaasch et al., 2019).

We therefore shed light on different mechanisms of diffusion as part of international (inter-)dependencies.

- We can not only add a substantive insight to the discussion of the impact of colonial power on the shaping of labour law norms of the colonies as part of their ‘social’ policies, but we will also provide first hints about how this influence amalgamates with particular colonial legal parameters and with indigenous law patterns that in conjunction may have been intended to rather enforce commodification than to protect workers. Although a slow development from repressive and force-based to incentive-based, protection-oriented, but still steering regulatory social policy can be described, it is clarified that particular patterns of *de facto* labour market segmentation today were introduced or mitigated by colonial legislation.
- In spite of the progress made, we admit that the data collection and quantitative method of comparative legal labour studies still need further elaboration and have certain limits. We therefore encourage a reflective and critical discussion of our approach in this volume to advance further interdisciplinary research.

4 STRUCTURE OF THE BOOK

The argument of this book unfolds in three parts. The first part introduces and critically assesses the theoretical concept of legal segmentation as part of regulatory social policy, the methodology for measuring it, and a critical discussion of both concept and measurement. *Heiner Fechner, Ulrich Mückenberger and Irene Dingeldey* discuss the historical emergence, development and theoretical framing of legal segmentation as a social policy for steering labour markets. This includes comprehensive definitions and its relation to legal and normative pluralism, but also theorising and describing different historical trajectories of legal segmentation in the GN and the GS (Chap. 2). In Chap. 3, *Marina Carlino, Heiner Fechner and Andrea Schäfer* elaborate how the leximetric methodology and measurement concept was adapted to the concept of legal segmentation. They detail the methods and coding practice used to create the WoL dataset—breaking new ground in social and legal research. Previous attempts over the last two decades using a leximetric methodology for measuring labour law are critically discussed by *Simon Deakin* (Chap. 4). He is author of the Cambridge University’s Centre for Business Research Labour Regulation Index (CBR-LRI) that overall reflects the development of protective

labour law regulation. It is this conceptual and empirical work that the WoL-project draws on and further elaborates with the focus on legal segmentation. Deakin's horizontal critique on leximetrics is complemented by *Tzebahinesh Teklè's* vertically oriented article shedding an in-depth light on the benefits and limitations of using the leximetric approach to analyse legal segmentation (Chap. 5).

The second part of the book presents empirical analyses of the development and dissemination mechanisms operant in the two directions of social protection and segmentation—displaying different methodological approaches. *Heiner Fechner* outlines the major phases of the development of labour market segmentation in the colonial and post-colonial context of Latin America. Based on qualitative analysis, he critically lays out the design of labour-related legislation in conjunction with regulations in other policy fields that are closely related to the former types of colonial rule (Chap. 6). How the leximetric methodology can be applied in practice to analyse legal segmentation and with which results, is shown in the following chapters. Applying the focus to colonial development, *Ulrich Mückenberger and Andrea Schäfer* (Chap. 7) mirror whether different types of standard employment relationships in imperialist states such as France, the United Kingdom and Germany in times of colonialism have imprinted labour law norms in their former African colonies over time. *Jean-Yves Gerlitz and Irene Dingeldey* use a time-series approach to identify patterns of change in the regulation of standard and non-standard forms of employment as an indication of legal exclusion. Exploratively, they use legal origin, a country's economic status and membership in transnational regional organisations to explain the respective patterns of change (Chap. 8). Finally, *Jean-Yves Gerlitz and Ulrich Mückenberger* (Chap. 9) ask how coverage and generosity of employment legislation have developed worldwide. Based on prominent explanations, they test whether standard-setting and privileging employment law has spread across the globe as by-products of economic development, by being applied to global value chains, or challenged by the impact of gender agency.

The third part examines the necessity and potentials of a paradigm shift in the steering of labour in the twenty-first century. *Ludger Pries* (Chap. 10), starting from a sociological perspective, recommends taking differentiated spatial, institutional and methodological perspectives in order to shape norms better equipped to overcome the *de jure–de facto* gap in labour law. In Chap. 11, *Kerry Rittich* proposes tackling labour market

segmentation and expanding coverage and generosity of employment legislation by moving beyond labour standards in the regulation of work, beyond market work, and beyond labour and social institutions in terms of global political economy. The editors' *conclusion* (Chap. 12) seeks to draw lessons from the chapters of this book. It winds up with an analysis of excluding and including policies and outcomes in the context of global interdependencies. And, finally, it dares to cast a brief glance at universalist work-related social policy alternatives under these conditions.

REFERENCES

- Aspalter, C. (2005). The welfare state in East Asia: An ideal-typical welfare regime. *Journal of Societal and Social Policy*, 4(1), 1–20.
- Barbieri, P., & Cutuli, G. (2016). Employment protection legislation, labour market dualism, and inequality in Europe. *European Sociological Review*, 32(4), 501–516.
- Bauer, S. (1923). Arbeiterschutzgesetzgebung. In L. Elster, A. Weber, & F. Wieser (Eds.), *Handwörterbuch der Staatswissenschaften* (Vol. 1, pp. 401–701). Gustav Fischer.
- Blanpain, R., & Hendrickx, F. (Eds.). (1977–2020). *International encyclopaedia for labour law and industrial relations*. Kluwer Law International.
- Börzel, T. A., van Hüllen, V., & Lohaus, M. (2015). *Governance transfer by regional organizations: Following a global script?* http://www.sfb-governance.de/publikationen/working_papers/wp42/SFB-Governance-Working-Paper-42.pdf#. SUB Hamburg Carl von Ossietzky.
- Bourdieu, P. (1998). *Acts of resistance*. New Press.
- Castel, R. (2003a). *From manual workers to wage laborers: Transformation of the social question*. Transaction Publishers.
- Castel, R. (2003b). *L'insécurité sociale: Qu'est-ce qu'être protégé? La république des idées*. Seuil.
- Chen, M., & Carré, F. (2020a). Introduction. In M. Chen & F. Carré (Eds.), *The informal economy revisited: Examining the past, envisioning the future* (pp. 1–28). Routledge.
- Chen, M., & Carré, F. (Eds.). (2020b). *The informal economy revisited: Examining the past, envisioning the future*. Routledge.
- Davidsson, J., & Naczyk, M. (2009). The ins and outs of dualisation: A literature review. *REC-WP Working Paper* (02).
- Deakin, S. (2013). *Addressing labour market segmentation: The role of labour law*. ILO Governance and Tripartism Department Working Paper No. 52. ILO.

- Deakin, S. (2016). Labour law and development in the long run. In S. Marshall & C. Fenwick (Eds.), *Labour regulation and development: Socio-legal perspectives* (pp. 33–59). Elgar.
- Deakin, S. (2018). The use of quantitative methods in labour law research: An assessment and reformulation. *Social & Legal Studies*, 27(4), 456–474.
- Deakin, S., & Sarkar, P. (2008). Assessing the long-run economic impact of labour law systems: A theoretical reappraisal and analysis of new time series data. *Industrial Relations Journal*, 39(6), 453–487.
- Deakin, S., Lele, P., & Siems, M. (2007). *The evolution of labour law: Calibrating and comparing regulatory regimes*. Centre for Business Research, University of Cambridge. Working Paper No. 352.
- Deakin, S., Fenwick, C., & Sarkar, P. (2014). Labour law and inclusive development: The economic effects of industrial relations laws in middle-income countries. In *Institutional competition between common law and civil law* (pp. 185–209). Springer.
- Dingeldey, I., Grimshaw, D., & Schulten, T. (2021). *Minimum wage regimes: Statutory regulation, collective bargaining and adequate levels*. Routledge.
- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2022). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(3), 560–597.
- Dukes, R. (2019). The economic sociology of labour law. *Journal of Law and Society*, 46(3), 396–422.
- Emmenegger, P. (2014). *The power to dismiss: Trade unions and the regulation of job security in Western Europe*. Oxford University Press.
- Emmenegger, P., & Marx, P. (2020). Regulation of employment: Chapter 35. In F. G. Castles, J. Lewis, H. Obinger, & C. Pierson (Eds.), *The Oxford handbook of the welfare state* (2nd ed.). Oxford University Press.
- Emmenegger, P., Häusermann, S., Palier, B., & Seeleib-Kaiser, M. (Eds.). (2012). *International policy exchange series. The age of dualization: The changing face of inequality in deindustrializing societies*. Oxford University Press.
- Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Polity Press.
- Esping-Andersen, G. (1996). *Welfare states in transition*. Sage.
- Feldmann, M. (2019). Global varieties of capitalism. *World Politics*, 71(1), 162–196.
- Finkin, M. W. (2014). Introduction: The past and future of labor law in comparative perspective. In O. Kahn-Freund, B. Hepple, & R. David (Eds.), *International encyclopedia of comparative law*. Mohr Siebeck; Nijhoff.
- Finkin, M. W., & Mundlak, G. (Eds.). (2015). *Research handbooks in comparative law: Comparative labor law*. Edward Elgar Publishing.
- Fudge, J. (2017). The future of the standard employment relationship: Labour law, new institutional economics and old power resource theory. *Journal of Industrial Relations*, 59(3), 374–392.

- Fudge, J., & Mundlak, G. (2022). Law and gendered labour market segmentation. In U. Mückenberger & I. Dingeldey (Eds.), *Overcoming legal segmentation: Extending legal rules to all workers? Special Issue: International Labour Review No. 3*. ILO.
- Gough, I., Wood, G., Barrientos, A., Bevan, P., Room, G., & Davis, P. (2004). *Insecurity and welfare regimes in Asia, Africa and Latin America: Social policy in development contexts*. Cambridge University Press.
- Grimshaw, D., Fagan, C., Hebson, G., & Tavora, I. (2017). *Making work more equal: A new labour market segmentation approach*. Manchester University Press.
- Hall, P. A., & Soskice, D. (2001). An introduction to varieties of capitalism. In P. A. Hall & D. Soskice (Eds.), *Varieties of capitalism: The institutional foundations of comparative advantage* (pp. 1–68). Oxford University Press.
- Hayter, S., & Weinberg, B. (2011). Mind the gap: Collective bargaining and wage inequality. In S. Hayter (Ed.), *The role of collective bargaining in the global economy* (pp. 136–186). Edward Elgar Publishing.
- Heyes, J., & Lewis, P. (2013). Employment protection under fire: Labour market deregulation and employment in the European Union. *Economic and Industrial Democracy*, 35(4), 587–607.
- Howe, J. (2017). Labour regulation now and in the future: Current trends and emerging themes. *Journal of Industrial Relations*, 59(2), 209–224.
- Hyman, R. (1995). Industrial relations in Europe: Theory and practice. *European Journal of Industrial Relations*, 1(1), 17–46.
- ILO. (2014). *Report of the Committee of Experts on the Application of Conventions and Recommendations: (articles 19, 22 and 35 of constitution); third item on the agenda: Information and reports on the application of conventions and recommendations; general report and observations concerning particular countries* (1st ed.). International Labour Office.
- ILO. (2018). *Women and men in the informal economy: A statistical picture*. 3rd ed., International Labour Organization.
- Julián Vejar, D. (2017). Precariedad laboral en América Latina: contribuciones para un modelo para armar. *Revista Colombiana De Sociología*, 40(2), 27–46.
- Jürgens, U., & Naschold, F. (1982). Arbeitspolitik—Entwicklungstendenzen und Politikformen. In *Politikwissenschaft und Verwaltungswissenschaft* (pp. 327–343). Springer.
- Kaasch, A., Koch, M., & Martens, K. (2019). Exploring theoretical approaches to global social policy research: Learning from international relations and inter-organisational theory. *Global Social Policy*, 19(1–2), 87–104.
- Kahn-Freund, O. (1983). *Labour and the law* (3rd ed.). *Hamlyn lecture series*. Stevens [u.a.].
- Kalleberg, A. L. (2011). *Good jobs, bad jobs: The rise of polarized and precarious employment systems in the United States, 1970s–2000s*. Russell Sage Foundation.

- Keller, B. (2014). Einführung in die Arbeitspolitik. In *Einführung in die Arbeitspolitik*. Oldenbourg Wissenschaftsverlag.
- Keune, M. (2021). Inequality between capital and labour and among wage-earners: The role of collective bargaining and trade unions. *Transfer: European Review of Labour and Research*, 27(1), 29–46.
- Kuitto, K. (2016). *Post-communist welfare states in European context: Patterns of welfare policies in Central and Eastern Europe*. Edward Elgar Publishing.
- Leisering, L. (2023). The state of social protection around the world. In L. Patel, S. Plagerson, & I. Chinyoka (Eds.), *Edgar handbooks in social policy and welfare. Handbook on social protection and social development in the global South* (pp. 64–96). Edward Elgar Publishing.
- Levi-Faur, D. (2014). The welfare state: A regulatory perspective. *Public Administration*, 92(3), 599–614.
- Marshall, S., & Fenwick, C. (Eds.). (2016). *Labour regulation and development: Socio-legal perspectives*. Elgar.
- Mosoetsa, S., Stillerman, J., & Tilly, C. (2016). Precarious labor, South and North: An introduction. *International Labor and Working-Class History*, 89, 5–19.
- Mückenberger, U. (1985). Die Krise des Normalarbeitsverhältnisses—Hat das Arbeitsrecht noch Zukunft? *Zeitschrift Für Sozialreform*, 31(7), 415–434; 31(8), 457–475.
- Mückenberger, U. (2022). A quest for equity: Labour standards on the transnational move. In F. Nullmeier, D. González de Reufels, & H. Obinger (Eds.), *International impacts of social policy: Short histories in a global perspective* (pp. 463–476). Palgrave Macmillan.
- Mückenberger, U., & Deakin, S. (1989). From deregulation to a European floor of rights: Labour law, flexibilisation and the European single market. *Zeitschrift Für Ausländisches Und Internationales Arbeits- Und Sozialrecht*, 3, 153–207.
- Mückenberger, U., & Dingeldey, I. (2022). Introduction: Worldwide patterns of legal segmentation in employment law. *International Labour Review*, 161(4), 511–534.
- Patel, L., Plagerson, S., & Chinyoka, I. (Eds.). (2023). *Edgar handbooks in social policy and welfare. Handbook on social protection and social development in the global South*. Edward Elgar Publishing.
- Powell, M., & Barrientos, A. (2015). Introduction: Twenty five years of the welfare modelling business. *Social Policy and Society*, 14(2), 241–245.
- Pries, L. (2019). *Erwerbsregulierung in einer globalisierten Welt. Theoretische Konzepte und empirische Tendenzen der Regulierung von Arbeit und Beschäftigung in der Transnationalisierung* (3rd ed.). VS Verlag für Sozialwissenschaften.
- Prosser, T. (2016). Dualization or liberalization? Investigating precarious work in eight European countries. *Work, Employment and Society*, 30(6), 949–965.

- Pulignano, V., & Doerflinger, N. (2018). Expanding social actor-based explanations in labour market dualisation research: A combined macro-micro and micro-macro approach. *Employee Relations*, 40(1), 75–88.
- Rittich, K. (2008). Global labour policy as social policy. *Canadian Lab. & Emp. LJ*, 14, 227–274.
- Rubery, J., & Piasna, A. (2016). *Labour market segmentation and the EU reform agenda: Developing alternatives to the mainstream* (etui. Working Paper No. 2016.10). European Trade Union Institute.
- Rueda, D. (2005). Insider-outsider politics in industrialized democracies: The challenge to social democratic parties. *American Political Science Review*, 99(1), 61–74.
- Rueda, D. (2014). Dualization, crisis and the welfare state. *Socio-Economic Review*, 12(2), 381–407.
- Rueda, D., Wibbels, E., & Altamirano, M. (2015). The Origins of Dualism. In P. Beramendi, S. Häusermann, H. Kitschelt, & H. Kriesi (Eds.), *The Politics of Advanced Capitalism* (pp. 89–111). Cambridge University Press.
- Sainsbury, D. (1994). Women's and men's social rights: Gendering dimensions of welfare states. In D. Sainsbury (Ed.), *Gendering welfare states* (pp. 150–169). Sage.
- Schnabel, C. (2000). A financial reform of the welfare system: Reforms are overdue. In L. Clarke, P. van Gijsel, & J. Janssen (Eds.), *The dynamics of wage relations in the new Europe* (pp. 86–91). Kluwer.
- Stone, K. V. W., & Arthurs, H. (2013). *Rethinking workplace regulation: Beyond the standard contract of employment*. Russell Sage Foundation.
- Syrovatka, F. (2022). *Neue Europäische Arbeitspolitik: Umkämpfte Integration in der Eurokrise*. Campus Verlag.
- Teklè, T. (Ed.). (2010). *Labour law and worker protection in developing countries*. ILO.
- Veneziani, B. (2014). Formation, modification and termination of employment contracts. In O. Kahn-Freund, B. Hepple, & R. David (Eds.), *International encyclopedia of comparative law* (pp. 1–90). Mohr Siebeck; Nijhoff.
- Vosko, L. F. (2010). *Managing the margins: Gender, citizenship, and the international regulation of precarious employment*. Oxford University Press.

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PART I

Legal Segmentation in Regulatory
Social Policy: Concept, History,
Measurement and Application



CHAPTER 2

Legal Segmentation in the Global North and South: Concept, Historical Emergence and Tentative Theoretical Explanations

Heiner Fechner, Ulrich Mückenberger, and Irene Dingeldey

1 INTRODUCTION

It is generally acknowledged in political economy and sociological research that labour regulation strongly influences labour market segmentation—in conjunction with other factors (Deakin, 2013; Grimshaw et al., 2017; Fudge & Mundlak, 2022; Rubery & Piasna, 2016). Mainstream research on employment law nevertheless has typically focused on the strengths

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and limits of the protective function of employment law in connection with the structural inequality between workers and employers—and therefore widely overlooked the phenomenon of legal segmentation. Legal segmentation includes forms of structured disadvantages affecting working individuals, groups or populations that are not primarily exerted by market forces or other social powers, but rather by lawmakers and state-set norms. So far the discourse on legal segmentation has been spelled out neither in the complete width of its theoretical and historical scope of application nor in a global perspective.¹

When assessing legal segmentation globally, we consider both the specificities of legal regulation in the Global North (GN) and South (GS) and their interdependencies arising through (post-)colonialism and the (new) capitalist world order while also recognising a certain division of labour between the GN and GS. We end up by identifying two ideal types of legal segmentation. The first, typical for the extractivist economies of the GS, is direct legal segmentation following imperialist utilitarian dispositives. The second, typical (at least recently) for the market economies of the GN, is indirect and follows dispositives of a new ‘spirit of capitalism’. Both types of legal segmentation, though differing historically and in their legal-pluralist settings, contain standard-setting, privileging and equalising functions in their employment laws. Despite being moderated by equalising regulation, both types of legal segmentation persist in their role of unequally sharing welfare state generosity and coverage between segments of societies differentiated according to gender, race and nationality. This research is designed to develop a better understanding of legal framing in worlds of labour according to their contribution to the equality or inequality of status, to opportunities with respect to access to employment and to the general conditions of employment and social security.

Characteristic for labour markets is the development of differentiated labour regulations and direct legal segmentation according to employment status, that is public servants, salaried employees or white-collar and blue-collar workers. A classic example developed in the GN has been the Standard Employment Relationship (SER), namely a full-time employment relationship with long and steady service, in middle- or large-sized establishments, giving rights to full (labour and social law) protection and

¹We are conscious that using the terms ‘Global North and South’ and even simplifying them as ‘two logics of segmentation’ disguises rather heterogeneous regional and local developments. However, it signifies a starting point to highlight major differences, but, of course, has to be further explored by in-depth regional and country studies.

coverage by collective agreements (Mückenberger, 1989; Deakin, 2013). The SER was characteristic for labour markets in the highly industrialised countries, developing under the political-economic conditions since World War II (WWII) and being more market-egalitarian in common law countries (particularly the UK), more status-protecting in European continental countries (particularly Germany) (cf. Introduction to this volume; Mückenberger & Supiot, 1999; Mückenberger & Dingeldey, 2022). The SER ideally represents the phenomenon of legal segmentation as associated with a normative grading of social rights according to contract and employment status (Mückenberger & Deakin, 1989). Protective functions are often graded in their generosity as they are linked to the duration of service (seniority principle for dismissal protection and other legal benefits). Protection may also be conditional, that is introducing thresholds to dismissal protection according to the size of the enterprise and exceptions for fixed-term contracts or agency work, and thus be of limited scope (exclusive). The legal construction of the SER can be found in almost all labour codes of the world (Mückenberger & Dingeldey, 2022; Dingeldey et al., 2022), although, obviously, in many countries of the GS it covers only a minority of employees (see Introduction).

Moreover, it has been shown that legal segmentation in the GS has a different legacy. For instance, ‘colonial’ legal segmentation in sub-Saharan Africa firstly aimed at the creation of commodified (male) labour to work for extractivist economies. This was based not only on the regulation of labour contracts but also on tax, recruitment and migration laws. Being racist and gendered not only in its effects but often also in explicit content, it contributed to the emergence of different economic spheres within the countries of the GS. While, for example, male African workers were bound to service the labour demand of colonial employers, most types of work done by women were relegated to informality (Fechner, 2022a, p. 630). Legal regulation aiming at workers’ protection was developed explicitly or implicitly only with respect to ‘white’ workers or privileged groups of the colonial administration. Hence, colonial legal segmentation actively supported a split between privileged ‘white’ workers, male formal work for Western capital and informal work for domestic (re-)production (see Fechner, 2022a, p. 629).

Our aim is to reveal different regulative layers within labour law, but also in other (social) policy fields that have influenced the development of particular patterns of coverage (inclusion and exclusion) of legal protection, or the ‘scope of labour law’, but also the grading of legal protection

(generosity or scope of benefits) for certain groups. We plan to indicate the complexity of legal segmentation in its historical origin and its development until today—highlighting different development paths in the GN and GS. Hence, our intention is to understand the phenomenon of legal segmentation in its complexity as part of different worlds of labour. Pursuant to this complexity, we suggest a tentative theoretical explanation grounded in historical institutionalism, but also drawing on other explanatory factors such as postcolonial theories and the development of capitalist production regimes or the influence of international organisations. The application of these theories may vary according to the time and place in the GN and GS under investigation.

1.1 Theorising Historical Trajectories of Legal Segmentation

Early theoretical efforts to explain the development of (different types of) typically Western welfare states and their modes of labour regulation highlighted industrialisation (Wilensky & Lebaux, 1958), economic growth and social classes or the power resources of different collective actors such as social democratic parties and trade unions (Korpi, 2019). However, political institutions that structure interest representation and decision-making were also seen to play a decisive role by defining the political opportunity structure (for an overview, see Immergut, 2021). More recently, neo-institutionalist theories emphasised path-dependent development, as past policies imply high transition costs for moving from one social programme design to another (Pierson, 1994). While these theories were criticised for not being able to explain institutional change, globalisation, post-industrialism and gender relations were stressed as drivers (for an overview, see Myles & Quadagno, 2002; Swank, 2021). As these theories have been constructed to explain welfare state development in affluent democracies of the GN, they may not be adequate for also explaining the development in the GS (see, however, recently Patel et al., 2023; particularly Leisering, 2023). Functionalist theories highlighting industrialisation as a key driver lose their explanatory potency in the context of weak capitalist modes of production and informal labour markets—as is most common in the GS. But also power resource theories based on class mobilisation (Korpi, 2019) become redundant when class is not a privileged basis for mobilisation and identity (cf. Surrender, 2013, pp. 15–16). Moreover, it

was stated that the analysis of global social policy requires the study of both internal and external components of impact.²

In what follows we draw on historical institutionalism, highlighting path-dependent developments both in the GN and in the GS (as an overview, see Fioretos et al., 2016). Choosing historical institutionalism as an anchor theory in combination with other explanatory theories thus may facilitate identifying commonalities and differences in the development of legal segmentation, but may also indicate the relevance of divergent influences on national regulatory social policy.

The different forms of legal segmentation are associated with the existence and interlinkage of different modes of socialisation and production within countries, but also reflect central elements of capitalism in the global sphere. Drawing on Rosa Luxemburg's theories, Dörre (2016, pp. 229–230) emphasises that relations between 'internal capitalist' and 'external non-capitalist' markets are hierarchical and rather dependent on unequal exchange or even on downright violence. Although in these terms, the 'internal' is not bound to national borders and the 'external', as in the case of unpaid care work, not necessarily abroad, this relation is especially significant for the links between transnational capitalist markets based in the GN and informal structures in the GS. These often revolve around Western exploitative institutions, particularly when colonialist exploitation started and gave origin to uneven development paths, based especially on extractivist relations (Baldwin, 2012; Alessandrini, 2022), which prevail until today (Steger, 2023; Gereffi et al., 2001; Henderson, 1996). Hence postcolonial theories (cf. Gandhi, 2019) may also address the influence of colonial exploitation and forms of violence via imperial powers in the GS. Because of these different economic, political and social conditions, legal segmentation developed on different terms in the GN and GS.

Beyond that we consider new regulatory paradigms and their distribution via discourse and regulation by international organisations and epistemic communities as a central influence on the development of (labour) law—although with respect to the GS even after colonial rule this

² See: www.globalsocialpolicy.de (retr. 23.07.2024) "The central thesis of the Collaborative Research Centre 'Global Dynamics of Social Policy' (CRC 1342) is that the type and density of these interdependency networks—in interaction with the national constellation in politics, society and the economy—shape the dynamics and patterns of national social policy."

may express some form of domination due to conditional support by the World Bank or the IMF (Fechner, 2022a; Hahs & Mückenberger, 2022).³

At the same time, historical institutionalism highlights junctures (Capoccia, 2016) or ruptures concerning ideational institutions (Blyth et al., 2016) and brings the role of ideational power (Pierson, 2016) and time (Hall, 2016) into play. This may be of importance to analyse both the influences on the development of legal norms promoting legal segmentation, of precolonial culture and of international organisations (Hahs & Mückenberger, 2022). But it also gives room to explore, for example, the relevance of different legal systems (*Rechtskreise*) and find explanations related to legal and normative pluralism (see below), or the role of complementarities between labour law, social policies and other fields of regulation (Amable, 2016). This is another reason why we present a wider historical analysis of different trajectories concerning the development of legal segmentation as an important influence also on de facto labour market segmentation then and now.

However, our attempt faces multi-faceted challenges. We therefore explore our approach in several steps. The next section is dedicated to further definitions and thoughts relevant to understanding legal segmentation, opening up to the conjunct influence of legal and non-legal social norms, differentiating between legal pluralism and normative pluralism as major influences. The central section of this chapter, however, explores the historical development of legal segmentation, sketching two different paths in the GN and the GS. The concluding section briefly highlights the two different logics of legal segmentation as well as their connectedness in a global perspective.

2 SEGMENTATION BY NORMS AND SOCIO-LEGAL PLURALISM

Segmentation of labour in general and labour markets in particular is strongly influenced by social norms (Weber, 2019; Popitz, 2017). *Legal norms* comprise norms set by the state as abstract and general regulations, such as constitutions, parliamentary acts, governmental directives and their practical manifestations in case law or collective agreements etc. In contrast, non-legal social norms comprise rules without the force of law

³With respect to implementation and de facto coverage in ‘weak states’, capacity and legitimacy may also be regarded as central determinants (Surender, 2013).

and are created by distinguishable non-state social actors, such as moral norms imposed by churches or principles defined by groups of, for example, transnational corporations, national trade union movements or other civil society actors. By legal segmentation we therefore mean forms of structured disadvantages affecting working individuals, groups or populations—not primarily exerted by market forces or other social powers, but rather by lawmakers and state-set norms themselves.

Laws can influence labour (market) segmentation by their own content, or in relation to other laws with substantially different rights and obligations. Two or more laws may influence work segmentation by complementarity (e.g. different rules for blue-collar and white-collar workers), by cumulation (e.g. family, tax and labour law reinforcing each other by imposing gender role models) or by neutralising each other (e.g. anti-discrimination legislation against coexisting functionally segmenting norms). In all these cases, we speak of *legal pluralism* in the context of legal segmentation. When non-legal social norms are involved, whether exclusively or in addition to legal norms, we speak of *normative pluralism*.⁴ This is the case when religious norms clash with legal norms or when church-imposed norms clash with social norms dominant in the workers' movement.

For the analysis of legal pluralism, the interaction of different branches of labour legislation and anti-discrimination law, as well as legal norms defining the different fields of social protection, family and tax law, land law and law on cooperatives and corporations, and even property law can be of interest for their segmentative or equalising character. Especially, but not only for economies of the GS, legal and normative pluralism forms part of our theoretical approach, since for instance religious norms (as well as those related to, e.g., caste or gender roles) can have a strong normative impact on labour market segmentation. Historical legal and other social norms can influence actors' habitus as well as their economic, cultural or social capital long after being repealed or outlawed, as racism and racist segmentations of labour markets prove. The broad understanding of legal segmentation therefore also includes historical norms and institutions still contributing to legal segmentation, although they have been repealed or amended.

⁴ Mentioned by Heinrich Popitz already in 1961 in his analysis of social norms: "The multiplicity of intersecting and overlapping obligations means that the possibility of a norm conflict is in principle inherent to a structure of social arrangements" (Popitz, 2017).

The differentiation between legal and social norms and legal and normative pluralisms should serve as a reminder that a critical perspective on the segmentation of work based on historical institutionalism has to look beyond the emergence and characteristics of the modern state and also beyond its laws. If only smaller minorities of people of working age who work fall under the auspices of applicable employment law (let alone under the shelter of the SER), the insufficiency of the state's power and the loopholes in its legislation show only one side of the coin. The majority of people in this case is neither unemployed (or idle) nor working without normative frameworks.

For the GN, phenomena connected with the SER and the NSER are being discussed from the perspective of a modern state with a monopoly on legitimate power, which emerged alongside modern labour relations, at the outset of industrialisation. Central elements for this analysis are the state as lawmaker and the dichotomy of free and unfree labour as a foundational narrative of modern labour legislation as protecting 'free' workers. From a perspective of worldwide legal segmentation, this approach leaves phenomena of fundamental relevance for the current global segmentation of work (in and beyond labour markets) invisible. Global historical sociology (Go & Lawson, 2017; Pries, 2019) rather shows that a comprehensive account has to look beyond the state at normative settings alongside the analysis of legal pluralism, and it has to see the complex normative settings between and beyond unfree and free labour. This perspective is equally gaining momentum in countries of the GN—for example in current debates about the SER-crisis (cf. Vosko, 2010; Fudge, 2017), about migrant labour in undocumented or illegalised settings (Standing, 2011; Sarmiento et al., 2016) or about the emerging gig economy (cf. Stefano et al., 2022).

Work beyond the incisive regulation of the state is thus not an 'informal black box', but an object of interest in its differentiated impact on working people from the legal segmentation perspective. As Tamanaha (2008) and Twining (2010) show, a taxonomy of normative orders beyond positive state law includes the different normative systems of customary, religious/cultural, economic/capitalist, functional and community/cultural character. A comprehensive analysis of normative segmentation in any specific country or social field would have to analyse these six systems of norms and their interaction in terms of their protecting, segmenting and excluding or equalising character concerning work relations. Among other things, thus, the typology of normative segmentations in the wider sense

needs to include the analysis of tribal and religious legal systems, of (further) patriarchal but also matriarchal formations resorting to customary law, and any other normative constructions based on race, caste and similar ‘systems of collective social ranking’ (cf. Berreman, 1972; Tamanaha, 2008). These historically developed, often precolonial rules have shaped the segmentation of labour markets until today.

Our state-centred approach (in terms of determining state authorship, responsibility and influence on segmentation), however, allows us to identify non-state normative forces influencing segmentation and the respective state action. The state does not act in a vacuum when segmenting labour, but rather reacts and proactively influences pre- and coexisting normative forces. In the case of SERs it is probable that the state, while regulating SER cornerstones, accommodates to the relevant value, interest and power structures among the workers and their representation taking advantage of this legal segmentation. This may even solve the enigma why this archetype of legal segmentation has steadily survived—despite egalitarian efforts, claims and movements and despite a legal pluralism simultaneously allowing equality as a legal value and the persistence of a still legally fettered SER. With respect to the GS, the interaction of employment law with other legal and non-legal norms may be even more indispensable.

3 HISTORICAL DEVELOPMENT AND VARIETIES OF *LEGAL SEGMENTATION* IN THE GN AND GS

According to Bob Hepple (1986a), the scholarly discipline of labour law originated in Europe in connection with capitalist industrialisation and the interplay of a diversity of national legal ‘interventions’. With respect to legal segmentation, employment law (individual labour law) (Veneziani, 1986; Ramm, 1986) seems to have undergone a metamorphosis from direct to indirect segmentation, over time (see the chronology in Hepple, 1986b, pp. 330–359). The early steps consisted in both extending reception, from Roman civil law, of freedom of contract in employment and public-legal interventions against market-disturbing labour practices (child labour, truck system, ongoing feudal bonds etc.). While under patriarchal-authoritarian regimes, freedom of contract had remained a *privilege of male nationals*, in the course of democratisation these public-legal segmentations became, gradually only, redressed via constitutional

and legal capacity reforms, so that family, inheritance and tax laws opened up contract-based access to employment equally for women. The democratic shift simultaneously brought about, mainly via substantive state legislation and collective representation and bargaining, a legally triggered status of employee. The newly emerged category of ‘workers’ were paradigmatically SER-workers—those with work biographies of continuous full-time employment, subordinated under managerial prerogative. *Direct* segmentation became increasingly outlawed as illicit discrimination. In the context of our analysis, however, the SER marked the shift towards *indirect* legal segmentation in employment laws of the GN. As it required particular social preconditions (full citizens’ legal capacity, freedom from care obligations), it systematically corresponded to the male breadwinner family model, hence went alongside gender segmentation (Mückenberger, 1989; Vosko, 2010). Despite more recent trends towards both flexibilisation of parts of the SER and equalising containment of legal segmentation (Hepple, 2009; Mückenberger, 2024), indirect segmentation—paradigmatically symbolised by the SER—remains predominant in GN employment laws.

In the GS, there have been significant differences in legal segmentation compared to the most industrialised countries in the GN. *Direct* legal segmentation played a prominent role in the construction of labour markets. Openly racist discrimination was present not only in Apartheid regimes; widespread gender discrimination structured labour markets, for example by the exclusion of domestic workers from general labour protection especially in societies with pronounced inequality; urban and rural workers were divided by lower standards for agricultural labour; and highly segmenting migration legislation often based on constructions of race was influential in times when in the GN immigration still was not a widespread phenomenon and with little legislation. *Indirect* segmentation, though, has also been present in the GS from the very beginning of labour law. The division between urban and rural areas via exceptions for small and medium companies or special economic zones can still be seen today. Legislation during the modernisation period after WWII was based on the male breadwinner model equally as in the GN. A characteristic of segmentation in large parts of the GS is the relatively low level of labour inspection often combined with a weakness of collective organisations in setting legal impulses or taking action.

As a common phenomenon in the GS over the twentieth century, it has been observed that formal employment relationships have by far not

reached the same coverage of the working population as in the GN (ILO, 2018; Chen & Carré, 2020). Much legislation typical for the GN can also be observed in the GS, but often with different effects, and hardly attaining universal significance (Ashiagbor, 2019a). Hence, precarity, not the SER, has been the standard since the twentieth century for what Julián Véjar (2022, p. 23) calls precarious societies—a society that institutes, regulates, reproduces, segments, classifies and induces precarity as a structural condition for its delimitation and governance. Another common feature is the continuous influence of colonial and postcolonial epistemology, legislation and imposition of interests in the worlds of labour, with work-related legislation especially focusing on relations to Western-based investment capital (Ashiagbor, 2019a, 2019b; Marshall & Fenwick, 2016). During colonialism and, after formal decolonisation, in many settler-colonial contexts, a legal differentiation between indigenous people and Euro-Americans or Euro-Africans can be observed, even approved by ILO Conventions (Fechner, 2022a). A third phenomenon is the intent of reaching the whole working population by means other than ‘modernisation via economic development’ and labour law (cf. Fechner, 2018). This approach includes critique of and underlines the limits of modernisation theory, starting slowly in the 1970s with the analysis of informal sectors and employment (Marshall & Fenwick, 2016). When the Western ideal of full employment based on industrialisation and a strong private sector has not shown any signs of arriving and the state is not expected to take over this role of primary employer, a focus on the working and living conditions of those on the margins and beyond formal employment is needed.

3.1 *Historical Development of Legal Segmentation in the GN*

The employment contract is not an ‘invention’ of industrial capitalism. Its main components—for example the synallagmatic structure of the *do ut des* between work and wage, the distinction between contract of service (*locatio conductio operarum*) and contract for services (*locatio conductio operis*) and the corresponding legal risk allocation structures—existed already in Roman law (*Corpus iuris civilis*) (Veneziani, 1986). As a pure contract law, it contained neither status properties nor segmenting status differentials. This heritage became ‘received’ in Europe under the auspices of a professional academic art, from the twelfth century onwards (*Bologna school* and other newly created universities). As a ‘common law’ for the

European principalities (Eck, 1880) it gained access to the modern employment law doctrine (e.g. Lotmar, 1902, pp. 45–52).

Max Weber, when illustrating the emergence of ‘contract societies’ throughout Europe, demonstrated that before industrial capitalism, this legal system applied to small proportions of societies only (Weber, 1967, 204 ff.). In Rome, for example, it covered the services of ‘freedmen/-women’, hence of a tiny minority of working people only, not the masses of labouring slaves etc.

The employment contract and its legal shape, in the GN, is historically strongly connected with the emergence of both capitalisation of the primary sector (agriculture, mining) and the expansion of the secondary sector (industrial capitalism, accompanied by homework, subcontracting, manufactories and factories) as well as the emergence of the welfare state. Europe, particularly Britain, led in the development of industrial capitalism since 1800 (Britain) and into the 1860s (Western continental Europe). This lead, vis-à-vis the other regions of the world, has been explained by Kenneth Pomeranz (2000) by the advantages in energy supply (coal) and the (slave) trade relations with the Americas. Capitalist industrialisation was connected with the shaping of an extensive market structure via the emergence of a transport industry and infrastructure implying the need for labour for road building and railways as well as for administrative and commercial services.

In Europe, the emergence of a consistent employment status was influenced by different legal inventions and their transnational diffusion (summarised in Hepple, 1986a). The British factory legislation, starting in the early nineteenth century with measures for child labour, became a sort of masterplan for continental labour inspectorate rules (Bauer, 1923; Ramm, 1986). The French *Code Civil* of 1804 (*Code Napoléon*) overcame the French separation of private law into customary and scholarly written law, and became the enlightenment-based source of personal freedom also used as a model in other European territories. The French system of *conseils de prud’hommes* (lay labour courts dating from the early nineteenth century) gained increasing professionalised momentum all over Europe (Malmberg, 2009; Ramm, 1986).

The *Bismarckian* compulsory social insurance system to cope with typical employment-based risks (sickness, industrial accidents, old age and invalidity) of the 1880s expanded to most other European countries. The German system of labour exchanges became ‘emulated’ in Britain (Hepple, 1986b, p. 2), while the Belgian ‘Ghent-system’ (unemployment insurance

governed by trade unions and other non-state actors, but increasingly financed by the state) moved from Belgium to the Netherlands, Germany, Italy, France and Scandinavia. Similarly, the German works councils act of 1920, with its first status-preserving dismissal protection measures, became a prototype for other European countries (Mückenberger, 2009; Veneziani, 2009; Ramm, 1986). Germany seems to have played an important role in the European employment law doctrine since the last third of the nineteenth century. Of course, in the making of European labour law (Hepple, 1986a), the international context of the ILO and its forerunners also played a role both for strengthening transnational emulation processes and partly harmonising national diversity (for historical specificities, cf. Pries 2019; Weber 2019).

All this confirms that overall in Western capitalist societies, the legal regulation of work, as a part of welfare state policies, supports the dual function of commodifying and protecting labour (Heimann, 1980). Since capitalist labour law can no longer rely on compulsory work (like slave labour), its functioning depends on its impact on workers' willingness to work for others, in a subordinated manner (Weber, 2013; Boltanski & Chiapello, 2005; Elias, 2000). The SER, in our opinion, seems to provide a paradigmatic tool for this incentive role of labour and social security law—in that it systemically couples coverage and generosity of legal protection to the uninterruptedness and continuity of performing wage labour (Mückenberger, 1985). Other fields of law (such as on minimum social protection, finance law, company law, property law, tax law, family law and inheritance law) provide for and shape the conditions under which workers remain dependent on selling their labour. Within this framework, labour law endeavours to make the capitalist order acceptable for workers and thus enhance their willingness to collaborate in the system of exploitation.

Labour law thus—as analysed by Boltanski and Chiapello (2005)—constructively takes up workers' and unions' protest and criticism. It nevertheless contains the commodifying function to ensure workers' internal commitment to exert waged labour. The inculcation of the willingness to perform commodified work, continuously and intrinsically over everyday life and the lifespan, requires the continuous presence of 'differentials' between people whatever their work may be—skilled or unskilled, commodified or non-commodified, care or manufacturing, indoor or outdoor etc. It also typically contains a legal expression of the performance principle, namely rewards and punishment for better or worse performance.

This creates the need for a grading system between working people according to their ability and willingness to perform dependent labour and implies a segregated social structure allowing for the simultaneity of the performance principle in the market sphere and societal reproduction in the home sphere—both connected with gender segregation.

We assume that important components of this legal incentive system (with its segmenting elements and a paradigmatic focus on the SER) were marked by industrialism and displayed all over the globe, over time (for the role of the ILO cf. Hahs & Mückenberger, 2022). Drawing on the historical development of legal regulation in the GN enables us to identify different legal instruments and normative settings as the origins of legal segmentation, namely the protective, privileging (excluding) or equalising (inclusive, universalising) side of individual labour law (Dingeldey et al., 2022). Hence, legal segmentation in labour law does not emerge by accident, but rather as a constituent systemic ingredient of welfare capitalism.

In the following sections we will substantiate the historical development of legal segmentation along the three historical phases used in the comparative labour law discourse (cf. Finkin, 2014). The description is not ‘historical’ in the strict sense. It rather reconstructs ideal-typically the building blocks, namely the protecting, segmenting and equalising functions of labour law, over time and in a historical order prevailing in Europe.

First Phase: Establishing Double-Free Labour

Within what Norbert Elias labelled the “civilizing process”, labour law replaced the external constraint to work by what Elias called the “constraint towards self-restraint” to work (Elias, 2000). Through labour law, in a first historical step, the direct external constraint to work, as used in feudalism, was abolished—by laws, but also by the legal doctrine (Hepple, 1986a), as a transnational spillover of the French Revolution. According to Hepple’s assessment (1986a), labour law became a coherent discipline, first in Denmark and Germany. The civil codes of, for example, France, Italy, Germany, Netherlands and Denmark of the nineteenth century allowed the “freedom of labour contract” (Bauer, 1923; Sinzheimer, 1923) which, from then on, took the form of freedom from both direct bonds and their own means of reproduction. This implied an indirect constraint to conclude a contract of employment—with both a certain hitherto unknown freedom of the worker to choose their employer. Social policy provided for a legal system of constraints and incentives—that is acts prohibiting the ‘idle Monday’, establishing the ‘workhouse’, laws

against beggars and vagabonds, laws against desertion of the workplace etc.—laws originating from the sixteenth century which became integrated and enforced during the nineteenth century, above all in the UK and in German territories. They aimed at producing the “productive” human being (Schröder, 1984). Other laws, however (like Property, Bank, Finance Acts), kept workers economically dependent on the commodification of their labour in order to reproduce themselves and their families (i.e. Karl Marx’s famous expression concerning the “double freedom” of labourers in capitalism).

In the field of public law, measures were taken to protect labour against misuse and accidents, particularly vis-à-vis women and children. Here Britain was the forerunner (Ramm, 1986)—due to its economic lead, but also an early system of factory inspection. This was the origin of legal protection of labour power—against misuse by the employer, but also by the workers themselves. Since this regulation focused on children and women only, it had properties of direct legal segmentation and was therefore disputed. Regulation, for example, of daily and weekly working time or prohibiting night work, that only affected the ‘exceptional’ labour power of women and children, took male labour power as the sole ‘normal’. This approach also characterised the early ILO Conventions (see Hahs & Mückenberger, 2022) and was the starting point of an ongoing tension between segmenting and egalitarian values and protagonists in labour law. This phase obviously introduced ‘direct’ legal segmentation. Its main functions, however, seem to have been both to provide labour for the emerging and growing industrial or agricultural capital and to secure unpaid reproduction of labour by female child-raising and care work.

Second Phase: Status-Building and Status-Safeguarding

On the basis of freedom of employment, contract labour law helped to build a relatively well-sheltered status for certain gainfully working people which culminated in providing them with the so-called Normal or Standard Employment Relationship (SER). This status differed from Sir Henry Maine’s dictum “from status to contract” (Maine, 1970) in that it was the product of private market transactions, not of public-legal obligations. De facto the new employment law status referred typically to (male) full-time workers with permanent employment contracts in industry (Mückenberger, 1989; Vosko, 2010).

With a view to the historical emergence of status and the SER, the legal transformation around the turn from the nineteenth to the twentieth

century followed three objectives building on the anterior ones: Via individual employment and collective law, labour law has built an *employee* status, paradigmatically an SER-status. In all European countries the legal status-orientation involves a conceptual restriction to *commodified* labour, to its status and its protection. To call this an ‘employee status’ was an early outcome of the German legal doctrine (Veneziani, 2009), whereas the British piecemeal legislation preserved a high number of designations.⁵ From that followed the (also legal) dichotomisation between commodified and non-commodified labour (e.g. gainful work and unpaid housework and care work), but furthermore between ‘typical’ and ‘atypical’ employment, between employment and the newly invented legal category of ‘unemployment’ (Salais et al., 1999) and a respective up- and downgrading of legal protection.

Within the sphere of commodified labour, status-oriented labour law in conjunction with social rights dependent on the employment status set up a system of rewards and punishment, of differentiated coverage and generosity of employment law and social protection, which systemically created ‘differentials’ among dependent workers.

Regulative social policy (more significant in France and Germany, less so in Britain), particularly the creation of the SER, is supposed to limit exploitation of the workforce and, in a more modern understanding, guarantee employees the possibility of economic and cultural participation. Hence, both the legal status of the contract and the SER provided protection for the covered employees. This included protection by individual and collective labour laws and their means of enforcement—again with an exception in Britain where collective agreements constantly lacked legal enforceability (Jacobs, 1986). Employment law (like the *Code du travail* as started in 1910) defines rights—and duties—within the employment relationship. This includes, for instance, rights to reproduction, that is defining working time limits and holidays, as well as guaranteeing legally defined or contractually agreed (minimum) remuneration. Moreover, severance payments in case of dismissal entail some economic security even beyond the duration of the contract. Additionally, collective rights to organise and to strike are supposed to balance the difference in power resources between labour and capital in general. To enforce these rights

⁵ Such as servants, workmen, menial versus domestic servants, labourers, servants in husbandry, journeyman, artificers, handicraftsmen (Goldschmidt, 1930). To date there remains the corresponding use of ‘employee’ and as a wider term ‘workers’ (Veneziani, 2014).

and duties, the provision of infrastructure in the form of labour inspection and labour courts was relevant. But also legally defined institutions of codetermination in the enterprise like works councils support compliance with labour law.

Moreover, both the legal status of the contract and the SER simultaneously functioned as gatekeepers for workers' access to the social security system (the *Bismarckian* social insurance vs. the much less generous, but more inclusive tax-financed British system) (see Hepple, 1986c; Rebhahn, 2009). This connection between the labour market system and access to social security became closer throughout the early twentieth century due to the fact that the insurance principle gained momentum all over Europe (Hepple, 1986c). Employment protection and overall contribution-based social security systems focused on long-term employment—the former via the seniority principle (the duration of employment increases the degree of protection, e.g. against dismissal), the latter via the equivalence principle (long-term payment of high contributions increases the benefits received by the social insurance entity). The longer the uninterrupted career in gainful work, the better the legal and social protection both in the job and in life periods without market income (sickness, old age, unemployment, accidents etc.). Additionally, 'coverage' or inclusiveness of full legal protection is often conditional on the size of the enterprise, creating selective incentives to work in large export-oriented firms or the public sector. With the full development of the welfare state after WWII, these combined incentives tied workers to their workplace and thereby provided employers (in the most productive sectors) with the continuous availability of a suitable workforce.

In consequence, a threefold regulatory system was created (following Mückenberger, 1985): Firstly, it provided full protection only for those segments of the working population that complied with the regulatory set 'standards', that is full-time employment in large enterprises. Secondly, it established a continuous and life-long performance principle within working peoples' biographies and life courses—with a continuous incentive to take up, maintain and improve best-remunerated commodified work. The definition of gender roles supported a gender and generation-related work/care distribution accordingly. The outcome was—thirdly—a corresponding legally structured system of socio-political inclusion and exclusion mirrored in gendered employment, poverty and wealth rates, power and impact structures related to firms and society etc.

Social policy reproducing a differentiated legal status, particularly the SER status, can thus be conceived as an example of what historical institutionalism (Fioretos et al., 2016; Thelen & Conran, 2016; Capoccia, 2016; Streeck & Thelen, 2005) introduced with the term ‘ideational inculcation’ (Blyth et al., 2016; Pierson, 2016; Hahs & Mückenberger, 2022). Both above-mentioned social policy institutions (employee status and SER) inculcated into individual employees the motivation to commodify their labour. Other welfare state measures—like tax, family, social assistance law—contributed to this inculcation focusing on male workers, while excluding or marginalising women with care responsibilities. They thus lead to what Elias (2000; similarly Boltanski & Chiapello, 2007) called “constraint towards self-restraint”—the internalisation, into the individual itself, of the constraint to commodify their proper labour.

Third Phase: Contradictory Flexibilising and Equalising Dispositive of Employment Law

The status-building and status-securing phase with systemic segmenting ingredients was followed—in the second half of the twentieth century—by an ambivalent phase of state interventions.

Since the 1980s, an economically disputed and socially disastrous strategy of flexibilisation and deregulation took place under neoliberal guidance in all countries of the Western world (cf. critical analysis in Mückenberger & Deakin, 1989). In the common law countries first, followed by spillovers to civil law countries (Veneziani, 2009), the intention of generating ‘employability’ led to further commodification as well as to increasing legal and de facto labour market segmentation. Fixed-term contracts, agency work or contract labour, and zero-hours contracts, have introduced an additional variant to the already existing precarisation of employment (Pittard & Butterworth, 2015, p. 36 ff.). Hence, grey zones at the margins of the labour market with self-employment and precarious and informal work were encouraged and expanded in the context of labour migration and insufficient compliance and control. In the Anglo-Saxon sphere, deregulation directly addressed unionism and the core labour force—following testing fields in the GS (Chile; cf. Fechner in this volume). However, most OECD countries preferred indirect forms of deregulation. Working time, as a subject of concession bargaining, but also the implementation of collective agreements were flexibilised with the consent of unions and employees’ representatives. This was combined with welfare state retrenchment and restructuring which cut and ‘conditioned’ social

security benefits particularly at the cost of worse-off participants in the labour market. Policies to encourage employability in combination with the increase in childcare facilities, but also the growth of the service sector led to increasing participation by women in the labour market (Dingeldey, 2007, 2011).

As a countermovement, however, partially equalising legal status among workers and between workers and non-workers was also promoted. Often under EU influence, greater equality among workers was envisaged. Here, apart from early anti-discrimination regulation in some Latin American countries like Brazil, the Anglo-Saxon countries had a lead vis-à-vis their continental counterparts in that they introduced anti-discrimination rules with ‘formal’ equality (Hepple, 2009), whereas the continental countries followed with ‘substantive’ equality rules. The reasons may be that the common law understanding of equality was rather an economic one (= discrimination as a distortion of competition/markets) and that anti-discrimination legislation had a race discrimination origin, whereas in the civil law countries, equality was simultaneously regarded as a matter of social justice, and anti-discrimination legislation was triggered by the experience of gender discrimination (Oppenheimer et al., 2020). Particularly from the 1970s onwards, laws against gender and racial discrimination were passed. In order to cope with demographic change, access to social security benefits was slightly decoupled from current gainful employment by creating better legal conditions for parenthood and reconciling work and life outside work. These worldwide legal trends were supported by international legal interventions like CEDAW 1979 (Oppenheimer et al., 2020, p. 54 ff.) and ILO Conventions C 100 (1951) and C 111 (1958) (Hepple, 2009). These, and many other measures, however, remained piecemeal and often favoured better-off workers more than their precarious counterparts or non-workers (Hahs & Mückenberger, 2022). In combination with only slowly changing gender roles, these policies resulted in rising income inequality in most Western welfare states (Barbieri, 2009).

The impact of these ambivalent developments—flexibilising and equalising rules—on legal segmentation is still uncertain. This holds for both the development of the two components themselves and their mutual relationship and impact. Where radical direct deregulation contains opportunities for union busting and abolishing status, as in Chile and the UK (Jacobs, 2009, p. 219 ff.), it possibly leads to more formal equality of workers—producing, however, legally protected equality on the lowest

level. Often deregulation is rather indirect, leaving large parts of collectively sheltered status intact while challenging and cutting protection and benefit levels for the worst-off (Jacobs, *ibid.*). This path contributes to further indirect segmentation in that it consolidates segmented worlds of labour ('societies of the two thirds') by further lowering the minimum floor of rights for those precarious life situations dependent on this minimum floor (Dingeldey et al., 2021).

3.2 *Legal Segmentation and Segmented Work Relations in the GS*

The major steps in labour legislation described in the GN can be traced in most countries of the GS as well. In spite of tremendous differences concerning the circumstances of its emergence, its effects and its social relevance, labour legislation in the GS in many aspects—NB *de jure*, not *de facto*—shows quite similar normative structures of legal segmentation as in the GN, a paradoxical phenomenon we may call divergent convergence and convergent divergence (Pries, 2013). If we look only at recent legislation since the late nineteenth century (for a historical perspective beginning in the sixteenth century, cf. Fechner in this volume), about five general phases of modern labour legislation could be described in the GS with a focus on sub-Saharan Africa. A first phase concerns the introduction of basic legislation for employment relationships, typically ending before WWI, often strongly divided in terms of sectoral regulation and corresponding segmenting effects. A second phase ending about 1930 is characterised by regionally differing legislation according to specific economic structures and the respective need for workers. In large parts of the GS, this second phase meant direct legal segmentation involving the construction of racial dividing lines and gender segmentation, laying the social grounds for gendered and racialised labour markets (Fechner, 2022a). After a short transition period with the rather formal ILO-based introduction of primarily collective labour legislation beginning in the Great Depression (Fechner, 2022b), the aftermath of WWII is characterised by an almost general introduction of worker protection and certain aspects of social security for waged workers. The basis for this was the consensus reached at ILO's Philadelphia (1944) and Paris (1945) International Labour Conferences concerning labour standards in the so-called dependant territories (ILO, 1946). This third phase marks the emergence of the major legal dividing lines between formal and informal employment in the

context of applied modernisation theory (Ashiagbor, 2019a; Pellissery, 2013). As the fourth phase we could describe the neoliberal phase beginning with the Chilean labour law reforms of 1978 (Fechner, 2023), where paradigmatic changes in terms of non-standard employment relationships were introduced which later became models for legislation in the GN. In parts of the GS, especially in Latin America, it was introduced almost in parallel with the equalising shift, which in other regions mostly started later and more weakly than in Europe. Finally, post-neoliberal labour reforms have been undertaken in large parts of the GS in the new millennium.

At first glance, labour legislation and legal segmentation in many aspects thus look similar to Western legislation, and not necessarily lagging behind. ‘Modern’ labour legislation was introduced on all three continents of the GS in parallel to or not much later than in the European and other GN countries. Some examples may illustrate this. The Masters and Servants Ordinance for the Cape Colony as the earliest African labour law stemmed from 1842, consolidated in the 1856 Masters and Servants Act; it was introduced long before general labour legislation in, for example, Germany (Hay & Craven, 2004). In Asia, the Indian Factories Act from 1881 was among the first laws concerning certain workers’ rights. It started with a focus on women and children, but since 1911 introduced general working time restrictions for all persons working in factories of a certain size, which became standard in Europe only after WWI. The Mexican Constitution of 1917 was the first worldwide to include social and economic fundamental rights, including norms which later were to become international standards elaborated in ILO Conventions, for instance the eight-hour day. Latin America furthermore was one of the global pioneers for the ratification of ILO Conventions and the introduction of comprehensive labour codes in Chile and Mexico (1931). If we go back to colonialism in Latin America, the first worker-protecting legislation was introduced in the Burgos Laws in 1512 (cf. Fechner in this volume).

The assumption that the GS simply followed the legislation in the GN would be utterly wrong. Since the need for state intervention due to comparatively weak labour movements was great, legislative interventions to protect workers can be observed in the GS, as in the case of the Mexican constitution of 1917. The same is also true, though, for the inverse: the GS has often been a testing area for legislation that later was applied also in the GN, as the case of Chilean neoliberalism and its major labour

reforms of 1978/1979 illustrates (Fechner, 2023). Although different patterns or types of legal segmentation exist, there is no indication that formal legal protection is systematically lower in the GS than in the GN (Mückenberger & Dingeldey, 2022).

However, thanks to the discussion on informality and precariousness, we know that often the majority of the workforce in the GS lacks *de facto* inclusion and coverage. As Breman et al. (2019, p. 8) note: “On the eve of independence from colonialism, only a tiny fraction of the total workforce—a privileged contingent of modern factory hands and office workers mainly—had come to enjoy formalized conditions of employment”. In order to follow these trajectories, we need to apply a broader focus on work-related legislation than with respect to the development in the GN. A legal segmentation approach only looking at the emergence and development of labour legislation is not sufficient to understand the more complex structure of the dividing lines of formality, informality and precariousness in the GS. In respect of legal segmentation in the GS, we therefore rather focus on exemplarily describing different normative constellations influencing the segmentation of labour markets.

From the perspective of historical institutionalism, typically three major lines of segmentation can be discerned, which still tend to have fundamental effects today. They concern distinctions of (1) gender, (2) race (as a social construct, coupled with ethnicity, e.g. concerning indigenous populations, and migration within and from the GS) and (3) employers’ target markets (domestic vs. GN), as will be illustrated below. In all these aspects, regional specificities can be observed as well as differences related to geographical factors (natural resources, agricultural conditions, accessibility for imperial powers), precolonial institutions (relations of production) and availability of manpower (availability and suitability for forced or contract-based migration; sufficiency for exploitation of natural and agricultural resources). Nonetheless, in terms of the three major lines, a strong tendency towards a dominance of centre-semiperiphery-periphery relations (with Europe as the centre; cf. Wallerstein, 2004) can be observed in the development not only of work-related legislation as such but also concerning legal segmentation (Fechner, 2022a).

These specificities of segmentative legislation can be traced to single laws, legal pluralism and the interaction with normative pluralism. The historically wide-reaching complexity of legal (and normative) segmentation in relation to precolonial conditions, early and late colonial approaches and the impact of international organisations in this respect can only be

roughly outlined here. Comparative research on the history of legal and normative segmentation in the GS is comparatively recent and all but systemised. Respecting that, across the different regions we face a most complex and diversified development. Therefore, it does not make sense to spell out in detail a historical scheme of phases of legal segmentation, but rather sketch some paradigmatic cases for different continents. The aim is not to give a complete picture, but to provide an idea of the broad range of historical developments to be considered and explained within our theoretical approach.

Different Types of Colonial Legal Segmentation and Their Long-Term Effects

As a first example of early modern legal segmentation relating to major segmentation lines in the GS, colonial legislation in Latin America is sketched and confronted with twentieth-century segmenting and equalising legislation. Secondly, as an illustration of the segmenting impact of legal pluralism, legal segmentation of early African work-related legislation is outlined. Finally, the relevance of normative pluralism is discussed taking the example of India.

Looking at the work-related legislation during the *Spanish colonisation of Latin America* (and the Philippines) provides an idea of the lasting impact of legal segmentation in a single codification within (and beyond) the colonial state's frontiers and its relation to legal pluralism. It is exemplary for segmentation based on the differentiation between state and non-state law in the governed territories, but also for an early complex system of legal segmentation differentiating rights of free contract workers, different forms of forced labour and slavery based on racist differentiation between different groups of people, among other grounds.

The *Leyes de Indias*,⁶ recompiled in 1680 as a compilation of 6400 laws institutionalising social relations between the crown, creole elites and subaltern classes, were valid in all Spanish overseas colonies (Lynch, 1992; Reynoso Castillo, 2005). Its second line of legal segmentation consisted in the construction of social classes by the type and quantity of physical force applicable to them, and the relative protection they enjoyed. In Book 9 they introduced legislation on aspects of wage labour such as maximum

⁶'Recopilación de leyes de los Reynos de Indias', referring to the European colonisers' original belief of having found India when conquering the Americas. The first compilation were the *Leyes de Burgos* of 1512.

working hours and wage payment. This legislation was by no means only protective, but rather had an administrative character, regulating and restricting the use of private and public force, among other aspects, in order to prevent depopulation of exploited areas. The proper fulfilment of contracts was guaranteed by force, which, from the worker's side, was hardly 'free' labour. It nonetheless did, in the same legislative context, differentiate wage labour from other forms of work.

This waged labour system in the *Leyes de Indias* coexisted with several forms of (even more) forced labour regulated in the same law. One was the *encomienda* system (abolished 1791), which obliged indigenous people to do unpaid work for or pay tributes to Spanish colonisers and their heirs. Another was the *mita* system, which obliged indigenous people to do public infrastructure work without payment, especially work in the mines (Gil Montero, 2011). While the *Leyes de Indias* prohibited enslavement of indigenous people and Spanish law prohibited the enslavement of Christians, the exploitation of enslaved persons of African descent was not only considered to be legal, but regulated by a vast body of law in the *Leyes de Indias* and beyond (La Fuente & Gross, 2010). The institutionalisation of social groups in relation to work based on origin, racist constructions of communities, for example by skin colour, ethnic groups and professions, had effects that can still be observed in today's social divisions, although the corresponding institutions were abolished long ago (Reiter, 2018). These laws and regulations can be seen as an exemplary early form of legal segmentation by legal pluralism.

A prime example of constructing racial and gender relations by subtle forms of legal segmentation based on legal pluralism can be found in sub-Saharan colonial legislation. Colonisation of sub-Saharan Africa primarily meant the introduction of wage labour by Africans for European employers. In comparison to the strongly privileged European and partially privileged Asian indentured workers, the autochthonous male population was considered and then both legally and forcefully pushed into the role of cheap unskilled labour. Using legal pluralist approaches, a set of tax, recruitment, administrative, penal and labour laws provided for strongly racialised and gendered constructions of labour. Hut and poll taxes directed at 'able-bodied men' obliged (exclusively) them to participate in the money-based economy. Recruitment laws regulated the migration conditions for male workers. Administrative and penal laws were designed to enforce male workers' employment contracts, while women were expected to stay in the villages or do unpaid reproduction work for the

paid male workers. Furthermore, beyond wage labour, several forms of (openly) forced labour were introduced, from forced labour on local infrastructure over prison labour to forced labour for large infrastructural projects such as railway construction, again racialised and gendered with the effect of forming almost genuinely male African working classes and classes of predominantly female informal workers (Fechner, 2022a). As in the Latin American case, institutions abolished a long time ago thus formed social structures which have strong repercussions until today.

Another form of legal segmentation introduced by *the colonial power interacting with pre-existing normative segmentation can be observed in India*. India's earliest industrial labour legislation, the 1881 Factory Act, by its definition of 'factory' only had effect in establishments using 'steam' and employing not less than 100 persons. The Factory Act 1948, still in force in 2023,⁷ reduced this number to ten workers in factories using power, or twenty without power. This exclusion of small- to medium-sized enterprises by legal segmentation meant that especially in rural areas traditional normative systems shape the segmentation of labour markets until today, including its implications for gender segmentation. In large parts of India, the traditional division of society into castes based on both custom and religion thus can be upheld through smaller enterprises, permitting normative segmentation with predetermination of economic and social rights ascribed by birth (Thorat, 2010; Srinivasan, 2016). Legislation here sets an explicit dividing line for segmentation between the formal and informal economy.

If, as in the Indian case, the large majority of working people are active outside the formal economy, the question arises about the norms governing their social status in terms of protection, differentiation of roles and groups, and normative forces for social inclusion or exclusion that have to be considered. Thus, wherever modernisation and industrialisation have not formed society as a whole, the typology of legal and normative segmentations in the wider sense needs to include the analysis of tribal and religious legal systems, of (further) patriarchal, but also matriarchal formations resorting to customary law, and any other normative constructions based on race, caste and similar 'systems of collective social ranking' (cf. Berreman, 1972; Tamanaha, 2008).

⁷The repeal of the Factories Act 1948 is foreseen in sec. 134(1)a Occupational Safety, Health and Working Conditions Act 2019, which had not been ordered to come into force by mid-2023.

We also find these developments in other regions. Historically developed, often precolonial customary practices originating from tribal rules, Islamic religious norms and state law for instance interact to deepen gender segmentation in Pakistan's labour market (Shahid, 2007). Matriarchal and patriarchal societies and their respective normative systems strongly influence gender roles in labour force participation in sub-Saharan Africa, influencing whether women can participate in the paid labour market, and in which sectors they may work (Zawaira et al., 2020). All of these normative approaches bring about normative segmentation based on normative pluralism.

Persistence of Legal Segmentation in the GS

Why do these structures still exist today predominantly in the GS, next to modern labour legislation? We believe that the underlying driving force can be theoretically reconstructed as capitalist utilitarianism in extractivist and comprador economic settings formed during colonialism, which has not yet overcome its original or postcolonial character—confirming theoretical assumptions of historical institutionalism.

Extractivism can be described as the mode of non-reciprocal resource extraction with intensive use of land and nature generating “benefits for distant capital without generating benefits for local people” (Scott, 2021, p. 124). It is the appropriation of large volumes of natural resources or at high intensity, predominantly exported as raw or hardly processed materials (Gudynas, 2018). While many people in extractivist countries are affected by this mode of production, relatively few are actively involved and the profit is mostly made in the countries of destiny. In terms of work relations, the function of this mode of production is not to activate and include the greatest part of society in a division of labour, but to utilise those necessary for extraction and related services.

Although not always the case, extractivist utilitarianism often coincides with comprador elites maintaining or even radicalising these structures, especially in the years following decolonisation. As Spivak (2010, 257 f.) puts it:

[t]he contemporary international division of labor is a displacement of the divided field of nineteenth-century territorial imperialism. Put simply, a group of countries, generally first-world, are in the position of investing capital; another group, generally third-world, provide the field for investment, both through the comprador indigenous capitalists and through their

ill-protected and shifting labor force. [...] maintaining the international division of labor serves to keep the supply of cheap labour in the comprador countries.

In the context of the New International Division of Labour (NIDL) observed since the 1970s (Fröbel et al., 1978; Charnock & Starosta, 2016), industrial production in countries of the GS has rocketed (also the labour force), but often without generally raising living standards or improving effective legal protection. Comprador structures persist, with local intermediate actors profiting from international value chains by exploiting local workers while offering little progress, as the maquiladoras in Central America or its South Asian counterpart, the garment industry in Bangladesh, show, where conditions (if at all) are improved only through international solidarity networks and typically in the context of severe human rights violations (Clean Clothes Campaign, 2013; Prentice, 2021).

While extractivism has been typical mostly for Latin American and African countries, but rather few Asian countries, the centre-periphery relation includes South, East and Southeast Asian states with comprador systems offering cheap labour without introducing legal designs for the division of labour covering society as a whole—and thus large parts of the GS (Amin, 2011 [1990]). This eventually implies a threefold division of labour markets into traditional, legally formalised and new informal parts, where legal segmentation necessarily has a different function in comparison to Western countries. On the other hand, we can differentiate between systems where high standards *de jure* are only introduced for workers in large firms producing relatively high rents, whereas in large parts of the GS relatively strong labour legislation is weakly enforced with the exception of firms with high rents and workers able to mobilise the workforce (Ronconi, 2015).

4 CONCLUSION: TWO LOGICS OF LEGAL SEGMENTATION—AND THEIR CONNECTEDNESS

Analysing the labour-related legal developments in the GN and the GS with a focus on Latin America and Sub-Saharan Africa, we found two salient results. Not surprisingly, we could discern different logics of labour regulation in the different world regions. In our analysis, the first logic of segmenting legal regulation is inspired by a modernised ‘spirit of

capitalism'. It is based on legitimacy via legal interiorisation ('inculcation' in the meaning of historical institutionalism, cf. Fioretos et al., 2016) of capitalist subordination and exploitation of labour. The second logic of segmentation is inspired by 'utilitarianism' as a sub-form of 'consequentialism'. It is based on constraint via a mix of diverse legal and other social normative levers to achieve willingness for extractive labour ('normative pluralism' in the scholarly meaning).

The expansion and generalisation of the first logic of capitalist labour regulation often coincided with periods of democratic rule and the development of a more or less encompassing welfare state (Marshall, 1950). It was based on, at least formally, voluntary cooperation of subordinated labour and its representatives with entrepreneurs and the state. This cooperation, substantively, resulted from the newly invented systems of status differentials among the workers (particularly in the form of SERs). Status differentials consisted in forms of segmentation which were tolerated, even supported and legitimised by dominant segments of (mainly white and male) workers and their representatives. Cooperation, procedurally, was achieved by collective representation and collective bargaining of workers vis-à-vis employers and the state. Collective representation integrated dominant strata of the subordinated workforce into, at least formally, self-determined rule-making procedures. Eventually, both these labour rules and the segmentation they contained formed part of a legitimate 'spirit of capitalism'. Certainly, they involved subordination of labour and segmentation within the working class. However, both were legitimised by an underlying consensus between and within the parties involved. We theorise this finding with reference not only to historical institutionalism, but rather to the theories of structuration (Giddens, 1984) and the "New spirit of capitalism" (Boltanski & Chiapello, 2005, with reference to M. Weber).

In contrast, the second logic of capitalist labour regulation mostly coincided with colonial or other authoritarian rule. It was based on an instrumental use of imperialist legal regulation in order to achieve the outcome of primarily extractivist labour. Only marginally did it intend to achieve consensus with the governed or agreement with their collective representation. The laws of different areas (labour, housing, taxes, penal law etc.) were regarded as tools to achieve a predefined objective—extractivism. Labour regulation hence was not regarded, treated and assessed under the aspect of its legitimacy vis-à-vis the workers governed by it, but rather only under the aspect of its effectiveness. This did not necessarily include the

development of a welfare state, and until today often has produced only residual kinds of social protection (Abu Sharkh & Gough, 2010; Surender & Walker, 2013; Gough & Wood, 2004). Certainly, legal segmentation was as necessary a component of this labour regime as in the first one. However, it was, though predominantly a form of direct legal segmentation, not an objective in itself, but rather an inevitable means to achieve the objective of extractivism. We capture this segmenting regulatory logic as the ‘utilitarian’ rule (in Jeremy Bentham’s and John Stuart Mill’s sense—with modern protagonists like Henry Sidgwick and Amartya Sen) as a part of ‘consequentialism’ (Sinnott-Armstrong, 2019).

In introducing legal segmentation as a research perspective, our considerations indicate great potential for comparative research aiming to address and overcome historically grounded lines of understanding labour law and the segmentation inherent to it. It aims to make visible the instruments of inclusiveness (or exclusion and marginalisation), generosity in labour law as a regulative social policy, or as a management tool for contemporary expressions of the welfare state. It thus contributes to tracing and naming historical forms of social injustice in both the GN and GS and their connectedness as one step towards overcoming them in the future.

REFERENCES

- Abu Sharkh, M., & Gough, I. (2010). Global welfare regimes: A cluster analysis. *Global Social Policy*, 10(1), 27–58.
- Alessandrini, D. (2022). A not so ‘new dawn’ for international economic law and development: Towards a social reproduction approach to GVCs. *European Journal of International Law*, 33(1), 131–162.
- Amable, B. (2016). Institutional complementarities in the dynamic comparative analysis of capitalism. *Journal of Institutional Economics*, 12(1), 79–103.
- Amin, S. (2011). *Maldevelopment: Anatomy of a global failure* (Original work published 1990). Pambazuka.
- Ashiagbor, D. (2019a). Introduction: Narratives of informality and development. In D. Ashiagbor (Ed.), *Re-imagining labour law for development: Informal work in the global North and South* (pp. 1–18). Hart.
- Ashiagbor, D. (Ed.). (2019b). *Re-imagining labour law for development: Informal work in the global North and South*. Hart.
- Baldwin, R. E. (2012). Global supply chains: Why they emerged, why they matter, and where they are going (CEPR Discussion Paper DP9103). Retrieved from <https://ssrn.com/abstract=2153484>

- Barbieri, P. (2009). Flexible employment and inequality in Europe. *European Sociological Review*, 25(6), 621–628.
- Bauer, S. (1923). Arbeiterschutzgesetzgebung. In L. Elster, A. Weber, & F. Wieser (Eds.), *Handwörterbuch der Staatswissenschaften* (Vol. 1, pp. 401–701). Gustav Fischer.
- Berberman, G. D. (1972). Race, caste, and other invidious distinctions in social stratification. *Race*, 13(4), 385–414.
- Blyth, M., Helgadottir, O., & Kring, W. (2016). Ideas and historical institutionalism. In O. Fioretos, T. G. Falleti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 142–162). Oxford University Press.
- Boltanski, L., & Chiapello, E. (2005). The new spirit of capitalism. *International Journal of Politics, Culture, and Society*, 18, 161–188.
- Boltanski, L., & Chiapello, E. (2007). *The new spirit of capitalism*. Verso.
- Breman, J., Harris, K., Lee, C. K., & van der Linden, M., Eds. (2019). *The social question in the twenty-first century: A global view*. University of California Press.
- Capoccia, G. (2016). Critical junctures. In O. Fioretos, T. G. Falleti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 89–106). Oxford University Press.
- Charnock, G., & Starosta, G. (Eds.). (2016). *The new international division of labour: Global transformation and uneven development*. Palgrave Macmillan.
- Chen, M., & Carré, F. (Eds.). (2020). *The informal economy revisited: Examining the past, envisioning the future*. Routledge.
- Clean Clothes Campaign. (2013). The history behind the Bangladesh fire and safety accord. Retrieved from <https://ecommons.cornell.edu/handle/1813/102182>
- Deakin, S. (2013). *Addressing labour market segmentation: The role of labour law*. ILO Governance and Tripartism Department Working Paper No. 52. ILO.
- Dingeldey, I. (2007). Between workfare and enablement—The different paths to transformation of the welfare state: A comparative analysis of activating labour market policies. *European Journal of Political Research*, 46(6), 823–851.
- Dingeldey, I. (2011). *Der aktivierende Wohlfahrtsstaat: Governance der Arbeitsmarktpolitik in Dänemark, Großbritannien und Deutschland*. Campus Verlag.
- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2022). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(3), 560–597.
- Dingeldey, I., Grimshaw, D., & Schulten, T. (2021). *Minimum wage regimes: Statutory regulation, collective bargaining and adequate levels*. Routledge.
- Dörre, K. (2016). Limits to Landnahme. Growth dilemma as challenge. In J. Dellheim & F. O. Wolf (Eds.), *Rosa Luxemburg: A permanent challenge for political economy* (pp. 219–260). Palgrave Macmillan UK.

- Eck. (1880). Dienstmiethe. In F. von Holtzendorff (Ed.), *Rechtslexikon* (pp. 531–533). Duncker & Humblot.
- Elias, N. (2000). *The civilizing process: Sociogenetic and psychogenetic investigations*. Basil Blackwell.
- Fechner, H. (2018). The field of popular power and transformative constitutionalism in Venezuela. In R. Sanín-Restrepo (Ed.), *Decrypting power* (pp. 265–292). Rowman & Littlefield.
- Fechner, H. (2022a). Legal segmentation and early colonialism in sub-Saharan Africa: Informality and the colonial exploitative legal employment standard. *International Labour Review*, 161(4), 615–634.
- Fechner, H. (2022b). Standard-setting in colonial labour regulation and the Great Depression. In F. Nullmeier, D. González de Reufels, & H. Obinger (Eds.), *International impacts of social policy: Short histories in global perspective* (pp. 331–344). Palgrave Macmillan.
- Fechner, H. (2023). Gefangen im Labyrinth des neoliberalen Arbeitsrechts: Brüche und Kontinuitäten in Chiles Arbeitsgesetzgebung (1924–2022). In E. Schöck-Quinteros & H. Fechner (Eds.), *Aus den Akten auf die Bühne: Bd. 18. Chile: Auf dem Weg zu einer neuen Demokratie?* (2nd ed., pp. 577–612). Institut für Geschichtswissenschaft Universität Bremen.
- Finkin, M. W. (2014). Introduction: The past and future of labor law in comparative perspective. In O. Kahn-Freund, B. Hepple, & R. David (Eds.), *International encyclopedia of comparative law*. Mohr Siebeck; Nijhoff.
- Fioretos, O., Falleti, T. G., & Sheingate, A. (2016). Historical institutionalism in political science. In O. Fioretos, T. G. Falleti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 1–28). Oxford University Press.
- Fröbel, F., Heinrichs, J., & Kreye, O. (1978). The new international division of labour. *Social Science Information*, 17(1), 123–142.
- Fudge, J. (2017). The future of the standard employment relationship: Labour law, new institutional economics and old power resource theory. *Journal of Industrial Relations*, 59(3), 374–392.
- Fudge, J., & Mundlak, G. (2022). Law and gendered labour market segmentation. In U. Mückenberger & I. Dingeldey (Eds.), *Overcoming legal segmentation: Extending legal rules to all workers?* Special Issue: *International Labour Review* No. 3. ILO.
- Gandhi, L. (2019). *Postcolonial theory: A critical introduction* (2nd ed.). Columbia University Press.
- Gereffi, G., Humphrey, J., Kaplinsky, R., & Sturgeon, T. J. (2001). Introduction: Globalisation, value chains and development. *IDS Bulletin*, 32(3), 1–8.
- Giddens, A. (1984). *The constitution of society: Outline of the theory of structuration*. Polity Press.
- Gil Montero, R. (2011). Free and unfree labour in the colonial Andes in the sixteenth and seventeenth centuries. *International Review of Social History*, 56(S19), 297–318.

- Go, J., & Lawson, G. (Eds.). (2017). *Global historical sociology*. Cambridge University Press.
- Goldschmidt, H. (1930). England. In H. C. Nipperdey (Ed.), *Europäisches Arbeitsvertragsrecht: 3. Teil, Dänemark, Deutschland, Saargebiet, England, Irland, Liechtenstein, Niederlande, Norwegen, Oesterreich, Schweden, Schweiz, Türkei*. Elwert'sche Verlagsbuchhandlung.
- Gough, I., & Wood, G. (Eds.). (2004). *Insecurity and Welfare Regimes in Asia, Africa and Latin America: Social Policy in Development Contexts*. Cambridge University Press.
- Grimshaw, D., Fagan, C., Hebson, G., & Tavora, I. (2017). *Making work more equal: A new labour market segmentation approach*. Manchester University Press.
- Gudynas, E. (2018). Extractivisms: Tendencies and consequences. In R. Munck & R. Delgado Wise (Eds.), *Routledge, Taylor & Francis Group critical development studies: Vol. 4. Reframing Latin American development* (pp. 61–76). Routledge.
- Hahs, J., & Mückenberger, U. (2022). Segmenting and equalizing narratives in the ILO's standard-setting practice. *International Labour Review*, 161(4), 635–655.
- Hall, P. A. (2016). Politics as a process structured in space and time. In O. Fioretos, T. G. Falletti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 31–50). Oxford University Press.
- Hay, D., & Craven, P. (2004). Introduction. In D. Hay & P. Craven (Eds.), *Masters, servants, and magistrates in Britain and the Empire, 1562–1955* (pp. 1–58). University of North Carolina Press.
- Heimann, E. (1980). *Soziale Theorie des Kapitalismus* (1929). Suhrkamp.
- Henderson, J. (1996). Globalisation and forms of capitalism: Conceptualisations and the search for synergies. *Competition & Change*, 1(4), 403–410.
- Hepple, B. (1986a). Introduction. In B. Hepple (Ed.), *The making of labour law in Europe: A comparative study of nine countries up to 1945* (pp. 1–30). Mansell Publishing Ltd.
- Hepple, B. (Ed.). (1986b). *The making of labour law in Europe: A comparative study of nine countries up to 1945*. Mansell Publishing Ltd.
- Hepple, B. (1986c). Welfare legislation and wage-labour. In B. Hepple (Ed.), *The making of labour law in Europe: A comparative study of nine countries up to 1945* (pp. 114–153). Mansell Publishing Ltd.
- Hepple, B. (2009). Equality at work. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 129–164). Hart Publishing.
- ILO. (1946). Proposed international labour obligations in respect of non-self-governing territories: Preliminary report on Item IV on the Agenda of the Conference: Minimum Standards of Social Policy in Dependent Territories (Provisions Suitable for a Convention). ILO.

- ILO. (2018). *Women and men in the informal economy: A statistical picture* (3rd ed.). International Labour Organization.
- Immergut, E. M. (2021). Political Institutions. In D. Béland, K. Morgan, H. Obinger & C. Pierson (Eds.), *The Oxford Handbook of the Welfare State* (pp. 313–328). Oxford: Oxford University Press.
- Jacobs, A. (1986). Collective self-regulation. In B. Hepple (Ed.), *The making of labour law in Europe: A comparative study of nine countries up to 1945* (pp. 193–241). Mansell Publishing Ltd.
- Jacobs, A. (2009). Collective labour relations. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 201–232). Hart Publishing.
- Julián Véjar, D. (2022). Sociedades precarias: estudios contemporáneos de la precariedad del trabajo. In D. Julián Véjar & X. Valdés S. (Eds.), *Sociología. Ciencias sociales y humanas. Sociedad precaria: Rumores, latidos, manifestaciones y lugares* (pp. 13–37). LOM Ediciones.
- Korpi, W. (2019). *The democratic class struggle*. Routledge library editions: Volume 22. Routledge.
- La Fuente, A. de, & Gross, A. J. (2010). Comparative studies of law, slavery and race in the Americas. *Annual Review of Law and Social Science*, 6, 469–485.
- Leisering, L. (2023). The state of social protection around the world. In L. Patel, S. Plagerson, & I. Chinyoka (Eds.), *Edgar handbooks in social policy and welfare. Handbook on social protection and social development in the global South* (pp. 64–96). Edward Elgar Publishing.
- Lotmar, P. (1902). *Der Arbeitsvertrag nach dem Privatrecht des Deutschen Reiches*. Duncker & Humblot.
- Lynch, J. (1992). The institutional framework of colonial Spanish America. *Journal of Latin American Studies*, 24(S1), 69–81.
- Maine, H. S. (1970). *Ancient law: Its connection with the early history of society and its relation to modern ideas*. P. Smith.
- Malmberg, J. (2009). Enforcement of labour law. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 263–288). Hart Publishing.
- Marshall, S., & Fenwick, C. (Eds.). (2016). *Labour regulation and development: Socio-legal perspectives*. Elgar.
- Marshall, T. H. (1950). *Citizenship and social class: And other essays*. Cambridge University Press.
- Mückenberger, U. (1985). Die Krise des Normalarbeitsverhältnisses—Hat das Arbeitsrecht noch Zukunft? *Zeitschrift Für Sozialreform*, 31(7), 415–433; 31(8), 457–474.
- Mückenberger, U. (1989). Non-standard forms of employment in the Federal Republic of Germany: The role and effectiveness of the State. In G. Rodgers & J. Rodgers (Eds.), *Precarious jobs in labour market regulation: The growth of atypical employment in Western Europe* (pp. 267–286). ILO.

- Mückenberger, U. (2009). Workers' representation at plant and enterprise level. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 233–262). Hart Publishing.
- Mückenberger, U. (2024). Les dialogues sociaux transnationaux comme leviers des normes mondiales du travail. In Dhermy-Mairal, Marine, Kott, Sandrine, Lespinet-Moret, Isabelle & Louis, Marieke (Eds.), *Mondialisation et justice sociale. Un siècle d'action de l'Organisation internationale du travail* (pp. 247–264). Paris: Éditions de la Sorbonne.
- Mückenberger, U., & Deakin, S. (1989). From deregulation to a European floor of rights: Labour law, flexibilisation and the European single market. *Zeitschrift Für Ausländisches Und Internationales Arbeits- Und Sozialrecht*, 3, 153–207.
- Mückenberger, U., & Dingeldey, I. (2022). Introduction: Worldwide patterns of legal segmentation in employment law. *International Labour Review*, 161(4), 511–534.
- Mückenberger, U., & Supiot, A. (1999). Ordre public social et communauté: Deux cultures du droit du travail. In B. Zimmermann, C. Didry, & P. Wagner (Eds.), *Le travail et la nation: Histoire croisée de la France et de l'Allemagne* (pp. 81–105). Éditions de la Maison des Sciences de l'Homme.
- Myles, J., & Quadagno, J. (2002). Political theories of the welfare state. *Social Service Review*, 76(1), 34–57.
- Oppenheimer, D. B., Foster, S. R., Han, S. Y., & Ford, R. T. (2020). *Comparative equality and anti-discrimination law* (3rd ed.). Edward Elgar Publishing.
- Patel, L., Plagerson, S., & Chinyoka, I. (Eds.). (2023). *Edgar handbooks in social policy and welfare. Handbook on social protection and social development in the global South*. Edward Elgar Publishing.
- Pellissery, S. (2013). The informal economy: Dilemmas and policy responses. In R. Surender & R. Walker (Eds.), *Social policy in a developing world* (pp. 81–100). Edward Elgar Publishing.
- Pierson, P. (1994). *Dismantling the welfare state? Reagan, Thatcher and the politics of retrenchment*. Cambridge University Press.
- Pierson, P. (2016). Power in historical institutionalism. In O. Fioretos, T. G. Falleti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 124–141). Oxford University Press.
- Pittard, M. J., & Butterworth, S. (2015). The rich panoply of sources of labour law: National, regional and international. In M. W. Finkin & G. Mundlak (Eds.), *Research handbooks in comparative law. comparative labor law* (pp. 21–61). Edward Elgar Publishing.
- Pomeranz, K. (2000). *The great divergence*. Princeton University Press.
- Popitz, H. (2017). Social norms. *Genocide Studies and Prevention: An International Journal*, 11(2), 3–12.

- Prentice, R. (2021). Labour rights from labour wrongs? Transnational compensation and the spatial politics of labour rights after Bangladesh's Rana Plaza garment factory collapse. *Antipode*, 53(6), 1767–1786.
- Pries, L. (2013). Ambiguities of global and transnational collective identities. *Global Networks*, 13(1), 22–40.
- Pries, L. (2019). *Erwerbsregulierung in einer globalisierten Welt. Theoretische Konzepte und empirische Tendenzen der Regulierung von Arbeit und Beschäftigung in der Transnationalisierung* (3rd ed.). VS Verlag für Sozialwissenschaften.
- Ramm, T. (1986). Laissez-faire and state protection of workers. In B. Hepple (Ed.), *The making of labour law in Europe: A comparative study of nine countries up to 1945* (pp. 73–113). Mansell Publishing Ltd.
- Rebhahn, R. (2009). Wage labour and social security. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 165–200). Hart Publishing.
- Reiter, B. (2018). Recognition, reparations and political autonomy of Black and native communities in the Americas. In K. Dixon & O. A. Johnson III (Eds.), *Comparative racial politics in Latin America* (pp. 44–63). Routledge.
- Reynoso Castillo, C. (2005). La materia laboral en las Leyes de Indias. *Alegatos (México)*, 61, 605–622.
- Ronconi, L. (2015). *Enforcement and the effective regulation of labor* (IDB Working Paper Series IDB-WP-622). Inter-American Development Bank. <https://publications.iadb.org/publications/english/document/Enforcement-and-the-Effective-Regulation-of-Labor.pdf>; <https://doi.org/10.18235/0000211>
- Rubery, J., & Piasna, A. (2016). *Labour market segmentation and the EU reform agenda: Developing alternatives to the mainstream* (etui. Working Paper No. 2016.10). European Trade Union Institute.
- Salais, R., Bavez, N., & Reynaud, B. (1999). *L'invention du chômage: Histoire et transformations d'une catégorie en France des années 1890 aux années 1980* (1st ed.). Quadrige: Vol. 286. Presses Universitaires de France.
- Sarmiento, H., Tilly, C., Garza Toledo, E. de la, & Gayosso Ramírez, J. L. (2016). The unexpected power of informal workers in the public square: A comparison of Mexican and US organizing models. *International Labor and Working-Class History*, 89, 131–152.
- Schröder, R. (1984). *Zur Arbeitsverfassung des Spätmittelalters: Eine Darstellung mittelalterlichen Arbeitsrechts aus der Zeit nach der großen Pest*. Schriften zur Rechtsgeschichte: Vol. 32. Duncker und Humblot.
- Scott, D. N. (2021). Extractivism: Socio-legal approaches to relations with lands and resources. In M. Valverde, K. M. Clarke, E. Darian-Smith, & P. Kotiswaran (Eds.), *Routledge handbook of law and society* (pp. 124–127). Routledge Taylor & Francis Group.

- Shahid, A. (2007). Women and employment in plural legal settings: Some reflections on theory and practice of Islamic teachings and legal pluralism in Pakistan. *Journal of Islamic State Practice in International Law*, 3, 49–85.
- Sinnott-Armstrong, W. (2019). Consequentialism. In E. N. Zalta (Ed.), *Stanford Encyclopedia of Philosophy*. Stanford: Metaphysics Research Lab, Stanford University. <https://plato.stanford.edu/entries/consequentialism>
- Sinzheimer, H. (1923). Arbeitsrecht. In L. Elster, A. Weber, & F. Wieser (Eds.), *Handwörterbuch der Staatswissenschaften* (pp. 844–872). Gustav Fischer.
- Spivak, G. C. (2010). Can the subaltern speak? In R. C. Morris (Ed.), *Can the subaltern speak? Reflections on the history of an idea* (pp. 237–291). Columbia University Press. (Original work published in 1988).
- Srinivasan, M. V. (2016). Arni's workforce: Segmentation processes, labour market mobility, self-employment and caste. In B. Harriss-White (Ed.), *Exploring urban change in South Asia: Middle India and urban-rural development* (pp. 65–96). Springer India.
- Standing, G. (2011). *The precariat: The new dangerous class*. Bloomsbury Academic.
- Stefano, V. de. (2022). In I. Durri, C. Stylogiannis, & M. Wouters (Eds.), *A research agenda for the gig economy and society*. Edward Elgar Publishing.
- Steger, M. B. (2023). *Globalization: A very short introduction*. Oxford University Press.
- Streeck, W., & Thelen, K. (2005). Introduction: Institutional change in advanced political economies. In W. Streeck & K. Thelen (Eds.), *Beyond continuity: Institutional change in advanced political economies* (pp. 1–40). Oxford University Press.
- Surender, R. (2013). The role of historical contexts in shaping social policy in the global South. In R. Surender & R. Walker (Eds.), *Social policy in a developing world* (pp. 14–34). Edward Elgar Publishing.
- Surender, R., & Walker, R. (2013). *Social policy in a developing world*. Edward Elgar Publishing.
- Swank, D. (2021). Globalization. In B. Daniel, K. J. Morgan, H. Obinger & C. Pierson (Eds.), *The Oxford Handbook of the Welfare State* (pp. 433–453). Oxford University Press.
- Tamanaha, B. Z. (2008). Understanding legal pluralism: Past to present, local to global. *Sydney Law Review*, 30, 375–411.
- Thelen, K., & Conran, J. (2016). Institutional change. In O. Fioretos, T. G. Falletti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 51–70). Oxford University Press.
- Thorat, S. K. (Ed.). (2010). *Blocked by caste: Economic discrimination in modern India*. Oxford University Press.
- Twining, W. (2010). Normative and legal pluralism: A global perspective. *Duke Law Review*, 20, 473–517.

- Veneziani, B. (1986). The evolution of the contract of employment. In B. Hepple (Ed.), *The making of Labour Law in Europe: A comparative study of nine countries up to 1945* (pp. 31–72). Mansell Publishing Ltd.
- Veneziani, B. (2009). The employment relationship. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 99–128). Hart Publishing.
- Veneziani, B. (2014). Formation, modification and termination of employment contracts. In O. Kahn-Freund, B. Hepple, & R. David (Eds.), *International encyclopedia of comparative law* (pp. 1–90). Mohr Siebeck; Nijhoff.
- Vosko, L. F. (2010). *Managing the margins: Gender, citizenship, and the international regulation of precarious employment*. Oxford University Press.
- Wallerstein, I. (2004). *World-systems analysis: An introduction*. Duke University Press.
- Weber, M. (1967). *Rechtssoziologie*. Luchterhand.
- Weber, M. (2013). *The protestant ethic and the spirit of capitalism*. Routledge.
- Weber, M. (2019). *Economy and society: A new translation*. Harvard University Press.
- Wilensky, H., & Lebaux, C. (1958). *Industrial society and social welfare*. Russell Sage Foundation.
- Zawaira, T., Clance, M., & Chisadza, C. (2020). *Social institutions and gender-biased outcomes in sub-Saharan Africa* (No. 2020101). University of Pretoria, Department of Economics. <https://EconPapers.repec.org/RePEc:pre:wpaper:2020101>

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Using Leximetrics for Coding Legal Segmentation in Employment Law: The Development and Potential of the Worlds of Labour Dataset

Marina Carlino, Heiner Fechner, and Andrea Schäfer

I INTRODUCTION

The discussion of how theoretical concepts can be empirically mapped and reproduced, but also derived, is not a new topic in many academic disciplines. Comparative legal research has recently started to empirically map, produce and prepare legal data, which are then subjected to statistical analyses. Consequently, open questions arise: Is law quantifiable and hence

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can it be subjected to quantitative empirical analysis? What relevance should or must be assigned to the embedding of law into the relevant political and social contexts? Which legal phenomena can be represented at all?

This discussion has gained new momentum in the context of globalisation and neoliberal labour market reforms. The new global mobility of capital heightened interest in global comparisons of investment conditions, including knowledge about labour market institutions such as labour law. The previous methods of data preparation only allowed qualitative comparisons of a limited number of countries, but not comparisons between global groups of more than 100 countries. For these reasons, quantitative methods attempting to measure law in numbers have come into focus (Barenberg, 2015).

This interest requires new approaches to making law measurable and mappable and to producing cross-country time-series data. The primary objective of the newly created datasets is to provide a detailed description of a specific labour market institution, namely employment legislation, by using self-generated data and describe them with a number. This methodological approach, named *leximetrics*, has given rise to extensive discussion and criticism in the legal sciences (cf. Teklè in this volume), but it also has great potential (Deakin, 2018).

Until now, there have been no datasets suitable for analysing the inherent differentiation of functions of labour law (Dingeldey et al., 2022). With ‘Worlds of Labour’ (WoL), a dataset that includes variables from the Cambridge Centre for Business Research Labour Regulation Index (CBR-LRI) and adds protection and anti-discrimination variables is now available. This chapter introduces the WoL’s methodology. We examine how to develop a quantitative dataset for mapping legal segmentation, the methodological and conceptual challenges involved, and the dataset’s analysis potential, which ranges from analysing configurations of employment legislation and social policy to legal discourse variations. (Dingeldey et al., 2022). With ‘Worlds of Labour’ (WoL), a dataset that includes variables from the Cambridge Centre for Business Research Labour Regulation Index (CBR-LRI) and adds protection and anti-discrimination variables is now available. This chapter introduces the WoL’s methodology. We examine how to develop a quantitative dataset for mapping legal segmentation, the methodological and conceptual challenges involved, and the dataset’s analysis potential, which ranges from analysing configurations of employment legislation and social policy to legal discourse variations.

First, we explore the methodological foundation for the theoretical approaches in employment legislation research that conceptualise and measure legal segmentation, an extremely challenging notion. These methods have limitations, as we will demonstrate. A method of data generation is presented that, despite criticism, offers several advantages and has been adopted in some projects to create datasets that quantify employment regulation, although these only have a narrow temporal or spatial range and focus on a limited number of topics.

With this methodological and conceptual understanding, we explain the most crucial processes in developing the WoL: (1.) Developing the concept and answering the question of which aspects of legal segmentation can be identified and how, and where gaps may arise. (2.) The selection of laws as a database to be quantified and the question of which resources are required to implement the conceptual frame. (3.) Finally, implementing the quantifying of qualitative data, which involves assigning indicators to text passages and then assigning numerical values to the indicators coding the textual material to create variables. In doing so, we focus on newly developed standards for this approach and highlight the difficulties that need to be overcome in managing complexity.

Finally, we discuss the potential inherent in the WoL for analyses of legal segmentation and for using the dataset for worker-protecting employment legislation and social science research.

2 LEGAL APPROACHES TO INVESTIGATING SEGMENTATION

Segmentation is a multi-layered concept that has found application in numerous academic disciplines, particularly in linguistics, marketing, computation, genetics and sociology. Legal segmentation is one of the younger, most challenging concepts. From an institutional perspective, organisational practices and industry norms that contribute to the segmentation of certain groups in certain occupations and the perpetuation of discriminatory practices have been analysed (Hipp et al., 2015). Studies that follow neo-institutionalism analyse how employment and labour legislation and organisational practices contribute to the segmentation of the workforce and the perpetuation of discriminatory practices. They also deal with whether, how and in what form functional differentiation of protective,¹ privileging and equalising aspects of employment and labour legislation

¹ On the idea of the protective function of labour law see ILO (2015, p. 6).

arise, develop, change and spread over legal systems within certain contexts (Dingeldey et al., 2020; Mückenberger & Schäfer in this volume; Fechner, Mückenberger et al. in this volume). And, of fundamental importance, they also investigate how legal segmentation causes or impacts other forms of segmentation, such as labour market segmentation (cf. Botero et al., 2004; Deakin, 2013). This discourse ties in with the discussion on the standard employment relationship (SER) as one form of legal segmentation and thus raises questions revolving around the regulation of labour as a fictitious commodity, i.e. the institutionalisation of the labour market in a power setting (Fudge, 2017).

Several theoretical approaches to labour and employment legislation—with ‘employment legislation’ understood here as covering individual contracts only for the development of WoL—deal with the phenomenon of legal segmentation. Critical legal studies, for example, question traditional legal doctrines and emphasise the role of power dynamics and social structures in shaping legal norms (Christodoulidis, 2019). This perspective criticises the existing legal framework for not adequately addressing the underlying power imbalances that contribute to segmentation, or even for creating them. Feminist approaches in legal theory criticise the gendered nature of legal norms and practices, i.e. how gender roles and expectations contribute to occupational segregation and discriminatory treatment of individuals based on gender (Hunter, 2019). In contrast, critical race theory focuses on how historical and institutional racism contributes to the segmentation of certain constructed racial and ethnic groups into specific occupational categories and the perpetuation of discriminatory practices (Möschel, 2014). The intersectional approach in employment legislation goes further, recognising that people can be disadvantaged on multiple levels, leading to complex patterns of segmentation and discrimination (Atrey & Fredman, 2023). These theoretical approaches use different methods within a mainly common methodological understanding to analyse specific cases, legal phenomena and norms, and policies and practices. Each of them frames the understanding of the complex dynamics of legal segmentation through a unique lens to examine why rights and justice are constructed in specific social, cultural and historical settings and are accompanied by specific methods.

Other researchers use historical analysis to understand the development of legal principles and to trace how legal norms have evolved and how they may reflect or perpetuate social inequalities. These reconstructive procedures use methodological principles that capture structures and

systematics and provide interpretations for, e.g., causes of legal segmentation in order to reconstruct and thus interpret them, but they cannot identify global patterns of legal segmentation over long periods of time. What all these approaches have in common is the focus on analysing text, be it from interviews, observations or written (legal) documents.²

3 LEXIMETRICS—A PROMISING PATH FOR LEGAL SEGMENTATION RESEARCH?

Text analysis is of particular importance in legal research, as legal acts (laws and regulations) are formulated in a specific technical language that is difficult to understand, let alone to measure. However, since the early 1990s, the use of positivist, quantitative methods has become more important as the need for data on legal regulation to steer reform processes (e.g. La Porta et al., 2008), the impact of labour laws on growth and development or in more general terms the consequences of legal rules (e.g. Deakin, 2018), the (de)re-regulation of employment and labour legislation (e.g. Ciminelli et al., 2022), the impact of international and supranational legal institutions on legislation (e.g. Hahs & Mückenberger, 2022), the mapping and classifying of legal phenomena around the world (e.g. Dingeldey et al., 2022), *inter alia*, has grown (cf. Deakin, 2018). There have certainly been previous approaches using quantitative methods, such as quantitative content analysis, to indicate the frequency of concepts or descriptive analyses of the legal regulatory structure (number of cases and court decisions, frequency of changes to legal texts). But none of these methods has focused on the legal text itself (and its context³) as much as lexicometrics (Brule Naudet, 2022; Kholodilin & Pfeiffer, 2021). The insight that lexicometrics can be used for legal comparisons over time rather than merely across countries (Cooter & Ginsburg, 2003) formed the starting point for numerous comparative law studies using this new and challenging method (cf. Kholodilin & Pfeiffer, 2021, p. 2).

Challenging, because the method used to create a new dataset on legal segmentation, is applied to analysing legal textual material, either laws or responses from legal experts (on questionnaires see, e.g. Malpezzi & Ball, 1993). Thus, it seems important to consider both the starting point, i.e.

² Certainly, there are other types of material apart from text that could be analysed.

³ More recent approaches attempt to identify which conceptions of social and legal reality are assumed by studies on the social impact of legal norms.

the question of what is to be achieved with this method (what does the method want and what can it do), and the endpoint, i.e. the intended result of applying the method (Siems, 2005; Mitchell & Arup, 2006; Deakin et al., 2007; Adams et al., 2017a; Deakin, 2018).

A methodological understanding of the leximetric approach and its position in the methodological canon play a role in the first point. The second point aims to conceptually determine which methodological principles underlie the leximetric approach to creating indicators and variables in order to be able to assess the potential of its scope for mapping employment legislation. Theoretical foundations, conceptual intentions, data sources, data processing, as well as questions of validity, reliability, reflexivity and transparency play a particularly relevant role here (Deakin, 2018). The methodological understanding is discussed below in relation to the advantages and limits of this method of coding text, and its informative value for legal segmentation and employment and labour legislation in general. The methodological principles are discussed in regard to their practical application in creating a new dataset.

Leximetric methods offer the means to measure and quantify various features of legal textual materials.⁴ This involves assigning numerical values to legal terms, phrases or concepts based on predefined criteria. The most common approach to measurement is coding laws, involving a six-step process for dataset construction (cf. Adams et al., 2023). First, a latent concept (such as legal segmentation) is chosen; then this concept has to be dimensionalised by a construct. Within this construct indicators have to be identified and made measurable by variables which include measuring instructions, named coding algorithms. The measurement scale for each variable is embedded in this coding algorithm. For the final steps, the legal texts serving as a database need to be chosen; then it is necessary to read them and extract the relevant text. The last step includes interpreting the extracted text and assigning the right variable with the correct numerical value, referring to a legal norm, to it.

The process of dataset construction entails methodological challenges and has been questioned (Siems, 2005; Adams & Deakin, 2015; Siems, 2018; Teklè, in this volume). Critiques of coding legal texts address two

⁴This is exclusively a method for quantifying qualitative data by means of coding in order to create numerical variables and thus often indices, but not a method for analysing these variables and indices. Even mapping these indices is a statistical method that has not been exclusively developed by the leximetric approach.

main points: the process by which the data are generated—how they can be objectively coded in the first place, i.e. objectivity, reliability and transparency; and the question of what can be measured without including the normative and cultural context of the text, i.e. the validity of the indicators.

At issue is the potential oversimplification of complex legal texts by reducing norms that are open to interpretation to numerical data points, neglecting the nuances and contextual richness embedded in legal language (for an overview on criticisms, see Deakin, 2018; Teklè, in this volume). Leximetrics may fail to capture the whole context of legal texts and their embeddedness in a complex network of legal doctrines, principles and precedents, as well as the systematic background of other standards in the same statute or the constitution (Kischel, 2019). The same criticism is also expressed by questioning the quantitative classification of worker-protective legislation with binary (or nominal) scales, categorising legislation as absent or present, or using ordinal or metric scales to measure law strength (Deakin, 2018).

Categorical classifications may not grasp the complexity of legal meaning and, from a methodological perspective, may not be used to construct indices. Ordinal or metric classifications, on the other hand, can appear arbitrary or judgemental (Lele & Siems, 2007). Similarly, the question of whether all components of the index are equally relevant to the overall concept may result in weighting procedures. Both the use and the lack of specific weightings can lead to misinterpretations (e.g. Zaaruka & Fedderke, 2011). Last but not least, the comparative perspective plays an important role. Comparisons of full indices, partial indices, functions or single variables affect the scope of the research results (Lele & Siems, 2007; Armour et al., 2009). The main point is that juridical interpretation methods cannot be reflected in simple numbers, which may lead to misinterpretation, misclassifying legal elements or misrepresentation.

Regarding the first main criticism, quantitative coding claims to produce objective results from legal texts, but legal language needs to be interpreted and has different meanings depending on context due to its applicability across numerous cases. Thus, this strategy may disguise biases or preconceptions in the coding process itself or in legal texts and reduce legal specificity. Converting legal texts into numerical data may lead to the loss of essential legal distinctions and subtleties.

This also concerns the material available for the analysis. Leximetric coding ignores legal culture and social context, focusing solely on the law. How worker representation, labour inspection and labour courts

interpret, control and enforce the legislation and influence the ‘law on the ground’ is not analysed. Due to its methodology, leximetrics thus cannot reflect legal reality, but only the law on the books and, in the best case, the law as decided by courts. Any researcher using such datasets must be aware that ‘law in action’ is not what is mapped. Thus, some limitations cannot be overcome with this method. Yet these limitations do not supersede or render the method useless as such. Leximetrics can—within the limitations of the character of the legal texts coded—represent the ‘law on the books’ or political will turned into law.

Many of these criticisms can be counteracted by focusing on what this way of preparing data can do, such as what is realistic and feasible in comparatively assessing employment and labour legislation and how transparency, reliability and validity might be improved. As Elkins and Ginsburg note,

Progress in science depends on coming up with better ways of explaining phenomena. [...] And without the promise of an alternative research program that does better in tackling the problems that empirical [...] studies set out to answer, we aren’t about to abandon data and the rapidly expanding ways to collect and analyse them. (Elkins & Ginsburg, 2021, p. 1839)

Recognising the importance of clearly defining and operationalising the criteria used to measure concepts like legal segmentation, and that context and nuance play a crucial role in interpreting leximetric data on legal segmentation in a comparative perspective is a starting point for applying the method (see Deakin, 2020). Additionally, *inter alia*, validating results against external benchmarks, choosing the appropriate units for database selection (substantive law, including jurisprudence, collective agreements and government orders; legislation only or specific laws, etc.), combining the leximetric data with elaborated methods of analysis or qualitative data, acknowledging that language evolves over time and adapting the coding schemes to account for linguistic variations are all essential to enhancing the robustness and comprehensiveness of the study of legal segmentation and to preventing misuse and misappropriation.

Since applying the leximetric procedure has several advantages for studying legal phenomena such as legal segmentation, the use of pre-defined coding schemes and statistical methods, for example, improves the replicability of results and enables consistent analysis by different researchers and studies.

Coding legal texts and creating datasets with original and translated text help others search, categorise and analyse legal texts, thus reducing the time and effort required to extract relevant information manually. Such data is suitable for identifying patterns, trends and recurring themes in legal texts, especially across different jurisdictions, time periods or legal contexts. From a comparative perspective, it highlights differences, similarities or evolving trends both geographically and historically.

The data generated by coding also facilitates the analysis of complex legal content, e.g. through the use of data visualisation techniques. Visual representations help explain complex legal patterns while rendering research results more accessible. In statistical analysis, the generated data can be used to make generalisable statements about the relationships between regulations and also about legal transfer. This helps discover correlations, associations or statistically significant patterns in legal texts or between labour laws and socio-economic trends, and to validate or refine theoretical propositions.

Thus, leximetrics offer a systematic and efficient procedure to coding legal text and studying legal segmentation, providing valuable insights into global patterns, trends and relationships.

The attempt to measure employment protection via coding has resulted in several datasets with a range of variables, sub-indices and aggregated indices (see Table 3.1).⁵ All of them measure *de jure* norms via variables based on information taken from laws. But they vary widely in terms of their rationale, the dimensions of labour regulation used in determining the variables, the time periods covered, the number of countries examined and the rigour of their coding processes.

EPLex (ILO, 2015; Freyens & Verkerke, 2017) provides data for the time period from 2000 to 2020, for 116 countries by 2020. Based on laws and national collective agreements, it focuses on employment protection legislation for employees in the private sector and provides separate variables for distinct categories of workers and sizes of enterprises. Eight sub-indices are created from almost 50 variables. Those variables were created on the basis of ranking norms and thus have ordinal scales. All sub-indices add up to an index for employment protection legislation for regular employment contracts based on the logic of identifying forms of labour regulation (ILO, 2015). Thus, EPLex has a narrow but in-depth focus on dismissal law only and does not capture the time period before 2000.

⁵ There are a variety of datasets coding labour law as shown in Kholodilin and Pfeiffer (2021).

Table 3.1 Overview of databases on legislation protecting workers that use coding in their leximetric approach

<i>Name</i>	<i>Institution</i>	<i>Period</i>	<i>Countries</i>	<i>Nature of the data</i>	<i>Indicator: rationale</i>	<i>Number of variables, sub-indices and indices</i>	<i>Methodological aspects: rigour of coding</i>
EPLex	ILO	2000–2020	116	<i>De jure</i> , based on employment protection legislation for employees in the private sector, “Where relevant, two EPLex indicators per country are computed, separately for distinct categories of workers (for example, blue-collar versus white-collar) or enterprises (distinguishing by size)” (ILO, 2015, p. 6); primary sources: “laws and national collective agreements, but not jurisprudence or statistical information on current practices in the area of employment protection” (ILO, 2015, p. 3; Freyens/Verkerke, 2017)	“Identifying distinctive modes of labour regulation—an exercise we call ‘mapping employment dismissal law’” (ILO, 2015, p. 2)	More than 50 variables, 8 sub-indices: (A) valid grounds for dismissals, (B) prohibited grounds for dismissals, (C) probationary period, (D) procedural notification requirements for dismissals, (E) notice periods, (F) severance pay, (G) redundancy pay, (H) avenues for redress; one summary index	Scale types: ordinal scales, weighed

CBR-LRI	Cambridge Centre for Business Research	1970-2022	Up to 117	<i>De jure</i> (formal legal rules and regulations) based on coding for an “indeterminate (or ‘permanent’) employment relationship”, a “default or standard case, that is, enterprises or workplaces at or above generally-applicable size thresholds” and the “minimal or less protective standards” (Deakin et al., 2023, p. 9); primary sources: laws and regulations (statutes and other legislative materials (decrees, orders and ordinances), case law and administrative regulations, and collective agreements as ‘functional equivalents’ to statutes or court decisions	“The core assumption implicit in its design is that regulating the employment relationship and collective labour relations are capable of affecting labour market outcomes in various ways. [...] We are coding for the presence and qualities of publicly-enunciated legal and regulatory norms” (Adams et al., 2017b, pp. 8-9)	40 variables, 5 sub-indices: (A) the law governing the definition of the employment relationship and different forms of employment, including the regulation of the parties’ choice of legal form, and the rules relating to part-time, fixed-term and temporary agency work, (B) the law on working time, (C) the law relating to dismissal, (D) the law governing employee representation, and (E) the law relating to industrial action; one summary index	Scale types: numerical terms, graduated scores, binary coding

(continued)

Table 3.1 (continued)

Name	Institution	Period	Countries	Nature of the data	Indicator: rationale	Number of variables, sub-indices and indices	Methodological aspects: rigour of coding
Worker Protection Index (WPI)	University of Adelaide	1970–2013	Australia, China, Indonesia and New Zealand	<i>De jure</i> but “through a reasoned transparent process set out descriptively in the template, to arrive at a more accurate measure of the law’s strength by incorporating appropriate weights for the extent to which the law covers different groups of workers” (Anderson et al., 2017, p. 3; Mahy et al., 2019); primary sources: legal regulations, including legislation, case law, administrative regulations, arbitral decisions of wide application and collective agreements	“Extent to which a legal system protects workers, i.e., an assessment of the formal, <i>de jure</i> , strength of the system’s legal protection as modified by the various conditions pursuant to which the law applies, and as further conditioned by the extent of the law’s practical enforcement as measured through a normalised value using a rule of law index (its <i>de facto</i> operation)” (Anderson et al., 2017, p. 3)	36 variables, 9 sub-indices: (A) forming employment relationships, (B) terminating employment relationships, (C) working time and pay, (D) discrimination, (E) health and safety, (F) voice and representation, (G) industrial action, (H) dispute resolution and enforcement powers, (I) social protection	Scale types: graduated scores

Sources: Authors’ description based on methodological reports

The CBR-LRI includes variables for 117 countries over the period 1970–2022 (Adams et al., 2023; Deakin et al., 2023). Based on laws and regulations, case law, administrative regulations and collective agreements, it tries to map the “presence and qualities of publicly-enunciated legal and regulatory norms” (Adams, Bastani, et al., 2017a, p. 9). With its focus on permanent employment, enterprises or workplaces at or above generally applicable size thresholds and minimal standards, it presents 5 sub-indices calculated from 40 variables. All variables encompass not only numerical terms but also graduated scores and binary scales. However, the variables have been added up to a summary index. This dataset extends the narrow focus of EPLex and adds information on the time period before 2000.

The Worker Protection Index (WPI)—based on the CBR-LRI—which only provides data for four countries, promises a “more accurate measure of the law’s strength by incorporating appropriate weights for the extent to which the law covers different groups of workers” (Anderson et al., 2017, p. 3; Mahy et al., 2019). It covers a wide range of legal regulations for Australia, China, Indonesia and New Zealand for the period 1970–2013, to capture the extent to which a legal system protects workers. Nine sub-indices are created from 36 variables.

These datasets provide an initial starting point for coding information on protection, dismissal and privileging contained in legal texts. However, a dataset based on a systematic measurement of theoretically derived indicators for the concept of legal segmentation globally and over a long historical period has been lacking.

In the next step, starting from the application of leximetrics to build a dataset, we discuss the second relevant point, namely the result of applying such a procedure as well as the underlying principles used in developing the variables. To track the dataset’s development, we begin by providing insights into its conceptual development, then we discuss the database and lastly look in-depth at the coding process of legal texts.

4 CODING LABOUR LAW VIA LEXIMETRICS: THE WORLDS OF LABOUR (WoL)

The act of coding law and accessing the laws themselves are two time-consuming processes when applying leximetrics. However, validity and intercoder reliability play a particularly crucial role in developing indicators, variables and standards.

The WoL has faced various challenges during its development due to its groundbreaking content. These challenges have provided valuable insights that could be useful for other projects aiming to quantify qualitative data using the leximetric procedure.

4.1 *Constructing a Dataset from Scratch*

WoL originated from the observation that the development of standard employment relationships (SERs) in European countries was founded on significantly heterogeneous legal constructs. For example, individual and collective labour regulation differs in many ways between France, Germany and the United Kingdom. Although there is extensive literature on the SER in Western countries, there has never been any systematic comparison of the legislation (Mückenberger & Dingeldey, 2022). Even if similar phenomena could and have been described for large parts of the (Western) world, commonalities and variations in the SER as a legal norm have yet to be quantified using quantitative data. WoL, as a dataset produced by a project at the Collaborative Research Centre 1342 (CRC) ‘Global Dynamics of Social Policy’, aims to quantifying the emergence and development of labour legislation from 1880 to the present. Consequently, the starting point was deciding which measurement method would be appropriate for the task at hand.⁶ The leximetric procedure seemed fruitful, since the aim of the project was not only to make the evolution of labour law easier to understand but also to highlight its different functions as they emerged in historical steps and led, *inter alia*, towards the SER regulating the basic functioning of the labour market, protecting workers, differentiating between groups of workers receiving relative protection due to their inclusion in gainful labour, or combatting discrimination. Thus, we asked: How can the development of labour law be quantified according to theoretically identified functions?

Our initial step was to review the state of the art by examining different datasets developed to quantify labour law (see Table 3.1). We focused on topics and their aptness for analysing the historical emergence and development of labour law but also the methods used to collect and generate data. ILO’s EPLex (ILO, 2010–2023) proved to be very useful as far as

⁶Not only in this phase did especially the collaboration with Jean-Yves Gerlitz, but also with the project managers Irene Dingeldey and Ulrich Mückenberger have a decisive impact on the design of the data set.

data exist, providing orientation on aspects of protection against dismissal. The most useful dataset for our purposes—in terms of topics covered and replicability of the method and results due to transparency of the coding process—was the CBR-LRI, which strongly shaped our approach. However—unlike the WoL data, which is based only on statutory law, only—the CBR-LRI data was coded using statutory provisions and relevant court decisions taken from secondary sources, national legal databases and ILO-NATLEX data (see Adams et al. 2017b). The data points combined from WoL and CBR-LRI result in the World of Labor Dataset (WoL V1, V2) (for the first version V1, 1970–2013 see Dingeldey et al. 2022, V1 and V2 are published in wesis.org; see Carlino et al. 2024). The WPI extends the CBR-LRI, but only for four countries, and could therefore not be used.

In the first months of the project, inspired by the CBR-LRI approach, a complex template representing four areas of research focus with ultimately 58 variables was developed, based on the historical reconstruction of major evolutionary steps in labour law (Bauer, 1923; Kahn-Freund, 1983; Finkin, 2014). For a comparative representation of labour law, we then planned to investigate the emergence of (A) ‘labour as a commodity – market-making and market-braking of labour’, with a set of 30 different indicators investigating ‘contractual freedom’, ‘exclusion from labour as a means of market-making and market-braking’, ‘non-discrimination’, ‘working time’, ‘right to remuneration’, ‘labour inspection’ and ‘labour courts’. The second set of 12 indicators (B) concerned ‘labour standards – standard employment relationships and non-discrimination’, investigating different aspects of ‘dismissal protection – the shaping of standard employment relationships’. ‘Labour standards concerning non-standard employment relationships’ (C) was made up of nine indicators on agency work, part-time work and fixed-term contracts, and finally ‘collective rights’ (D) comprising seven indicators related to trade unions, collective bargaining and codetermination.

The resources available for deriving indicators, developing coding schemes and coding laws quickly proved to be too limited for the aims pursued in the original proposal. Insufficient experience in the field was one issue. None of the original team members had previously coded legal texts or developed and classified indicators.⁷ Developing and validating

⁷The two legal scholars in the interdisciplinary team had not previously conducted (historical) legal research on labour law from the GS.

the coding schemes posed a challenge, as the task required combining legal expertise on the research subject, i.e. legal segmentation, with methodological expertise on the development of measurement instructions. Understanding the division of laws in different countries and legal cultures was time consuming, but the search for historical legislation was much more so. Second, legal texts proved difficult to extract and process. In our first attempt, we essentially wanted to code the emergence and evolution of all major aspects of labour legislation worldwide.

In light of these challenges, compromises on scope of data and its quality were unavoidable. First, a preliminary and later a reduced set of indicators with corresponding coding schemes were developed, with pre-tests on a small number of countries.⁸ The original template with its 58 variables proved to be too complex for the available resources. Instead of reproducing the entire development of the main aspects⁹ of labour legislation, we thus decided to focus on legal constructs in individual labour law considered in the Western context to contribute to the evolution of the SER, and other indicators designed to overcome exclusionary tendencies by guaranteeing equal treatment (anti-discrimination law) and basic protection (minimum wages). To this end, we took three of the four sets of CBR-LRI indicators—‘different forms of employment’, ‘regulation of working time’ and ‘regulation of dismissal’ and added sets of indicators for core aspects of the evolution of the SER, which we later categorised as ‘privileging functions’ and ‘equalising functions’.

Since the SER in legislative politics is typically geared towards indefinite full-time employment in the same company, thus rewarding loyalty to the employer (Mückenberger, 1985; Fudge, 2017), we developed indicators focusing on rewarding seniority in qualifying periods for dismissal protection, duration of notice periods, redundancy selection and redundancy compensation. Furthermore, as we understand the SER to be present only in fully formalised contractual relationships guaranteeing all aspects of employees’ rights protection, we added a variable measuring the relationship between dismissal protection and firm size. In terms of anti-discrimination protection, we added variables measuring the right to equal

⁸ After five months, from the first draft of the ‘long template’ to its final version, it was decided to radically reduce the number of indicators by using the existing CBR-LRI indicators as a basic set, modifying them according to methodological or epistemological needs, and only adding indicators for topics not covered at all by CBR-LRI.

⁹ In addition to the major functions of protective labour legislation, we also covered several institutional aspects such as labour courts and labour inspection.

access to employment, working conditions and the prescription of special measures to overcome discrimination. Differentiated rules concerning gender and ethnic/racial discrimination were later expanded to include multiple grounds for discrimination in order to capture the progress made in developing comprehensive anti-discrimination laws. This was rounded off by variables measuring the strength of legislation on ‘equal pay for work of equal value’ and the ‘right to a universal minimum wage’.

The creation of a set of variables to map the SER was accompanied by a theoretical discussion on the functions of labour law, possibly going beyond its mere Western-style reconstruction. This resulted in the theoretical classification of the 35 variables (and a first version of the WoL covering the time period 1970–2013)¹⁰ according to the three main functions of employee-protecting individual labour law: ‘standard-setting’, ‘privileging’ and ‘equalising’ (for a detailed discussion of these functions, cf. Dingeldey et al., 2022).¹¹ The standard-setting function (S) refers to legal norms designed to guarantee all workers certain basic rights. These generalised rules, which should apply regardless of contractual terms, cover large sets of norms characterising labour legislation from its very beginning. This function also covers the prohibition of child labour, Truck Acts enforcing payment in cash and rules concerning the transfer of undertakings. For the WoL, we reduced complexity to a minimum, adopting 13 CBR-LRI indicators concerning working time and dismissal protection.

The privileging function (P) covers norms that privilege certain groups of workers over others by means of exclusion or weaker levels of protection. It refers to a functional steering of employment by conferring status, introducing legal incentives (or disadvantages) to pursue certain labour conditions or positions. By definition, special rules designed to address particular disadvantages or prevent certain dangers are excluded (e.g. related to childbirth, disability, trade union leadership, etc.). The privileging function refers to favouring groups such as white-collar and blue-collar workers, ‘native’ workers over Europeans or Asians, exclusion from

¹⁰ A new dataset, in which all variables were coded exclusively on the basis of statutory law, was created and used by Mückenberger and Schäfer (2025, in this volume), extends the historical period back to 1880 and changes variables provided by the CBR-LRI.

¹¹ The classification of the variables into these three functions has not yet been empirically confirmed. In the second project phase, we were able to prove, by using factor analysis, for example that various variables grouped as equalising function can empirically not be grouped together. Nevertheless, based on theoretical reasoning, the dataset enables a classification of variables into different functions of individual labour law.

workers' right based on ethnicity or migration status. Guided by the literature on the SER, we focused on seniority rules conferring stronger rights to workers with longer tenure in the enterprise, waivers on small enterprises' obligations to implement certain forms of protection, and weaknesses and openings in the definition of the employment relationship which confer the right to privilege (by means of deciding who is protected and who is not) to the employer by, for instance, calling the employment contract a 'contract for service' or 'of services', reflecting the selectivity of protection foreseen by the lawmaker. Here, we adapted one CBR-LRI indicator, slightly changed two¹² and introduced four new¹³ ones to cover central aspects of the privileging function, which ideally would be made up of many more indicators.

The third function, equalising (E), again describes a different dimension of labour legislation. According to our understanding, equalising refers to norms designed to overcome inequalities caused by factors outside current labour legislation (e.g. gender, racial and other similar forms of discrimination) and those designed to reduce disadvantages caused by the higher vulnerability of the specific employment relationship itself (e.g. fixed-term employment, part-time and agency work). Thus, we differentiated between person-related and contract-related discrimination. Here, we adapted seven CBR-LRI indicators and introduced eight¹⁴ new ones.

Our theoretical approach to differentiating functions led automatically to a central dilemma in developing a legal segmentation index. Previous approaches to quantifying law had either aimed to construct an index to

¹²The scaling of two of the variables in the CBR-LRI dataset ('The law, as opposed to the contracting parties, determines the legal status of the worker' and 'Minimum qualifying period of service for normal case of unjust dismissal') was changed. The scaling was reversed once.

¹³These are the following indicators (with wording last revised in 2023): 'Notice period increases with seniority', 'Severance/redundancy payments increase with seniority', 'Seniority is a decisive redundancy selection criterion' and 'General dismissal protection depends on the size of the enterprise'.

¹⁴Namely (wording revised in 2023): 'The law provides for equal opportunities for men and women in terms of access to employment', 'The law prescribes special measures (e.g. affirmative action) in order to overcome labour discrimination of women', 'The law provides for equal opportunities concerning ethnicity/race in terms of access to employment', 'The law prescribes special measures (e.g. affirmative action) in order to overcome labour discrimination of groups disadvantaged in terms of ethnic/racial background', 'Equal pay for work of equal value is legally provided for', 'The law provides for equal opportunities for men and women in terms of working conditions', 'The law provides for equal opportunities in terms of working conditions concerning ethnicity/race', 'Employees have the right to a universal minimum wage'.

map the overall protective function of labour law (CBR-LRI; EPLex), or its ‘rigidity’ and related costs for employers (see Table 3.1; OECD, World Bank). Such a ‘single index’ solution cannot be the aim of using the WoL. If combined into one index, the variables representing the three functions would be comprised of data characterised by their different protective approaches. Instead, the three functions of worker-protective labour law were organised in a three-dimensional SPE typology, representing the three mostly independent dimensions (Dingeldey et al., 2022).

5 COMPILING THE DATABASE

Accessing the laws and other relevant legal texts posed logistical challenges, while coding the collected material and quantifying the indicators posed methodological challenges. In this section, we refer exclusively to the variables we developed ourselves; the development of the CBR-LRI indicators has been documented in detail elsewhere (Adams et al., 2017a).

The law—a set of published, abstract and general rules—could be considered easily accessible knowledge. Modern laws can be found in libraries and archives, and mostly also online. Nevertheless, the hardest part of creating the dataset was collecting the data. The challenges arose (a) because global databases neither cover all countries nor are historically complete data available, and (b) the national databases often do not offer a systematised historical database for the relevant legislation. Added to this were linguistic hurdles. All of which could essentially be overcome.

Until now, historical labour legislation on a global scale has hardly been systematised for research. The ILO offers three main access points that were relevant for developing the WoL: its digitised Legislative Series for historical research between 1919 and 1988, a complete list of all legislation in all of the ILO’s areas of interest and the digital database of national labour, social security and related human rights legislation (NATLEX).

Although access to these ILO databases is quick and easy, the data on many countries and many specific laws proved to be incomplete. Concerning colonial labour law, for instance, legislation on many territories was lacking, especially secondary legislation, and legal changes were rarely reproduced in the printed volumes. NATLEX is often lacking the full text of older legislation, frequently referring to laws via outdated links.

The gaps left by ILO could be expected to be filled quickly by research in national databases. Indeed, while for current legislation most countries provide national platforms accessible through the government, supreme

court or parliamentary websites, these platforms often lack access to historical legislation, especially in smaller countries and in the Global South (GS). For these countries, historical collections digitised by libraries, archives (including British Online Archives) and research projects like HDTCOL on French labour regulation in the colonies (Le Crom, 2017) could fill certain gaps.

After using the available collections, major gaps still remained, which had to be filled by visiting archives, mainly the legislative archives of the ILO in its library repository and The National Archives in London.¹⁵ Although we scanned hundreds of laws and made them digitally readable via OCR (optical character recognition), gaps in our collection remain, especially for regions difficult to access in terms of language and importance of labour legislation for international actors, e.g. in the case of secondary legislation in colonial regions, or rules on public holidays. Even ILO's collection is not complete, and the resources for archival visits were insufficient. However, during the ongoing project phase, we have produced the most comprehensive digitised collection of labour legislation existing so far, hoping to be able to feed these data into a global database such as NATLEX.

Beyond access to the laws as such, language hurdles were troublesome at the beginning. However, AI like DeepL and ImTranslator allowed us to automatically translate webpages and legal norms from some languages, providing access to legislation and information otherwise partially or completely inaccessible. Over time, the quality of the AIs has significantly improved, which helped make all norms to be coded available in English and to overcome language barriers to accessing information in later stages of the project.¹⁶

The coding of laws in languages that were not directly accessible to us, as well as from legal cultures that differed from those with which we regularly worked, made it even more essential to use secondary literature to validate our findings against external benchmarks. We used legal textbooks to find the relevant law and its correct interpretation wherever possible, within the constraints of our resources. We also used databases from ILO and UN treaty bodies' expert committees to determine the introduction

¹⁵ In our search for laws, we concentrated on covering the historical period from 1880 onwards worldwide.

¹⁶ Languages spoken in the project team are English, French, Spanish, German, Italian, Portuguese, for a limited period also Russian.

dates for general labour legislation, as well as legal changes in topics that are not necessarily covered by labour codes. Reports by CEDAW and CERD Committees of Experts (CoE) on anti-discrimination legislation, as well as observations and direct requests by ILO CoE on ILO Conventions proved to be very helpful on a global scale. In this context, initial country reports after ratification proved to be extraordinarily useful, as countries not only describe the current legal situation and its historical background without dissimulation but also tend to be more eager to provide data. Country reports by ratifying and, less often but equally valuable, non-ratifying governments on ILO agreements related to our indicators were useful. These annual country reports for the International Labour Conference were simplified by 1979, with more detailed governmental information on the evolution of labour legislation for the preceding years, but were still helpful, since literature on recent legislation is more readily available.

As can be seen, we coded the law published by political actors (government), not the locally applicable law. Therefore, in nations, like Denmark, where collective agreements or court rulings are the main form of employment regulation, only a minor part of employment protection is portrayed in WoL data. To achieve the goal of creating a cross-country time-series dataset for longitudinal analysis, pragmatic reasons strongly supported the restricted approach. It is highly challenging to collect and code historical legislation on a global scale due to widely differing legal systems and approaches. Considering the resources available, it would have been virtually impossible to include the relevant jurisprudence and, even more so, collective agreements on a global and historical scale.

6 DEVELOPING THE TEMPLATE, CODING INSTRUCTIONS AND INDICATOR DESCRIPTIONS

Coding law requires flexible approaches due to different ways of expressing the same rule or principle according to each state's legal culture, while ensuring that the same normative content from different countries results in the same coded value independently of the coder and the concrete wording. To this end we created a template, coding instructions and indicator descriptions as general rules for coding.

The template has been published once the dataset completed (Fechner & Carlino, 2025, forthcoming). It covers 11 questions to be answered, if

relevant. Four items deal with the variables adopted from the CBR-LRI.¹⁷ Next to the value we allocated for each year of legal changes our reasoning is stated, the relevant extract of the norms must be copied into the appropriate field, the legal reference specified, and secondary sources and comments on these cited when necessary. Since these items leave many questions open, technical coding instructions and individual descriptions for each indicator were developed.

The coding instructions and indicator descriptions were used to improve the systematicity, communicability and transparency of the coding process and to promote reflexivity and dialogue within the coding team (cf. O'Connor & Joffe, 2020). As a result, they contribute to increased intercoder reliability, as well as variable consistency and validity. The coding instructions, referring to coding as the assignment of indicators to text, specified the geographical scope for coding (the threshold value for states to be covered, the treatment of federal and other entities with more than one historical body of legislation for the territory), the time period in the two template versions (first version 1970–2013 finished by 2021 for up to 115 countries and second version 1880–2022 finished in 2024 for up to 150 countries), the legislation to be covered (laws passed by government valid directly for workers and employers, neither collective agreements nor judgements, nor generally constitutions),¹⁸ the coding objectives and basic measurement (measuring legislation in terms of functional differentiation from the lawmaker's perspective), coding principles and general rules and standards for collecting information and coding legislation. Due to the complexity of coding, in addition to several hours of personal instruction based on prior reading of our main documents and instructive materials, coders were trained collaboratively with experienced coders, usually in the same or a neighbouring room, to allow for immediate discussion of questions and observations.

¹⁷ CBR-LRI values; CBR-LRI explanation; CBR-LRI comment for cases where results differ from ours, be it for reasons of using jurisprudence, collective agreements or errors in coding; and finally collective agreements, as a reminder for coders to check if the CBR-LRI values result from taking collective agreements into account. But, the versions WoL, V1 and V2 published in *wesis.org* and Dingeldey et al. 2020, 2022 contain the original CBR-LRI values for all 23 variables taken from the CBR-LRI.

¹⁸ The number of coded legal norms is limited, as they are intended to reflect political decisions with direct legal implications for employees and employers. Thus, constitutional norms, collective agreements, court decisions and internal governmental norms are not considered.

We established reliability of sources, correctness and accuracy of data and coding results, transparency of results and processes, comparability of data, verifiability of results, and accessibility and usability of data and results as coding principles in the coding instructions.¹⁹ We designed our new indicators mostly with nominal or ordinal scales to reduce complexity at the start of our coding process, which caused commensurability difficulties. We decided nonetheless to implement a first global coding process with simplified indicators trying to first collect and fathom the complexity of historical global legislation before thoroughly revising indicators, adapting them later towards an ordinal scaling (see second version). Since we work with two versions of indicators, the indicator descriptions also have to be elaborated in two versions.

As general rules and standards for collecting information and coding legislation in the country-specific Excel sheets, we defined the exact citation of legal norms, common standards for the exploration of legal content, a common treatment of recurrent difficult cases concerning the finding of primary and secondary sources for coding, the use of a ‘traffic-light system’ for defining the quality of our findings (between certainty and probability of results, depending on the quality of laws²⁰ and secondary sources available) and finally general rules for the use of the template.

Coders used coding instructions and indicator descriptions for self-reflection and preparatory material. With growing complexity of the template, timeframe and materials, even preliminary coding became less and less feasible for student assistants. Financial cuts, also affecting student assistants, made progress harder and delayed results. Thus, in the second phase of the research project coding is being done almost exclusively by graduate team members. In any case, we used a two-person rule.

Legal text coding and research go in tandem. It was easiest for us to code text historically for every year (in the second phase), starting from the present. Since current legislation is usually easiest to find (e.g. via NATLEX), and it can often be used to trace back legislation by checking which laws were modified or repealed by it, we usually start with the law currently in force.

¹⁹ This means that wherever possible we code the law directly, not merely based on secondary literature, and—if possible—with official versions or translations, etc.

²⁰ Questions raised are, for instance, do we have a copy of the law from the official gazette, from an official collection of laws, or only in translation, in the worst case not even authorised?

Compliance with these principles was harder than expected as long as the data collection process was not completed. Due to the reflexive revision process of coding instructions, indicator descriptions and the indicators themselves during the ongoing coding process, the publication of coding values and Excel sheets for country coding as well as coding instructions and indicator descriptions was postponed several times, while waiting for a ready-to-use platform²¹ and complete data at least in terms of consistency.

Both the coding instructions and the indicator descriptions as self-reflective materials and standards for coding have been under constant revision and subject to enlargement. The same is true, in larger steps, for the set of indicators itself. The result of these efforts is a database with 35 indicators. With this new dataset and following the conceptual approach of legal segmentation, a number of analyses are now possible.

7 THE WoL AS A TOOL FOR MULTIDISCIPLINARY APPROACHES TO LABOUR MARKET INSTITUTIONS

Given that history provides a record of the evolution of social structures, it is crucial to consider historical data in legal research to comprehend the development of the law and legal systems within the framework of social change (Bhat, 2019). The WoL, by framing time periods in which certain conditions were met, allows researchers to explore different outcomes related to employment legislation by combining the data with cross-disciplinary research. The time span covered by the WoL, the type of data preparation and publication as Excel sheets allow researchers to apply historical methods to evaluate the evolution over time of the coded labour norms and the related SPE functions. It is possible to conduct quantitative longitudinal analysis estimating, e.g., the impact of the three functions of individual employment law on labour market segmentation over time and across countries (Dingeldey & Gerlitz, 2022a, 2022b). Combining case and variable-oriented approaches facilitates tracking norm configurations, such as SER dimensions, across countries and over time via qualitative comparative analysis (Mückenberger & Schäfer in this volume). In this

²¹ The second version of the WoL has been uploaded and described in the CRC's database WeSIS (we sis.org) in 2024. Andrea Schäfer was responsible for the description and uploading of the variables to WeSIS, except for the 12 self-generated variables, which were entered into the database by Heiner Fechner.

way it is possible to identify, *inter alia*, what Patmore describes as “policy amnesia” (Patmore, 1998), to observe the emergence of such policies over time in different legal, political and socio-economic contexts and validate or discard the assumption that a policy failure in the past would inevitably lead to the same failure in the present.

Naturally, a significant limitation of historical research is related to its temporal dimension. It is possible that there may be gaps in the historical reconstruction of the evolution of labour law, due to the potential loss or destruction of necessary documents—or major access difficulties. It needs to be kept in mind that with the WoL the evolution of certain indicators related to three of the main functions of worker-protective employment legislation can be observed, but also the emergence of specific SPE typologies on a national, global and comparative basis by coding employment legislation from the end of the nineteenth century to the present day. The WoL spans a period starting when the concept of *locatio conductio* (letting and hire) was dominant, when the value of labour was determined solely by exchange and not by substantive justice (Hepple & Veneziani, 2009a), passing through a period in which the principle that labour is not a commodity was enshrined as a fundamental principle in the constitution of the ILO, to the current trends towards the re-commodification of labour. As Hepple and Veneziani write, “[l]egal history requires *diachronous* order, examining developments in stages or periods; legal comparison requires *synchronous* order, that, is a cross-evaluation between countries and their institutions in the same period. Comparative legal history requires both diachronous and synchronous orders” (Hepple & Veneziani, 2009b, p. 7). Given the number of countries coded, the WoL is a tool for quantitatively analysing both diachronous and synchronous orders.

Not only can qualitative descriptive segmentation analysis be informed by the Excel sheets for each country in the WoL (cf. e.g. Cooney, 2022), it can also be applied to classify countries according to functions of labour law, thus establishing types of segmentation systems on a global basis using descriptive analysis (Dingeldey et al., 2022). Assigning countries to SPE-types, functions of labour law or SER-variants, especially with the help of map visualisations, can help examine how law and the physical space in which a certain legal configuration emerged, interact (Fechner et al., 2023a, 2023b) and thus serve as a tool for legal geography.

As a scientific approach, legal geography entails three characteristics: First, going beyond the traditional concept of space, transcending tangible/intangible borders while paying attention to specific research

questions as to the scope of legal regulation (Philippopoulos-Mihalopoulos, 2011). Second, analysing the fractious interaction between law and the local context in which law acts. The spatial environment impacts the legal norm through practical mediation by local administrators, unforeseen outcomes, inability to achieve the norm's goals or *de facto* mis/disapplication by actors facing that law (Bennett & Layard, 2015). Third, the commitment to making visible what law often obscures (Witte, 2022).

For instance, given the societal expectations placed on women to prioritise unpaid family work over their careers, mapping employment norms based on seniority can help evaluate the impact it has on women, particularly in places where the division of labour based on gender is deeply ingrained in social norms (Hanson & Pratt, 2003). Some legal geographical studies focus on exploring how social boundaries between women and men and gender employment segregation are constructed in different places (Massey, 1984; Hanson & Pratt, 2003). Surprisingly, the question of legal segmentation as an explanatory factor for sex-based employment segregation has not been addressed in the discussion. Classifying countries on the basis of the WoL could make visible cross-country questions of discrimination, gender, race and, more generally, the social justice implications of employment regulation, to explore how it affects the world of labour as a whole, including gender- or race-based employment segregation.

The WoL has great potential in this regard, since it facilitates analysis of the emergence, diffusion and development of single indicators. As a further example, researchers have frequently examined the impact of regulations that set firm size as a requirement for workers' access to employment protection. With the WoL, such regulations can be mapped in a global and historical perspective, in different kinds of economies and socio-political environments, assigning values that evidence how strong these regulations are in different geographical areas. Other researchers investigate factors that generate geographical labour market inequality (Morrison, 1990; Martin & Morrison, 2003; Askenazy & Escudero, 2022). Until now, only a small number of scholars have directed their attention towards labour law or acknowledged the importance of employment legislation in relation to this matter (Hafiz, 2023). The WoL measures legal segmentation in employment protection legislation (EPL) and shows its dimensions as well as where and how they emerge

and evolve, facilitating explorations of how employment law affects geographical labour market inequality.

Furthermore, the timeframe of the WoL's coding facilitates identifying reforms in EPL over a long enough period to evidence changes in the political aspect of the democratic process that produces labour legislation. According to theories about the partisan politics of employment protection, welfare-oriented policymakers may favour EPL to increase labour market regulation or retain the current level. However, market-oriented governments may prioritise deregulation to boost employment and economic success (Zohlnhöfer & Voigt, 2021). The divergent conclusions reached by various researchers in this regard appear to be contingent upon certain limitations, particularly in relation to the specific database being used and the lack of long-term data available. Some used OECD data on EPL (Becher, 2010; Voigt & Zohlnhöfer, 2020), others resort to the relevant indicators in the Economic Freedom of the World index (Aaskoven, 2019), others have personally gathered and organised data (Huo et al., 2008; Emmenegger, 2011). The WoL not only overcomes these shortcomings, it also makes it possible to evaluate different aspects of EPL separately, but also as a composite indicator, to find out if partisan politics differ when looking at variations of SPE typologies, or different combinations of functions and indicators, or if there might be broader patterns. Data on institutions relevant to varieties of capitalism or welfare state theory are needed for crafting multi-level models of institutional capitalist diversity (cf. Schröder, 2019). The WoL provides variables on a labour law institution that functions as the gatekeeper for access to a wide range of benefits. The dataset can thus be especially useful for labour market analyses looking at different levels or factors impacting on labour market processes and structures, under different typologies of welfare capitalism.

8 LABOUR LAW TEXTBOOKS AND CORPUS-BASED LEGAL DISCOURSE ANALYSIS

The WoL goes beyond numbers. It provides single country-related data sheets which cite and comment the historical development of normative content for each variable. The legislative history of the main aspects of labour legislation can be traced on the basis of the norms contained in legal provisions. These features facilitate the work on labour law textbooks, whether on a comparative or single-country historical level.

A corpus is a collection of texts stored according to specific criteria, which can be processed using specialist software. It integrates and supports discourse analysis with a tool for quantitative analysis and can be applied to various legal texts, such as legislation enacted at different levels, judicial decisions, law reports, contractual instruments, wills, etc. (Goźdz-Roszkowski, 2021).

The indicators in WoL provide a description of what is coded, allowing scholars to identify and circumscribe norms in legal provisions, regardless of the legal definition assigned by the lexicon of the system under consideration. This feature of the WoL makes it suitable for building a corpus of legal concepts and exploring linguistic variation. Externally, analysing linguistic variation involves examining the distinctions between legal language and other specialised languages as well as general language. Internally, analysing linguistic variation entails making explicit comparisons between different types or genres of legal texts. Diachronically, it involves analysing the differences between present-day legal language and its historical forms. Cross-linguistically, it aims to understand how legal language varies across different countries (Goźdz-Roszkowski, 2021). The WoL can help studies on the latter two types of variation.

9 CONCLUDING REMARKS

Against the backdrop of the challenges and disadvantages of quantitatively measuring legal segmentation, we have shown how the WoL has been developed, thus providing information for other researchers interested in developing new leximetric datasets, enhancing or furthering the WoL, or simply using the data for their own research. The newly created WoL offers great potential for further research including, *inter alia*, estimating legal segmentation as an explanatory factor for discrimination-based employment segregation, analysing the evolution of legal segmentation in employment protection legislation, describing the impact of labour law as a factor in explaining typologies of welfare capitalism, and exploring legal discourse variation globally and historically.

REFERENCES

- Aaskoven, L. (2019). Redistributing under fiscal constraint: Partisanship, debt, inequality and labour market regulation. *Journal of Public Policy*, 39(3), 423–441.
- Adams, Z., & Deakin, S. (2015). Quantitative labour law. In A. Ludlow & A. Blackham (Eds.), *New frontiers in empirical labour law research* (pp. 31–50). Hart Publishing.
- Adams, Z., Bastani, P., Bishop, L., & Deakin, S. (2017a). The CBR-LRI dataset: Methods, properties and potential of leximetric coding of labour laws. *International Journal of Comparative Labour Law and Industrial Relations*, 33(1), 59–92.
- Adams, Z., Bishop, L., & Deakin, S. (2017b). CBR Labour Regulation Index (Dataset of 117 Countries) [CBR-Index]. Cambridge: Centre for Business Research. <https://doi.org/10.17863/CAM.9130>
- Adams, Z., Billa, B., Bishop, L., Deakin, S., & Shroff, T. (2023). CBR Labour Regulation Index (Dataset of 117 Countries, 1970–2022). Codes and Sources. Cambridge: Centre for Business Research, University of Cambridge. <https://www.repository.cam.ac.uk/bitstreams/b6cdacab-2012-4d49-8d8c-e15fd4d359d4/download>
- Anderson, G. J., Cooney, S., Gahan, P. G., Mahy, P., Mitchell, R., O'Donnell, A., Stewart, A., & Sutherland, C. (2017). The Worker Protection Index (WPI): Coding for Australia, China, Indonesia and New Zealand. *SSRN Electronic Journal*.
- Armour, J., Deakin, S., Lele, P., & Siems, M. (2009). How do legal rules evolve? Evidence from a cross-country comparison of shareholder, creditor and worker protection. *SSRN Electronic Journal*.
- Askenazy, P., & Escudero, V. (2022). The geographical dimension of inequalities in access to employment. In C. Cottineau & J. Vallée (Eds.), *Inequalities in geographical space* (pp. 85–118). ISTE Ltd / John Wiley and Sons Inc.
- Atrey, S., & Fredman, S. (2023). *Exponential inequalities: Equality law in times of crisis* (1st ed.). Oxford University Press.
- Barenberg, M. (2015). International labour indicators: Conceptual and normative snares. In A. Blackett & A. Trebilcock (Eds.), *Research handbooks in international law. Research handbook on transnational labour law* (pp. 76–92). Edward Elgar Publishing.
- Bauer, S. (1923). Arbeiterschutzgesetzgebung. In L. Elster, A. Weber, & F. Wieser (Eds.), *Handwörterbuch der Staatswissenschaften* (Vol. 1, pp. 401–701). Gustav Fischer.
- Becher, M. (2010). Constraining ministerial power: The impact of veto players on labor market reforms in industrial democracies, 1973–2000. *Comparative Political Studies*, 43(1), 33–60.

- Bennett, L., & Layard, A. (2015). Legal geography: Becoming spatial detectives. *Geography Compass*, 9(7), 406–422.
- Bhat, P. I. (2019). Historical legal research. In P. Ishwara Bhat (Ed.), *Idea and methods of legal research* (pp. 198–229). Oxford University Press.
- Botero, J. C., Djankov, S., La Porta, R., Lopez-de-Silanes, F., & Andrei, S. (2004). The regulation of labor. *The Quarterly Journal of Economics*, 1339–1382.
- Brule Naudet, L. (2022). Integrating statistical thinking to the reform of contract law: Towards a leximetric approach of the French legal system. <https://hal.science/hal-03506558/>
- Carlino, M., Dingeldey, I., Fechner, H., Mückenberger, U., & Schäfer, A. (2024). *Compiled WoL and CBR leximetric datasets* [Updated 2024]. University of Bremen.
- Christodoulidis, E. (2019). Critical theory and the law: Reflections on origins, trajectories and conjunctures. In E. Christodoulidis, R. Dukes, & M. Goldoni (Eds.), *Research handbook on critical legal theory* (pp. 2–26). Edward Elgar Publishing.
- Ciminelli, G., Duval, R., & Furceri, D. (2022). Employment protection deregulation and labor shares in advanced economies. *The Review of Economics and Statistics*, 104(6), 1174–1190.
- Cooney, S. (2022). Legal segmentation in China, India, Malaysia and Viet Nam. *International Labour Review*, 161(4), 573–591.
- Cooter, R. D., & Ginsburg, T. (2003). *Leximetrics: Why the same laws are longer in some countries than others*. Uillinois Law & Economics Research Paper No. LE03-012(LE03-012).
- de Witte, F. (2022). Here be Dragons: Legal geography and EU law. *European Law Open*, 1(1), 113–125.
- Deakin, S. (2013). Addressing Labour Market Segmentation: The role of Labour Law. ILO Governance and Tripartism Department Working Paper No. 52. ILO.
- Deakin, S. (2018). The use of quantitative methods in labour law research: An assessment and reformulation. *Social & Legal Studies*, 27(4), 456–474.
- Deakin, S. (2020). Decoding employment status. *King's Law Journal*, 31(2), 180–193.
- Deakin, S., Lele, P., & Siems, M. (2007). *The evolution of labour law: Calibrating and comparing regulatory regimes* Working Paper No. 352. Centre for Business Research, University of Cambridge.
- Deakin, S., Armour, J., & Siems, M. (2023a). *CBR Leximetric Datasets* [Updated 2023]. <https://doi.org/10.17863/CAM.9130.2>
- Deakin, S., Armour, J., & Siems, M. (2023b). *The CBR-LRI dataset: Methods, properties and potential of leximetric coding of labour laws*. Cbr-LRI Dataset (No. 1). Cambridge. <https://doi.org/10.17863/CAM.8220>
- Dingeldey, I., & Gerlitz, J.-Y. (2022a). Labour market segmentation, regulation of non-standard employment, and the influence of the EU. In F. Nullmeier, D. González de Reufels, & H. Obinger (Eds.), *International impacts of social policy: Short histories in global perspective*. Palgrave Macmillan.

- Dingeldey, I., & Gerlitz, J.-Y. (2022b). Not just black and white, but different shades of grey: Legal segmentation and its effect on labour market segmentation in Europe. *International Labour Review*, 161(4), 593–613.
- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2020). *Measuring legal segmentation in labour law: Socium SFB 1342*. Working Papers No. 5. Measuring Segmentation (Socium SFB 1342, Working Papers No. 5). Bremen. Socium, Universität Bremen. <https://www.socialpolicydynamics.de/f/90e3891ffd.pdf>
- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2022). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(3), 560–597.
- Elkins, Z., & Ginsburg, T. (2021). On disruption and leximetrics: A reply to Niels Petersen and Konstantin Chatziathanasiou. *International Journal of Constitutional Law*, 19(5), 1835–1841.
- Emmenegger, P. (2011). Job security regulations in Western democracies: A fuzzy set analysis. *European Journal of Political Research*, 50(3), 336–364.
- Fechner, H., & Carlino, M. (2025). *Coding worlds of labour. Coding instructions, description of indicators and country annotations for the WoL Labour Law Index*. SOCIUM SFB 1342 Working Papers, forthcoming.
- Fechner, H., Mückenberger, U., & Schäfer, A. (2023a). Non-discrimination in the labor market: Global progress, growing gaps. In I. Mossig & H. Obinger (Eds.), *Mapping global dynamics of social policy: SOCIUM SFB 1342 working papers*, 25 (pp. 20–23).
- Fechner, H., Mückenberger, U., & Schäfer, A. (2023b). Worker protection worldwide – But universal? In I. Mossig & H. Obinger (Eds.), *Mapping global dynamics of social policy: SOCIUM SFB 1342 working papers*, 25 (pp. 16–19).
- Finkin, M. W. (2014). Introduction: The past and future of labor law in comparative perspective. In O. Kahn-Freund, B. Hepple, & R. David (Eds.), *International encyclopedia of comparative law*. Mohr Siebeck; Nijhoff.
- Freyens, B. P., & Verkerke, J. H. (2017). *Mapping employment dismissal law: A leximetrics investigation of EPL stringency and regulatory style*. Conditions of Work and Employment Series No. 88. Geneva, ILO. https://www.ilo.org/travail/info/working/WCMS_607471/lang%2D%2Den/index.htm
- Fudge, J. (2017). The future of the standard employment relationship: Labour law, new institutional economics and old power resource theory. *Journal of Industrial Relations*, 59(3), 374–392.
- Goźdz-Roszkowski, S. (2021). Corpus linguistics in legal discourse. *International Journal for the Semiotics of Law - Revue Internationale De Sémiotique Juridique*, 34(5), 1515–1540.
- Hafiz, H. (2023). *The law of geographic labor market inequality*. University of Pennsylvania Law Review, 172, Article 596.

- Hahs, J., & Mückenberger, U. (2022). Segmenting and equalizing narratives in the ILO's standard-setting practice. *International Labour Review*, 161(4), 635–655.
- Hanson, S., & Pratt, G. (2003). *Gender, work, and space. International studies of women and place*. Routledge.
- Hepple, B., & Veneziani, B. (2009a). Introduction. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 1–29). Hart Publishing.
- Hepple, B., & Veneziani, B. (Eds.). (2009b). *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004*. Hart Publishing.
- Hipp, L., Bernhardt, J., & Allmendinger, J. (2015). Institutions and the prevalence of nonstandard employment. *Socio-Economic Review*, 13(2), 351–377.
- Hunter, R. (2019). Critical legal feminisms. In E. Christodoulidis, R. Dukes, & M. Goldoni (Eds.), *Research handbook on critical legal theory* (pp. 45–62). Edward Elgar Publishing.
- Huo, J., Nelson, M., & Stephens, J. D. (2008). Decommodification and activation in social democratic policy: Resolving the paradox. *Journal of European Social Policy*, 18(1), 5–20.
- ILO. (2010–2023). *Employment protection legislation database: EPLex*. ILO. <https://eplex.ilo.org/>
- ILO. (2015). *Employment protection legislation: Summary indicators in the area of terminating regular contracts (individual dismissals)*. Protection. Geneva, International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch (INWORK). http://www.ilo.org/wcmsp5/groups/public/%2D%2D-ed_protect/%2D%2D-protrav/%2D%2D-travail/documents/publication/wcms_357390.pdf
- Kahn-Freund, O. (1983). *Labour and the law* (Hamlyn lecture series) (3rd ed.). Stevens [u.a.].
- Kholodilin, K. A., & Pfeiffer, L. (2021). *Measuring unmeasurable: How to map laws to numbers using leximetrics*. DIW Discussion Paper No. 1933. <https://doi.org/10.2139/ssrn.3810489>
- Kischel, U. (2019). *Comparative law* (1st ed.). Oxford University Press.
- La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2008). The economic consequences of legal origins. *Journal of Economic Literature*, 46(2), 285–332.
- Le Crom, J.-P. (Ed.). (2017). *Histoire du Droit du Travail dans les Colonies*. Rapport pour la Mission Droit et Justice. <https://halshs.archives-ouvertes.fr/halshs-01592836/document>
- Lele, P., & Siems, M. (2007). Shareholder protection: A leximetric approach. *Journal of Corporate Law Studies*, 7(1), 17–50.
- Mahy, P., Mitchell, R., Sutherland, C., Gahan, P., O'Donnell, A., Cooney, S., Anderson, G., Mao, L., & Stewart, A. (2019). Measuring worker protection

- using leximetrics: Illustrating a new approach in four Asia-Pacific countries. *The American Journal of Comparative Law*, 67(3), 515–549.
- Malpezzi, S., & Ball, G. (1993). Measuring the urban policy environment: An exploratory analysis using rent controls. *Habitat International*, 17(2), 39–52.
- Martin, R., & Morrison, P. S. (2003). *Geographies of labour market inequality* (Regional development and public policy series). Routledge.
- Massey, D. (1984). *Spatial divisions of labour: Social structures and the geography of production*. (Critical human geography). Macmillan.
- Mitchell, R., & Arup, C. (2006). Labour law and labour market regulation. In *Labour law and labour market regulation: Essays on the construction, constitution and regulation of labour markets* (No. 9781862876118, pp. 3–18). The Federation Press.
- Morrison, P. S. (1990). Segmentation theory applied to local, regional and spatial labour markets. *Progress in Human Geography*, 14(4), 488–528.
- Möschel, M. (2014). *Law, lawyers and race: Critical race theory from the United States to Europe*. Routledge.
- Mückenberger, U. (1985). Die Krise des Normalarbeitsverhältnisses – Hat das Arbeitsrecht noch Zukunft? *Zeitschrift Für Sozialreform*, 31(7), 415–433; 31(8), 457–474.
- Mückenberger, U., & Dingeldey, I. (2022). Introduction: Worldwide patterns of legal segmentation in employment law. *International Labour Review*, 161(4), 511–534.
- Mückenberger, U., & Schäfer, A. (2025). Genesis and forms of standard employment relationships in three European ex-colonial powers and their former colonial territories. In U. Mückenberger, H. Fechner, & I. Dingeldey (Eds.), *Constructing worlds of labour. Coverage and generosity of labour law as outcomes of regulatory social policy*. Palgrave Macmillan.
- O'Connor, C., & Joffe, H. (2020). Intercoder reliability in qualitative research: Debates and practical guidelines. *International Journal of Qualitative Methods*, 19. <https://doi.org/10.1177/1609406919899220>
- Patmore, G. (1998). Digging up the past: Historical methods in industrial relations research. In K. Whitfiel & G. Strauss (Eds.), *Researching the world of work: Strategies and methods in studying industrial relations*. Cornell University Press.
- Philippopoulos-Mihalopoulos, A. (2011). Law's spatial turn: Geography, justice and a certain fear of space. *Law, Culture and the Humanities*, 7(2), 187–202.
- Schröder, M. (2019). Varieties of capitalism and welfare regime theories: Assumptions, accomplishments, and the need for different methods. *Kölner Zeitschrift Für Soziologie Und Sozialpsychologie*, 71(1), 53–73.
- Siems, M. (2005). Numerical comparative law: Do we need statistical evidence in law in order to reduce complexity. *Cardozo Journal of International and Comparative*, 13(2), 521–540.

- Siems, M. (2018). *Comparative law* (Law in context series) (2nd ed.). Cambridge University Press.
- Voigt, L., & Zohlnhöfer, R. (2020). Quiet politics of employment protection legislation? Partisan politics, electoral competition, and the regulatory welfare state. *The ANNALS of the American Academy of Political and Social Science*, 691(1), 206–222.
- Zaaruka, B. P., & Fedderke, J. (2011). *Indicators of political and economic institutions in Tanzania: 1884–2008*. Working Papers 231, Economic Research Southern Africa.
- Zohlnhöfer, R., & Voigt, L. (2021). The partisan politics of employment protection legislation: Social democrats, Christian democrats, and the conditioning effect of unemployment. *European Political Science Review*, 13(3), 331–350.

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Is the Standard Employment Relationship Undergoing a Revival?

Evidence from the 2023 Update of the CBR Labour Regulation Index

Simon Deakin

I INTRODUCTION

Leximetric coding techniques are becoming widely used as a way of benchmarking labour laws across the world, in a way that facilitates quantitative analysis. Their use is part of a wider ‘metric wave’ in legal research and practice. This movement poses many issues of legal and social science methodology. As is the case with other quantitative sources, it would seem important for there to be clarity on how leximetric datasets are constructed. There are distinct approaches to the quantitative study of labour laws, which correspond to different theoretical understandings of what can be achieved in statistical analysis of legal rules. This chapter will explore some of the resulting issues, by reference to the growing empirical literature which relies on labour law datasets to test claims of labour law’s social and economic impacts. In doing so, it will address the question of how far

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a leximetric approach helps us to understand trends affecting the standard employment relationship ('SER') of formal, full-time and indeterminate-duration work (Mückenberger, 1985; Mückenberger & Deakin, 1989).

Section 2 sets out the methodology, which aims to achieve 'construct validity', underlying the dataset of global labour laws developed at Cambridge University over the course of the last two decades, the CBR Labour Regulation Index ('CBR-LRI'). The dataset was designed for use not by legal scholars or practitioners, who have no need of a quantitative measure of this kind, but by social scientists and policy-makers, for whom such a summary measure could have a number of uses. Economists, sociologists and political scientists can make use of the index in regression analysis, while policy-makers can use it to compare trends in labour laws in different countries using a common benchmark. The value of the Cambridge dataset ultimately stands or falls on the methodology underlying it. There are well-established principles for constructing synthetic indices, which the CBR-LRI observes. Being able to demonstrate how the index was constructed and in what respects it follows generally accepted norms for determining the validity of a data source from a social science perspective is an important aspect of its design. In Sect. 3 the focus turns to the empirical analysis using the index. In this part some of the main descriptive findings of the most recent iteration of the CBR index, published in 2023, are briefly set out, and there is an account of the main lines of the econometric literature using the index to explore the social and economic impacts of labour laws. This part of the chapter is used to show how a leximetric approach can throw light on the trajectory of the SER. Section 4 provides a concluding assessment.

2 CONSTRUCT VALIDITY: STEPS IN CREATING THE CBR-LRI

The methodology underlying the creation of the CBR-LRI is generally understood by reference to the term 'construct validity'. A full account of it is given in the OECD-EU *Handbook* on methods for creating synthetic indices (OECD, 2008). Table 4.1 sets out the different steps involved and indicates how they were realised in the case of the CBR-LRI (for more detail, see Adams et al., 2023). An index such as CBR-LRI is, by definition, constructed knowledge, so it is appropriate that the term 'construct' is used to describe the end product. The index is not in any way a 'natural' or given object. It is created by the researchers who are its authors, to

Table 4.1 Steps in creating the CBR-LRI index

<i>Phenomenon</i>	<i>Object of interest</i>	<i>Labour law</i>
Construct	Concept which more precisely captures the object of interest	Legal regulation of work relations = legal protection of workers
Indicator(s)	Variable(s) which express the construct in numerical terms	40 indicators, grouped into 5 sub-indices
Protocol	Coding protocol or algorithm to translate primary material (legal texts) into numbers	Definitions of coding protocols for each indicator
Scale	Measurement scale for capturing the dimension of interest	Scores are normalised on a 0–1 scale with a higher score indicating greater protection
Sources	Primary source material for the coding	Original legal texts (statutes and judgements), sourced from NATLEX, law libraries, online materials
Weights	Adjusting the weight to be accorded to an indicator or indicators	Weights can be adjusted exogenously to reflect a particular causal theory or endogenously by reference to a statistical technique such as clustering or principal component analysis
Aggregation	Aggregating or averaging variable scores to arrive at an overall score	Different variable combinations can be used to study particular areas of labour law
Reporting	Presentation and visualisation of the data	The data are presented in country/year units in an Excel spreadsheet, the explanations in a related sourcebook, both publicly available
Error correction	Updating the index to correct for errors and omissions	Feedback from national experts and users of the index is reflected in later iterations of the dataset, which is also updated to reflect new laws

answer specific questions in the context of the research they are doing. The data contained in it are not waiting to be simply collected or observed. However, to say that data are constructed is to make a statement that is true of *all data*, no matter their type. Even datasets based on simple counts still represent a partial view of the world, a sample, and therefore prior choices made by the researcher. In the case of so-called big data of the kind collated by platform companies, the data are framed not so much by a given set of research questions, as by the commercial imperatives of the

company concerned, and the opportunities they have for remote surveillance, of customers, workers or others as the case may be (Zuboff, 2019). Even ‘big data’ is a sample, not the world (Spiegelhalter, 2019, p. 146).

Given that the CBR dataset is a ‘construct’, its ‘validity’ depends upon being able to show, at each stage of the construction, that the methodological choices made were justifiable. Being as systematic in this regard as possible is the best (perhaps the only) defence that an index’s authors have against charges that the index is subjective, artificial or unrealistic. We will now consider each of the elements of construct validity in turn.

2.1 *Labour Law as Phenomenon/Object of Interest*

With respect to the first step, the *phenomenon* or object of interest, choosing to research ‘labour law’, may be thought to be a relatively uncontroversial step, but there are assumptions here which need to be recognised for the ‘subjective priors’ that they are. It is being assumed that the category ‘labour law’ makes sense as a way of classifying legal rules. For legal scholars and practitioners, the meaning of labour law may be self-evident, but social scientists approaching law from the vantage point of another discipline may not find it so.

It is helpful therefore to consider what exactly is being assumed when ‘labour law’ is used as a category to define the scope of the index. The effect, it may be suggested, is twofold. Firstly, it means including some rules (those of labour law conventionally understood) while excluding others (such as those relating to closely related fields such as social security law and company law). Secondly, it is to assert that within the category of labour law, the rules operate in a certain relationship to each other. They could be connected in the doctrinal sense of being inter-related through the operation of certain principles or concepts, or in the more sociological sense of working together to shape work relations in practice. In both senses, to choose labour law as a meaningful category is to assert the view that an area of law has a certain coherence of both form and function.

That ‘labour law’ exists as a meaningful research field (perhaps known in some contexts as ‘work law’ or as covering both ‘labour’ and ‘employment’ law in some jurisdictions, e.g. in north America) is, it might be thought, a subjective prior of those researching in that field. There may be some disagreement about the location of its boundary, in particular with cognate areas such as social security law and health and safety law, but there is sufficient agreement among scholars and practitioners for it to be

possible to define its limits. The five sub-indices of the CBR-LRI (different employment relationships, working time, dismissal, collective representation and industrial action) correspond to classifications used in many labour law textbooks. The idea that there is a distinct category 'labour law' is related to similar classifications in economics (the 'labour market') and sociology ('employment relations'). It is also connected to the division of labour between government departments (most countries recognising a distinct labour or social affairs ministry) and international agencies (the ILO having a sphere of activity which is not that of the World Bank or WTO, even if there are overlaps and some degree of institutional competition between the various agencies). Thus, a defence can be made for the choice of 'labour law' as the general phenomenon of interest.

A further assumption is being made about the stability of the research object, 'labour law'. This is that the legal rules which make up labour law are sufficiently stable to be analysed 'from outside'. The research object must have some existence apart from the process being used to study it. If that process is precisely what brings the object into existence, it cannot (or should not) be said that new knowledge is being created. The index would simply be coding itself.

There is an influential view, associated initially with legal realism and subsequently with critical legal studies, that legal rules are ultimately indeterminate and hence political in their mode of operation. Categorisation of legal rules is less a description of the world, it may be said, and more a projection. Systems of representation can change their context, particularly where they involve measurement: an instance of 'Goodhart's law', which states that "when a measure becomes a target, it ceases to be a good measure" (Goodhart, 1979). To that extent, they may end up measuring themselves, once feedback effects are taken into account.

At the very outset of the coding process, these are potentially fundamental objections. However, they are not specific to leximetrics; they apply to the wider project of attempting to translate legal materials into terms familiar to empirically orientated social scientists. The argument from indeterminacy is surely over-claiming if it is deployed to say that obtaining a measure of labour law for use in the social sciences is impossible. To say that legal rules are open-ended, and that their interpretation opens up a space for extra-legal values to flow into the process of legal decision-making, does not equate to arguing that legal rules have no stable content at all. Many legal rules are not significantly contested or vary in their application within a predictable or probabilistically determinable

range. It is this relatively determinate content of legal norms that leximetric coding is trying to capture.

Legal researchers and social scientists alike need to take account of the risk of reflexivity. Not being fully aware of this risk is one reason, perhaps the most important one, for the vulnerability of the World Bank's Doing Business Report (DBR) indices to the 'gaming' which led to their demise in 2021 (Schmulyan, 2021). The DBR was particularly vulnerable to this practice because it relied heavily on subjective opinions of a range of stakeholders in arriving at values. The CBR is designed to be more objective, through the use of protocols arrived at in advance of the process of coding, and whose application to the rules which are being coded can be independently verified and, if desired, replicated.

What of the possibility that the Cambridge index is an instrument of a particular ideology? It may be that the authors of the index, being labour lawyers themselves, are more sympathetic to the claim that labour laws promote valuable ends (including 'economic efficiency' and 'social justice') than would be the case if the index were designed by neoclassical economists, whose home discipline instils at least an initial scepticism towards these claims.

This claim too must be put in perspective. All researchers, whatever their home discipline, will bring their disciplinary priors with them. The point is to be self-aware about this. The design of the CBR index is intended to be invariant, as far as possible, to the kind of answers it may give to questions about the effects of labour law. It is neutral on the question of whether labour laws are inherently beneficial or harmful to workers: it is assumed, in advance of the coding process and of econometric analysis, that either positive or negative outcomes are possible. By contrast, the theoretical priors of the DBR and OECD indices, in so far as they rely on the neoclassical economic view of labour laws as 'rigidities', are far from neutral on this question. On the contrary, they appear to assume the outcome they are setting out to test.

2.2 *Concept/Construct*

The next step is to identify the *concept* or (in a specific sense) construct which narrows down the general phenomenon of interest into a more precisely defined object of interest. In defining the focus of the CBR-LRI as 'regulation', a methodological choice was made. By way of comparison, the focus of the DBR is on the 'costs' of operating business (World Bank,

various years), while that of the OECD Employment Protection Indicators is on the ‘rigidity’ of labour law rules (OECD, various years). In these two cases, it is assumed that legal rules directly alter the cost-benefit calculus of employers when deciding, for example, to hire or fire workers and, as just noted, in a negative or distorting way. Again, as just noted, the CBR-LRI makes no such assumption.

Agnosticism on the likely economic or social effects of labour law rules is justified for a number of reasons which were spelled out when the research design underlying the CBR-LRI was first published (Deakin et al., 2007; Deakin & Sarkar, 2008). They include the likely existence in practice of enforcement and interpretation gaps in translating laws into market and firm-level behaviour, and the probable differential impact of laws on enterprises of different sizes. Labour law rules, being mostly minima, may not directly affect the practices of firms already observing more protective standards through collective bargaining or contract.

In addition, there are good reasons at the level of theoretical priors for leaving the question of the effects of labour law rules open. In an institutionalist perspective, labour law rules may not be ‘rigidities’ at all but means of reducing transaction costs, promoting cooperation and facilitating information sharing between workers and firms (Deakin & Wilkinson, 2000). More generally, there are good reasons to believe that the ‘labour market’ is instituted or constituted by law; removing law does not return it to a state of nature (Deakin et al., 2017; Mückenberger & Deakin, 1989). At the same time, the CBR index needs to be open to empirical testing from a range of approaches. The design of the CBR-LRI does not assume that either the neoclassical or the institutional approach to labour law is correct; it treats the correctness of these different theories as a question to be resolved by empirical testing.

Thus, rather than coding for an assumed effect (‘costs’ or ‘rigidities’) of law, the CBR index focuses on the content of the communication or signal sent by the law (‘regulation’). Certain theoretical priors are again at work. The CBR index takes seriously claims made by theories of legal pluralism, to the effect that there is a distinction between formal or jural law, on the one hand, and norms operating beyond the legal system, which may reinforce or counter the effect of formal law, on the other (Tamanaha, 2017). It is also adopting a position, common to both legal positivism and the Weberian tradition in the sociology of law, to the effect that rules produced by the modern nation-state have at least some degree of intrinsic normativity or practical effect qua legal rules, that is independently of how far they are actually respected or observed.

Thus, the Cambridge index avoids making two problematic assumptions: that legal rules are automatically self-enforcing, and that legal rules only have effects to the extent that they are enforced through sanctions of some kind. From a legal-pluralist perspective, legal rules are unlikely to be entirely self-enforcing but may possess some normative power simply by virtue of their official status as norms produced by the state. Their effect in practice is likely to depend on how far they complement other sources of normativity in society, including social norms, customs and values. Sanctions may enhance compliance with labour laws but could also engender resistance and evasion. The CBR index, in its design, recognises these possibilities and leaves it open to researchers to examine how far labour laws work in practice, which they can do by combining the CBR-LRI with one or more of the many indices which measure the legal and institutional environment in a country (for discussion of these points, see Deakin, 2018).

2.3 *Indicators*

The third step is to break the overall construct down into individual *indicators* or variables. This is done in order to facilitate the measurement process. In effect, the construct is first ‘deconstructed’ into individual components and then ‘reconstructed’ through aggregation to give an overall picture or impression of the research object.

The choice of indicators is not neutral; it will again reflect the theoretical priors of the researchers, and possibly, if they are not sufficiently self-aware, their ideological ones. There should not be an objection in principle to prior theoretical understandings shaping the choice of indicators. The ‘data’ are constructed for a purpose, the purpose being to test certain claims about the world, which are in the end derived from a prior theoretical understanding of it. Again, the issue is to be transparent about these claims.

The CBR index was constructed with the aim of testing claims about the economic and social impact of labour laws, and it is designed to be so used. It is not, and does not pretend to be, a description of labour law rules for any other purpose, such as doctrinal analysis. As long as the purpose of the index is kept in mind, the lack of neutrality in the choice of indicators can be defended: here, form may be allowed to follow function.

Other factors framing the choice include resource constraints, given that coding is expensive in terms of the time and human labour that must be invested in it. Forty indicators might be thought to be a large number

given the resources needed to devote to coding, but a small number given the complexity of labour law as a field. It must be obvious that many features of labour law rules are not going to be captured this way. The issue is how far the chosen indicators are sufficiently representative of labour law rules to be a good indicator of their likely overall impact.

The indicators, and the five sub-indices to which they correspond, were intended to cover what might be thought of as the core of labour and employment law rules, excluding, for the most part, health and safety law, discrimination law and the separate but related discipline of social security law. The choice of the specific indicators was influenced by prior indices: the content of the CBR index was arrived at after its authors reviewed the pre-existing OECD index, and the index developed by Botero et al. (2004) and which later fed into the DBR (for discussion, see Deakin et al., 2007). The OECD index, while taking employment protection as its focus, is narrower than the CBR-LRI, as it only purports to measure the rules relating to economic dismissals, as opposed to those relating to personal misconduct, for example.

The five sub-indices of the CBR-LRI are similar in scope to those developed by Botero et al. and overlap somewhat with the OECD's categories with respect to employment protection, but there are differences at the level of individual indicators, both in the choice of variable and in variable definition. These differences reflected the view of the index's authors that the OECD and Botero et al. indices were not fully capturing certain variables of interest, for example the rules governing the equal treatment rights of part-time, fixed-term and temporary agency workers.

2.4 *Protocols*

Adopting coding *protocols* for the indicators is done with a view to ensuring that laws are coded consistently and transparently across countries. The protocols used in the CBR-LRI have a number of features. Firstly, the scores they generate are graduated, thereby permitting a greater range of information about laws of different types to be captured. The variables used by Botero et al. (2004) are mostly binary, indicating either the presence of a law of a given type, or its absence, but nothing in between. Secondly, the definition of the protocols in the case of each variable reflected the authors' understanding of the different types of laws, for each indicator, that they were likely to encounter in the coding process. It might be thought that there is a potentially infinite or at least very large

range of possibilities for a given labour law rule, but in practice this is not the case. The preliminary coding of five countries (Deakin et al., 2007) suggested that there was a limited range of possibilities for any given indicator. Some were more complex than others; for example, rules on working time can be particularly complex when account is taken of derogations and exceptions. As more countries were coded, new variants of laws were encountered, the protocols were updated, and countries already coded were recoded. Relatively few changes of this kind have been made over the successive iterations of the dataset (for discussion of this point see the most recent iteration of the dataset, explained in Adams et al., 2023).

Having precise coding protocols is intended to reduce the risk of subjectivity and error. The codings are not purely subjective; there is in principle a ‘right’ answer to be derived when applying an indicator to a given law. The mode of proceeding was for one member of the research team to do an initial scan of the laws for the country concerned and to arrive at a preliminary coding which was then shared with the other coders. The final score was one agreed after deliberation between the members of the team.

The aim of transparency is met by providing, in the sourcebook which accompanies the dataset, a description of the source for the coding and an explanation for the value given for the rule in question. The intention here is not just to explain the coding but to allow other researchers to modify the score in an appropriate case. Recoding may be justified in the event of error or of a different interpretation of the relevant rule. Errors should be minimal, but where they exist and are known, it should be straightforward to change the relevant score. In this way, transparency is connected to a wider process of error correction (on which, in general, more below).

2.5 Scales

The *scale* used to describe the scores is an embedded feature of the coding protocols for each variable. The scale is a way of dimensionalising the variable of interest, understood as the degree of regulation designed to achieve protection of workers. While ‘regulation’ is the term used in the CBR-LRI, the effect would be the same if the term ‘protection’ had been used. What is being measured is the regulatory content of the law, meaning how far it protects workers. Employers are understood to be ‘regulated’ according to how far they are subjected to laws whose aim is to protect worker interests in various ways.

The index does not aim to capture other possible dimensions of a given labour law rule. Combining *different* dimensions of a rule into a *single* scale would make it problematic to interpret the results of the coding. This is something of a limitation. To address another dimension would require a whole new index, as has been done, for example, via the Worlds of Labour dataset (Dingeldey et al., 2022).

The scale used by the CBR-LRI is 0–1 for all indicators. The DBR uses a functionally similar 0–100 scale. The OECD, by contrast, uses a number of more complex measures, including a 1–6 scale for certain variables. As all values can ultimately be normalised so as to map on to a 0–1 or 0–100 scale, the CBR scale has the merit of offering relative simplicity and clarity in its scorings.

2.6 Sources

The sources of the coding contained in the CBR-LRI are original legal texts, mostly statutes, and the more important judgments of courts. Thus, it codes for jural or textual law. This may be thought to be a significant limitation, given the existence of enforcement and interpretation gaps. The choice is partly made on resource grounds. Evidence on how the law is implemented in a given country could be obtained from surveys. Sourcing a new survey from scratch would be a major undertaking, however. Also, it would not provide us with any new historical data. Moreover, survey evidence already exists for certain countries via the World Values Survey (WVS, 2023). Contextual evidence on the application of laws at country level is also available via surveys and expert assessments, in some cases over substantial periods of time, in the case of democracy and rule of law indices, such as the Freedom House indicator (Freedom House, 2023) and the World Bank's governance indicators, which contain a rule of law of index among others (Kaufmann & Kraay, 2023).

Given the existence of these datasets, a plausible strategy is to use them in conjunction with the CBR-LRI, for example, by using them as controls in regression analyses, rather than to create new data on enforcement from scratch. Combining evidence from textual coding with survey results, as the World Bank did in the case of its Employing Workers Index (World Bank, 2004), might provide a more complete picture within a single index, but makes it difficult to identify the role of changes in law itself as distinct from its application in practice.

2.7 *Weighting and Aggregation*

Once the scores for the individual indicators have been arrived at, decisions have to be taken on the linked issues of *weights* and *aggregates*. The division of the index into five sub-indices and 40 individual indicators allows for flexibility in the way that data are combined. It is possible to focus on individual indicators or sub-indices, or to construct bespoke combinations of indicators for particular purposes. The issue of how, if at all, to weight the individual indicators within aggregates is a complex one. Weights can be adjusted on *a priori* grounds but it is not always clear that a good *a priori* reason exists for weighting the individual variables other than equally (the default position if scores are simply aggregated or averaged). The most that can be done is to be transparent about the decisions taken on whether or not, and how, to weight.

2.8 *Reporting and Error Correction*

The way in which data are *reported* can make a practical difference to their use. The CBR-LRI is published in two linked documents: as an Excel spreadsheet, in which values are reported in country/year units; and via a sourcebook, which explains the coding methodology and provides the source for all the scores. Both documents are available on the website of the Cambridge University data repository, Apollo, which means that they can be easily accessed by other researchers (Deakin et al., 2023). They are published with a CC-BY licence, which has the effect of protecting the underlying intellectual property in the dataset, while making it immediately and unconditionally available for researchers to use. The spreadsheet is presented in such a way as to facilitate visualisation of the data, a technique which can be highly effective in communicating findings, and econometric analysis, with the data being straightforwardly translatable into software packages such as Stata and R.

Publication serves the further purpose of encouraging third-party users of the dataset to provide feedback to the authors, thereby adding a further layer of *error correction*. While relatively few errors (through omission or misinterpretation) have been reported over time, those which have are incorporated into later iterations of the dataset.

3 EMPIRICAL RESULTS FROM THE CBR-LRI AND THEIR IMPLICATIONS FOR THE DEBATE OVER THE SER

In this section, findings from the most recent iteration of the Cambridge index, published in 2023 (Deakin et al., 2023), are reported. In addition to identifying general trends in worker protection, the 2023 version of the index, together with the body of literature applying earlier iterations in econometric analysis, throws light on the evolution of the SER.

3.1 *Descriptive Trends*

As we have seen, the CBR is a ‘jural’ or text-based index. The OECD index, in its earlier iterations, was based on expert coding, with scores submitted by the labour ministries (or equivalents) of member governments. Latterly, the OECD has used a method more akin to leximetrics and has started reporting the primary legal sources to which its codings correspond (OECD, 2019). Whereas the study reported by Botero et al. (2004) was based on an analysis of legal texts, the DBR combined text-based and survey evidence. As a result, it was less than completely clear how a coding was arrived at. Use of surveys might be thought to have made the DBR more realistic in its codings, but it also meant that the index was a hybrid of law, practice and perception, rather than a measure of regulation as such.

It is not entirely clear that these differences in index construction necessarily feed into different end results, but they may do so. There are certainly some notable differences in the way countries are scored across the different indices. For example, the scores the OECD gives to dismissal protection in the UK are consistently below those in the CBR index (Adams & Deakin, 2015). According to the OECD, the UK is similar to the USA in terms of the protection provided against unfair dismissal. The CBR index scores the UK as similar to most other European countries, somewhat below Germany but not very much so. The OECD scoring for the UK is surprising given that the employment at will rule prevails in the USA, but not in the UK since the advent of employment protection law, influenced by a German model, in the 1970s. The low OECD score for the UK appears to reflect the view that the UK has a ‘light touch’ approach to labour market regulation by comparison to mainland European systems. This view was promoted by the Blair government in the 1990s at the point when the OECD was carrying out its *Jobs Study* (OECD, 1994) and

starting the process of data collection for the Employment Protection Indicators. The CBR index suggests that this view was a myth and that the UK was not a ‘light touch’ system by global or even by European standards. Being able to make this kind of statement with the back-up of evidence to support it, in the form of the detailed codings contained in the sourcebook, is one of the features which the CBR index offers: it does not rely on perceptual evidence from surveys of ‘experts’, which may simply be recycling stereotypes.

Another possibly surprising result from the CBR index is the evidence that there has been an incremental but steady increase in worker protection since the 1970s. This is the trend we see from averaging the scores across countries and over time (Fig. 4.1). The result, which is similar to that reported in Gerlitz and Dingeldey (in this volume), appears counter to the perception (or stereotype) that neoliberal policies have brought about a significant decline in labour protections since the early 1980s, foreshadowing the ‘end of labour law’. In fact, only a few countries experienced programmes of radical deregulation along neoliberal lines, and in most of them there was a later revival in protection, if not to the level it

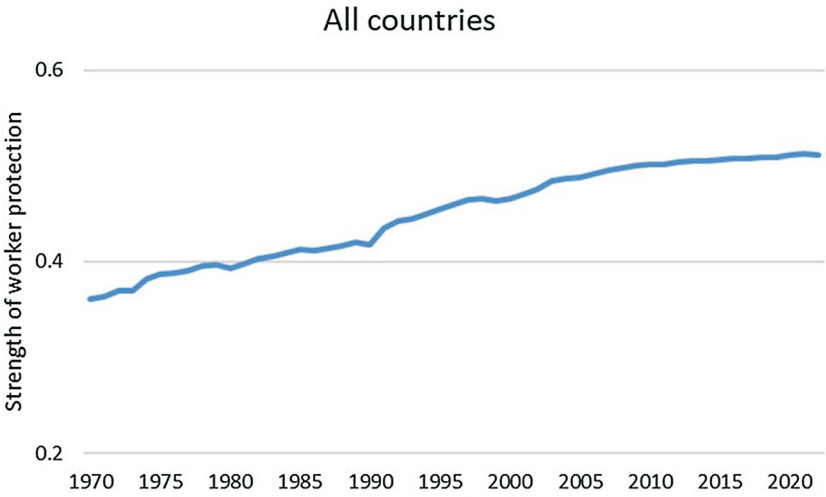


Fig. 4.1 Trends in labour regulation, all countries, all years. The vertical index records the strength of worker protection, as measured by the CBR-LRI index. For an explanation of the method underlying the index, see the text *infra*. The source of the data is A

had achieved before (Fig. 4.2). Equally, some countries which had low levels of protection to begin with have seen relatively little change over the period coded by the index, but these are outliers (Fig. 4.3). In most countries there is a high level of activity in labour law, in the sense that new laws are continually being proposed and enacted, but decreases in protection are not generally long lasting; in Europe, deregulation following the Eurozone debt crisis after 2009 gave way to a new strengthening of working time, dismissal and codetermination rules within a decade, in several cases prompted by the Covid-19 pandemic and the resulting need to stabilise employment (Fig. 4.4). In many middle-income countries labour protections have strengthened since the 1980s. In South Africa, Latin America and parts of East Asia (Korea and Taiwan) this is linked to democratisation, in China to market-led economic development (Figs. 4.5 and 4.6).

The relationship of labour law reform to neoliberalism is a more complex one than is suggested by the ‘doing business’ agenda. One possible interpretation of the CBR results is that neoliberal experiments are more isolated phenomena, confined to particular countries, than is sometimes supposed. Alternatively, the slow and incremental increase in legal worker protections may be in some way compensating for the decline of trade

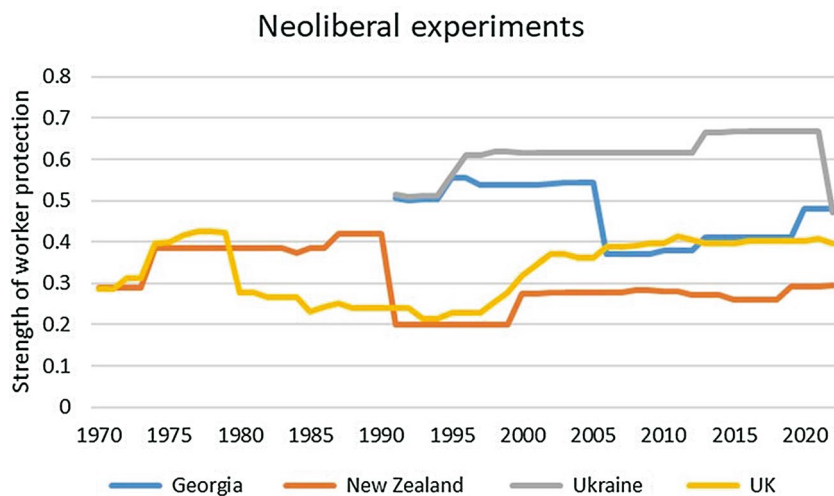


Fig. 4.2 Neoliberal experiments. For explanation and source, see Fig. 4.1

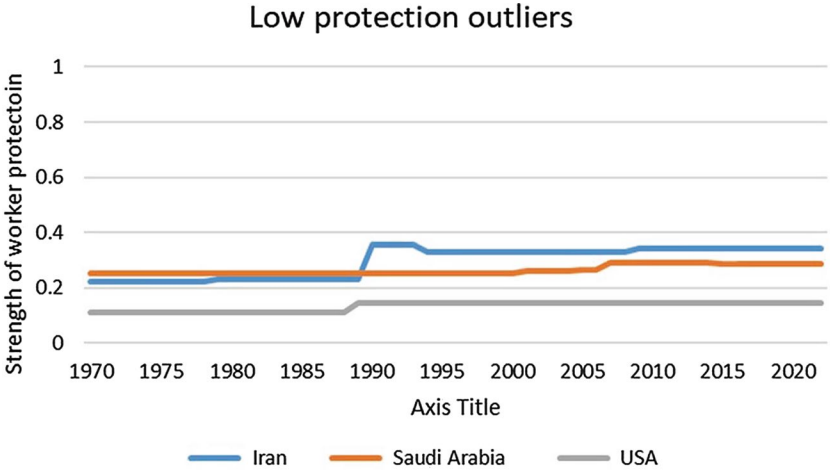


Fig. 4.3 Low-protection outliers. For explanation and source, see Fig. 4.1

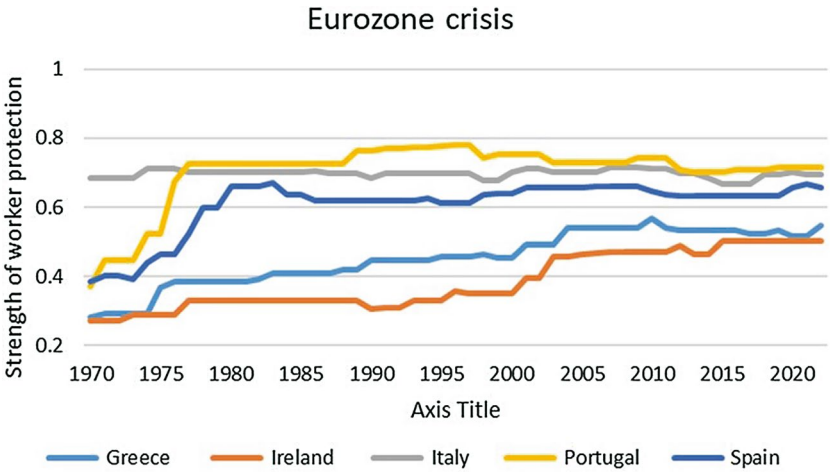


Fig. 4.4 Eurozone crisis. For explanation and source, see Fig. 4.1

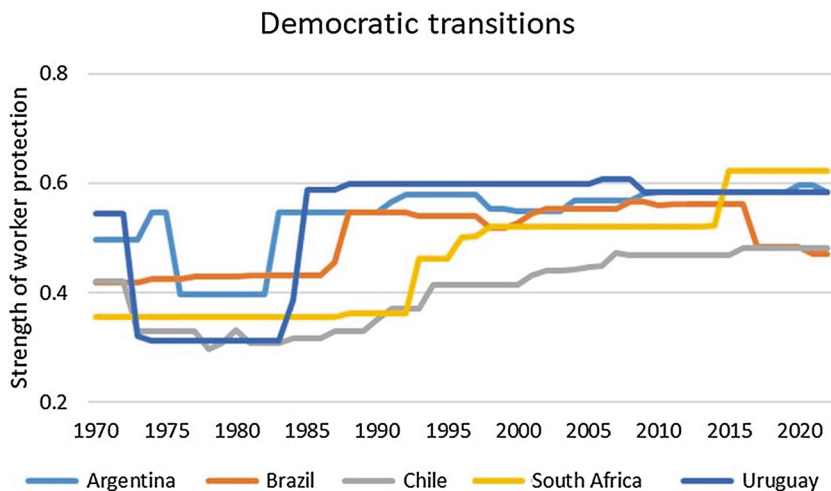


Fig. 4.5 Democratic transitions, South America and Africa. For explanation and source, see Fig. 4.1

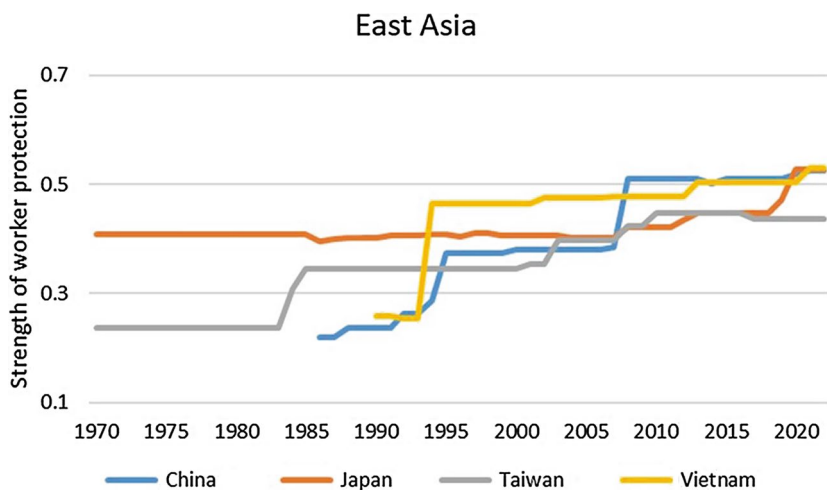


Fig. 4.6 East Asia. For explanation and source, see Fig. 4.1

union membership and influence over the same period; however, this does not seem to be backed up by evidence. On the contrary, there would seem to be a positive correlation between worker protection and collective bargaining coverage (Visser et al., 2017). Stronger evidence for the influence of neoliberal policies comes in the strengthening of shareholder rights, which other CBR indices show has been a global trend since the 1990s. Shareholder rights have been strengthening during a period when labour rights were seeing modest improvements overall; thus, in terms of the balance of power, there has been a tilting of influence towards capital interests, and away from those of labour, which is reflected in the declining labour share of national income. But for the preservation of labour law protections in many countries, this decline would have been greater than it was (Deakin, 2020).

How do these descriptive data from the latest iteration of the CBR map on to the debate about the SER? The erosion of the SER in the face not just of social trends but also tendencies in regulation has been the focus of legal and sociological scholarship since at least the 1980s (Mückenberger, 1985; Mückenberger & Deakin, 1989). This scholarship recognised that the SER was a practice or institution which could entrench certain inequalities, in particular between workers who, via the SER, had access to regular work and income and the related social benefits they conferred, and those in less regular or more precarious work relations, who were thereby exposed to income insecurity. As the SER was linked in practice to the tendency of law and collective bargaining to support a specifically male breadwinner wage, the persistence of the SER threatened to entrench sex discrimination in the workplace and the wider labour market. From the beginning, the SER had both protective and exclusionary dimensions (Mückenberger & Deakin, 1989). At the same time, it was recognised that the SER was an institution around which certain protections for labour in its relation with capital had historically coalesced. Given this linkage, the erosion of the SER was putting protections at risk, immediately affecting workers in the previously protected core of full-time and permanent work, but without improving the position of those outside that core.

The CBR-LRI does not directly address the question of what has been happening to the SER, but the trends it reveals can help us better understand its evolution since the 1980s. The incremental improvement in overall worker protection suggested by Fig. 4.1 is not confined to workers in full-time and permanent relations with an employer. The sociological ideal type of the SER does not exactly map on to the juridical category of

the employment or work contract, which is the gateway to labour law protections. Part-time and fixed-term contract workers might not have the full protection of the SER, but they would in general have employment contracts and would thereby be able to access most of the rights whose steady improvement is recorded in Fig. 4.1, in particular those relating to collective employee representation and the right to strike.

The picture is less clear with respect to working time and dismissal laws. Many features of working time laws are designed with a regular, full-time working week in mind. Dismissal protections which require a certain duration of weekly working time and impose a qualifying period of continuous employment will tend to exclude part-time workers and those with an irregular or interrupted work schedule. Fixed-term workers may not be treated as dismissed on the termination of their contract or may be deemed to have been fairly dismissed. Temporary agency workers will not normally be in a direct employment relationship with the hirer or user of their labour and so may have no means of defending their access to continuing work with that entity.

This is the context in which the rise of part-time, fixed-term and temporary agency work was thought to signify an erosion of the SER when these trends were identified in the 1980s. The response of lawmakers to this trend was twofold: on the one hand, to legitimise the use of the so-called atypical or non-standard forms of work where they had previously been restricted (this was principally the case with temporary agency work); and, on the other, to regulate these forms, by placing limits on how far employers could make use of them without also observing labour standards applicable to the 'core' SER. This dual strategy can be thought of as normalising the so-called non-standard forms, by aligning them with the SER for certain purposes. Rather than undermining the SER or accelerating its erosion, the strategy of normalising non-standard work can be said to have *reinforced* the status of the SER as the benchmark or standard on which labour law rules operated.

The first sub-index of the CBR-LRI captures this trend. It contains a number of indicators which together capture how far employers must treat part-time, fixed-term and temporary agency workers equally or proportionately with those in full-time, indeterminate and regular work. As can be seen from Fig. 4.7, the degree of worker protection in this sub-index has risen substantially over time. Particularly influential in this respect has been the trio of EU Directives passed in the course of the 1990s and early 2000s for the regulation of non-standard work. Figure 4.7 captures not

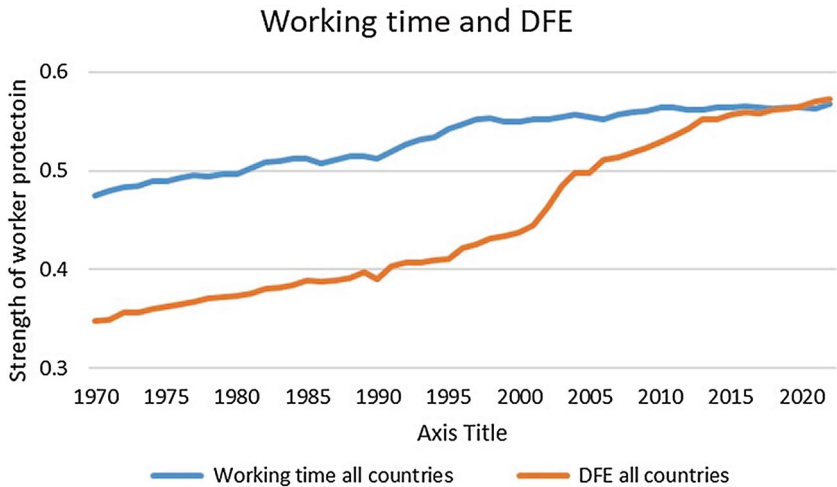


Fig. 4.7 Trends in laws governing working time and different forms of employment (DFE). For explanation and source, see Fig. 4.1

only the implementation of these Directives in EU member states but also their wider influence and diffusion, a process which has seen countries across the world, and in particular in Latin America, East Asia and Sub-Saharan Africa, adopting aspects of the EU model. Dingeldey and Gerlitz (2022, p. 256) report similar results.

The trend indicated in Fig. 4.7 suggests that the SER has not lost its importance as a legal benchmark. If anything, its role as a norm or standard has been reinforced by these legal developments. In other respects, however, the CBR index records aspects of the SER's erosion. The working time sub-index has not seen as significant a rising trend. Reductions in the length of the working week have been achieved in some countries over this period, but a counterbalancing trend has been the introduction of measures aimed at making working time more flexible. Since the 1970s, countries have been experimenting with longer reference periods for the working week, allowing employers more leeway to vary hours up and down over periods of time of up to a year. Like the trends reported with respect to the treatment of non-standard work, the tendency towards the flexibilisation of the working week is the result of an EU-level initiative, in this case the Working Time Directive of 1993. The rolling out of this Directive is reflected in a fall in the aggregate working time score for

certain European countries since the late 1990s, and helps to account for the near-flat trend in global working time protection shown in Fig. 4.7.

The Cambridge index just reports trends in the law, not in practice, and so in itself it tells us nothing about what may have been happening to the SER on the ground. With increasing digitalisation over the last decade, and now with the growing use of algorithmic management techniques, the SER is facing new challenges. Studies suggest that there is a growing disconnect between working time and paid time, the result of a ‘work on demand’ culture. Platform companies have put into practice various forms of disintermediation, enabling them to deflect, either in law or in practice or through a combination of the two, the protective norms which labour law would apply to employees. Given these developments, it is possible that the legal model of the SER, while remaining a norm around which labour law protections are constructed, is becoming an irrelevance for a growing portion of the labour force.

The CBR index on its own does not assist in helping us to understand this question since it cannot code for the practices which are putting the SER into doubt. It does however provide some evidence of the normalisation strategy which, beginning in the 1980s, regularised the so-called non-standard forms of employment and in so doing appeared to give the SER a new lease of life at least as a juridical model, notwithstanding the negative implications it may have for segmentation (see other contributions to this volume). Whether that strategy can now succeed remains to be seen, but the CBR index provides evidence to the effect that it is being tried. The scores for variable 1 of the index, which is concerned with how far the law prevents employers evading the employment contract through the strategic use of own-account work and other indicia of self-employment, has seen an uptick in the past few years; this reflects case law in several jurisdictions which has sought to clarify the employee or worker status of platform workers, or which has aimed to align the norms applying to platform work with those applicable to the SER regardless of the issue of employment status. It remains to be seen how successful this strategy will prove to be.

3.2 *Econometric Analysis*

Billa et al. (2025, forthcoming) report over 20 studies making use of the CBR-LRI to estimate the social and economic effects of labour laws since the first versions of the dataset were published. The team responsible for

creating the index is also responsible for a series of analyses having consistently found evidence of a positive impact of labour protection on income equality (as proxied by the labour share) and either no negative impact on employment and productivity, or positive effects (Adams et al., 2019; Deakin, Fenwick, & Sarkar, 2014; Deakin, Malmberg, & Sarkar, 2014). Not all impacts of labour laws appear to be beneficial to workers; one study reported a negative correlation between industrial action protection and scores on the Human Development Index in a range of middle-income countries (Deakin, Fenwick, & Sarkar, 2014). Studies by other researchers show a similarly wide range of results, but, again, with relatively few negative outcomes. Acharya et al. (2014) used the CBR index scores for five developed countries to find a positive correlation between innovation (proxied by patent numbers) and employment protection, and a series of papers by Belloc (2016, 2019) confirms this finding for the parts of the CBR index relating to employee representation. Jäger et al. (2021, 2022) find that board-level codetermination laws have few discernible impacts on wages and employment, but may induce firms to increase capital investment.

With respect to the SER debate, a number of the econometric studies are pertinent. The 2019 study by Adams et al. is currently the most comprehensive analysis to use leximetric data, as it employs a panel of 117 countries, representing 95% of world GDP, for the period 1990–2013. This study used a full range of econometric techniques including dynamic panel data models which can estimate the effects of labour law changes over distinct time periods. In particular, these models can distinguish between initial effects of the passage of a law, and medium- to long-term impacts over a period of years. Thus, they can be used to test the hypothesis that after an initial ‘shock’ of rising costs when a newly protective labour law is introduced, firms may respond by taking steps to improve labour quality, through additional training, and to make further investments in capital goods and in organisational improvements. The assumption here is that stronger labour laws ‘discipline’ firms into taking measures to improve their productivity, so increasing the value added for each unit of labour. If the hypothesis is correct, we would expect to see a short-term negative shock to employment arising from the introduction of stronger labour laws, coupled with a medium-term rise in employment, as firms capture the benefits of organisational and technological improvements.

The Adams et al. study finds evidence of this effect when using as the independent or causal variable the indicators captured by the first

sub-index of the CBR-LRI, which measures the protection conferred by law on non-standard work relationships. One way to interpret this result is that as additional protections are conferred on workers in part-time, fixed-term and temporary work, individuals who would otherwise consider own-account work are more willing to take up waged employment in one or other of the non-standard forms. This interpretation is confirmed by another of the findings in the Adams et al. (2019) study, which is when the laws captured by this sub-index become more protective, the numbers working in self-employment tend to fall. This is evidence that the strategy of normalising the so-called non-standard forms of work and aligning them with the SER need not lead to unemployment; on the contrary, it can stimulate employment gains.

Another study which is relevant to discussion of the SER is Blanton and Peksen (2019). These authors set out to study the relationship between labour laws and the size of the informal economy. A large informal economy is an indicator of the low prevalence of work organised via the SER in a country, and whether the informal economy is rising or falling can be understood as a sign of how far the SER is stable or eroding. The study is based on a panel of over 100 countries between 1990 and 2012, and deploys data from the CBR-LRI along with data on institutional capacity derived from the International Country Risk Guide (ICRG) measure of the rule of law and the World Values Survey (WVS). The theoretical premise of the paper is that labour laws, by making employment more attractive to workers, provide both firms and workers with incentives to participate in formal, as opposed to informal or unregistered, work. The authors find that a higher level of worker protection through law, as indicated by the CBR-LRI, is correlated with reduced labour informality, and this effect is stronger when institutional quality, as proxied by the ICRG and WVS measures, is higher. They conclude that this is evidence that the labour law protections embedded in the SER do not just coexist with a high degree of formality in the wider economy but may be a means of promoting more formal work and resisting tendencies to informalisation. Mückenberger and Dingeldey (2022), finding that high levels of labour law protection are found alongside very different (high, moderate and low) levels of informal work, also challenge the neoliberal assumption that labour regulation induces a rise in informality.

It is unlikely that the debate over the economic effects of labour laws will be concluded in the near future. A meta-analysis by Brancaccio et al. (2020) looked at a total of 53 papers published between 1990 and 2019

on the question of the employment effects of labour market deregulation initiatives. It found that under a third supported the supposed consensus view advanced since the 1990s by the OECD, World Bank and IMF, to the effect that deregulation could be used to stimulate employment and growth. Just over half of the papers directly challenged the consensus view. Thus, the ground may be shifting to some degree. At the same time, the inherent complexity of the issues at stake suggests that it may be premature to assume that a new consensus is emerging. While we may be at the point of being able to say that the previous consensus understated the beneficial social and economic impacts of labour laws, we still know relatively little about the factors which may determine why labour laws tend to work in some countries and contexts and not in others. Panel data studies mostly report general or average effects across a range of countries, making it hard to be sure of trends in any single jurisdiction.

Partly because the debate over the effects of labour law remains open across the various social sciences interested in this question, interest in the CBR index may well continue to increase, as it has done since the mid-2010s. The index has proved useful to social scientists because of its extensive time and country coverage (1970–2022, 117 countries) and wide remit of laws coded (the OECD index only codes for part of the laws governing forms of employment, dismissal and collective representation, omitting working time and industrial action completely).

One of the features of the econometric literature using the CBR index is the wide variety of statistical techniques being used to clarify issues of causal inference. These include time series analysis (Deakin & Sarkar, 2008), dynamic panel data analysis (Adams et al., 2019), difference in differences regression models (Acharya et al., 2014) and regression discontinuity design (Jäger et al., 2021). It seems likely that there will continue to be further developments on the issue of causal inference and new methods through which to estimate the effects of legal change on the economy and to employ a wider range of social indicators. Notwithstanding the greater plurality of methods being used by researchers, the cautionary assessment of the computer scientists Pearl and McKenzie (2021) remains pertinent: econometric techniques have mostly not got beyond the first level of the ‘ladder of causation’, that of statistical association. New approaches will be needed to model causality at the upper levels of Pearl’s causal ladder, namely interventions and counterfactuals. This will be a major challenge for the social science community.

4 CONCLUSION

When assessing what leximetric approaches have so far achieved in the field of labour law, it would seem important to take account of the methodological bases of different indices. The CBR-LRI is based on a particular approach to index construction, which in numerous respects does not follow the model previously established by the DBR and OECD-EPI. The CBR index is distinctive in its theoretical priors, primary data sources and approach to coding, in particular through the use it makes of protocols, aggregates and weights. It also has a specific approach to data reporting, involving maximum transparency, which feeds into its modes of error correction and updating. Whether the CBR provides a more complete picture is hard to say, but it undoubtedly presents a different one from the World Bank and OECD alternatives. Econometric results from the CBR index also appear to differ from the trend although only in a small sample of studies so far (studies using the CBR index can be measured in the tens, compared to the hundreds using the OECD index). More work needs to be done to get a clearer picture, which will most likely involve some attention being paid to the debate over causal inference in econometrics. The CBR index should, in principle, be a useful aid for those working in this field, particularly when used in conjunction with other sources, including the Worlds of Labour dataset.

In the process, we should get a clearer understanding of the trajectory of the SER. Descriptive analysis of the trends revealed by the CBR-LRI indicates that the strategy of normalising the so-called non-standard employment forms, by aligning part-time, fixed-term and temporary agency work with aspects of the regulations applying to the SER, was widely adopted around the world, beginning in Europe and then being diffused to other regions, in particular Latin America and parts of Asia and Africa, from the 1980s onwards. There is econometric evidence to suggest that this strategy, rather than introducing rigidities or inflexibilities into labour markets, was consistent with employment growth and with the reduction of labour informality. Future iterations of the CBR-LRI should make it possible to find out more about how far the emerging strategy of normalising platform work, by increasing the scope of labour laws to provide basic protections to gig workers, can operate in a similar way.

REFERENCES

- Acharya, V., Baghai, R., & Subramanian, K. (2014). Labor laws and innovation. *Journal of Law and Economics*, 56(4), 997–1073.
- Adams, Z., Billa, B., Bishop, L., Deakin, S., & Shroff, T. (2023). CBR labour regulation index 1970–2022: Codes and sources. In S. Deakin, M. Siems, & J. Armour (Eds.), *CBR leximetric datasets [updated]*. University of Cambridge, Apollo Data Repository. <https://doi.org/10.17863/CAM.9130.2>
- Adams, Z., Bishop, L., Deakin, S., Fenwick, C., Martinsson-Garzelli, S., & Rusconi, G. (2019). The economic significance of laws relating to employment protection and different forms of employment: analysis of a panel of 117 countries, 1990–2013. *International Labour Review*, 158(1), 1–35.
- Adams, Z., & Deakin, S. (2015). Quantitative labour law. In A. Ludlow & A. Blackham (Eds.), *New frontiers of empirical labour law research* (pp. 1–20). Hart Publishing.
- Belloc, F. (2016). Employee representation legislation and innovation: evidence from manufacturing sectors. *FEEM Working Paper No. 004.2016*. Available at SSRN: <https://ssrn.com/abstract=2740996> or <https://doi.org/10.2139/ssrn.2740996>
- Belloc, F. (2019). Institutional complementarities between labour laws and innovation. *Journal of Institutional Economics*, 15(2), 235–258.
- Billa, B., Bishop, L., Deakin, S., & Pourkermani, K. (2025, forthcoming). The impact of labour laws on the labour share of national income, productivity, unemployment and employment: first results from the 2023 update of the CBR Labour Regulation Index. *ILO Working Paper*.
- Blanton, R., & Peksen, D. (2019). Labor laws and shadow economies: A cross-national assessment. *Social Science Quarterly*, 100(5), 1540–1565.
- Botero, J., Djankov, S., La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2004). The regulation of labor. *Quarterly Journal of Economics*, 119(4), 1339–1382.
- Brancaccio, E., De Cristofaro, F., & Giammetti, F. (2020). A meta-analysis on labour market deregulations and employment performance: No consensus around the IMF-World Bank consensus. *Review of Political Economy*, 32(1), 1–21.
- Deakin, S. (2018). The use of quantitative methods in labour law research: A defence and reformulation. *Social & Legal Studies*, 27(4), 456–474.
- Deakin, S. (2020). Wage and employment policies in a post-neoliberal world. In P. Arestis & M. Sawyer (Eds.), *Economic policies for a post-Neoliberal world, international papers in political economy* (pp. 165–186). Palgrave Macmillan. https://doi.org/10.1007/978-3-030-56735-4_8
- Deakin, S., Fenwick, C., & Sarkar, P. (2014). Labour law and inclusive development: The economic effects of industrial relations laws in middle-income countries. In M. Schmiegelow & H. Schmiegelow (Eds.), *Institutional Competition between Common Law and Civil Law: Theory and Policy* (pp. 267–289). Springer.

- Deakin, S., Gindis, D., Hodgson, G., Huang, K., & Pistor, K. (2017). Legal institutionalism: Capitalism and the constitutive role of law. *Journal of Comparative Economics*, 53(1), 188–200.
- Deakin, S., Lele, P., & Siems, M. (2007). The evolution of labour law: Calibrating and comparing regulatory regimes. *International Labour Review*, 146(3–4), 133–162.
- Deakin, S., Malmberg, J., & Sarkar, P. (2014). How do labour laws affect unemployment and the labour share of national income? The experience of six OECD countries, 1970–2010. *International Labour Review*, 153(1), 1–27.
- Deakin, S., & Sarkar, P. (2008). Assessing the long-run economic impact of labour law systems: A theoretical reappraisal and analysis of new time series data. *Industrial Relations Journal*, 39(6), 453–487.
- Deakin, S., Siems, M., & Armour, J. (Eds.). (2023). *CBR leximetric datasets [updated]*. University of Cambridge, Apollo Data Repository. <https://doi.org/10.17863/CAM.9130.2>
- Deakin, S., & Wilkinson, F. (2000). Labour law and economic theory: A reappraisal. In H. Collins, P. Davies, & R. Rideout (Eds.), *Legal regulation of the employment relation* (pp. 1–20). Kluwer Law International.
- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2022). Worlds of Labour – Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(4), 560–597.
- Dingeldey, I., & Gerlitz, J.-Y. (2022). Labour market segmentation, regulation of non-standard employment, and the influence of the EU. In F. Nullmeier, D. Reufels, & H. Obinger (Eds.), *International impacts on social policy* (pp. 247–260). Palgrave Macmillan.
- Freedom House. (2023). Freedom in the world 2023. <https://freedomhouse.org/report/freedom-world/2023/marking-50-years>
- Goodhart, C. (1979). Problems of monetary management: The UK experience. In C. Goodhart (Ed.), *Papers in monetary economics* (pp. 1–24). Macmillan.
- Jäger, S., Noy, S., & Schoefer, B. (2022). What does codetermination do? *ILR Review*, 75(4), 857–890.
- Jäger, S., Schoefer, B., & Heining, J. (2021). Labor in the boardroom. *Quarterly Journal of Economics*, 136(2), 669–725.
- Kaufmann, D., & Kraay, A. (2023). Worldwide governance indicators, 2023 update. www.govindicators.org
- Mückenberger, U. (1985). Die Krise des Normalarbeitsverhältnisses. *Zeitschrift für Sozialreform*, 31(7), 415–433; 31(8), 457–474.
- Mückenberger, U., & Deakin, S. (1989). From deregulation to a European floor of rights: Labour law, flexibilisation and the European single market. *Zeitschrift für internationales Arbeits- und Sozialrecht*, 3(2), 153–207.
- Mückenberger, U., & Dingeldey, I. (2022). Introduction: Worldwide patterns of legal segmentation in employment laws. *International Labour Review*, 161(4), 511–534.

- OECD. (1994). *OECD jobs study*. OECD Publishing.
- OECD. (2008). *Handbook on constructing composite indicators: Methodology and user guide*. OECD Publishing.
- OECD. (2019). *Employment outlook*. OECD Publishing.
- OECD. (various years). *OECD indicators of employment protection*. <https://www.oecd.org/els/emp/oecdindicatorsofemploymentprotection.htm>
- Pearl, J., & McKenzie, D. (2021). *The book of why: The new science of cause and effect*. Penguin.
- Schmulyan, L. (2021). Manipulation of the world bank's ease of doing business index. *LSE Blog*. <https://blogs.lse.ac.uk/internationaldevelopment/2021/10/05/manipulation-of-the-world-banks-ease-of-doing-business-index/>
- Spiegelhalter, D. (2019). *The art of statistics: Learning from data*. Penguin.
- Tamanaha, B. (2017). *A realistic theory of law*. Cambridge University Press.
- Visser, J., Hayter, S., & Gammarano, R. (2017). Trends in collective bargaining coverage: Stability, erosion or decline? *ILO Issue Brief No. 1 Labour Relations and Collective Bargaining*. https://www.ilo.org/global/topics/collective-bargaining-labour-relations/publications/WCMS_409422/lang%2D%2Den/index.htm
- World Bank. (2004). *Doing business in 2004: Understanding regulation*. World Bank Group.
- World Bank. (various years). *Doing business reports*. <https://archive.doingbusiness.org/en/doingbusiness>
- WVS. (2023). *World values survey*. <https://www.worldvaluessurvey.org/wvs.jsp>
- Zuboff, S. (2019). *Surveillance capitalism: The fight for a human future at the new frontier of power*. Profile Books.

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The Leximetric Methodology Applied to the Analysis of Legal Segmentation in Labour Law: A Critical Appraisal

Tzehainesh Teklè

1 INTRODUCTION¹

One of the most worrisome features of the world of work in both the Global North (GN) and the Global South (GS) is significant and growing inequalities. The profile of the poorest can be identified both by the social groups they belong to and the contractual arrangements they are in. Based on the former analytical perspective, women and members of ethnic minorities, racialised groups and indigenous peoples are over-represented among the poorest. From a contractual arrangement outlook, the poorest are workers in so-called non-standard employment relationships (NSER).

¹This chapter has taken into account the first version of the leximetric dataset of the WoL project, as illustrated in Dingeldey et al. (2022) and in Mückenberger and Dingeldey (2022a).

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The two groups almost coincide since women, young people and migrant workers constitute the majority in NSERs (ILO, 2021b). In the most recent years, the COVID-19 pandemic has aggravated these inequalities (ILO, 2021a; Berg & Soares, 2022; Beccaria et al., 2022; Howson et al., 2022).

One of the explanations for inequalities in income levels, conditions and benefits at work, employment protection, social protection coverage, eligibility to state social provisions and rights at work is what various strands of academic literature have called “labour market segmentation” (Fudge & Mundlak, 2022, p. 1). This has been conceived and studied through different lenses (Deakin, 2013). From a purely legal perspective, it has been considered as occurring “when the labour market is divided or structured in a way which is reflected in the forms taken by the employment relationship or contract. It is associated with the division between ‘core’ and ‘atypical’ employment in some contexts, and with that between ‘formal’ and ‘informal’ employment in others” (Deakin, 2013, p. 1).

Thus, inequalities are determined, strengthened or perpetuated by the fact of workers being or not being in a so-called standard employment relationship (SER) or in formal employment and by the association of higher wages, protections or better protection with SER and formality.

Labour law reforms have been adopted to counteract labour market segmentation, but labour law is also one of its causes since it can exclude certain groups of workers from its scope or privilege some workers over others. Therefore, starting from the premise that labour market segmentation is also legally determined and focusing on the SER as the normative type delineating the boundaries of labour markets segments, the Worlds of Labour (WoL) project proposes a conceptual framework whereby legal segmentation is understood from a functional perspective on labour law. In this framework labour law has historically developed along three main functions, which can also co-exist. These have been defined as: (1) standard-setting/protecting, (2) privileging and (3) equalising (SPE). The first refers to the protective function of labour law developed in favour of workers finding themselves in the SER normative type, that is in a work relation that is subordinate, full-time, indefinite and performed in medium-to large-sized enterprises. Labour market segmentation is a consequence of this function since workers who are not in a work relation featuring the above-mentioned characteristics are excluded from labour law protection. The second function relates to protections that are given only to some workers or protections that are graded according to criteria such as

seniority. In this case segmentation is inherent to the function. The third function concerns labour legislation that has been adopted to counteract labour market segmentation due to the discrimination faced by members of certain groups (such as women, younger workers, members of ethnic minorities or racialised groups) or to the increase in non-‘standard’ contractual arrangements. To address the former phenomenon, anti-discrimination law has been developed. To deal with the latter, legislation abolishing non-‘standard’ contractual arrangements or equalising the treatment of workers in NSER with those in SER has been adopted. The workers targeted by the two types of legislation often overlap as women, younger workers, members of ethnic minorities or racialised groups are over-represented in the unprivileged segments of ‘standard’ employment and, as also mentioned above, in NSER. The WoL project observes that this third function can mitigate but not eliminate labour market segmentation since it does not challenge the SER as the paradigmatic type around which labour law protection is conceived. Even the extension of protections to workers in NSER is carried out by using the SER as the benchmark.

Based on the above-summarised functional perspective on labour law, the WoL project studies how these three functions have unfolded and measures legal segmentation in labour law. A central element is the construction of a dataset which relies on the leximetric method and uses and extends the data supplied by the Cambridge University’s Centre for Business Research Labour Regulation Index (CBR-LRI) and the ILO’s Employment Protection Legislation Index (EPLex) (Dingeldey et al., 2022). Notably, it constructs eight ideal types of standard-setting, privileging and equalising (SPE) employment law models based on different combinations of the three functions. These models feature different degrees of legal segmentation, the two extremes being the elitist model having low standard-setting, high privileging and low equalising dimensions (sPe), and the universalist model having high standard-setting and equalising dimensions and low privileging features (SpE). The ambition of the project is also to identify the historical unfolding and relevant determinants of these three labour law functions in national settings across the world.

In this chapter, I propose a critical assessment of the use of the leximetric approach for the understanding of the historical evolution of labour law from a functional perspective and its effects in producing, maintaining or reinforcing labour market segmentation. I conduct this reflection by

focusing on the application of leximetrics to the study of the equalising function of labour law and its impact on legal segmentation.

2 INTEREST IN AND LIMITS OF THE LEXIMETRIC METHOD FOR THE UNDERSTANDING OF LEGAL SEGMENTATION IN LABOUR LAW

Leximetrics has been defined “as coding and numerically measuring labour legislation for comparative purposes” (Dingeldey et al., 2022, p. 569). Applying this method to a study of legal segmentation carries with it the intrinsic attractiveness and disadvantages of the leximetric approach along with some specific elements of interest as well as weaknesses.

The attractiveness of leximetrics lies in that this approach enables the management and synthesis of a large quantity of information and, consequently, comparisons between a high number of countries over a long period of time. Writing about the CBR-LRI, Adams et al. have underlined that labour law indexes can “clarify trends and patterns which are otherwise obscured by the sheer volume and complexity of legal texts” (Adams et al., 2017, p. 4 on the CBR-LRI). In the case of the WoL project, over one hundred countries are studied, covering both the GN and the GS. Moreover, the time period covered spans centuries.

The specific interest of leximetrics in the context of the WoL project is its application to a broader scope of analysis and a new research question vis-à-vis previous uses. Leximetrics has been employed by academics (see, e.g. Adams et al., 2017; Mahy et al., 2019) and international organisations and governments to measure the level of protection of labour legislation and “test claims of labour law’s social and economic impacts” (Deakin in this volume). This has resulted “in several data sets and indicators, albeit with different limitations according to transparency and verifiability” (Dingeldey et al., 2022) and, particularly in the case of the World Bank’s Doing Business indicators, with controversial “normative, conceptual, methodological and empirical dimensions” (Baremborg, 2015, p. 80). The WoL project has broadened the perspective on labour law by looking not only at the protective but also to what the project has designated as the ‘privileging’ and ‘equalising’ functions. Further, it has adopted leximetrics to address the question of how labour law, in its threefold functional dimension, has contributed to labour market segmentation over time. This is a fundamental question for all those studying labour

regulation from different disciplinary backgrounds and interested in critically dissecting the premises, purposes and effects of such regulation upon working people. It also has important policy dimensions since discussing the segmenting mechanisms and effects of labour law through the functional perspective described above contributes to the debates not only on labour law reforms but also, more generally, on social policy. The latter, which aims to combat inequalities and poverty and ensure a fair distribution of resources and opportunities, cannot overlook the centrality of work and labour market institutions as essential tools to pursue social and distributive justice (Rittich, 2008, p. 237). This can also be inferred from the objectives assigned to the ILO by the 1944 Declaration of Philadelphia, which consist in guaranteeing “all human beings” “their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”.² The level of socioeconomic justice and equality in a society derives also from the protections and rights granted at work. Therefore, deconstructing the mechanisms through which labour law can contribute to segmentation and, thus, inequalities is an important input to the ongoing discussions on how to ensure universal protection of workers and combat inequalities and poverty.

However, the application of leximetrics to the study of legal segmentation cannot ignore the questions that this approach raises *per se*, some of which have also been recognised by the scholars who have used it (see, e.g. Deakin et al., 2007; Adams et al., 2017; Deakin, 2018). The overarching question is whether a numerical approach is useful to comparative law (Siems, 2005). While recognising the elements of attractiveness indicated above, it seems undeniable that a quantitative approach has limitations which bear upon the completeness and accuracy of the results of a leximetric analysis, including on legal segmentation in labour law.

As the authors of the WoL project state, leximetrics is about reducing complexity (Dingeldey et al., 2022). This is one of the features that makes it attractive for comparative research on a global scale, but it also has inherent limitations. The first limitation consists in reducing complex systems such as legal systems into parts and numbers, which cannot capture their complexity. The use of indicators implies being selective in the choice of the aspects of labour law studied and thus one necessarily ends up

² Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia), 1944, II (a).

overlooking certain other features. Therefore, the conclusions that can be reached through an investigation based on the leximetric method can be biased by such selectivity and simplification. In the context of the WoL project, these can affect the conclusions concerning the levels of the protective, privileging and equalising functions of different labour law systems, and therefore the manifestations and degrees of legal segmentation in different countries over time.

The second limitation is that this approach looks at labour law in isolation. This entails that the effects of the interplay of labour law with other branches of law cannot be considered, while workers' lives are affected by a variety of regulations. Consequently, debates on workers' protection (or lack of it) requires going beyond the law that regulates the employment relationship (Arup & Mitchell, 2006), including social protection, commercial, company, competition, taxation, immigration and family law. Segmentation at work (including by contractual arrangement and worker identity) is also a product of legal rules and institutions beyond labour law. This means that the degree of legal segmentation linked to the performance of the different functions of labour law can also be influenced by other laws and an in-depth understanding of the operation of legal segmentation in labour law would require an investigation of whether and how labour law intertwines with these other laws. In the case of the WoL dataset, another manifestation of the silo approach of leximetrics consists in isolating labour legislation from other sources of labour regulation such as case law and collective bargaining.

The third limitation regards the examination of labour law as it results from the texts and not as it is actually applied. Not only does enforcement not enter into the scope of the measurement, but also how the law permeates the relations between social actors is not assessed. The relationship between the law and social actors is particularly important when labour law has developed through a process of transfer from other national legal systems or international law, which the project describes as having occurred and as still occurring particularly in the GS. Leximetrics does not appraise to what extent labour law norms are actually 'alive' (applied, claimed and enforced) and, if they are, how they are socially understood and legally interpreted.

The fourth limitation, which is interrelated with the first and the third, concerns the comparability of numerically represented legal systems and their segmenting nature. Establishing convergence between legal systems

determined by quantitative methods can be misleading. Leximetrics gives a static and uniform picture of the law, while the law is a lively entity, whose life course and impact on people's lives is conditioned by its dynamic relation with the context in which it intends to operate. This context is multidimensional (legal, political, ideological, economic, social, cultural) and plural (each dimension can be articulated in a plurality of voices or from a system theory perspective—systems). The WoL dataset cannot capture it and does not aim to do so. The only convergence that can be established is therefore textual.

The fifth limitation is connected to one of the advantages of leximetrics, which is the ability to cover a long historical time period. The limit is linked to the intention expressed by the WoL project to establish the determinants of the historical developments and the claim that leximetrics can not only show how the different labour law functions “gained momentum in which historical period” but also allow “for explanations related to colonialism, world-trade, UN or ILO decisions” (Dingeldey et al., 2022, p. 594), as well as migration, war, emulation and epistemic communities. In reality, we can deduce correlations between historical events and labour law developments as resulting from the leximetric analysis, but it is only through multidisciplinary qualitative studies that a causality nexus can be affirmed.

In the section below, I deepen the analysis of the leximetrics method by looking at how this has been applied to the study of the equalising function of labour law.

3 A CRITICAL ASSESSMENT OF LEXIMETRICS APPLIED TO THE ANALYSIS OF THE EQUALISING EFFECT OF LABOUR LAW

As stated above, the protective and privileging functions of labour law have led to the exclusion of large portions of workers from all or some of the protections granted by labour law. These workers can be identified by the type of employment relationship they are in (e.g. temporary, part-time, involving more than two parties) and by group membership (such as by their gender, ethnicity, age and other personal grounds). Across the world, it is mainly men from dominant social groups that fit into the contours of the SER normative paradigm (ILO, 2016) and into its most generously protected segments. Thus, women, younger workers, members of

ethnic minorities and racialised groups suffer from double and interlinked discrimination, which is both person- and contract-based. In addition, their over-representation in NSERs or in less privileged segments of the SER is the result of not only labour market but also pre-labour market discrimination.

The gendered labour market segmentation in both the GN and the GS epitomises this twofold and intertwined discrimination very well. In the case of women, their over-representation in NSERs and less privileged segments of the SER is a reflection of direct discrimination exerted by employers (ILO, 2016, p. 119) and of structural discrimination due to the norms shaping the world of work (e.g. in relation to working time), social welfare policies, tax policies and provision of public services, among other factors, which do not consider the needs of workers with family responsibilities, the majority of whom are women. At the basis of the legal and policy infrastructure that excludes women from the labour market or integrates them at a disadvantage vis-à-vis men lies a discriminatory social construct. As feminist socioeconomic and legal literature has amply demonstrated, the SER is based on a “gender contract” (Vosko, 2006, p. 55), which assumes the man as the breadwinner and the woman as the caregiver who performs unpaid work or, if employed, is treated as a secondary earner (Grimshaw et al., 2017). Further, women in the labour market earn less, not only as a result of direct forms of discrimination and discontinuous or part-time employment paths but also because female-dominated jobs are undervalued due to a process whereby the efforts, working conditions and responsibility connected to these jobs receive no or lower recognition (Teklè, 2018a, p. 601). In addition, the skills used in these occupations (e.g. in relation to care) are considered as an extension of those skills used in the private sphere and conceived as ‘innate’ to women.

The WoL project applies leximetrics to study the unfolding of the equalising function of labour law aimed at counteracting both person-related and contract-related discrimination (Mückenberger & Dingeldey, 2022a). It does so by moving forward from the consideration that anti-discrimination legislation has been developed since the 1970s to address the direct and indirect forms of discrimination that certain groups are subject to improve the protections of workers in NSERs (Mückenberger & Dingeldey, 2022b).

Talking about person-related discrimination, Dingeldey and colleagues refer to discrimination based on factors such as sex, gender, race and ethnicity, age, religion and belief, disability, sexual orientation and gender

reassignment (Dingeldey et al., 2022; Mückenberger & Dingeldey, 2022b). Dealing with contract-related discrimination, they refer to discrimination linked to specific contractual features such as being in part-time, fixed-term or temporary agency employment, or in certain areas of responsibility or hierarchies in the pay scale.

The WoL project acknowledges that labour law in its equalising function can confine itself to prohibiting person-related discrimination or can allow for or prescribe affirmation action or special measures to overcome structural discrimination. In the case of contract-related discrimination, labour laws can prohibit potentially discriminatory contracts or terms, or provide for equal treatment in some or all aspects. The more of these aspects the law covers, the more it is considered to oppose labour market segmentation.

With respect to discrimination on personal grounds, on which I focus, the WoL project has chosen to concentrate on discrimination on the grounds of gender and ethnicity in accessing employment and regarding working conditions.

The indicators they have elaborated regarding access to employment are four: (1) the law provides for equal opportunities/Equal opportunities/equality of opportunity for men and women; (2) the law provides for regulation of positive discrimination/Discrimination/discriminatory to overcome labour discrimination/Discrimination/discriminatory of women; (3) the law provides for equal opportunities/Equal opportunities/equality of opportunity concerning ethnicity/Ethnic minorities, ethnicity, ethnic/race/Race/racism/racist/racial; (4) the law provides for regulation of positive discrimination/Discrimination/discriminatory to overcome labour discrimination/Discrimination/discriminatory in terms of ethnicity/Ethnic minorities, ethnicity, ethnic/race/Race/racism/racist/racial.³

As for discrimination vis-à-vis working conditions, the indicators are also four: (1) legally prescribed equal pay/Equal pay for work of equal value/Values; (2) legally prescribed equal opportunities/Equal opportunities/equality of opportunity for men and women in terms of working conditions; (3) legally prescribed equal opportunities/Equal opportunities/equality of opportunity in terms of working conditions concerning ethnicity/Ethnic minorities, ethnicity, ethnic/race; (4) the existence of a legally prescribed universal/Universality/universalism/universal minimum wage.⁴

³ Dingeldey et al. (2022, Supplement).

⁴ Dingeldey et al. (2022, Supplement).

While the merit of this study is to examine how the law has been historically trying to redress labour market segmentation, it also features the advantages and the limitations that I have ascribed to the leximetric method as such. In addition, there are some critical areas that are specific to the analysis of the equalising function. The first of these areas relates to the inability of leximetrics to represent the complexity of legal systems as argued above. In the case of anti-discrimination law, this is manifested by the restricted personal and employment-related scope of the study and of the indicators selected. It also regards the extent to which the study intends to examine the equality models underlying the evolution of the equalising function of labour law, notably whether a formal or a substantive model of equality is present.

The selection of two grounds for discrimination (gender and race/ethnicity) collides with the intention to measure equalising labour law in its historical development and its ability to respond to labour market segmentation. One of the features of the evolution of anti-discrimination legislation is the enlargement of the social groups protected. Moreover, a quantitative approach (coupled with the lack of discussion of the application of the law) does not permit an analysis of anti-discrimination norms to be conducted from an intersectional perspective. The grounds for discrimination (notably gender and ethnicity) are considered as stand-alone identities rather than identities which intersect with others and make the experience of discrimination different according to the different combination of the diverse identities that a person can have. Therefore, leximetrics applied to the study of the equalising function of labour law tells us something about the extent to which laws have been adopted to counteract discrimination against women and members of ethnic and racialised groups, but it cannot tell us the extent to which the law in fact addresses or perpetuates intersecting forms of discrimination. Does it, for example, equally benefit women from both dominant and non-dominant ethnic or racialised groups?

Furthermore, the selection of two areas of discrimination (access to employment and working conditions) means excluding other important areas where discrimination takes place, such as dismissal or access to training, which are important determinants of labour market segmentation. For example, dismissal of women due to present or future pregnancy and the lack of training opportunities are factors that keep women in or push them towards NSERs if they are not outside employment *tout court*.

Regarding the concept of equality, segmentation is counteracted by not simply protecting individuals from discrimination but also remedying the effects of past and present discrimination and changing the institutions, practices and policies that systemically disadvantage certain groups of workers. The effective contribution of anti-discrimination law to the eradication of discrimination thus depends on what conception of equality this has embraced and how this has historically unfolded. Thus, the other challenging aspect of the leximetric investigation on the equalising function of labour law regards its ability to give account of the way in which anti-discrimination legislation goes beyond a mere equality of opportunity approach in its formal sense to embrace a notion of equality interested in addressing the systemic causes of discrimination. Such analysis is important to grade the ability of equalising laws to combat labour market segmentation. One of the features of the transition from a formal to a substantive concept of equality is the introduction of the notion of indirect discrimination (Sheppard, 2015). This has historically been the first legal step towards addressing structural forms of discrimination, and it has been successfully used to challenge discriminatory norms and practices with effects going beyond individual situations. This omission seems even more regrettable given its relevance not only to respond to labour market segmentation through the lens of person-based but also contract-based discrimination since the status of workers in NSERs can be read through the conceptual and legal category of indirect discrimination. The exclusion of certain categories of workers (e.g. domestic workers) from legal protections or granting them lower protection amounts to indirect discrimination on grounds such as gender and ethnicity due to the prevalence of women, migrants, members of ethnic minorities among them. As a matter of fact, the legal prohibition of indirect discrimination has been one of the tools used to challenge legal segmentation with repercussions going beyond individual situations.⁵

Even though the WoL project does not take indirect discrimination into account, it purports to look at how equalising laws have tackled structural discrimination by measuring the presence of ‘positive discrimination’. Arguably, the project wants to refer to measures falling under umbrella terms such as positive action, employment equity or affirmative action, which go beyond a formal, procedural and complaint-based system

⁵ Recently see UK Employment Tribunal judgment in *Puthenveetil v Alexander & George & Others*, December 2020; for a discussion, see Sedacca (2022).

of anti-discrimination law and are aimed at proactively changing institutions and practices (Sheppard, 2012, pp. 8–9).

However, it is not sufficient to assess the presence of positive action measures since their ability to counteract labour market segmentation depends on their design and purpose. These measures can encompass various types of actions and these can respond to different objectives. Feminist literature has noted how affirmative action has traditionally been conceived as a derogation from or an exception to the principle of equality. However, they have been re-thought as part of the package of measures that states have to take to achieve *de facto* equality. The aim of affirmative or positive action can also be reconceptualised from a measure to redress/remedy past discrimination and assist the integration of discriminated groups into the existing institutions to a measure meant to realise the structural, social and cultural changes necessary to fight discrimination and realise substantive equality (Teklè, 2014). A fundamental issue is whether and to what extent equalising norms only help discriminated groups to adapt to existing structures and institutions or can recognise the diversity that exists in society and help this diversity to be reflected in the workplace through a transformation of such structures and institutions. Thus, leximetrics alone cannot empirically sustain the conclusion shared by the WoL project that equalising norms have an intrinsic limitation, which is to leave unchallenged the segmenting effects deriving from maintaining the SER as the fundamental normative paradigm or benchmark, nor can leximetrics provide sufficient empirical support to the theoretically convincing position that equalising laws are not sufficient to combat labour market segmentation and what is (also) needed is “re-visiting the standard-setting aspect of labour law and re-considering the ‘standard’ and the limited scope of the ‘formal’” (Fudge & Mundlak, 2022, p. 5).

Another critical issue is the scope of the equalising norms underlying the leximetric study. In international labour and human rights law, norms that protect maternity (as a condition to guarantee equality of opportunity in practice) and promote the reconciliation of work and family responsibilities are considered part of a gender equality agenda (Teklè, 2018b, p. 621). More broadly, care-related norms are part of a “transformative package of care policies” which include a continuum of care leave policies and care services, and are a pathway for building a better and more gender equal world of work (ILO, 2022). However, in the leximetric study the equalising function neglects laws that proactively pursue substantive equality by recognising the social value of maternity and parenthood in general

(Fredman, 2014) and how they help dismantle the social reproduction bargain described above whereby women bear the burden of family responsibilities and men are the breadwinners.

It is only by considering all these elements that it is possible to make that type of radical analysis of legal segmentation that the WoL project seems to be committed to. These elements are essential to avoid generalisations about the extent to which labour law is successful to not only counteract but also prevent gendered labour market segmentation.

In conclusion, what seems to be lacking is a normative framework fully conceptualising equalising norms not only in reactive but also proactive terms in line with international and national legal evolutions of anti-discrimination law and academic conceptualisations. In this latter regard, the multidimensional substantive equality framework formulated by Fredman could provide helpful guidance. In her idea, such a framework “should aim to *redress disadvantage*. Second, it should *counter prejudice, stigma, stereotyping, humiliation and violence* based on protected characteristics. Third, it should *enhance voice and participation*, countering both political and social exclusion. Finally, it should *accommodate difference and achieve structural change*” (Fredman, 2016, p. 727; italics added). By adopting this framework in the study of the equalising function of labour law, not only should additional elements be included, such as the presence of legal provisions on violence and harassment, but also an assessment should be made of the coexistence of all these dimensions. As argued by Fredman, it is only through their synthesis that each dimension can not only reinforce the others but also address the weaknesses and limits of the others.

However, one wonders whether the multiplicity of dimensions and indicators that would be needed to try to comprehend the various declinations of the equalising function of labour law is compatible with a method (leximetrics) that requires making selections to be able to manage the amount of collected information and make a synthesis. The complexity of the equality models cannot in fact be unveiled by simply adding dimensions to consider (e.g. care-related norms) but would also call for a plethora of indicators to give accurate account of the different manners in which such dimensions can be articulated (e.g. care leave length, remuneration granted, eligibility requirements, and sectors and occupations covered).

As stated above, if all these aspects are not considered, one cannot accurately assess the extent to which equalising labour law has counteracted

labour market segmentation and verify (in the case of gendered labour market segmentation) whether it has addressed or, conversely, left unchallenged the gendered “social reproduction bargain” (see Fudge & Mundlak, 2022) by confining itself to accommodate women’s social roles in a labour market whose legal institutions are still predicated on the undervaluation of social reproduction and care and on the gendered distinctions between productive and reproductive roles. This seems needed to reflect on what to keep and what to transform in the way labour regulation is conceived with a view to not simply reacting to legal segmentation but also offering a coherent and integrated framework that can guide conceptual and policy reforms in the area of regulation of work (Johnstone & Mitchell, 2004), including both paid and unpaid labour (Conaghan, 2014). This means going beyond the labour market. To do this, segmentation should be seen as a phenomenon conceptualised as segmentation in the world of work and not just in the labour market. In turn, the equalising function should be seen as a response to the labour market and non-labour market, legal and non-legal mechanisms that create segmentation at work. The challenge remains on the extent to which leximetrics can be a viable tool to unpack the responses to all these different dimensions.

Another challenging aspect of the study of the equalising function of labour law through leximetrics regards the fact that in order to assess whether structural discrimination is challenged or not one should also look at collective bargaining and case law, and look at the interplay of anti-discrimination labour law with other branches of law. However, this approach is reflected only in part in the analysis of equal pay norms. In this regard, the indicators developed include laws on a universal minimum wage given the role that a minimum wage has in combating discrimination in pay (Rubery, 2003a). This approach is not reflected anywhere else. With this exception, equalising norms are considered in isolation, disregarding the impact of other laws on helping, reducing or undermining the achievement of equalising objectives.

The other fundamental challenge concerns the comparability of the results of a leximetric investigation on equalising laws. Drawing on comparative institutional theory, “labour markets are social constructs, shaped and influenced by institutions and social actors”, and in comparing national labour markets one needs to take into account that these markets vary as to institutional arrangements, social conditions, forms of economic organisation, and role and attitudes of social actors (Rubery, 2003b, p. xvii). This approach “cautions against applying universalist theorising

about processes of labour market segmentation” (Grimshaw et al., 2017, p. 9). This warning also applies to processes of legal segmentation. Moreover, as argued above, a law-in-context approach suggests considering a number of variables such as the socio-political structure, the legal culture, non-state regulatory systems and social norms, and the economic and ideological environment for an in-depth understanding of legal systems (Teklè, 2010, p. 11). All these factors impinge upon the effectiveness of the functions that labour law tries to perform but cannot be weighted by employing the leximetric method. Even remaining at the level of measuring segmentation not in practice but as it results from statutory law, the selectivity of the indicators can bring about contestable outcomes. According to the results of the leximetric study, countries as diverse as Algeria, Brazil, Cambodia, Gabon and EU countries result as having strong anti-discrimination legislation (Dingeldey et al., 2022, Supplement). Yet, if one takes a close look at the laws of these countries, going beyond the selected indicators, and considers the intersection of labour law with laws in other domains, one cannot but realise that the differences are significant. For instance, using ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) as a benchmark, one can see that in certain countries the law does prohibit discrimination but does not cover all grounds and all aspects of employment.⁶ Countries may have anti-discrimination norms but also feature laws in other domains such as those governing personal and family relations that are discriminatory.⁷ Countries in the EU do have legislation complying with the basic requirements of Convention No. 111, but in certain cases the measures taken to address women’s lower participation in the labour market may be inadequate to change employers’ attitudes and create a balanced distribution of family responsibilities between men and women.⁸

Moreover, as Finkin and Mundlak have noted, in comparative law “good description” is a necessary but is “not a sufficient condition” to a complete understanding of the law. This implies grappling with what they call “the unarticulated values the law embraces” (Finkin & Mundlak, 2015, p. 3). However, leximetrics cannot disclose them nor can show how they interlock with other value systems that exist in a society and can

⁶ See Direct Request (CEACR)—adopted 2022, published 111st ILC session (2023).

⁷ Until recently this was the case of Gabon, see Observation (CEACR)—adopted 2024, published 113rd ILC session (2025).

⁸ See Observation (CEACR)—adopted 2024, published 113rd ILC session (2025).

condition the social understanding and adhesion to the interpretation by the legal professions and the application and enforcement of norms that are similar across countries. This is particularly the case in the anti-discrimination field.

Thus, convergence between legal systems determined by quantitative methods can be misleading because leximetrics does not permit the consideration of how legal rules operate in fact. This can depend not only on the institutions charged with their application or enforcement but also on the societal reception of these rules, particularly when there are values involved such as in the case of rules regarding equality. In conclusion, the risk of leximetrics is to produce results that are correct in the abstract but not necessarily on the ground.

Moreover, since in many countries equality legislation arrives through a process of transfer from international law, the results of this dynamic cannot be assessed through leximetrics. This method can only verify whether international norms feature in national legislation. Yet, even taking these norms in isolation, it is only by assessing what is the interpretation by legal professions, the level of appropriation by social actors and their enforcement that one can understand whether there is convergence across countries.

Consequently, the construction of the SPE employment models may also present some weaknesses. For instance, the SpE ‘universalist model’, which is found in the case of strong protective and equalising laws, is defined as the “point of culmination for an *inclusive employment law policy*” (Dingeldey et al., 2022) under which the state proactively cares for all those who are in need and provides for a high level of protective labour legislation (Dingeldey et al., 2022, p. 337). The abstract definition of this model is convincing. However, deriving whether a state *proactively* cares for *all* in need from the few dimensions and indicators selected may not be a sufficiently strong empirical foundation not only for the reasons put forward above. Another reason is that the leximetric method only partially addresses how labour law has corrected the exclusion from its scope of categories of workers who are in work relations that do not match the SER model. This issue is dealt with under the equalising function of labour law aimed at counteracting contract-based discrimination. In this case, the WoL project only covers fixed-term, part-time and agency work and selects indicators falling under two categories: (1) legal *restrictions* (notably on the use of fixed-term contracts and reliance on agency work) and (2) legally prescribed *equal treatment* (notably between part-time workers

and full-time workers, fixed-term workers and permanent workers, agency workers and permanent workers of the user-enterprise).⁹ Two observations can be made here. The first is the lack of consideration of disguised self-employed and all those situations of dependent self-employment. This is an old challenge for labour law, one that has acquired new manifestations with the spread of digital labour platforms impacting on workers worldwide (ILO, 2021b, 2022). The second one is that it seems problematic not having considered the exclusion of certain occupations or sectors where women, ethnic minorities and racialised groups are over-represented, such as domestic work or the agricultural sector. They may be considered by the universal minimum wage indicator, but this indicator does not cover other labour law protections.

4 CONCLUSIONS

The WoL project has the praiseworthy ambition to broaden the geographical scope and timespan regarding the study of the development of labour law in both the GN and the GS and to discuss its role in creating, perpetuating and reinforcing labour market segmentation. It pursues this endeavour by looking at labour law from a functional perspective according to which labour law has performed three functions (standard-setting, privileging and equalising) across the world. The value of this study consists in providing original analytical tools and knowledge that helps think about and act upon old and new forms of socioeconomic inequalities and their legal determinants.

Leximetrics is one of the methodological tools used. This has the advantage that it can provide a snapshot of the development of labour law and legal segmentation in a very large number of countries over a long period of time. It also has the attraction of enabling a synthesis of comparative research to be made. Challenges, however, accompany these advantages and elements of attractiveness. As has been noted regarding measuring inequalities, we witness a paradox. Measurements have the advantage of giving ‘visibility’ to their objects (De Leonardis, 2022). This can be the positive outcome of the WoL project, that is to raise attention about the discriminatory biases of labour law and the inequalities it can produce. However, measurements can also ‘obfuscate’ what is not within the parameters of what is measured (De Leonardis, 2022). This can also

⁹ See Dingeldey et al. (2022) Supplement.

be the case of the dataset on legal segmentation and concerns anything (e.g. certain dimensions of labour law and institutions and laws that interact with labour law and impact on workers' lives) and anyone who is not encompassed by the selected indicators and the SPE models (e.g. in the case of the equalising laws, women migrant workers and those workers who are not within the boundaries of the SER or the selected NSER). Building on Salais (2006), Supiot observes how the quantified representation of the world that now governs the management of public and private affairs involves international organisations, states and companies and increasingly cuts them off from the reality of people's lives (Supiot, 2008, p. 168). I fear that leximetrics is part of this trend and faces the same challenge.

Leximetrics is inherently unable to give an account of the complexity of labour law and its relation with the broader multidimensional context in which it operates and of how this affects the ability of the law to achieve the assigned objectives. It also says nothing about whether and how the law is applied. This coupled with the selectivity of the indicators homogenises the objects of the comparison, overlooking the realities in which they are inserted and biasing such comparison. What cannot be homogenised escapes from the study. So, the risk is that a project that is grounded on a critical theoretical perspective of the law, uses a method that is based on criteria that do not help achieve the objectives pursued.

Acknowledging some of these limits, Dingeldey and Mückenberger define leximetrics as a "starting point for concrete comparative law research" (Mückenberger & Dingeldey, 2022a, p. 519), and as a matter of fact, the project has the great merit of envisaging multidisciplinary, qualitative country-based studies besides theoretical studies. However, clarity is required on the role of qualitative research. How does this relate to the global dataset? Is it meant to complement leximetric results or check them? Further, it would be important to explicitly address the question as to how these results should be read if taken in isolation from qualitative studies. If not all results are checked (and corrected) and information gaps filled, the risk can be that the simplification inherent to leximetrics and to the construction of models can lead not only to approximation but also to misrepresentation. Further, what if the complex picture of legal segmentation that should result from qualitative study ends up questioning the SPE models and/or the choice of indicators and relevant weights? As Merry has argued, global indicators can bring about results that do not reflect those of "qualitative, locally informed systems of knowledge production"

(Merry, 2016, p. 3). So, the question is also who is involved in the process leading to the selection of indicators and their weighting.¹⁰ These are some methodological issues having concrete repercussions on the way the phenomenon studied is going to be represented.

In conclusion, my hope is that these reflections can help the ongoing construction of and discussions about the WoL dataset within the important endeavour to study the discriminatory biases that law dealing with the world of work can have, while also contributing to the debate that is animating scholars from various disciplines about the prevailing tendency of producing and presenting knowledge through measurements/quantification.¹¹

REFERENCES

- Adams, Z., Bastani, P., Bishop, L., & Deakin, S. (2017). The CBR-LRI dataset: Methods, properties and potential of leximetric coding of labour laws. *International Journal of Comparative Labour Law and Industrial Relations*, 33(1), 59–91.
- Arup, C., & Mitchell, R. (2006). Labour law and labour market regulation. In C. Arup et al. (Eds.), *Labour law and labour market regulation: Essays on the construction, constitution and regulation of labour markets and work relationships* (pp. 3–18). Federation Press.
- Baremborg, M. (2015). International labour indicators: Conceptual and normative snares. In A. Blackett & A. Trebilcock (Eds.), *Research handbook on transnational labour law* (pp. 76–92). Edward Elgar.
- Beccaria, L., Bertranou, F., & Maurizio, R. (2022). COVID-19 in Latin America: The effects of an unprecedented crisis on employment and income. *International Labour Review*, 161(1), 83–105.
- Berg, J., & Soares, S. (2022). The labour market fallout of COVID-19: Who endures, who doesn't and what are the implications for inequality. *International Labour Review*, 161(1), 5–28.
- Conaghan, J. (2014). Gender and the idea of labour law. *feminist@law*, 4(1), 1–20.
- De Leonardis, O. (2022). Quantifying inequality: From contentious politics to the dream of an indifferent power. In A. Mennicken & R. Salais (Eds.), *The new politics of numbers: Utopia, evidence and democracy* (pp. 135–166). Palgrave Macmillan.
- Deakin, S. (2013). Addressing labour market segmentation: The role of labour law. *ILO Working Paper No. 52*.

¹⁰ See Merry (2016) for an insightful study and discussion on these issues.

¹¹ For a recent compendium of multidisciplinary insights, see Mennicken and Salais (2022).

- Deakin, S. (2018). The use of quantitative methods in labour law research: An assessment and reformulation. *Social & Legal Studies*, 27(4), 456–474.
- Deakin, S., Lele, P., & Siems, M. (2007). The evolution of labour law: Calibrating and comparing regulatory regimes. *International Labour Review*, 146(3–4), 133–162.
- Dingeldey, I., Fechner, H., Gerlitz, J., Hahs, J., & Mückenberger, U. (2022). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(3), 560–597.
- Finkin, M. W., & Mundlak, G. (Eds.). (2015). *Comparative labor law*. Edward Elgar.
- Fredman, S. (2014). Reversing roles: Bringing men into the frame. *International Journal of Law in Context*, 10(4), 442–459.
- Fredman, S. (2016). Substantive equality revisited. *I•CON*, 14(3), 712–738.
- Fudge, J., & Mundlak, G. (2022). Law and gendered labour market segmentation. *International Labour Review*, 161(4), 657–675.
- Grimshaw, D., Fagan, C., Hebson, G., & Tavora, I. (2017). A new labour market segmentation approach for analysing inequalities: Introduction and overview. In D. Grimshaw, C. Fagan, G. Hebson, & I. Tavora (Eds.), *Making work more equal: A new labour market segmentation approach* (pp. 1–32). Manchester University Press.
- Howson, K., Fried, A., Parr, S., Shevchuk, A., & Strebkov, D. (2022). Stripping back the mask: Working conditions on digital labour platforms during the COVID-19 pandemic. *International Labour Review*, 161(3), 413–440.
- International Labour Organization. (1944). *Declaration concerning the aims and purposes of the International Labour Organisation*.
- International Labour Organization. (2016). *Non-standard employment around the world: Understanding challenges, shaping prospects*.
- International Labour Organization. (2021a). *Inequalities and the world of work: Report IV, International Labour Conference, 109th Session*.
- International Labour Organization. (2021b). *World employment and social outlook: The role of digital labour platforms in transforming the world of work*.
- International Labour Organization. (2022). *Care at work: Investing in care leave and services for a more gender equal world of work*.
- Johnstone, R., & Mitchell, R. (2004). Regulating work. In C. Parker, C. Scott, N. Lacey, & J. Braithwaite (Eds.), *Regulating law* (pp. 101–121). Oxford University Press.
- Mahy, P., Mitchell, R., & Adler, L. (2019). Measuring worker protection using leximetrics: Illustrating a new approach in four Asia-Pacific countries. *The American Journal of Comparative Law*, 67(3), 515–549.

- Mennicken, A., & Salais, R. (Eds.). (2022). *The new politics of numbers: Utopia, evidence and democracy*. Palgrave Macmillan.
- Merry, S. E. (2016). *The seductions of quantification: Measuring human rights, gender violence, and sex trafficking*. University of Chicago Press.
- Mückenberger, U., & Dingeldey, I. (Guest Editors). (2022a). Special Issue – Overcoming legal segmentation: Extending legal rules to all workers? *International Labour Review*, 161(4), 511–675.
- Mückenberger, U., & Dingeldey, I. (2022b). Introduction: Worldwide patterns of legal segmentation in employment laws. *International Labour Review*, 161(4), 511–534.
- Rittich, K. (2008). Global labour policy as social policy. *Canadian Labour & Employment Law Journal*, 14(2), 227–275.
- Rubery, J. (2003a). Pay equity, minimum wage and equality at work. *ILO, DECLARATION/WP/19/2003*.
- Rubery, J. (2003b). Preface. In J. Rubery & D. Grimshaw (Eds.), *The organisation of employment: An international perspective*. Palgrave.
- Salais, R. (2006). Du bon (et du mauvais) usage des indicateurs dans l'action publique. *Semaine sociale Lamy, Supplément Protection sociale et travail décent. Nouvelles perspectives pour les normes internationales du travail*, 1272, 73–81.
- Sedacca, N. (2022). Domestic workers, the 'family worker' exemption from minimum wage, and gendered devaluation of women's work. *Industrial Law Journal*, 51(4), 771–801.
- Sheppard, C. (2012). Mapping anti-discrimination law onto inequality at work: Expanding the meaning of equality in international labour law. *International Labour Review*, 151(1-2), 1–19.
- Sheppard, C. (2015). Inclusive equality and new approaches to discrimination in transnational labour law. In A. Blackett & A. Trebilcock (Eds.), *Research handbook on transnational labour law* (pp. 247–258). Edward Elgar.
- Siems, M. (2005). Numerical Comparative Law - Do We Need Statistical Evidence in Law in Order to Reduce Complexity? *Cardozo Journal of International and Comparative Law*, 13, 521–540.
- Supiot, A. (2008). L'inscription territoriale des lois. *Esprit*, 11, 151–170.
- Teklè, T. (2010). Labour law and worker protection in the South: An evolving tension between models and reality. In T. Teklè (Ed.), *Labour law and worker protection in developing countries* (pp. 3–47). Hart Publishing and ILO.
- Teklè, T. (2014). An international perspective on affirmative action. In O. Dupper & K. Sankaran (Eds.), *Affirmative action: A view from the Global South* (pp. 89–117). African Sun MeDia.

- Teklè, T. (2018a). Equal Remuneration Convention, 1951 (No. 100). In E. Ales, M. Bell, O. Deinert, & S. Robin-Olivier (Eds.), *International and European labour law: A commentary* (pp. 602–611). Beck and Hart Publishing.
- Teklè, T. (2018b). ILO Convention 111 Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In E. Ales, M. Bell, O. Deinert, & S. Robin-Olivier (Eds.), *International and European labour law: A commentary* (pp. 605–624). Beck and Hart Publishing.
- Vosko, L. (2006). Gender, precarious work, and the international labour code: The ghost in the ILO closet. In J. Fudge & R. Owens (Eds.), *Precarious work, women, and the new economy* (pp. 53–75). Hart Publishing.

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PART II

Development and Dissemination of
Both Social Protecting and
Segmenting Functions of Labour Law



Legal Segmentation of Work in Latin America: Colonial Origins and Evolution of Segmentation, Precarisation, Protection and Universalisation

Heiner Fechner

I INTRODUCTION

Segmentation of labour markets in Latin America (LA) is particularly pronounced. High informality rates of 54% of the workforce (ILO, 2018) affect indigenous peoples (Bocarejo et al., 2021) and populations of African descent (Guzmán Sanhueza, 2023) disproportionately strongly. But statistics for the region surprisingly, and in contrast to most parts of

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the world, hardly show any differences between male and female total informality rates (ILO, 2018). Indigenous and Black women furthermore suffer intersectional discrimination in domestic labour, working as racialised employees under highly precarious conditions (CEPAL/UNFPA, 2020). With accentuated racial and gender segmentation among working people, LA, next to Sub-Saharan Africa, has had the highest rates of income inequality in global comparison since reliable statistics have been available, although a downward trend is emerging in the twenty-first century (Amarante et al., 2016). In addition to many historical and contemporary factors possibly impacting this situation, this marked racial, gender and general income inequality also raises the question of the relevance of legal segmentation of work relations in a historical perspective.

In this respect, Graciela Bensusán (2022) has shown how current labour market structures are related to legal segmentation by means of exclusive social protection systems, by relatively high protective legal standards with often low or selective enforcement mechanisms and by relatively strong antidiscrimination legislation. The methodological design of her study, tailored to the Worlds of Labour SPE methodology and indicators (see below and Dingeldey et al., 2022), did not, however, permit historical analysis extending beyond the second half of the twentieth century. In this chapter I aim to extend the research on legal segmentation in LA further into the past, sketching developments on an exemplary level. My objective is to discuss major institutionalisations and fundamental changes in the regulation of work in Spanish-speaking LA, focusing on legal segmentation with respect to race and gender.

After explicating the theoretical and methodological foundations of this study, I analyse developments in legal segmentation in four historical steps, highlighting moments of institutionalisation and transition: (1) Normative and legal segmentation during colonialism with a focus on slavery, forced labour and gender relations are contrasted by (2) developments during early independence with the abolition of slavery and forced labour duties and the introduction of civil codes, (3) the introduction of modern labour legislation in the early twentieth century and (4) reforms associated with/precipitated by the competing demands of human rights and neoliberal policies since the late twentieth century. The focus is laid on Spanish-speaking LA, since former Portuguese and French colonies underwent a different legal evolution. Due to the focus on historical episodes, I do not monitor legal changes in detail over time.

2 ANALYSING HISTORICAL LEGAL SEGMENTATION IN THE GLOBAL SOUTH

There is abundant literature on the relations between law and questions of exclusion, marginalisation and other aspects of segmentation in different regions of the Global South (GS), and in particular on LA (cf. the articles in the edited volumes of Bensusán, 2006; Teklè, 2010; Marshall & Fenwick, 2016).

So far, only few studies have focused specifically on legal segmentation in the GS with the meaning of the term used in this book (cf. Chap. 2 by Fechner et al., Chap. 7 by Mückenberger & Schäfer, Chap. 8 by Gerlitz & Dingeldey and Chap. 9 by Gerlitz & Mückenberger in this volume). The design or propensity of legislation to segment work relations can be analysed with the recently developed legal segmentation approach (see Introduction and Chap. 3 in this book as well as Dingeldey et al., 2020). Its first central focus has been the leximetric analysis of individual employment legislation norms differentiated by three central functions of worker-protecting legislation (SPE), namely standard-setting (S), privileging (P) and equalising (E). The initial rationale behind this approach was to measure the emergence and evolution of constructs of the standard employment relationship (SER) on a global comparative scale (Dingeldey et al., 2022; Mückenberger & Dingeldey, 2022). At the same time, the approach expands on decades of theoretical, qualitative and quantitative research on the relation between legal (and other) norms and exclusion, marginalisation and segmentation of labour markets (cf. Fechner et al. in this volume).

Hahs and Mückenberger (2022) analysed ILO's early normative standards and narratives in terms of SER construction and, in this context, protecting and segmenting legislation oriented towards the GS. Taking note of the not only numerical dominance of men and representatives of the Global North (GN) in the ILO bodies, they confirm the dominance of legal segmentation in the norm-setting, SER-reflecting narratives. Cooney (2022) discussed legal segmentation in employment legislation in four Asian countries, comparing China, India, Malaysia and Vietnam. Referring to the SPE functions, Fourie and van Staden looked at the development of labour regulation and legal segmentation in the countries of the Southern African Development Community. For LA, Bensusán (2022) pioneered legal segmentation analysis in five countries based on the concept developed by Dingeldey et al. (2022). Colonial regulation of work has so far only been analysed in the legal segmentation context in the case of

Sub-Saharan Africa, where I introduced a broader understanding of legal segmentation reaching out to different sets of laws governing labour, ranging from employment to recruitment, tax and administrative law, with modern labour law introduced by colonial entities (Fechner, 2022).

In contrast to the African case, undertaking a postcolonial critique of legal segmentation in LA is not self-evident. Modern labour institutions, even basic modern civil law, were only introduced after the end of Spanish colonialism. Moreover, postcolonial theories and decolonial thought have lately been subjected to severe critique from highly influential voices within LA labour studies (cf. the articles in the edited volume by De la Garza Toledo, 2021). Among other things, the debate centres on the question whether race or class are the central categories of exploitation that Western capitalism brought to LA. Without wishing to take sides in the debate, I will show from a critical juridical perspective why it makes sense to bring colonialism into focus, and why looking at the (historical) law as a means for constructing epistemologies in the sense of the original idea of postcolonialism laid down by Edward Said (1978) helps to understand and deconstruct current racial and gender inequalities which find no convincing explanation when looking at modern law alone.

I use historical institutionalism as a theoretical lens for analysing the long-term effects of legal segmentation, looking especially at legislation, including changes and repeals, and its expectable effects during ‘critical junctures’ after the end of Spanish colonialism. As North (1991) shows, institutional frameworks (the “institutional matrix”, p. 109), formed among others things by law, provide sets of opportunities which constrain and direct future institutional developments. Pierson (2000) points out that path dependence does not mean that future developments are predetermined, since often a wide range of possibilities exist, while some fundamental institutionalisations or their effects may be almost impossible to reverse. The ideational and material foundations of institutions on the other hand typically only enter stages of re-formation in times of critical junctures or moments of structural indeterminacy which open up space for radical change (Fioretos et al., 2016; Collier & Collier, 2002). Analysing the impact of critical junctures, I build on Acharya et al. (2018) who use the term “behavioural path dependence” to describe the stability of cultural patterns of communities moving along firmly rooted paths which, as institutions themselves, may be equally difficult to reverse or change even if institutions are abolished. When observing these stabilities, they inquire first about the critical junctures at which behavioural paths emerge, and,

second, about the reasons for their lack of reversal or alteration by later events or interventions. Following their approach, I am seeking the original and perpetuating or transforming normative instruments of racial and gender segmentation.

3 LEGAL SEGMENTATION INTRODUCED DURING COLONIALISM

The first critical juncture for the institutionalisation of a racialised and gendered economy in Abya Yala (the American double continent) in the emerging world system (Wallerstein, 2004) took place in the sixteenth century via colonisation. Spanish legal traditions and new conceptions were introduced, while pre-existing institutions were maintained in name but profoundly changed in content, shaping segmentation between working people. LA was not a blank slate when Spanish *conquistadores* came, and a thorough analysis of colonial legal segmentation would have to reflect the great complexity of the interaction between precolonial, colonial and mutually responding approaches. The division of labour and legal segmentation including slavery and forced labour pre-existed in many, although not all, indigenous cultures and societies affected by colonialism, but changed their character during colonialism (González Torres, 1979).

The changes introduced stemmed from the new, colonial governance system exercised by the representatives of the Spanish Crown and the Catholic Church. As the term “Catholic Kings” (*Reyes Católicos*) for the Spanish Crown at the time of the *conquista* already implies, both were intimately connected. This is illustrated by the Crown’s legislation, prepared by the Council of Indias (*Consejo de Indias*) or approved by them if stemming from the Americas, which in the collection of Laws of the Indies (*Leyes de Indias*) begins with a book on church-related affairs. The Church legitimised colonisation of the Americas as a missionary task coordinated with the Crown, while the Spanish monopoly on extracting the continent’s resources depended on legitimisation provided by papal bulls.

The structure of domination evolved over time and with the growing influence of settlers, primarily of Spanish origin, during colonialism. The essential division for the evolution of the racial social and work order consisted in direct Spanish governance (later more and more *creole*, i.e. performed by ‘white’ descendants of Spanish colonisers born in LA), on the one hand, and indirect rule through self-governing, tribute-paying

indigenous communities, on the other hand. The latter case was of fundamental relevance for the colonisers, with the communities having diverse collective duties concerning labour. This indirect rule was based on collaboration with chiefs (indigenous *caciques*), who had to mediate between communal interests and the colonising forces (Brown, 2000). In terms of legal segmentation, exploitation thus developed in an individual and collective form, with the latter especially affecting indigenous communities.

Segmentation of societies was already present in large parts of LA when colonisation began, especially in the highly developed areas (Aztec Mexico and the Inka Andean region/Peru). Nevertheless, in gender terms the situation differed strongly between Andean and Mexican territories. In contrast to the markedly patriarchal gender relations in precolonial Mexico, in large parts of the Andean region women had a relatively strong social position with rights of equal values to those of men. While class segmentation was highly developed, gender relations were largely complementary and without structural inferiority of one side. In religious terms, male and female deities were equivalent and venerated according to the actor's sex. Inheritance was equally gender divided, passing from female ancestors to female children, and from male to male (Silverblatt, 1987).

In the Andean region, though, legal segmentation concerning gender also existed in pre-Colombian times, but without hierarchical differentiation. While married women, among other labour, were expected to do care work, married men between 18 and 50 were responsible for the community's tributary labour. As a duty imposed on communities, it meant that up to one-seventh of married men were obliged to do tributary work in turns, while the others would stay in the community. This *mita* meant that male members of a community had to work, for example in street construction for the Inka. Labour as communal duty for society, resulting mainly in infrastructural improvements, was unpaid but with free alimentation and accommodation (Mó Romero & Rodríguez García, 1998).

In terms of the critical juncture, colonial segmentation was highly influenced by the collaboration of (and tensions between) the Church, the imperial state and *conquistadores* as entrepreneurs in terms of racial segmentation and segregation, radical redefinitions of gender roles and the construction of general social hierarchies related to work. In what follows, I will show first how the Catholic Church introduced a legal division resulting in a racial hierarchy, which was successively adopted and elaborated by the colonial state. Subsequently, I will discuss how this

differentiation between ultimately Black slave labour and indigenous peoples' forced (but 'free') labour contributed to changing gender relations especially for the indigenous population.

3.1 *The Construction of Racial Orders by the Church*

The Catholic Church laid the ground for the new phenomena of legal segmentation based on a racist division of labour in the 'New World'. By issuing papal bulls between 1452 and 1537, the popes not only divided access to resources in Africa and the largest part of America between Portugal and Spain, but also normatively prepared the racialised understanding of Black slave labour and American indigenous subalternity between servitude and subjugated forms of non-slave labour in distinction to European Christian domination, including work relations.

Pope Nicholas V issued the bulls *Dum diversas* (1452) and *Romanus pontifex* (1455), authorising the Portuguese kings not only to conquer territories and subjugate the non-Christian people in Africa south of today's Morocco, but also to "reduce their persons to perpetual slavery" and, more important in practical terms, to use enslaved persons and goods bought there at will. The conquest of LA in a first step also began with enslaving indigenous peoples, not yet introducing a differentiation based on racial categories. This was indirectly reinforced by Pope Alexander VI's papal bull *Inter caetera* (1493), which guaranteed the largest part of the newly conquered territories to Spain in order to Christianise the indigenous peoples.

Racial differentiation resulted, among others things, from the intervention of humanist Dominican monks like Bartolomé de las Casas, who thoroughly criticised the enslavement and massive extinction of indigenous peoples—proposing the introduction of Black slaves from Africa instead (Las Casas, 1999 [1518]).¹ After considerable parts of the indigenous populations in the Caribbean and the Central and South American mainlands had been eradicated by weapons, severe exploitation and illnesses, and making effective and sustainable use of the land became more and more difficult due to the lack of workers, Pope Paul III in 1537 issued the bull *Sublimis Deus*. He declared the enslavement of indigenous people

¹ Las Casas later distanced himself from this idea of exploiting enslaved Black persons for mining and agriculture when it had already become public policy and private practice (Camplani, 2011).

in the Spanish colonies, which was often based on the supposition that the indigenous people were not human, to be illegal. While the enslavement and sale of enslaved Black persons was considered lawful, this was not the case with indigenous persons, thus introducing a fundamental normative segmentation between Black African and indigenous persons (Adiele, 2017).

Based on the ‘discovery doctrine’ developed by colonisers in the fifteenth and sixteenth centuries, the African and American indigenous peoples were subjugated and deprived of their rights with the help of papal bulls (Miller, 2019). By deciding which peoples could be enslaved and which enslaved persons could be handled as chattel, the Catholic Church and episcopal law contributed to legal segmentation as a racial division lasting for almost four centuries in the modern world system. By placing enslaved (Black) persons in the emerging fields of work at the very bottom as actors deprived of rights, and indigenous people with the status of persons not fully equal to Europeans only a little above the enslaved, it laid the foundation for racism inside and outside the fields of work.

3.2 *The State’s Parallel Construction of Racial Hierarchies as Legal Segmentation*

The Spanish colonial state acted in parallel with the Church, concretising the new racial order co-designed by the Church by introducing legislation and re-framing old institutions in the colonial context. Slavery in the new colonies soon became the lowest legal category for the workforce. Although house slavery also existed, in the form of domestic labour for the upper classes, the great majority of enslaved persons were exploited in mines and on plantations producing cash crops for the European markets, thus working in extractive industries (Piqueras Arenas, 2016). Public legislation related to Christian missionary activity introduced segmenting and segregating legislation that differentiated by racial criteria.

Enslavement of Black persons had existed in the Islamic Iberian Peninsula since the eighth century (white slavery even longer) and was adopted by the Spanish nobility in the context of the *Reconquista*. In the Spanish law collection *Las Siete Partidas* (seven-part code), first compiled in the mid-thirteenth century, slavery was legally regulated and differentiated into three types according to origin: war captives, birth and self-enslavement, for example by debt bondage. It further differentiated between Christian and non-Christian slaveowners (Jews and

Muslims/‘Blackamoors’); the latter could not legally ‘own’ Christians (laws 4.21.1 & 8, version 1491).

In the first decades of colonisation before 1543, and following the European example, slavery in the new colonies did not differentiate by skin colour. White slaves—especially Muslim Moriscos—were brought from Spain to the colonies; as Salmoral (2000) points out, enslaved persons from Asia were brought to the Americas as well. For a relatively short time, characterised by high death rates, the enslavement of the indigenous populations particularly in the Caribbean and Central America down to Venezuela was very common (Las Casas, 1991 [1542]). For instance, King Charles I in 1528 privileged the German Welser merchants with enslaving people in Venezuela, while at the same time privileging them with a monopoly to bring 4000 enslaved Africans to the new colonies. But while indigenous mass enslavement was soon to be prohibited, the said privileges started to mould the monopolistic slave trade system in the Spanish colonies (*asiento* system), which received its most characteristic form during the Iberian (Spanish-Portuguese) union after 1580 (Haebler, 1903; Denzer, 2005).

During the conquest of LA, the basis for differentiation changed within a short time from religious criteria to skin colour. In 1543, King Charles I of Spain (simultaneously Emperor Charles V of the Holy Roman Empire) prohibited the importation of “slaves which are not black” without governmental licence, including children of Black and Spanish parents (*mullatos*) (Leyes de Indias, 1791c, p. 313), thus cementing the criterion of skin colour for social roles outlined by the papal bull of 1537. This was the central step for identifying Black skin colour with the social status of an enslaved or liberated person in Spanish LA.

The essential rules steering slavery in the Americas and establishing the status of Black African Americans in relation to the rest of the population were made in the sixteenth century in reaction to rebellious social practices of the marginalised people. Due to the harsh living conditions and short survival expectancies in mines and sugar plantations as the main places of enslaved Black migrants’ exploitation, flight to the mountains or less accessible areas was a common form of resistance. Laws concerning the treatment of these maroons (*cimarrones*) are among the most extensive acts of the *Leyes de Indias* (cf. *Leyes de Indias*, 1791b). These laws not only concern punishments for the *cimarrones* but also proscribed and prohibited behaviour for others regarding the right to capture them or prohibitions on contact or giving shelter etc. For instance, legislation introduced

in 1551 prohibited Black persons in all colonies from having intimate contact with indigenous persons, punishing enslaved and free Black persons with 100 whiplashes for the first offence, and cutting off the ears of enslaved persons or exiling free Black persons for the second offence (*Leyes de Indias*, 1791b, p. 362). Legislation affecting enslaved Black workers thus for many years did not regulate labour conditions directly, but rather the segregation of enslaved persons, guaranteeing effective conditions for exploitation based on rules concerning property rights, family, administrative, criminal and tax law—the latter related to taxes to be paid by slaveowners. Protective legislation—still serving public order—was not introduced during the critical juncture of early colonialism, but only shortly before independence (Salmoral, 2000; Zeuske, 2020).

While Black persons were thus widely excluded from any form of protection in the context of labour conditions, indigenous people were covered by a large set of laws with protective content, accompanied by an equally large set of laws concerning their effective exploitation. As in the case of Black people, indigenous communities were subject to regulations explicitly targeting the racialised group of *indios*, or respective regional groups. Legislation at least rhetorically designed to protect indigenous persons was introduced by several sets of laws beginning as early as 1512 with the Laws of Burgos (*Leyes de Burgos*) and strengthened fundamentally in 1542 by the New Laws (*Nuevas Leyes de Indias*), which were later systematically collected in the *Leyes de Indias* in norms which can be considered precarising colonial forms of exclusion within the marginalising function of work legislation. When the first decades of colonisation with the *repartimiento* of indigenous people (a form of distribution of indigenous people among *conquistadores* at least widely equalling slavery) had resulted in waves of extinction, the colonial government, pressed by Dominican monks, accepted considering indigenous people as human beings and introduced rules with certain protective aspects (Escobar Ohmstedte, 2014).

The *repartimiento* as an early basic form of forced labour, euphemistically increasingly called *encomienda* (literally: assignment), especially in the time before 1542, was de facto a form of forced labour by indigenous people brought about by force (if they did not comply by ‘free will’, considered by law as the expected standard in the *Leyes de Burgos*) in the mines and agricultural settlements of the *conquistadores*. The *repartimiento/encomienda* entitled the Spanish colonisers to tributes for up to two

generations, with tributary duties later passing to the state. Although monetary duties formally replaced labour tributes after 1542 and unpaid labour in general was converted into paid labour, in the case of insufficient monetary income, indigenous people had to pay tributes in the form of labour in return for being Christianised (Leyes de Indias, 1791b, p. 39; Escobar Ohmstede, 2014). Beyond the political sphere, for all affected indigenous persons and society in general, the *encomienda* established a racial order right from the start with white persons at the top.

An agricultural, traditional indigenous community typically had to offer between one-seventh and one-fifth of its male population as tributary labour, with alternating groups, and often in other regions. Although the law provided for a growing set of protective rules for indigenous communities and workers, abusive and often lethal practices of exploitation continued to exist, since no effective labour inspection was introduced, and restriction and protection basically existed only on paper. The same is true for the *mita* (originally community labour for public infrastructure), another form of (temporary) forced labour in the Andean region under former Inka control, adopted from the Inka and fundamentally changed in character by the Spanish Empire. Though formal protection existed concerning minimum wages, maximum working time and other restrictions to severe exploitation, these limitations were ignored for a long time (Pizarro Zelaya, 2013; Sánchez-Arcilla Bernal, 2021). Nevertheless, in contrast to enslaved Black persons, in legal terms indigenous people were considered to be free, with their status and rights, including work and tributes, being regulated in one of the nine books of the *Leyes de Indias*.

3.3 *Racial Segregation*

Legislation concerning the division of work in early colonialism was thus equally legislation on racial segregation. Drawing on analyses by Rosenblat (1945) and Aguirre Beltrán (1946), the racist social order based on the law has been classified as a ‘caste system’ in parts of the literature, while among ethnologists there was little consensus about the use of the term in comparison to class or ethnic origin (Giraud, 2018). The differentiated set of denominations for inhabitants of the Spanish colonies depended on their lineage from indigenous, Black or Spanish origin (sometimes called ‘original castes’), further differentiated by denominating children from

different ‘castes’ in first² and further generations. The corresponding lineage was noted in censuses and parish registers (Jackson, 1995). In contradiction to the existence of a closed ‘caste’ system comparable to the Indian model, the attribution of denominations was a socially negotiated construct, not only changing over time, but in addition to genetic origin also according to (parental or own) wealth, occupation, honour, integrity and place of birth (McCaa, 1984; Giraudo, 2018).

In this context, much colonial legislation was dedicated to avoiding interracial marriages and extramarital relations, calling *mestizo* and “illegitimate” children equally “flawed” (*defectuoso*) (Leyes de Indias, 1791a, p. 54). The function of this racial segregation was to uphold the social order headed by Spanish and creoles, with indigenous vassal communities paying tributes including work as collectives, while Black slaves were incorporated into the parasitical economies of white landlords and mine owners. Segmentation by law was thus a complex phenomenon; on the one hand regulating work duties based on racial criteria, while on the other hand racialising society as a whole as a means for an enduring exploitative order with a Spanish and creole minority in control.

Although the *Leyes de Indias* contained numerous regulations affecting rights and limitations, especially for mestizos and mulattos, including restrictions to inheritance, the struggle for privileges such as access to public and church offices between the creole ruling classes and people of not purely Spanish origin was particularly fought on a secondary normative level. Thus, while during early mainland colonisation, secondary education and newly founded universities were regularly open to mestizos and children of indigenous chiefs, this began to change at the end of the sixteenth century. When colonial power was secured and more women from Spain had started to settle in LA, parts of higher education and certain offices such as notaries in courts were closed to mestizos and mulattos for a long time, with formal equality only starting in the nineteenth century (Leyes de Indias, 1791a; Olachea Labayen, 1976a, 1976b).

Legal segmentation not only had a spatial dimension by differentiating rural indigenous communities from the non-indigenous (multi-cultural) urban centres, and within the latter by segmenting access to education and thus higher social positions, but also by regulating relatively privileged working spaces in urban settings. Indigenous and free Black people,

² Mulatto being of European-African descent, mestizo being European-indigenous, zambo being of African-indigenous descent etc.

mestizos, mulattos and their descendants as well as Europeans were allowed to work in the towns and manufactories. In terms of sectoral hierarchy, legislation put labour rights in the factories (trading posts) and fortifications at the top. Workers were entitled to an eight-hour day, health care and protection. In addition, different forms of waged work by indigenous workers in personal services, various agricultural sectors and mine work, among others, without a clear hierarchisation of rights, were regulated in the *Leyes de Indias* (6th book, *Leyes de Indias*, 1791b), with work in unregulated textile companies (*obrajes*, proto-factories comparable with sweatshops) offering the worst working conditions (not only) to women who were not allowed to work in the mines, with formally foreseen, but little effective control of working conditions (Bourhass, 2005).

Irrespective of how the emergence and phenomenon of racism should be labelled in the Latin American context, it was especially legal segmentation with a complex set of interacting legal and extra-legal norms that resulted in persistent racial hierarchies. As Sieder (2019, p. 52) notes: “Spanish colonial rule was [...] characterized by hierarchical and racialized legal pluralism (the *Leyes de Indias*)”. The legal pluralist segmentation consisted of several layers of legislation in the *Leyes de Indias*, the central set of norms, complemented, among others, by autonomous law set by public and church institutions, and indigenous law. And while the hierarchical order was not formally established as such in a specific law and people were not legally assigned specific social status based only on ethnicity or race, a general hierarchy between Black, indigenous and Spanish (creole) people was established. A fundamental factor was the almost complete legal restriction of slavery to people of African origin, specific forms of forced labour imposed on indigenous communities, racial barriers in access to education and certain social positions, and reserving leading and controlling functions for Spanish (and creole) people.

Legal segmentation here shows special characteristics. While the duty of *mita* imposed on indigenous communities per se already meant precarisation, the law functionally bestowed extra power on the Spanish or creole beneficiaries without effectively guaranteeing living wages to the workers. As a general trait, on the one hand, colonial law did not stipulate abuse, rather introducing substantive norms for protection reflecting the type and strength of the beneficiaries’ abuse of their position. On the other hand, by conferring institutionalised power to actors already in structural superiority and without guaranteeing the existence of (public or self-organised) counterforces that would have the capacity to implement

material limitations to the structural superiority, it encouraged abuse. The institutions set up to control working conditions (*visitas*) conferred tasks on persons who often lacked adequate formation and numbers, but also were often of questionable reputation due to their class affiliation and career interests (Bourhass, 2005). The Latin American proverb “[the law] is acknowledged but not given effect” (*se acata pero no se cumple*) thus has one of its origins in this contradictory institutionalisation.

3.4 *The Construction of New Gender Relations*

Colonial legislation also had a fundamental segmenting influence on gender relations, augmented by Catholic norms, but also the de facto norm-setting powers of creole principles. Especially the Andean case illustrates how the complementary normative powers and interests of these three forces collaborated in fundamentally changing the position of women in terms of work relations and social standing. These gender relations were extensively affected by the new Spanish order, although formally the *mita* was upheld where indigenous people were not restructured in new communities under the direct control of Spanish colonisers, that is in *encomiendas/repartimientos*. Nevertheless, their character changed in such a way that they were hardly comparable with the previous institution. Male indigenous people had to serve the *mita* between the age of 18 and 50, regardless of whether they were married or not, thus disrupting its character as part of marital obligations. The *mita* could include agricultural work and labour in the mines. Although the *mita* became remunerated during colonialism, the wages were insufficient to cover even the workers’ living expenses, which they now had to bear themselves. Typical responses were to either evade the duty by leaving the tribute-paying community, to let the wives work for money as well (in *obrajes*) under typically highly exploitative conditions to meet the family’s basic needs or to keep working for payment after the end of the *mita* to pay off the debts, possibly resulting in debt bondage. Any of these ‘solutions’ was not only harmful to traditional community relations, but it also changed the traditional egalitarian gender division of labour (Silverblatt, 1987).

A further factor redefining the position of women in the field of work was the Catholic Church (Silverblatt, 1987). It had multiple roles, being a significant player in abolishing the old orders, legitimising the new public and private order, controlling the obedience of subaltern colonised actors and profiting economically and in terms of power from the new structures.

Bringing Christian faith to the colonised peoples served as a central pretext to legitimise colonial exploitation. Christianity meant leaving not only other religions behind but also the gender and other social roles conferred by these religions, while imposing the heavily patriarchal Christian order. Catholic rules concerning gender relations, following the Maria cult, included the indissolubility of marriage, submission of women to their husbands including labour and care duties and the duty to follow their husbands in case of migration.

The Church's struggle for substantive protective norms for the indigenous population helped to legitimise both the Church and the colonial order, while entailing few practical changes. The institutionalisation of the confession, seconded by the Holy Inquisition, served as an instrument for controlling both the faithful and their communities (Silverblatt, 2004). The expansion to LA was lucrative for the Church, which received land titles and property. One consequence was more personnel on all levels, thus further enforcing the newly designed patriarchal order by contributing to the virtual monopoly of intellectual power in male (bishops', priests' and monks') hands.

In summary, the critical juncture of early colonialism can thus be seen as a radical change in the fields of work caused by establishing a new estate society segmented roughly into Black, indigenous, mestizo/mulatto and white (creole/Spanish) members based on legal segmentation. Women in general were conferred a segmented, secondary role by religion, but as a form of early intersectional discrimination, indigenous (and Black) women in particular were put into highly segmented and precarious positions of marginalisation in the newly constructed fields of work.

4 CRITICAL JUNCTURES SINCE INDEPENDENCE

After independence, three major critical junctures for the legal segmentation of labour markets can be distinguished. The first is the liberalisation of labour markets, characterised by the abolition of slavery and the introduction of modern civil codes, impacting both racial and gender relations. The second is that of the introduction of modern (worker-protecting) labour legislation, mostly around the 1920s and 1930s. A third critical juncture is the (neoliberal and human rights-oriented) globalisation turn in the last quarter of the twentieth century. The Costa Rican sociologist Pérez Sáinz notes the same three "historical moments" in the construction of modern capitalism in LA, naming them "oligarchic", "national modernisation" and "globalised modernisation" (2014, 18 f.).

4.1 *Liberalisation: Formal Racial Equality and Gender Inequality*

The first critical juncture after the end of colonialism was the period when mostly liberal legal work regimes were introduced in the mid-nineteenth century, characterised by the abolition of slavery and the introduction of civil codes, replacing the Spanish colonial legislation and also post-slavery conditions. With few exceptions, newly independent nations followed similar paths which, although closing a dark chapter, immediately brought forth new forms of legal segmentation with explicit or implicit racialising and gendering functions.

Except for the Caribbean islands, the former Spanish Latin American colonies had effectively gained independence by the late 1820s. The consolidation of formally liberal legal work regimes with typically conservative, oligarchic power structures in the economy and politics took place around the mid-nineteenth century. Pérez Sáinz (2014, p. 19) characterises this epoch as “marked by the attempt, on the part of primary-exporting capital, to proletarianise as much as possible but salarise as little as possible”. This critical juncture of consolidating new independent regimes changed the economic order, while intensifying social inequalities in terms of race and gender based on different legal interventions.

The Abolition of Slavery

The abolition of slavery was completed in most Latin American states shortly before new civil codes replaced the old Spanish and interim legal regimes. Three major steps typically characterised the end of slavery. First, the slave trade was legally abolished, often shortly after declaring independence (beginning in the settler colonies Chile and Argentina in 1811/1812, with the slave economy Cuba being the last in 1866). Second, ‘free womb laws’ were passed, guaranteeing freedom to newly-born children (again, Chile being the first in 1811, while most states adopted similar laws in the 1820s). Third, most Latin American countries legally guaranteed abolition, again beginning with Chile (1811/1823) and terminating with Cuba (1886) and Brazil (1888). Legislation typically foresaw compensation for slaveowners (not the enslaved!) for the emancipation of enslaved persons, while forcing emancipated persons into contractual unpaid apprenticeships often meant that formerly enslaved persons had to pay for their freedom (Klein & Vinson, 2007; Marcite, 2019).

In terms of legal segmentation and behavioural path dependence, the ‘free womb laws’ and the rules for apprenticeships play fundamental roles. The critical juncture for recently independent states undergoing historical reorganisations of government and the economy could have focused on historical exclusion and injustice, undertaking to restructure unequal fields of work by introducing equalising norms in favour of those who had been historically excluded. Instead, they introduced *patronage* (guardianship) regulations accompanying the ‘free womb laws’, putting mothers and children under the tutelage of masters (slaveholders) for often up to 25 years (e.g. Colombia, Venezuela), and up to 50 years in Peru after 1839 (Candioti, 2022). The message both to the liberated and to society, deeply inscribed into their bodies (Foucault, 1978), was that Black people’s freedom was different to the freedom of all other people, and that equality was not meant for them. Radical exclusion of enslaved persons was thus replaced by exclusion based on a formal legal status of second-class liberty.

Legislation on abolishing slavery applicable to the generations living at the time can be differentiated into two groups of laws and legal backgrounds. On the one hand, abolition was prompted by external and internal pressure from liberal, especially urban forces. In these cases, the law typically foresaw damages to be paid to the slaveowners, which was the characteristic case in LA, following the British and French examples. On the other hand, abolition was used as an instrument in civil wars to recruit Black soldiers, promising them emancipation after a certain duration of service, for example in Venezuela, Uruguay and Peru (Candioti, 2022). The second case is particularly interesting as it meant double emancipation: liberating previously enslaved persons from the absence of any rights, but also including them into existing institutions (armies) and thus offering rights and status on an equal footing. This is one of the few approaches to overcoming historical racial exclusion that was implemented.

The Introduction of Civil Codes

The 1850s, as the most important decade for the final abolition of slavery in LA, coincided more or less with the introduction of the first civil codes. In Chile, Andrés Bello’s path-breaking and often copied *Código Civil* of 1855, modelled on the French *Code Napoleon*, provided for the protection of freedom of contract. In the tradition of Roman law, the *Código Civil* regulated labour contracts as service leases (*locatio conductio operarum*) and thus left the structural inequality between employers and employees untouched (Oficina de Trabajo 1921). At the same time, it

repealed colonial segmenting legislation and thus introduced widespread formal normative equality between workers. Only with regard to domestic workers did the *Código Civil* contain special regulations (articles 1987–1995), which parts of the literature consider to have a certain protective character (Thayer Arteaga, 1994), although it essentially established equal rights for employers and employees concerning termination of contracts and damages. Protection was understood as securing liberty, stipulating a maximum contract duration of five years and the written form for contracts with a duration of more than a year. In Mexico, after constituting occupational freedom and freedom of association in the Declaration of Rights of 1857 and the concise regulation of labour passed in 1865 during the short interregnum of Austrian Archduke Maximilian (1863–1867), the civil code of 1870 only regulated basic rights and duties of domestic labour, day labourers and contracts for works and labour (articles 2551–2628).

In the case of the indigenous and *mestizo* population, the situation in large parts of LA even partially worsened after independence. The introduction of civil codes abolished the legal pluralism of the Spanish Empire, which had respected indigenous and *campesino* collective property. The concept of individual property contained in the civil codes abolished formally collective property, expropriating communities without compensation (Schacherreiter, 2014). Traditional agricultural indigenous and *campesino* communities thus lost protection of their communal territories, suffering in parallel a direct assault on their historical cultures. As in the case of many Black emancipated workers, the effect was proletarianisation, that is the absence of their own means of production.

As Pérez Sáinz (2014, 2016) points out, the momentum of exclusion that continued during the abolition of slavery was again upheld during the introduction of civil codes. This era in the second half of the nineteenth century meant the beginning of modern capitalism, comprising rural oligarchies and mine owners exploiting wage labour, as an integral part of re-institutionalisation after independence. The newly introduced civil codes and freedom of contract facilitated long-term (mostly internal) migratory contract labour, which served as the basis for modelling relationships of bonded labour. The foundation of these so-called *enganche* contracts, or *habilitaciones* in Mesoamerica, were advance payments by intermediaries for work to be done at distant places. These payments were not only incentives for contract labour but also a major problem for workers who often spent this money on community or family obligations. The

contracted workers were usually rural, typically Black or indigenous workers engaged to perform poorly paid labour in export-oriented mines or on plantations at significant distance from their home for a long time. Another characteristic of this type of labour was that the workers, due to the distance of the workplace from towns, either had to purchase their daily necessities from the employer or were paid in kind with highly overpriced products, a typical element of bondage. The *modus vivendi* was comparable to that in Sub-Saharan Africa during early colonialism (cf. Fechner, 2022). Especially in Mesoamerica, the historical caste-related racial division became an important instrument of control, with mestizos (*ladinos*) serving as intermediaries for the *habilitación* of indigenous workers in service to white landowners, or serving in militias, or municipal authorities imposing forced labour on indigenous workers in their private interest (Torras Conangla, 2005).

The introduction of civil codes in LA diversified gender relations compared with the colonial era characterised by Catholic doctrine, introducing for instance the possibility of divorce. Nevertheless, beyond that, liberal reforms avoided drastic changes while secularising gender relations. They typically redefined the functions of marriage and motherhood, underlining the patriarchal (and heterosexual) order, constructing the role of women as wives under the control of their husbands (*patria potestad*)—dependent, obedient and responsible for the children—while their male counterparts were constructed as the head of the family and income providers (Rodríguez Sáenz, 2014). The original Chilean Civil Code, for instance, stipulated that the husband has to protect his wife, while she owes “obedience” to him (article 131). Without his consent, she could neither enter into contracts nor any other transaction (article 137), including labour contracts or other occupations. However, if authorised to work, she was considered to be enabled to enter into any contract related to this work.

The two major critical junctures concerning work can thus be described as upholding exclusion or marginalisation for formerly enslaved persons and their offspring in the transition phase, while liberalising conditions for contract labour, which was characterised by severely unequal, exploitative contracts *de facto* often representing bonded labour. Formally excluding law was gradually replaced by liberalising legislation, which nonetheless did not improve the situation of severe precarity of those historically discriminated against based on racial criteria. In gender terms, the situation also hardly improved, with the exception of reducing the role of the

Church with liberal civil codes. In terms of historical intersectional discrimination, the law barely improved the situation of Black and indigenous women.

4.2 *The Introduction of Modern Labour Law*

The introduction of modern labour law, beginning in the early twentieth century, was another critical juncture in the region. It brought about fundamental changes in terms of worker protection—but for most members of historically marginalised groups it meant relatively little progress. Although various factors beyond the law have played a relevant role in the marginalisation of workers and the low level of its effectivity concerning equal, protecting working conditions (Cordova, 1966), legal segmentation should be considered as a relevant normative factor in this context. Different paths lead to relatively comparable results.

The perhaps central dividing line from a perspective of race and gender has been between formal and informal labour (Guzmán Sanhueza, 2023). From a legal perspective, formal labour in LA means the existence of an employment relationship, which in empirical terms is easiest measured by asking whether a worker is registered in the social security system (Bertranou et al., 2013). Chile, a settler colony which reinforced colonisation by conquering indigenous independent Mapuche territories and started to actively promote migration of European settlers to the country after independence from Spain,³ from the introduction of social security onwards undertook to include not only all waged workers but also independent workers and craftsmen into the health care and other social security systems (law 4.054 of 1924). In contrast, Mexico opted in its 1942 law founding the Mexican Institute of Social Security for the exclusion of “employees in undertakings of a family character, homeworkers, domestic workers, agricultural workers, temporary workers and casual workers”, postponing the introduction of special regimes for these workers (Cueva, 2001; Pozas Horcasitas, 1992), as did Bolivia for virtually the same groups in its Social Insurance Act. Accordingly, in LA as late as 1990 only 16.6% of female domestic workers contributed to social security schemes, with a maximum of 51.4% in Chile and a minimum of 2.5% in Mexico (no figures for Bolivia) (ILO, 2010, p. 57). People doing unpaid work were exempted

³ Between 1810 and 1896 alone, Chile passed more than 190 laws concerned with colonisation; cf. Zenteño Barros (1896).

in general, being only indirectly covered by derived rights from their partners, if at all.

The formality/informality divide was not only the result of social security legislation. In most countries of the region with traditional forms of exploitation of indigenous workers in agriculture, these were often exempted from general labour regulation (cf., e.g. Ecuador's Contract of Employment Law 1928, Bolivia's Labour Code 1939), or received special treatment in the general law with weaker rules (cf., e.g. Venezuela's Labour Law 1928, Colombia's Contracts of Employment etc. Decree 1944). In many cases, agricultural and domestic labour—both most relevant for indigenous and Black persons, in the case of domestic labour mostly female workers, were equally excluded. For instance, the Peruvian laws on female and child work passed in 1918 and 1921 (laws 2851 and 4239) exempted domestic and agricultural work from the scope of application. The same applied for the Chilean labour law of 1924 (law 4053). Indigenous women and their partners were thus statistically predestined to work outside general labour protection.

An example for especially racist early labour legislation can be found in Guatemala's first legislation covering agricultural workers in 1894 (Executive Decree 486 in the form of Legislative Decree 243 of the same year). It contained several special rules for indigenous farm workers, including rules exempting indigenous workers from military service if they worked under fixed-term contracts on coffee plantations. In this context, article 32.5 foresaw an exemption for indigenous male workers, if they had formerly served as forced workers (*servicio de mandamientos*), and furthermore could read and write and “abandoned their primitive clothing, they and their families” (cf. Torras Conangla, 2005). These are early examples of what would be characteristic for twentieth-century mainstream public opinion in LA, which equated modernity with the model of the ‘developed’ countries of the GN, as opposed to indigenous tradition ‘hindering development’ (Ibarra Colado, 2000).

In terms of direct gender discrimination, the introduction of labour legislation mostly broke with the conservative past of the civil codes, introducing equal access to work for women based on freedom of contract for employment (e.g. Venezuela, Labour Law 1928), or at least strongly reducing the *patria potestad* and guaranteeing formally equal rights, while protecting female and child labour from severe exploitation, thus often re-introducing indirect exclusion mechanisms concerning certain forms of work. For instance, the Chilean Labour Code (1931) established women's

right to equal pay for equal work, to their whole wage regardless of their husband's approval and to join trade unions and assume leadership roles there. On the other hand, some countries like Bolivia introduced maximum percentages for female employment (45%; Labour Code 1939), thus reaffirming traditional Catholic gender relations.

Certain forms of indirect gender segmentation visible in large parts of the world based on seniority rules were introduced in virtually all countries of the region. As the WoL database shows and Bensusán (2022) underlines, severance payments and other advantages for workers with an SER, such as longer paid leave based on seniority, are typical for Spanish-speaking LA. For instance, labour legislation from 1924 to 1931 in Chile introduced restricted and graded protection against dismissal with severance pay based on length of service in the event of dismissal, and an annual pension fund (*fondo de retiro*) that could be paid out and inherited upon dismissal, on reaching age 60 or after 40 years of work. As in other parts of the world at the time, salaried employees were considerably more privileged than wage workers (Lizama Portal, 2011). In Mexico, seniority rules for paid leave were introduced in the 1931 Federal Labour Law (sec. 82), while seniority for severance payments was only introduced in 1955 (sec. 126.XII). This disadvantaged women engaged in informal work or with interruptions due to care duties. Middle-class women able to employ indigenous or Black domestic workers and thus return to protected employment after giving birth were less marginalised by these rules than their servants who could not employ others for care work and thus were typically suffering intersectional discrimination.

Countries like Mexico with a more progressive labour discourse established formally equalising legislation, while at the same time introducing control and enforcement mechanisms subject to arbitrary government control. With the Federal Labour Law of 1931 Mexico opted for a corporatist model with selective application of the law. With a workers' movement split into several labour federations, a large majority of the population still working in the agricultural sector, growing belligerency among workers with companies closing enterprises and strongly reducing investments, the government opted for a corporatist model that would dominate the Mexican labour market well into the twenty-first century. Bensusán (2000, p. 41) terms this a move from "protectionism" introduced by the 1917 constitution to "corporative flexibility". She describes four central traits of this legislation: (1) generalised protective rules applicable to all workers; in WoL terms: a strong standard-setting function; (2) strengthening of

collective action by recognising coercive powers of trade unions, such as strikes and closed shops, with government control over organisation and claims; (3) direct government intervention in individual and collective conflicts with a high level of discretion, leaving space for economic, political and social rationalities to be decisive; and (4) absence of worker participation in the governance of companies, but strong participation in public labour administration and justice via mixed bodies. In sum, as Bensusán underlines, protection essentially covered workers in larger enterprises with strong trade unions and in sectors where the government had a special interest. It was especially the arbitrariness of government intervention based on legal lagoons, vagueness and the openness of the law to political priorities that opened the second, less visible line of legal segmentation in LA—a factor that could be seen already in colonial administration and legal arrangements.

From the indigenous and *campesino* perspective, one big difference between Mexico and the rest of LA was a further constitutional provision. In addition to the regulation of waged labour, the constitution restored the right to collective territories (*ejido*) and stipulated a land reform foreseeing the provision of territories to landless peasants (Trujillo Bautista, 2015). For the traditionally marginalised and excluded indigenous and *campesino* communities, this meant restitution of their status quo ante before the civil code deprived them of their communal territories and thus forced them into proletarianisation or precarity, that is without legal security of collectively used territories. In terms of legal segmentation, this right can be considered an equalising measure.

Summing up, the historical juncture of institutionalising modern labour and social law in the first half of twentieth century at least in this brief overview shows few signs of actively breaking with historical marginalisation based on race by introducing equalising legislation. Although mostly not openly racist, behavioural path dependencies were hardly addressed or broken but rather reaffirmed by new marginalising legislation specifically affecting Black, indigenous and often, as in the case of domestic employees, Black or indigenous female workers. Against the background of structural conditions and de facto labour market segmentation, the exclusion of particularly agricultural and domestic work from social security legislation reaffirmed the marginalising function of work legislation affecting Black and indigenous people, impacting women in these groups twice as hard. On the other hand, with few exceptions like Bolivia, access to work was equally opened and protected for women and men alike, while women

were protected in relation to motherhood. This might help to explain why there is no major gender-related difference in general employment rates today.

While unpaid work—predominantly female, but also typical for subsistence economies in, for example indigenous and maroon communities—was completely excluded from protection, as well as work in the informal economy, paid work was vertically and horizontally segmented. Domestic work—during the Spanish Empire labour often done by indigenous girls co-financing their families, and to a lesser degree by female house slaves, under often similar conditions of severe exploitation (Cumes Simón, 2014)—was placed at the bottom of social hierarchies by legislation as well. The law put agricultural work (to be done either by Black or by indigenous persons and their descendants) either horizontally on the same level or a little above if trade unionism was allowed. In contrast, waged work in industry and mines was placed above the former two, but below white-collar work, which again was rather typical for lighter skin (Lima & Carneira Araújo, 2016; Urrea Giraldo & Celis Ospina, 2016). In effect, historical racial and gender segmentation was reinforced during the introduction of modern labour law by three major segmenting divisions: formality/informality, standard and non-standard work (non-standard meaning here: agriculture, domestic labour, homework, day labour etc.) and blue-collar versus white-collar work.

4.3 *The Late Twentieth Century: Neoliberal Globalisation and Human Rights*

A recent critical juncture to break with the (behavioural) path dependencies and reconstruct the field of labour based on horizontal justice was the momentum of human rights legislation, specifically the introduction of antidiscrimination legislation in the last quarter of the twentieth century promoted by international actors. Between 1965 and 1980, the Universal Declaration of Human Rights was filled with (legal) life, with the first four of today's nine fundamental human rights treaties being passed. All four are directed towards overcoming historical injustices related to slavery and forced labour (Convention on Civil and Political Rights, 1966, CCPR), overcoming historical racism (International Convention on the Elimination of All Forms of Racial Discrimination, 1965, CERD), inequalities concerning women (Convention on the Elimination of All Forms of Discrimination Against Women, 1979, CEDAW) and aiming to confer the

right to dignified work and social welfare (Convention on Economic, Social and Cultural Rights, 1966).

LA has been a champion in ratifying human rights treaties since the 1970s (Lutz & Sikkink, 2000), including the treaties concerning racial and gender discrimination, CERD, CEDAW and ILO's Indigenous and Tribal Peoples Convention 169 of 1989, in addition to the instruments of the Inter-American System for the protection of human rights. These conventions not only prohibit discrimination against people based on race or gender; they also allow for and partially even demand special measures to overcome historical exclusions and marginalisation. Overcoming military and authoritarian regimes in the 1980s thus would have been a chance to compensate historical exclusion by implementing targeted special measures to break with exclusions.

The global human rights movement, picking up speed in the 1980s when authoritarianism in LA collapsed, meant a great opportunity for radical change by tackling injustice originating in colonialism. But instead of using the law to overcome fundamental historical inequalities, new marginalisations were introduced. Based on the IMF and World Bank's Washington Consensus, especially promoted in structural adjustment plans in LA and preceded by the Pinochet military dictatorship's legislative decrees of 1978 and 1979, most Latin American countries undertook major labour law reforms by flexibilising individual labour relations from the employer's perspective, both in terms of individual and collective labour law. With different priorities in the respective legislation, they especially changed contractual aspects (e.g. allowing fixed-term contracts without justification), facilitated dismissals and reduced compensations, with several countries excluding small enterprises partially or completely from protective labour law restrictions (Vega Ruiz, 2005). Alongside existing *de facto* labour market segmentation, most of the reforms again affected the historically marginalised groups hardest (Raso Delgue, 2001).

Although the introduction of human rights was thus overwritten by the politics of 'structural adjustments' imposed or inspired by the IMF and World Bank, at least the possibility of creating special measures to overcome historical exclusions and marginalisations was introduced in large parts of the region. While in some countries new constitutions or constitutional reforms explicitly made affirmative action and other special measures possible, others incorporated the international human rights treaties as constitutional law with the same effect, while in a third group of countries the courts opened the path to affirmative action (Domínguez

Redondo, 2021; Obando-Camino & Rayo-Urrita, 2021; Cobos Campos, 2021).

On the labour law level, these possibilities have hardly been used so far. Almost all countries in the region adapted their labour law by introducing norms on antidiscrimination relating to access to employment and working conditions, as the Worlds of Labour dataset shows (cf. [wesis.org](https://www.worlsofwork.org/)). But although some countries, for example Bolivia (2010) or Uruguay (1989), allow special measures like affirmative action at least for gender equality, only a small minority (Nicaragua, 2008; Venezuela, 2012) prescribe special measures for women's inclusion and equal opportunities. Nevertheless, many countries in the region formally do not even allow these measures (e.g. Chile, Colombia, Peru) for women—while neither Bolivia nor Nicaragua, Uruguay nor Venezuela even allow special measures for racial equalisation. At least in labour legislation, there is hardly space so far for compensatory justice.

So far, the key areas where affirmative action has been applied are political participation and the educational system, especially concerning access to university (Varas & Díaz-Romero, 2013). Labour has been at the margin of the discussion in LA, with female access to leadership positions and indigenous collective access to land being among the few aspects discussed. Broader academic and political debates about legal compensation for historical marginalisation have only recently arisen in the latest critical juncture of emerging New Latin American Constitutionalism since the turn of the millennium (Fechner, 2018), with the momentum interrupted by the failure of the first referendum on the new constitution in Chile in 2022 (Fechner & Schöck-Quinteros, 2023).

5 CONCLUSION AND OUTLOOK

Legal segmentation with European origin has been present in Latin American history for more than 500 years, constructing and later perpetuating racial and gender inequalities. Papal bulls and Spanish imperial legislation laid the foundations for hierarchised and exclusive fields of work. The differentiation between Black, indigenous and European workers—the “triad of racial cultures, separated by strong social boundaries” (Silverblatt, 2000, p. 111)—was accompanied by a renewed and strengthened Catholic patriarchal order. It could be shown that the critical juncture of early colonialism institutionalised a labour system based on the enslavement and systematic marginalisation of Black people and on

systematic subordination and forced labour of indigenous people (*encomienda*, *mita* etc.), accompanied by extra-legal Catholic norms redefining the role of women as subordinate to men.

The critical juncture after independence reaffirmed this social order instead of reversing it towards a system of universalised protection. Although abolishing slavery as such had a liberalising function, the procedures introduced for transitory periods had a marginalising function, reaffirming the highly precarised social position of Black Latin Americans. The introduction of civil codes in the same historical phase had comparable results, also for indigenous peoples. Modern civil law eliminated respect for the collective property of indigenous communities, in this regard having a proletarianising effect. Additionally, freedom of contract left space for highly abusive practices (*enganche*, *habilitación*) similar to those during Spanish colonialism, reaffirming the subaltern position of the indigenous populations. For women, the civil codes legally reaffirmed the *patria potestad*, that is their almost complete subordination to their husbands' power in economic and cultural terms, thus generalising a subaltern position also in (often unpaid) work relations.

The introduction of modern labour law as another critical juncture systematically established protection, namely the general inclusion of women into protective labour law, but also segmentation. Special regulation of domestic labour meant intersectional discrimination for Black and indigenous women and their descendants, while special regimes for agricultural labour tended to perpetuate the marginalised positions of the non-white population in the periphery. Differentiating legally between blue- and white-collar workers complemented the marginalising function of legal segmentation (here as a mirror to the privileging function of other workers) for groups historically discriminated against. In effect, in the first half of the twentieth century a model of legal segmentation was developed which, on the background of historically grown social structures and de facto labour market segregation, perpetuated and intensified racial and gendered hierarchies.

Antidiscrimination legislation entering with the wave of human rights conventions in the late twentieth century did not mean fundamental change, since almost in parallel highly segmenting, precarising labour legislation was introduced, again perpetuating the relatively inferior position of the historically marginalised groups.

Without legislation introducing compensatory justice, that is using affirmative action and other special measures as effective types of

equalising legislation, and the abolition of legislation systematically precarising *de facto* the three historically marginalised groups, it cannot be expected that these postcolonial phenomena can be reversed. As we indicated with the SPE differentiation, legally excluding certain sectors, professions or sizes of enterprises from protection, but also privileging legislation, like seniority rules, contribute to the ongoing precarisation of historically marginalised people who are most likely to be found in these segments of the labour market.

Moreover, collective strategies are necessary for the inclusion of the historically excluded and marginalised groups. Such strategies should not (only) rely on traditional trade unions or the state, but rather collectively empower marginalised persons in order to change power relations by constructing new societal actors. Both independent and powerful labour unions are needed, as well as other social and political organisations that promote racial and gender equality, introduce new forms of economic participation and growth for these groups and press for not only the introduction but also the enforcement of more equal and universal protection. Academic discourse on the one hand needs to prepare coordinated sets of regulations capable of reversing this historical injustice in the necessary course of several generations, but also to better prepare public and legal opinion for the necessity of breaking with formal equality. Equalising measures need to target all relevant fields in society, not stopping at access to education and political positions, but also addressing the fields of work more clearly.

In summary, it could be shown how legislation in early colonialism introduced a normative framework for racial and gender inequalities that contributed to behavioural path dependencies concerning these inequalities, plausibly explaining the statistical picture described in the introduction. Although liberal, formal equality has been introduced and reaffirmed in the critical junctures after independence and late twentieth-century globalisation, parallel counteracting legislation and a lack of equalising conceptions during these critical junctures explain why these fundamental inequalities have not been overcome. On the contrary, legislation seems to have contributed to the predominance of indigenous and Black workers in informal and precarious work relations.

REFERENCES

- Acharya, A., Blackwell, M., & Sen, M. (2018). *Deep roots: How slavery still shapes Southern politics. Princeton studies in political behavior*. Princeton University Press.
- Adiele, P. O. (2017). *The Popes, the Catholic Church and the Transatlantic Enslavement of Black Africans 1418–1839*. Georg Olms Verlag.
- Aguirre Beltrán, G. (1946). *La población negra de México 1519–1810: Estudio etno-histórico*. Ediciones Fuente cultural.
- Amarante, V., Galván, M., & Mancero, X. (2016). Inequality in Latin America: A global measurement. *CEPAL Review*, 118, 25–44.
- Bensusán, G. (2000). *El modelo mexicano de regulación laboral*. Plaza y Valdés.
- Bensusán, G. (Ed.). (2006). *Conocer para decidir. Diseño legal y desempeño real: Instituciones laborales en América Latina*. Univ. Autónoma Metropolitana Unidad Xochimilco División de Ciencias Sociales y Humanidades.
- Bensusán, G. (2022). Employment law and its contribution to labour market segmentation in Latin America. *International Labour Review*, 161(4), 535–553.
- Bertranou, F., Casanova, L., Jiménez, M., & Jiménez, M. (2013). *Informalidad, calidad del empleo y segmentación laboral en Argentina*. Oficina de País de la OIT para la Argentina.
- Bocarejo, D., Araujo, C., & Albertos, C. (2021, September). *Brechas y desafíos socioeconómicos de los pueblos indígenas de América Latina: retos para el desarrollo con identidad*.
- Bourhass, A. (2005). El intervencionismo en el desarrollo de los obrajes mexicanos. In A. Gutierrez Escudero & M. L. Laviana Cuetos (Eds.), *Estudios sobre América, siglos XVI–XX: Actas del Congreso Internacional de Historia de América* (pp. 993–1012). Asociación Española de Americanistas.
- Brown, J. C. (2000). *Latin America: A social history of the colonial period*. Harcourt College Publ.
- Camplani, C. (2011). La defensa de los Negros en Bartolomé de Las Casas. In V. Lavou Zoungbo (Ed.), *Bartolomé de Las Casas* (pp. 89–98). Presses universitaires de Perpignan.
- Candioti, M. (2022). Abolición y post-abolición de la esclavitud en la América Hispana: cambios legales y trayectorias personales. Una introducción. *Anuario Del Instituto De Historia Argentina*, 22(2), e170.
- CEPAL/UNFPA. (2020). *Afrodendientes y la matriz de la desigualdad social en América Latina: retos para la inclusión: Documentos de Proyectos (LC/PUB.2020/14)*. CEPAL.
- Cobos Campos, A. P. (2021). Affirmative action in Central America. Influence of the international legislation and jurisprudence of the Inter-American system. In E. Howard, E. Domínguez Redondo, & N. L. X. Baez (Eds.), *Affirmative*

- action and the law: Efficacy of national and international approaches* (pp. 138–160). Routledge.
- Collier, R. B., & Collier, D. (2002). *Shaping the political arena: Critical junctures, the labor movement, and regime dynamics in Latin America* (2nd ed.). University of Notre Dame Press.
- Cooney, S. (2022). Legal segmentation in China, India, Malaysia and Viet Nam. *International Labour Review*, 161(4), 573–591.
- Cordova, E. (1966). Sobre la implementación del derecho laboral en la América Latina. *Journal of Inter-American Studies*, 8(3), 453–470.
- Cueva, M. de la. (2001). *El Nuevo Derecho Mexicano del Trabajo: Historia, Principios Fundamentales, Derecho Individual y Trabajadores Especiales*. Porrúa.
- Cumes Simón, A. E. (2014). *La “india” como “sirvienta”. Servidumbre doméstica, colonialismo y patriarcado en Guatemala*. CIESAS.
- De la Garza Toledo, E. (Ed.). (2021). *Crítica de la razón neocolonial*. CLACSO.
- Denzer, J. (2005). *Die Konquista der Augsburger Welser-Gesellschaft in Südamerika (1528–1556): Historische Rekonstruktion, Historiografie und lokale Erinnerungskultur in Kolumbien und Venezuela. Schriftenreihe zur Zeitschrift für Unternehmensgeschichte: Vol. 15*.
- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2020). *Measuring legal segmentation in labour law*. Measuring Segmentation (Socium SFB 1342, Working Papers No. 5). Socium, Universität Bremen. <https://www.socialpolicydynamics.de/f/90e3891ffd.pdf>
- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2022). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(3), 560–597.
- Domínguez Redondo, E. (2021). Universalism or fragmentation. United Nations treaty bodies and affirmative actions in Latin-America, the United Kingdom, South Africa, China and India. In E. Howard, E. Domínguez Redondo, & N. L. X. Baez (Eds.), *Affirmative action and the law: Efficacy of national and international approaches* (pp. 13–36). Routledge.
- Escobar Ohmstede, A. (2014). Instituciones y trabajo indígena en la América española. *Revista Mundos Do Trabalho*, 6(12), 27–53.
- Fechner, H. (2018). The field of popular power and transformative constitutionalism in Venezuela. In R. Sanín-Restrepo (Ed.), *Decrypting power* (pp. 265–292). Rowman & Littlefield.
- Fechner, H. (2022). Legal segmentation and early colonialism in sub-Saharan Africa: Informality and the colonial exploitative legal employment standard. *International Labour Review*, 161(4), 615–634.
- Fechner, H., & Schöck-Quinteros, E. (Eds.). (2023). *Chile—Auf dem Weg zu einer neuen Demokratie?* Universität Bremen.

- Fioretos, O., Falleti, T. G., & Sheingate, A. (2016). Historical institutionalism in political science. In O. Fioretos, T. G. Falleti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 1–28). Oxford University Press.
- Foucault, M. (1978). *The history of sexuality: Volume 1: An introduction*. Pantheon.
- Giraudó, L. (2018). Casta(s), “sociedad de castas” e indigenismo: la interpretación del pasado colonial en el siglo XX. *Nuevo Mundo Mundos Nuevos*, 1–18.
- González Torres, Y. (1979). La esclavitud en la época prehispánica. In W. Jiménez Moreno (Ed.), *Mesoamérica: Homenaje al doctor Paul Kirchhoff* (pp. 87–96). Instituto Nacional de Antropología e Historia.
- Guzmán Sanhueza, D. (2023). Caracterizando la informalidad laboral en América Latina. Un Análisis de su persistencia. *Religación: Revista De Ciencias Sociales Y Humanidades*, 8(36), 1–24.
- Haebler, K. (1903). *Die überseeischen Unternehmungen der Welser und ihrer Gesellschafter*. Hirschfeld.
- Hahs, J., & Mückenberger, U. (2022). Segmenting and equalizing narratives in the ILO’s standard-setting practice. *International Labour Review*, 161(4), 635–655.
- ILO. (2010). *Decent work for domestic workers: Report IV(1)*. ILO.
- ILO. (2018). *Women and men in the informal economy: A statistical picture* (3rd ed.). International Labour Organization.
- Jackson, R. H. (1995). Race/caste and the creation and meaning of identity in colonial Spanish America. *Revista De Indias*, 55(203), 149–173.
- Klein, H. S., & Vinson, B. (2007). *African slavery in Latin America and the Caribbean* (2nd ed.). Oxford University Press.
- Las Casas, B. de. (1991 [1542]). *Brevísima Relación de la Destrucción de las Indias*. A. Er. Revista de Filosofía.
- Las Casas, B. de. (1999 [1518]). *Obras completas* (Á. Huerga, Ed.). Alianza Editorial.
- Leyes de Indias. (1791a). *Recopilación de leyes de los reynos de las Indias: Tomo primero* (4th ed.). Viuda de D. Joaquin Ibarra.
- Leyes de Indias. (1791b). *Recopilación de leyes de los reynos de las Indias: Tomo segundo* (4th ed.). Viuda de D. Joaquin Ibarra.
- Leyes de Indias. (1791c). *Recopilación de leyes de los reynos de las Indias: Tomo tercero* (4th ed.). Viuda de D. Joaquin Ibarra.
- Lima, J. C., & Carneira Araújo, A. M. (2016). La sociología del trabajo en un contexto de transformaciones: una revisión de la producción brasileña de las últimas décadas. In E. De la Garza Toledo (Ed.), *Los estudios laborales en América Latina: orígenes, desarrollo y perspectivas* (pp. 76–102). Anthropos Editorial.
- Lizama Portal, L. (2011). El Derecho del Trabajo chileno durante el Siglo XX. *Revista Chilena de Derecho del Trabajo y de la Seguridad Social*, 2(4), 109–142.

- Lutz, E. L., & Sikkink, K. (2000). International Human Rights Law and practice in Latin America. *International Organization*, 54(3), 633–659.
- Mareite, T. (2019). Slavery, resistance (s) and abolition in early nineteenth-century Chile. *Journal of Global Slavery*, 4(3), 372–403.
- Marshall, S., & Fenwick, C. (Eds.). (2016). *Labour regulation and development: Socio-legal perspectives*. Elgar.
- McCaa, R. (1984). Calidad, clase, and marriage in colonial Mexico: The case of Parral, 1788–90. *Hispanic American Historical Review*, 64(3), 477–501.
- Miller, R. J. (2019). The doctrine of discovery: The International Law of Colonialism. *The Indigenous Peoples' Journal of Law, Culture, & Resistance*, 5, 35–42.
- Mó Romero, E., & Rodríguez García, M. E. (1998). Las mujeres andinas y el mundo hispánico: descomposición de una sociedad y ritos de supervivencia. *Espacio, Tiempo Y Forma*, 11, 147–158.
- Mückenberger, U., & Dingeldey, I. (2022). Introduction: Worldwide patterns of legal segmentation in employment law. *International Labour Review*, 161(4), 511–534.
- North, D. C. (1991). Institutions. *Journal of Economic Perspectives*, 5(1), 97–112.
- Obando-Camino, I., & Rayo-Urrita, A. (2021). The implementation process of affirmative action in Argentina, Chile, Colombia and Peru. In E. Howard, E. Domínguez Redondo, & N. L. X. Baez (Eds.), *Affirmative action and the law: Efficacy of national and international approaches* (pp. 114–137). Routledge.
- Olaechea Labayen, J. B. (1976a). Acceso del mestizo hispanoindiano a universidades y colegios (I). *Revista Española De Pedagogía*, 34(133), 277–306.
- Olaechea Labayen, J. B. (1976b). Acceso del mestizo hispanoindiano a universidades y colegios (y II). *Revista Española De Pedagogía*, 34(134), 413–433.
- Pérez Sáinz, J. P. (2014). *Mercados y bárbaros: La persistencia de las desigualdades de excedente en América Latina*. FLACSO Costa Rica.
- Pérez Sáinz, J. P. (2016). *Una historia de la desigualdad en América Latina (la barbarie de los mercados desde el siglo XIX hasta hoy)*. Siglo XXI.
- Pierson, P. (2000). Increasing returns, path dependence, and the study of politics. *American Political Science Review*, 94(2), 251–267.
- Piqueras Arenas, J. A. (2016). *La esclavitud española en América Latina y el Caribe*. Editora Historia.
- Pizarro Zelaya, A. (2013). Leyes de Burgos: 500 años. *Dialogos Revista Electrónica De Historia*, 14(1), 31–78.
- Pozas Horcasitas, R. (1992). El desarrollo de la seguridad social en México. *Revista Mexicana De Sociología*, 54(4), 27–63.
- Raso Delgue, J. (2001). Las relaciones de trabajo en América Latina. *Revista De La Facultad De Derecho (Uruguay)*, 20, 113–126.

- Rodríguez Sáenz, E. (2014). Controlando y regulando el cuerpo, la sexualidad y la maternidad de las mujeres centroamericanas (siglo XIX e inicios del siglo XX). *Cuadernos Intercambio Sobre Centroamérica Y El Caribe*, 11(2), 233–258.
- Rosenblat, A. (1945). *La población indígena de América desde 1492 hasta la actualidad*. Institución cultural española.
- Said, E. W. (1978). *Orientalism* (1st ed.). Pantheon Books.
- Salmoral, M. L. (2000). *Leyes para esclavos: el ordenamiento jurídico sobre la condición, tratamiento, defensa y represión de los esclavos en las colonias de la América española*. <https://core.ac.uk/download/pdf/71612464.pdf>
- Sánchez-Arcilla Bernal, J. (2021). Las Leyes de Burgos de 1512: una falacia de los Derechos Humanos. Revisión historiográfica. *Cuadernos De Historia Del Derecho*, 28.
- Schacherreiter, J. (2014). *Das Landeigentum als Legal Transplant in Mexiko: Rechtsvergleichende Analysen unter Einbezug postkolonialer Perspektiven*. Mohr Siebeck.
- Sieder, R. (2019). Legal pluralism and fragmented sovereignties: Legality and illegality in Latin America. In R. Sieder, K. Ansolabehere, & T. Alfonso Sierra (Eds.), *Routledge handbooks. Routledge handbook of law and society in Latin America* (pp. 51–65). Routledge Taylor & Francis Group.
- Silverblatt, I. (1987). *Moon, sun, and witches: Gender ideologies and class in Inca and colonial Peru*. Princeton Paperbacks. Princeton University Press.
- Silverblatt, I. (2000). The Inca's witches: Gender and the cultural work of colonization in seventeenth-century Peru. In R. B. St. George (Ed.), *Possible pasts* (pp. 109–130). Cornell University Press.
- Silverblatt, I. (2004). *Modern inquisitions: Peru and the colonial origins of the civilized world. Latin America otherwise*. Duke University Press.
- Teklè, T. (Ed.). (2010). *Labour law and worker protection in developing countries*. ILO.
- Thayer Arteaga, W. (1994). Orígenes, evolución y perspectivas del derecho laboral chileno. *Estudios Públicos*, 54, 223–241.
- Torras Conangla, R. (2005). El impacto del desarrollo del café en un territorio no cafetalero: conformación del municipio de mozos de Colotenango en Guatemala, 1877–1947. *Revista De Historia* (51–52), 237–286.
- Trujillo Bautista, J. M. (2015). El ejido, símbolo de la Revolución Mexicana. *Estudios Agrarios*, 58, 125–151.
- Urrea Giraldo, F., & Celis Ospina, J. C. (2016). Los estudios laborales en Colombia entre 1993 y 2014. In E. De la Garza Toledo (Ed.), *Los estudios laborales en América Latina: orígenes, desarrollo y perspectivas* (pp. 127–156). Anthropos Editorial.
- Varas, A., & Díaz-Romero, P. (2013). *Acción afirmativa: política para una democracia efectiva*. RIL editores.

- Vega Ruiz, M. L. (2005). *Reforma laboral en América Latina 15 años después: Un análisis comparado*. ILO.
- Wallerstein, I. (2004). *World-systems analysis: An introduction*. Duke University Press.
- Zenteño Barros, J. (1896). *Recopilación de leyes i decretos supremos sobre colonización 1810–1896* (2nd ed.). Ministerio de Colonización.
- Zeuske, M. (2020). *Handbuch Geschichte der Sklaverei: Eine Globalgeschichte von den Anfängen bis zur Gegenwart* (2nd ed.). De Gruyter Reference. De Gruyter Oldenbourg.

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Genesis and Forms of Standard Employment Relationships in Three European Ex-Colonial Powers and Their Former Colonial Territories

Ulrich Mückenberger and Andrea Schäfer

I INTRODUCTION

The comparative literature on international legal transfer¹ and social policy concepts confirms that colonialism, among other things, implies efforts to transplant the diversity of European social policy and its integral

¹Transfer is used as an umbrella term for processes such as diffusion, circulation and/or transfer (see de Oliveira, 2021). Whether a legal norm is “a swift movement of adoption”,

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components, such as the legal systems for social protection (Hay & Craven, 1993, 2004; see also Le Crom et al., 2017; Leisering, 2023; Nowak-Garmer, 2023; Schröder, 2006). Labour law and its inherent concepts, such as the Standard Employment Relationship (SER), are an integral part of social policy (as summarised by Leisering, 2023; see also Nowak-Garmer, 2023). Comparative studies of labour law concepts mostly examine the ways in which labour laws were enacted, modified and redesigned during the colonial period, while highlighting the remarkable differences between the various regions of the colonial territory (Hay & Craven 2004; see also Le Crom et al., 2017; Schröder, 2006). Throughout the literature, economic structure and needs, social stratification, legal tradition and the nature of colonial administration, local resistance and adaptation, and political and constitutional relations with the colonial power are cited as causes of differences in legislation between colonies in different regions (Benton, 2001). The literature also shows a transfer of labour norms as well as similarities within the regions arising from the transfer of labour laws from the colonial powers to the colonies. The transfers follow certain economic interests of the colonial power, the imposition of social and racial hierarchies by colonial rule and a certain degree of institutional continuity imposed by the colonial power.

Based on these studies, we can expect that there were efforts by European coloniser powers to export labour law concepts to their colonies. Most studies focus on the transfer of labour law as a whole or certain aspects of implementation from the perspective of one colonial power and its territories. The reconstructive approaches used allow for a discussion of individual norms in individual countries. A comparative study of the transfer of a clearly defined labour law concept that considers several colonial powers and their territories, however, is still pending. Despite the diversity of findings, there is a lack of in-depth understanding in comparative research that investigates the question: To what extent were segmenting regulatory concepts transferred by European colonial powers to certain parts of the world during colonialism? As we explain later, we pursue this research question by focusing on the three European ex-colonisers, United Kingdom (UK), France and Germany, and their African ex-colonial territories with respect to their efforts to transplant their respective concepts of

“an ensemble of adoption” and/or “a fluid movement with multiple pauses and round-way trips” (de Oliveira, 2021, p. 7) cannot be verified within this study. However, we assume that there are transfer processes from one country - entity - to another.

a SER. We use fuzzy sets as a methodological approach to answering this question. This approach facilitates the construction of useful conceptual frameworks for understanding complexity beyond recognising patterns and processing and classifying information. It also allows the effects of different combinations of regulatory aspects to be examined to show that there are several paths to tracing implementation of one segmenting regulatory concept.

The focus on one segmenting regulatory concept, the SER, enables us to trace both the development of a clearly defined labour law concept and the efforts to transfer a socio-political idea of the design of employment relations based on labour law norms. The SERs in Western capitalist industrialised countries proved to be prototypes of legal segmentation, as they concentrated and limited their protective effect in a gendered perspective (Vosko, 2010) on the male breadwinner while excluding women and non-SER workers from their benefits (Mückenberger & Dingeldey, 2022). This prototype has long been criticised in the Western hemisphere for its patriarchal and overall societal dominance effects (Mückenberger, 1985; Mückenberger & Deakin, 1989). There are good reasons to assume—however, as yet no legal-empirical evidence—that this prototype of legal segmentation has been ‘exported’ to countries of the Global South (GS)—also by international organisations such as the ILO (Hahs & Mückenberger, 2022; see also Vosko, 2010).

The SER as a concept can be determined on the basis of the combination of mappable legal norms that convey a standard of labour regulation. Our focus is on segmenting functions inherent in the SER, the protection and privileging of workers based on the status of their employment, the continuity and scope of employment and the size of the workplace.

As already mentioned, we select three European colonial powers—France, the UK and Germany—for comparison. They are “embedded in a European type of social protection”—namely what Lutz Leisering characterised as the model “Social Insurance—Labour-Centred and Gendered” (Leisering, 2023, pp. 80–84)—however, each exhibits characteristic legal paradigms. France shows a state paradigm, the UK a market paradigm and Germany a community paradigm (Bercusson et al., 1992a, 1992b; see also Mückenberger & Supiot, 1999). Including Germany also permits a mirroring of the relevance of short versus long durations of colonial occupation. Based on the differences in the European colonial powers’ ideological ideas regarding the regulation of protection and privileging, that is different legal paradigms, we assume that these legal paradigms are frames for

very different development paths to SERs in each colonial power. To this end, we empirically trace the development of the paths to SERs from 1880 to 2021 in the three European colonial powers to provide evidence for three different SERs. As we will show, the design of each SER's own pathway is based on the respective legal paradigm.

It is plausible to assume that the strategies and mechanisms of imperialist colonialism played a major role in the worldwide spread of the SER, but this requires legal-empirical evidence. There are various reasons for this assumption. Firstly, colonialism (especially in the form of 'direct rule'—cf. Doyle, 1986) tends to export its ideational (including normative) components. Secondly, the dominant property of the SER prototype takes on particular significance in the context of colonial rule. Transferred to a territory with a high proportion of informal labour, with large racial and gender inequalities in the labour market, and with a tiny segment of white male formal employees, the SER enormously expands its function of domination, which is already inherent in the hemisphere of the world in which it emerged. It is therefore plausible to assume that the imperialist colonial masters profited from this prototype as an instrument for subjugating the labour force and society as such in their respective colonies. At the same time, the three colonial powers had their own strategies and mechanisms for enforcing or adapting the legal framework in their colonies during their occupation, which could explain similarities in the SERs between the European colonial powers and their respective colonies.

Accordingly, the three European ex-colonial powers differed in their favoured mode of ex-colonial rule² (Conrad, 2023, p. 46; see also Geiss, 2002, p. 489). France most clearly represented 'direct rule'—most obviously in Algeria where the colonial power tried to gain hegemony not only over territory and its resources but also over the process, norms and institutions of the public administration of the colonised territory. In contrast, UK predominantly adhered to 'indirect rule'—for example in Nigeria under Lord Lugard, the colonial power constrained local and regional chiefs and tribe elites to agree to provide a certain amount of products etc.; however, it did not interfere with their agency ('dominance without hegemony', a term coined by Ranajid Guha (1998) for the British Empire

²The distinction between direct rule and indirect rule, understood as a theoretical tool for the analysis of opposite modes of colonial rule, goes back to Frederick Lugard's seminal analysis of British colonialism over India and later on North-Nigeria, systematised in *The Dual Mandate* (Lugard, 1920).

in India). German colonial rule, like a pendulum, swung between indirect rule and direct military violence. For example, in South West Africa, at the outset, German colonisers preferred to closely cooperate with chiefs and local *akides*, integrating them into the administration and respecting their hegemony and agency, as long as this provided a better outcome than would pure military violence. Thus, we assume that the differences in the labour law paradigms and mechanisms of the exercise of rule, that is forms of colonial rule, and the external control of colonial territories between the European colonial powers, condition a similar design of the SER paradigms in the labour law of the former colonial territories of the respective colonial power, but maintain differences between the different territories. However, this is also conditioned by the duration of the occupation of the respective territorial area by the European colonial powers.

After tracing the different development and design of the SER in three European colonial powers—France, the UK and Germany—we then turn to describing the similarities and differences in the development of the SER patterns both within their respective colonial territories, twelve states in Africa, and between them. The former French colonial territories studied are Algeria, Tunisia, Gabon, Republic of Congo and Ivory Coast. The German ex-colonies are Namibia, Cameroon and Tanzania (German), while the British ones are Zimbabwe, Nigeria, Sierra Leone and Kenya. The twelve former colonial territories were chosen, apart from data availability, on the basis of the idea of minimal contrast, because they were all located on the same continent and had similar economic structures, populations and access to trade routes (Geiss, 2002, pp. 481–616, especially on the colonisation and decolonisation of Africa, pp. 488–493). With the help of these similar colonies, we want to work out whether the reconstructed SER patterns per European colonial power remain stable, or whether, despite the similarity of the colonies, internal differences emerge with regard to the transfer of SERs. The literature (Geiss, 2002; see also Hay & Craven, 2004; Le Crom et al., 2017; Leisering, 2023; Nowak-Garmer, 2023; Schröder, 2006) suggests that internal differences are due to the adaptation of regulation to the respective context, the legal infrastructure, local resistance and coercive measures by the colonisers. Local resistance to colonial rule and the exploitation of labour could have influenced the implementation and enforcement of labour laws differently in the various colonies. Factors such as the existence of indigenous legal systems, labour movements and the extent of colonial violence could also affect the transfer process.

This chapter is organised as follows: First, an overview of previous research on the transfer of regulation during colonialism is provided. Second, we explain the components of the SER and the extent to which we can map these in the study. We then go into the scope of our study based on the data, indicators and sample and discuss the advantages of the evaluation approach chosen: qualitative comparative analysis with fuzzy sets. With the help of this analysis, we are then able to show three different paths of a SER in France, United Kingdom and Germany and how these three paths are reflected in their respective colonies. Finally, we draw key conclusions from these new insights.

2 COLONISATION AS A LEVER FOR LEGAL NORM TRANSFER?

Developments in the nineteenth century led to enduring standards in the regulation of labour in European states (Rittich & Mundlak, 2017). This development is accompanied by the fact that, historically, social policy benefits in most countries of the world were increasingly linked to the employment status of the respective labour force (c.f. Fechner et al., 2025, in this volume). The degree to which forms of employment are worthy of protection is reflected in the grading of their participation in social policy coverage and generosity: the closer the employment relationship is to the SER, the better-off the worker is with respect to their social policy goods and benefits—and vice versa. The degree of protection for SERs has increased in European states since the beginning of the setting of labour standards. Since these states took part in the ‘Scramble for Africa’, from the 1870s onwards (Pakenham, 2011) it is worth inquiring about the extent to which colonisation led to a transfer of legal paradigms.

The period of European colonisation of Africa can be seen firstly as a period of developing typical legal paradigms in European labour regulation and at the same time as a fundamental period for the influence of European colonial powers on labour regulation in the colonies (see also Merry, 1991). Of particular interest were the questions of the impact of colonial powers on legal systems and the effects of this impact over time (c.f. Merry, 1991).³ Since this period, which ends with official

³ As Merry noticed: “Colonialism typically involved the large-scale transfer of laws and legal institutions from one society to another, each of which had its own distinct sociocultural organisation and legal culture” (1991, p. 890). In our research we focus on transfer

independence from the respective colonial power, led to enduring standards in the regulation of labour in European states and marked the development of typical legal paradigms in European labour regulation for the protection and privileging of workers, the colonial impact of these labour regulation paradigms can be traced for British, French and German African colonies.

So far, the question of transferability and change of legal concepts, as well as differences and similarities between legal systems, has triggered an extensive discussion on the possibilities of “the transfer of a rule or an entire system of law from one country to another” (Watson, 1974, pp. 22–24 cited by Trikoz & Gulyaeva, 2023, p. 520). In this debate, the legal transplant approach (Watson, 1993) suggests that the movement of legal norms from one legal tradition to another and legal change are the result of purely legal history and can, independently of a particular time and place, be explained without reference to social, political or economic factors. Contrarily, the culturalist approach argues that the meaning and content of legal norms are inseparable from the respective society and culture, the context and the interpretative community in which they arise (Legrand, 1997, 2001). This approach argues that the meaning of legal norms is always culturally determined and cannot survive a transfer. Thus, a transplantation of legal norms is not possible. Over recent years there has been a long academic debate on these approaches (Abel, 1982, p. 792; Cotterrell, 2001; Nelken, 2001, pp. 3–4 & 351; Miller, 2003, p. 844; Webster, 2006, p. 439; Wise, 1990, p. 13) which can be solved with conclusions by Ewald (1995) and Twining (2006) that empirical insights via detailed studies of processes of legal transfers can be helpful when the complexity of the processes and context remains in focus. Antonia Bakardjieva Engelbrekt stated: “Regression analyses and statistical methods can be highly valuable for identifying patterns and capturing trends. However, the results of such analyses can guide legal and economic reform only if combined with in-depth comparative studies, based on close observation of local context and careful process-tracing of legal and institutional evolution” (2015, p. 140). Certainly, legal transfer is not the only, possibly not even the most important, lever of power and violence in colonial rule. It has to be assessed together with colonial measures to expropriate indigenous landowners and to exploit and subjugate workers (Fechner, 2022).

from ex-colonisers to ex-colonies, leaving aside the transfers between ex-colonies and their respective colonial offices as studied by Merry.

Notwithstanding that, scientific findings show that the civilisational idea of legal influence and norm-setting during colonialism (Chanock, 1985; Fitzpatrick, 1990) and the role of law were important ingredients in the establishment of control and dominance (e.g. Merry, 1991; Ocran, 2006⁴) and an important prerequisite of the capitalist transformations within the colonial period (e.g. Merry, 1991⁵).

The history of colonial employment law has been related in the recent academic discourse on legal norms, enforcement and social stratification. For the French ex-colonies worldwide from 1848 to the 1960s, Le Crom and colleagues have provided a seminal work—underscoring the complexities and gradual progression of the evolution of labour law in French colonies, reflecting broader socio-political changes and local resistance (Le Crom et al., 2017). They identified some commonalities among the colonies, such as the legal distinctions between native and European labourers and the progressive harmonisation of colonial labour laws with those of metropolitan France: They also drew attention to the notable differences in labour laws across the various regions of the colonial territories shaped by their administrative status and colonial past. For example, labour rules in older colonies such as the Antilles and Réunion differed from those in newer colonies in Africa and Asia. Labour laws in older colonies started to converge more swiftly with metropolitan French standards, as demonstrated by Le Crom and colleagues. During the 1920s and during the Popular Front government, notable advancements were achieved. A major shift occurred after the 1944 Brazzaville Conference, leading to laws granting union rights to indigenous workers, the establishment of independent labour inspections and the abolition of forced labour. Eventually, a labour code inspired by the metropolitan code was introduced in overseas territories, although this faced resistance from colonial business interests. Overall, despite regional variations and different timelines, the studies highlight a trend towards the standardisation of labour laws and the

⁴ Particularly with regard to the hierarchy of norms and the recognition of the dominance of colonial law over customary law.

⁵ “[C]olonial law fostered the creation of a wage labor force available to the plantation, mine, and factory and facilitated the commodification of land. Laws were passed in various colonies to regulate labor contracts, land tenure, vagrancy, desertion and to control social activities that impinged on work. At the same time, law contributed to the construction of a new consciousness, a new set of understandings of persons and relationships” (Merry, 1991, p. 892).

improvement of workers' rights across the French colonies, driven by both local demands and international pressures.

British colonial labour law, for nearly the whole British Empire until 1955, is described in Hay and Craven's research note (1993) and their scientific collection (2004) on the spread and role of master and servant legislation throughout the American colonies, including Upper and Lower Canada and the British Caribbean, as well as the Cape Colony, some Indian states, Mauritius and sub-Saharan Africa over a period of about four centuries. These laws regulated the hiring, retention and disciplining of workers in various industries and were enforced by judges who had wide discretionary powers. The master and servant legislation and similar legal mechanisms were adapted and implemented in various colonies to maintain similar control over labour relations and exploit labour for economic gain in different colonies. These laws facilitated the management of labour in plantations, mines and other colonial enterprises, ensuring a steady and disciplined workforce. As Hay and Craven state, colonial administrators, often trained in UK,⁶ brought with them the legal norms and practices from the metropole. This continuity ensured that colonial legal systems developed along similar lines, reinforcing the uniformity of labour laws across different parts of the empire. It helped to maintain social order by legally reinforcing the authority of employers (often colonists) over workers (often indigenous or imported labour). These factors triggered to create a legal environment in the British Empire where labour laws exhibited notable similarities despite the diverse local conditions and challenges faced in different colonies. However, the authors show that each region adapted the laws to local conditions, economies and social structures to function in a certain way.

For German colonies, such as Cameroon, Togo, Southwest-Africa and in East Africa and the Pacific, Schröder extensively analysed colonial labour law for "coloured" workers (Schröder, 2006, p. 3). His study reveals similarities in the legal approaches to labour issues in the German colonies: One of the most important similarities he notes is the underlying intent of the legislation to control and exploit the labour of the native population for colonial economic advantage. Laws in the various colonies often contained provisions that restricted labour mobility, imposed strict working conditions and introduced legal mechanisms to enforce labour contracts

⁶We do not differentiate according to the historical phases of the country, that is 'United Kingdom' is used as a general term and refers to the historical area in each case.

often to the detriment of the native workforce. Moreover, Schröder's research shows that these legislative measures were often justified with paternalistic arguments, claiming to protect and civilise the indigenous population, while in practice they served to reinforce the economic exploitation and social control desired by the colonial authorities. This pattern of legislation and its justification was consistent across the different colonies and reflected a broader strategy of the German colonial administration during this period. Nonetheless, Schröder paints a complex and diverse landscape of labour law in the German colonies, reflecting the particular circumstances and needs of each region.

The comparative approach employed in all of this literature demonstrates the ways in which labour laws have been enacted, altered and reimagined while also highlighting the notable differences between the various regions of colonial territory. Across the literature, the economic structure and needs, social stratification, legal tradition and type of colonial administration, local resistance and adaptation and the political and constitutional relationship with the colonial power all cause differences in legislation within the colonies in different regions. But the literature also shows a transfer of labour standards and similarities across the regions. This was achieved by transplanting colonial powers' laws to colonies, by the specific economic interests of the colonial power, by the social and racial hierarchies imposed by colonial rule through the colonial power and by the degree of institutional continuity imposed by colonial power.

There is hence a solid basis for studying colonial labour law transfer. However, a historical comparison of legal transfers across and within colonial powers is still lacking. The named sources study the spread of labour law, under colonialism, as such. However, no attention is given to the transfer of legal segmentation in employment which we grasp with our focus on the SER.

3 THE STANDARD EMPLOYMENT RELATIONSHIP AS AN OBJECT OF LEGAL TRANSFER DURING COLONIALISM

We study the legal transfer of employment law in the context of research on legal segmentation—that is research guided by the assumption that labour law and statutes do not just protect workers, but rather do so in a manner favouring some segments of the labour market only while excluding others from these advantages. The basis for the study is the analysis of

the transfer of legal norms containing the idea of a specific employment relationship, the SER, to colonial territories. The SER implies that an employment relationship is legally legitimised by an employment contract, that the scope of working hours is standardised and at the same time limited and that long-term employment is rewarded.

In European countries, notwithstanding the above-mentioned variations, employment law has been constructed in a common form in that these laws presupposed certain employment relationships as ‘normal’ (both empirically and normatively) and shaped legal regulation in a manner so that it best suited the functioning of precisely these ‘Standard Employment Relationships’. The resulting SER prototypes were adapted to industrial capitalism, as the mode of production, and to the male breadwinner family, as a social component of production and the main source of the reproduction of labour. SER research over the last four decades (Fudge, 2017; Mückenberger, 1985; Mückenberger & Deakin, 1989; Vosko, 2010) has shown that SERs in the industrialised hemisphere—despite their national and regional varieties—have certain legal criteria in common. As summarised by Hahs and Mückenberger (2022), the SER is characterised by:

1. formal contract-based dependent employment;
2. long and steady service (‘seniority’);
3. full-time employment;
4. in-house employment in medium-sized or large establishments;
5. employment of adults and
6. work performed by skilled workers.⁷

As a normative lever, it effectively provides the industrial workforce’s orientation to gainful employment (Mückenberger, 1985) by (1) establishing a life-long continuous incentive for adults to comply with the SER criteria, (2) providing a high level of social protection as a reward for this compliance, and (3) threatening severe disadvantages for those forms of work and working people not complying with the SER criteria, wholly or partly, throughout significant periods of their life courses. Simultaneously, the theoretical SER concept is oriented towards, and actively confirms, the gender-hierarchic mode of societal production and reproduction. Within

⁷ Beyond these criteria, Vosko (2010) has introduced the migration issue as an increasingly important component in non-SER.

families, the latter is based on the unequal distribution of care responsibilities between men and women and, in employment, the unequal allocation of SERs to men while allocating non-gainful work or work in non-SERs (NSERs) to women. The SER construction is deeply rooted in both the functioning (system) and the value systems (life-world) of the industrial societies.

Informal employment relationships, excessive or short working hours and changes in employment relationships are the other side of these legal norms—and beyond social protection.

At the same time, the analysis of the transfer of legal norms is placed in a historical context, from the end of the nineteenth century to the middle of the twentieth century. This period is characterised by the colonial expansion of European powers and the first major developments in European labour law, such as the hierarchisation of legal instances and the primacy of state law combined with a high degree of complexity in legal policy.

Until now, the worldwide transfer of the SER concept has been only partly legal-empirically researched. Lea Vosko (2010) made important advances for the ILO. But her work mainly concerns the aspect of international law. The comparative view on transferring the SER is still more than incomplete. The transfer of European powers' concepts of the SER was, as we will show, conditioned by differences in the labour law paradigms and mechanisms of the exercise of rule and force, that is forms of colonial rule, and the external control of colonial territories.

4 IDENTIFYING LEGAL NORMS AS MEASURES OF THE SER CONCEPT: DATA, INDICATORS, SAMPLE AND METHOD

To study the modes and diffusion of the SER and its inherent legal segmentation, we selected nine⁸ indicators derived from the Worlds of Labour dataset which capture the essential criteria of the SER concept (c.f. Carlino et al., 2025, in this volume).⁹ We created nine variables for the timespan

⁸Five of the nine WoL indicators are based on indicators from the CBR-LRI dataset (Adams et al., 2017). However, the datamatrix used for this study is newly created by the authors and based on statutory law, only.

⁹The conceptual approach distinguishes legal norms according to their functions: (1) norms concerning working time and dismissal protection (standard-setting function); (2) norms introducing selective grades of protection, for example differentiating protective measures according to size of establishment or seniority of workers (privileging function) and (3)

from 1890 to 2021 for these nine indicators in fifteen selected countries. The data are based on statutory laws whose normative content was transferred into Excel tables by experienced coders with a legal background who used coding schemes, standards and rules to assign deductively derived indicators and variables to the legal norms (on leximetrics, see Deakin, 2018; see also Carlino et al., 2025, in this volume). The Excel files document the paragraphs and articles of laws in use as references.

After receiving the Excel tables, they were checked for quality and consistency. The error list was returned to the coders for error correction before we created the datamatrix as the basis for our new dataset. Thus, the datamatrix reflects the legal interpretative expression of the legal norms in numerical form and is based on qualitative sources. This datamatrix is complemented by information on the beginning and end of the respective colonisation period from the COLDAT dataset (Becker, 2019) to form the final dataset for the analysis.

The nine variables representing the basic structure of our SER concept¹⁰ do not fully capture the content of the prototypical theoretical SER concept. Still, they cover its essential legal criteria ((1)–(6), as stated above) and their segmenting function (c.f. Table 7.1.).

The variable referring to the legal SER criteria (3) full-time employment is ‘*Maximum daily working time*’ (W). It measures the norm of limiting a regular working day in hours and thus serves as a point of reference for both public control and firm-internal measures (e.g. overtime term and payment). It thus establishes and guarantees a norm of the relation between work and free time.

Several variables refer to the SER criterion (2) long and steady service, such as the variable ‘*Law imposes substantive constraints on dismissal*’ (C). This variable measures the norm of legitimised protection of continuity of

norms designed to prevent/inhibit discrimination of workers due to physical characteristics (gender, ethnicity) or non-typical contract arrangements (part-time, fixed-term, agency work) (equalising function) (Dingeldey et al., 2022).

¹⁰Confirmatory factor analysis was used to check whether the data fit the theoretically expected structure. Because the variables are scaled differently, we resorted to a polychoric correlation matrix. The Kaiser–Meyer–Olkin Measure of Sampling Adequacy (KMO = .800) indicates that the variables are suitable for factor analysis. Thus, a confirmatory factor analysis was conducted. This indicates the presence of two factors: one factor just above an eigenvalue of 1 and the other factor with an eigenvalue of 4.12. Based on the screen plot and theoretical considerations, a one-factor solution was chosen, which explains 71.8 percent of the variance. Thus, we can confirm a latent factor ‘Standard Employment Relationship’.

Table 7.1 Overview of variables in newly created dataset according to legal SER criteria, legal function and symbol used in analysis

<i>Name of variable in newly created dataset</i>	<i>Coverage of legal SER criteria by variable</i>	<i>Legal function according to legal segmentation approach</i>	<i>Symbol in fuzzy-set analysis</i>
Maximum daily working time	3. Full-time employment	Standard-setting	W
Law imposes substantive constraints on dismissal	2. Long and steady service	Standard-setting	C
Priority in re-employment	2. Long and steady service	Privileging	E
Minimum qualifying period of service for normal case of unjust dismissal	2. Long and steady service	Privileging	U
Seniority is a decisive selection criterion in case of redundancy	2. Long and steady service 4. In-house employment in medium-sized or large establishments	Privileging	R
General dismissal protection depends on the size of the enterprise	2. Long and steady service 4. In-house employment in medium-sized or large establishments	Privileging	G
Notice period increases with seniority	2. Long and steady service 4. In-house employment in medium-sized or large establishments	Privileging	N
Severance/redundancy payments increase with seniority	2. Long and steady service 4. In-house employment in medium-sized or large establishments	Privileging	P
The law, as opposed to the contracting parties, determines the legal status of the worker	1. Formal contract-based dependent employment 2. Long and steady service 3. Full-time employment	Privileging	S

Source: Authors' classification

employment. Rules requiring reasons for dismissal by the employer create a protective space for the continuity of the employment relationship. The variable ‘*Minimum qualifying period of service for normal case of unjust dismissal*’ (U) links the coverage of dismissal protection to a minimum period of service and thus favours long-term employment over short-term employment. ‘*General dismissal protection depends on the size of the enterprise*’ (G) measures norms differentiating according to firm size thresholds. Norms limiting dismissal protection to larger firms (SER criteria (4)) are equally in line with SER criteria (2). Also, the variables ‘*Notice period increases with seniority*’ (N), ‘*Severance/redundancy payments increase with seniority*’ (P) and ‘*Seniority is a decisive selection criterion in case of redundancy*’ (R) relate directly to the SER criterion (2) long and steady service—moreover, so does ‘*Priority in re-employment*’ (E). The first three variables address norms which directly or indirectly favour continuous employment relations within the same firm, and thus they implicitly refer to the SER criterion (4) in-house employment in medium-sized or large establishments. ‘*Priority in re-employment*’ captures continuity through the pattern ‘once in, always in’.

The variable ‘*The law, as opposed to the contracting parties, determines the legal status of the worker*’ (S) serves as a proxy for the SER criterion (1) formal contract-based dependent employment and requires the status of ‘employee’ or ‘worker’ as a prerequisite for any legal protection against an employer’s dominance. This variable measures whether a labour regulation allows the contracting partners to evade the applicability of labour law by labelling the contract differently.

The nine selected SER variables thus demonstrate four components of labour regulation essential for the SER concept (c.f. Table 7.1.). Firstly, to be covered by the norms requires the formal status as an employee or at least a worker (all nine variables), the legally binding character of this status is addressed by S. Secondly, continuity of employment is regarded as a regulatory value which needs protection (U). Thirdly, many of the selected variables address norms which establish and/or increase legal protection in accordance with seniority achieved by working people in an enterprise—be it periods of notice (N), amount of dismissal compensation (P), dismissal protection (R and U) or re-entry into an employment relationship (E). Fourthly, norms are addressed favouring workers in medium-sized and large firms (G).

Our selection of variables does not address the SER criteria (5) employment of adults and (6) work performed by skilled workers. Moreover, two

criteria are addressed in a weak manner only. Criterion (1) formal contract-based dependent employment is only indicated by variable S. As such, no variable tests the worker's status as an employee or worker with personal dependency as a prerequisite for the application of labour law. Criterion (3) full-time employment is only addressed by variable W, which provides for a normal working day; however, there is no legal disadvantage in case of deviation from full-time work (e.g. part-time work).

As previously mentioned, we now compare the employment laws of twelve of the former colonial territories of the three European colonial powers, France, the UK and Germany, over the period of their colonisation starting from 1880.¹¹ Two of these colonial powers, France (Blanc-Jouvan & Boulouis, 1972, pp. F-47–F-87) and the UK (Simmonds, 1976, pp. U-50–U-102), ruled over the colonies until the time of their decolonisation (see Table 7.2).¹²

As we indicated previously, the selected European colonial powers differ, both historically and contemporarily, in their labour law paradigm (Bercusson et al., 1992a, 1992b; Hepple & Veneziani, 2009a, 2009b; Mückenberger & Supiot, 1999; Supiot, 2001). In common law countries such as the UK (c.f. Butler, 2018), labour law norms predominantly originate in an economic or market paradigm. In contrast, French labour legislation (Despax et al., 2022) follows a predominantly political or state orientation. German labour law (Weiss et al., 2020) differs in that it shows a strong influence of a social or partnership paradigm co-produced by a community of judges, social partners and law scholars (Mückenberger & Supiot, 1999).

¹¹ For the details on the ex-colonisers and ex-colonies treated in this chapter, we refer to Geiss (2002, pp. 481–616). The legal (mainly constitutional) reports from the time of colonisation and shortly after decolonisation are helpful; nearly all countries in our sample can be found in the *International Encyclopedia of Comparative Law* (1970), c.f. Bedjaoui, 1970, pp. A-17–A-28 (for Algeria); Simmonds, 1976, pp. U-50–U-102 (for United Kingdom); Vergnaud & Monie, 1975, pp. C-1–C-9 (for Cameroon); Gabou, 1977, pp. C-79–C-85 (for Republic of Congo); Blanc-Jouvan & Boulouis, 1972, pp. F-47–F-87 (for France); Auge, 1976, pp. G-1–G-7 (for Gabon); Medicus, 1972, pp. F-1–F-27; Posch, 1976 (for Germany/GDR); Linossier, 1972, pp. I-117–I-124 (for Ivory Coast); Cotran, 1970, pp. K-1–K-9 (for Kenya); Nylander, 1993 (for Nigeria); Joko Smart, 1985, pp. S-47–S-53 (for Sierra Leone); Ghai, 1973, pp. T-1–T-8 (for Tanzania); Abdesselem & Charfi, 1973, pp. T-31–T-44 (for Tunisia); Marshall, 1974, pp. U-107–U-130 (for Zimbabwe/South Rhodesia, in: United Kingdom Dependand Territories).

¹² For Germany (FRG and GDR), see the contemporary accounts in Medicus, 1972, pp. F-1–F-27 and Posch, 1976, pp. G-13–G-32.

Table 7.2 Overview of the sample selection for the analysis

<i>Country</i>	<i>Duration of colonisation^a (in years)</i>	<i>Colonisation started^a (year)</i>	<i>Colonisation ended^a (year)</i>	<i>Introduction dates of employment legislation (year)</i>
<i>French colonial territories:</i>				
Algeria	115 ^b	1848	1962	1902
Tunisia	76	1881	1956	1908
Gabon	75	1886	1960	1911
Republic of Congo	79	1882	1960	1907
Ivory Coast	72	1889	1960	1925
<i>German colonial territories:</i>				
Namibia	31	1885	1915	1907
Cameroon	33	1884	1916	1902
Tanzania	27	1891	1917	1897
<i>British colonial territories:</i>				
Zimbabwe	58	1923	1980	1899
Nigeria	62	1899	1960	1877
Sierra Leone	66	1896	1961	1895
Kenya	69	1895	1963	1902

Sources: Authors' calculations using a self-created dataset

^a Year of colonisation by the respective colonial power started or ended and duration of colonisation by the respective colonial power

^b Information before 1880 is not part of the analysis, thus the duration under analysis is 83 years

We now briefly describe the method Fuzzy-set ideal type analysis utilised in this study to compare SER concepts between the three European colonial powers and between them and the twelve former colonial territories.

The starting point for fuzzy-set analysis (using fsQCA see Ragin & Davey, 2022) is that country cases are best understood as distinct and differing configurations of multiple, conceptually rooted legal criteria. Thus, we identified the key conceptual criteria that are the focus of our analysis and then proceeded by viewing each of these dimensions as a 'set' in which the cases can have varying degrees of 'membership' (i.e. degree of accordance with respective criteria). Sets are 'fuzzy' (i.e. multifaceted); thus, we

analyse the country cases based on their graded, partial memberships of sets. The fuzzy membership scores demonstrate how close the country is to the respective SER concept converted into fuzzy sets.

In order to conduct the fuzzy-set analysis, we first set up the nine selected legal variables. Second, we proceed assigning one of three qualitative anchors to each case for each set being analysed: ‘fully in’, ‘fully out’ and ‘crossover point’ for each set (key criteria) being analysed.¹³ This allows us to identify the types of legal SER concepts in all fifteen countries both at the beginning and at the end of the colonisation period. The degree of membership is calculated and interpreted by the ‘principle of negation’, the ‘minimum principle’ and the ‘maximum principle’.¹⁴ Together, these principles can be used to calculate all possible combinations of the multiple fuzzy sets being analysed. Accordingly, the ideal type is determined by applying the number of cases that each category variable can take. There are eighty-one ideal type sets (high or low) based on the nine category variables for our analysis. Our classification of countries is based on the key criteria discussed above.

Fuzzy-set analysis has several major advantages (Ragin, 2008).¹⁵ First, it does not allow compensation effects to mask the real extent of diversity. If a state is ‘weak’ in one legal SER criterion, it cannot ‘make up’ for this by being ‘very strong’ in another. Second, the approach allows for the simultaneous analysis and measurement of multiple SER criteria and handles these criteria in a manner that emphasises, rather than moderates,

¹³We calibrated the scores. As specified Ragin (2008, p. 77) used numerical values 0.05, 0.5 and 0.9 to indicate whether countries were ‘fully out’, ‘more in than out’ or ‘fully in’ in each of the causal and outcome conditions. Thus, the method requires us to calibrate the variables, and it does not rely on crude means and standard deviations which depend highly on characteristics of individual samples.

¹⁴Thus, what is equally important is how multiple criteria are combined. Two key principles of logic are utilised to analyse combinations of sets: logical / NOT (the negation principle) and logical * AND (the intersection or minimum principle). In this case, the principle of negation enables the setting up of the negative categories: ‘w’, ‘c’, ‘e’, ‘s’, ‘u’, ‘r’, ‘g’, ‘n’ and ‘p’ through ‘1-fuzzy-set membership score of the applicable category’.

¹⁵Previous studies often rely either on single phenomenon—single-case qualitative analysis—or on quantitative analysis assuming a linear understanding of relationships between variables that can mask important elements of cross-national diversity. In particular, they are prone to outlier effects: if a country is exceptionally strong or weak in one legal criterion, this can have an undesirable impact on its classification. Moreover, these analyses fail to identify important conceptual issues signified by the data. This can result in countries being allocated to ideal types in ways that fail to capture the true meaning of the underlying data. Fuzzy-set QCA can overcome these issues.

difference: fuzzy logic allows us to classify colonial territories based on multiple, even conflicting, components. Third, by forcing us to think about the links between data and concepts, fuzzy-set analysis offers a bridge between quantitative and qualitative approaches. In particular, by recognising that not all variation matters, fuzzy-set analysis avoids the distorting effects of extreme values that can thwart some quantitative analyses.

5 FINDINGS: DEVELOPING SER PATHS IN THREE EUROPEAN COLONIAL POWERS

We now present the results achieved by applying the fuzzy-set analysis to our research question. According to the research question, we start with the SER paths of the three European colonial powers and their changes over time beginning in 1880, and then proceed with those of the twelve colonial territories at the beginning and end of their colonisation.

The SER paths of the three colonial powers were derived from their shape in the years 1880, 1960 and 2021.¹⁶ From 1880 to 2021, all three colonial powers showed a change in their SER paths. However, the respective paths differed (see Table 7.3.). In 1880, all three colonial powers are included in path $w*c*e*u*r*g*n*p$ ¹⁷—that is ‘weakly-regulated SER’, shaped at a low level.

As early as 1960, three differentiated paths emerged. Germany is included in the path $W*C*c*S*U*r*g*N*P$ with six highly regulated SER legal norms. In contrast, France in 1960 follows the path ‘ $W*c*c*S*u*R*g*n*p$ ’, showing a high level of regulation in three legal norms (regarding working time, legal status and seniority) that reflect the SER concept. The path the United Kingdom is included in, ‘ $w*c*c*S*u*r*g*n*p$ ’, is characterised by only one highly regulated legal norm, the legal status of workers. German employment legislation in this year shows a more universal SER tendency than France, which prefers a more privileging one. In comparison, British SER legislation is still absent.

¹⁶ Overall, the variance of the variables between the countries and over the period is low. This is particularly evident in the first years from 1880 onwards. This may be due to insufficient differentiation of the value range of the indicators in the WoL.

¹⁷ Since protective labour law was absent, the S-indicator does not yet form part of the fuzzy-set type. If indicators do not play a role in the configuration of the paths, they are not mapped.

Table 7.3 Results of fuzzy-set ideal type analysis (intermediate solution): changes and continuity of SER paths in ex-colonial powers from 1880 to 2021

<i>Country\Year</i>	<i>1880</i>	<i>Membership value</i>	<i>1960</i>	<i>Membership value</i>	<i>2021</i>	<i>Membership value</i>
France	w*c*e*u*r*g*n*p	0.90	W*c*e*S*u*R*g*n*p	0.60	W*C*E*S*U*R*G*n*P	0.60
United Kingdom	w*c*e*u*r*g*n*p	0.90	w*c*e*S*u*r*g*n*p	0.60	W*C*e*s*U*r_g*N*P	0.57
Germany	w*c*e*u*r*g*n*p	0.90	W*C*e*S*U*r*g*N*p	0.65	W*C*e*S*U*R*G*N*P	0.60
Total number of ideal types (solution coverage)	1 (0.627907)		3 (0.168182)		3 (0.0919481)	

Source: Authors' calculations using a self-generated dataset. Only cases with membership greater than 0.5 and consistency higher than 80 percent

From this period up to 2021, however, a shift towards a ‘strongly-regulated SER’ can be observed in all three countries. Paths in which almost all nine legal norms are represented are followed by France $W^*C^*E^*S^*U^*R^*G^*n^*P$ and Germany $W^*C^*e^*s^*U^*r^*g^*N^*P$. France is characterised by strong regulation oriented towards the SER concept of five legal norms since 1960. Germany, due to already having six highly regulated SER norms in 1960, developed more slowly, however, more clearly into the direction of the privileging SER elements, that is seniority as a decisive dismissal selection criterion and firm size as a prerequisite for dismissal protection. The British path $W^*C^*e^*s^*U^*r^*g^*N^*P$ differs in that employment legislation caught up with the two other countries in terms of protecting and privileging SER components. Only the legal status of the workers (s) regressed, changing from a strongly to a weakly regulated SER, towards greater contract autonomy of the parties and the market.

Figure 7.1 presents an additional descriptive analysis based on a yearly picture of the approximation to the SER for the three countries. We use a yearly additive index of the nine indicators for the period 1880 to 2021, which exhibits an upward trend as well as yearly patterns for all three countries. Clearly, there is an overall trend to increasing strength of legal norms towards achieving the complete SER concept. The data for the UK show a later and weaker increase in the SER index than for the other two countries. The SER index for France and Germany has two remarkable intersections. Germany shows a substantial change with the introduction of the first works councils and dismissal protection legislation in 1920. France catches up, in steps and leaps between the late 1930s and the early 1980s, particularly with the Popular Front working time regulation and the socialist *Lois Auroux* (‘Auroux laws’) (Despax et al., 2022, pp. 55–62). The pattern is not consistent from year to year, and major leaps can also be observed.

They reflect political upheavals like the German Revolution of 1918, soon replaced by the Nazi individual labour legislation; the fascist occupation of France and the Vichy regime; and the democratic grassroots movements of the 1960s/1970s, in the UK. The different patterns equally demonstrate the constitution of the labour law paradigms of the three countries mentioned above. Despite substantial differences at the beginning and with respect to some regulatory elements, all three of the SER patterns, the British less so than the two others, develop towards a European type of social protection—namely what Lutz Leisering

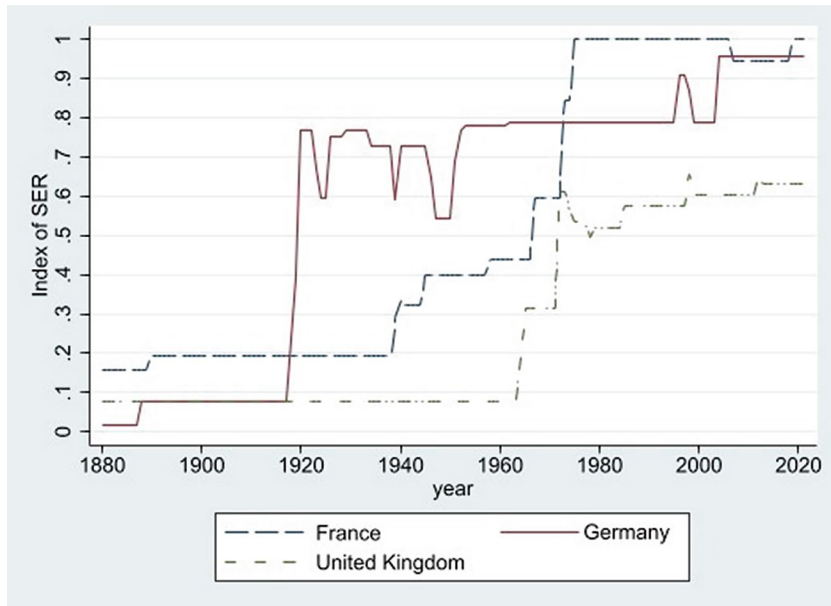


Fig. 7.1 Additive index of SER in France, United Kingdom and Germany—1880–2021. (Source: Authors’ calculations using a self-created dataset)

characterised as the model “Social Insurance—Labour-Centred and Gendered” (Leisering, 2023, p. 80).

6 DID THE SER PARADIGMS OF EUROPEAN COLONISER POWERS HAVE AN IMPACT ON THEIR COLONIES?

In order to verify whether a transfer of legal norms to territories colonised by European colonial powers took place, we conduct two analyses. First, we describe the SER path in each colony at the beginning and end of the colonisation period. Then we compare differences and similarities between the colonies and their respective colonial power, and with the two other colonial powers. The reference time for the comparison is the end of the colonisation period for each country.

Not surprisingly, at the beginning of the observation period, that is around 1880, all colonies are on the ‘weakly-regulated SER path’

w*c*e*u*r*g*n*p, which is equally observed in all three colonial powers (see Table 7.4.).¹⁸ During the period of colonisation, however, some legal norms in the colonies underwent changes, resulting in distinct types of ideal SER paths.¹⁹

The fuzzy-set analysis for the selected *German colonial territories* brings forth two SER paths at the end of the colonialisation period. Path w*c*e*s*r*g*n*p holds for Namibia and Cameroon. At the beginning of German colonisation in 1885, Namibia (Conrad, 2023, pp. 19–20) had a heterogeneous population, lacked both trade and industrial importance and was envisaged as a German settler colony; it did not provide the prerequisites for coherent labour regulation. In Cameroon, partly plantations, often with forced labour, were installed; however, without continuous German territorial dominance, as was the case with Namibia, this made coherent employment regulation improbable. The second path was W*c*e*S*u*g*n*p for German East Africa (today Tanzania²⁰). German colonisation was an interlude which stemmed from the agreement with UK (1890) and ended during World War I, with again British trusteeship from 1920 onwards (Ghai, 1973; Geiss, 2002, pp. 590–591). As to workers' status, race-related tax laws tried to force Black African workers into the colonial plantation farms in the Highlands. At the end of the relatively short German colonial period (see Table 7.2), not surprisingly none of the three colonies matched the relevant components of the German SER path. There were some legal changes during the colonial period, particularly with regard to working time and the status of workers

¹⁸No colony had any formal regulation of labour law in 1880—unlike the colonial powers, all of which already had partial regulation of labour law at this time although this is not represented by the present variables.

¹⁹The fuzzy-set analysis for the beginning of the colonisation period shows that the type w*c*c*u*r*g*n*p has a raw coverage of round 49 percent (0.492823). The types w*c*e*s*r*g*n*p (0.0913149), W*c*e*S*u*g*n*p (0.083198), W*c*E*s*u*r*g*n*p (0.0142045) and w*C*c*S*u*r*g*N*P (0.0460633) at the end of the colonisation period have a raw coverage of less than 10 per cent; only type w*c*c*S*u*r*g*p has a raw coverage of around 17 percent (0.168628). The raw coverage refers to the size of the overlap between the size of the casual combination set and the outcome set relative to the outcome set (Ragin, 2006, p. 301), showing how much of the SER is explained by the type. All types together show a coverage of about 29 percent (0.287743) of the SER to be explained. This coverage is 52 percent (0.516746) at the beginning of the colonisation period. The solution consistency denotes reliability of partial casual paths (Ragin, 2006). In this analysis the consistency value is 100 percent for all types.

²⁰Without Zanzibar (i.e. only Tanganyika), but with Rwanda and Burundi.

Table 7.4 Results of fuzzy-set ideal type analysis (intermediate solution): changes and continuity of SER paths in colonial territories at the beginning and end of the colonisation period according to colonial power

<i>Countries</i>	<i>Colonisation^a started</i>	<i>Membership value</i>	<i>Colonisation^a ended</i>	<i>Membership value</i>
<i>German colonial territories:</i>				
Namibia	w*c*e*u*r*g*n*p	0.90	w*c*e*s*r*g*n*p	0.90
Cameroon	w*c*e*u*r*g*n*p	0.90	w*c*e*s*r*g*n*p	0.90
Tanzania	w*c*e*u*r*g*n*p	0.90	W*c*e*S*u*r*g*n*p	0.60
<i>French colonial territories:</i>				
Algeria	w*c*e*u*r*g*n*p	0.90	W*c*e*S*u*r*g*n*p	0.65
Tunisia	w*c*e*u*r*g*n*p	0.90	W*c*E*s*u*r*g*n*p	0.60
Gabon	w*c*e*u*r*g*n*p	0.90	w*c*e*S*u*r*g*p	0.57
Republic of Congo	w*c*e*u*r*g*n*p	0.90	w*c*e*S*u*r*g*p	0.57
Ivory Coast	w*c*e*u*r*g*n*p	0.90	w*c*e*S*u*r*g*p	0.57
<i>British colonial territories:</i>				
Zimbabwe	w*c*e*u*r*g*n*p	0.90	w*c*e*S*u*r*g*p	0.60
Nigeria	w*c*e*u*r*g*n*p	0.90	w*c*e*S*u*r*g*p	0.60
Sierra Leone	w*c*e*u*r*g*n*p	0.90	w*c*e*S*u*r*g*p	0.90
Kenya	w*c*e*u*r*g*n*p	0.90	w*c*e*S*u*r*g*p	0.60

Source: Authors' calculations using a dataset based on COLDAT and a new self-created dataset. Only cases with membership greater than 0.5 and consistency more than 80 per cent

^a Year of colonisation by the respective colonial power started or ended

in Tanzania. The German impact on these changes—in relation to the British one and the plurality of Islamic ones (Ghai, 1973)—seems to have had minor importance.

The differences and changes to be observed in *French colonial territories* are more significant. Three distinct SER paths were identified: Gabon, Republic of Congo and Ivory Coast were included at the end of the colonisation period in path w*c*e*S*u*r*g*p. Republic of Congo, before independence in 1958 a member of the French African Equatorial colony (*Afrique Équatoriale Française*—AEF) (Le Crom, 2017, p. 58), having a *conseil de prud'homme*-like labour court system for individual affairs (Gabou, 1977), developed labour contract regulation from 1911

onwards—quite similar to Gabon (Auge, 1976) and, though later, Ivory Coast (Linossier, 1972). This is why the state played a role in determining the status of workers. The similarity of paths can be read as an outcome of French colonial direct rule. Tunisia is included in the $W^*c^*E^*s^*u^*r^*g^*n^*p$ SER path, with a high level of regulation in two legal norms that reflect the SER concept: daily working time and priority in re-employment. During the French protectorate, Muslim Tunisia modernised *sharʿa* under the direction of the Minister of Justice Djiait, by transforming it into written code. The re-employment clause stemmed from 1944 and was statutorily renewed after independence, in 1966 and 1996. By contrast, Algeria, like France, has the path $W^*c^*e^*S^*u^*g^*n^*p$ at the end of the colonial period. Despite being occupied by France in 1848 and remaining an integral part of the French metropolitan territory (Bedjaoui, 1970) until gaining independence in 1962, Algeria maintained, even after independence, a sophisticated plurality between Islamic and French state law, however, with a state hegemony in labour affairs. Not surprisingly, its SER path nearly corresponds to that of the colonial power: namely a high level of regulation in daily working time and the legal status of workers. It is true that, in the Algerian case, there is no capital R as in the French case (see Table 7.3)—this, however, does not necessarily express a legal-conceptual divergence but rather the fact that dismissal protection was only introduced in Algeria in 1975, after its independence.

All in all, labour contract law in the French colonies in Africa seems to be both more extensive and more homogenous than in the German colonies. This has been observed equally with respect to other components of social policy imported to French colonies throughout colonialism and often maintained thereafter through path dependency (Nowak-Garmer, 2023, p. 116). That their SER paths widely differ from the French one (less so in Algeria), however, must be noted and requires further explanation.

The *British colonial territories* Zimbabwe, Nigeria, Sierra Leone and Kenya all have the same type of ideal SER mix after colonisation. The path $w^*c^*e^*S^*u^*r^*g^*p$ is characterised by weak regulation in almost all legal norms, in line with the SER concept. This abstentionist order conforms with British indirect colonial rule. The only exception is the legal status of workers regulated in all four ex-colonies by their Master & Servants, Manual Labour and/or Employers and Employed regulations. These rules, however, seem not to be intended to safeguard the application of substantive labour law against the will of the parties (since such

substantive law is nearly absent), but rather to clarify the conundrum of notions ('servants', 'employed' etc.) and to delimit contract-based workers from informal types of labour. This at least points in the direction of approaching a SER concept.

As the analyses show, this path fully corresponds to the path of the United Kingdom in 1960. The only exception is Zimbabwe, whose end of colonisation falls in a year (1980) when the UK already had a different SER path. This divergence has its background in both legal cultures. The UK began to approach the European Community's social regime while maintaining its indirect colonial rule. In Rhodesia, after the Unilateral Declaration of Independence in 1965, by the then Southern Rhodesian Prime Minister Ian Smith, a double rule ensued between the Crown and the Rhodesian government, until the establishment of Zimbabwe under Robert Mugabe, in 1979 (Geiss, 2002; Marshall, 1974). Under this double rule (which Marshall (1974, p. U-128) contemporarily characterised as "confused and obscure") a legal transfer from London to Rhodesia was more than improbable.

A final observation concerns the homogeneity of the paths among British ex-colonies. At first glance, this seems to be a similarity to France. However, this British-rooted homogeneity consists less of labour-regulation but more of *non-regulation*. It indicates that British colonial rule was predominantly indirect, in line with British internal abstentionism in labour affairs (Simmonds, 1976) which equally holds for other areas of social policy and protection (Nowak-Garmer, 2023, p. 116).

As the analysis shows, all three European colonial states have progressed over time to approximating SER-like employment regulation (Germany earlier than France, France earlier than the UK), and each represents a particular SER concept. Whereas the French and the German concepts show a high level of state involvement (with only one weak legal norm each), the UK concept shows minor state involvement (with four weak legal norms including, however, segmenting ones).

The twelve selected colonies concurrently start their colonisation with low SER criteria (where all eight legal norms are weak). Apart from Namibia and Cameroon, they end up with higher SER criteria (where one or two legal norms out of eight are strong while the rest are weak). Although the number of strong regulated legal norms increased, there are still fewer than in the three European countries in 2021 and even fewer than in Germany and France in 1960.

By the end of colonisation, France and the UK both left their colonies with some parts of their SER concepts intact, albeit to different degrees and with different implications. The countries with a longer French colonial history (e.g. Algeria, less so Tunisia) show more highly regulated patterns, not dissimilar to France in the year 1960. Those with shorter colonial histories (Gabon, Republic of Congo, Ivory Coast) show a lower, however, *inter se* consistent pattern. It is obvious that this pattern is fully concurrent with the one of the four British ex-colonies at the end of colonisation—with all indicators weak, only the indicator for workers' status is strong. The three ex-German colonies' paths are inconsistent—due to short and mixed colonial periods—in that two of them (Namibia and Cameroon) have no strong indicators at all whereas Tanzania's path mirrors Algeria's, and is more similar to France's path than that of Germany in 1960.

7 FINAL DISCUSSION

We started our investigation with the research question: To what extent and in which form did European colonialism lead to the transplant of protecting and privileging employment law as synthesised in each colonial power's SER in their respective former African colonies? The general background of this research question is the assumption in the CRC 1342 that social policy changes are determined both by internal factors within a given country and by external interdependencies vis-à-vis this country. In addition to international trade or international organisations, one of these external interdependency factors is imperialist violence based on power asymmetry, with colonialism as the historically most important example. Regarding labour law, and specifically the SER as part of regulative social policy, we can easily set our findings in context to other legal and social policy research.

It is interesting to relate our findings with the different modes of colonial rule and the different employment law paradigms of the three European colonial countries. The same has been discovered, for the area of social protection, by Renata Nowak-Garmer (2023). The dominant role of the state in France corresponds to its mode of direct colonial rule and brings about relatively consistent employment law patterns in the colonies, at least among the older and the younger ones. Here, the SER paths of coloniser and colonies correspond in a positive sense. In comparison, for the UK we postulated that a dominant role of market actors (in the

colonial context accompanied by colonial companies and military violence) and legal abstentionism correspond to indirect rule, and thus, not to coherent employment regulation. The SER paths between coloniser and colonies hence correspond in a negative sense. Since Germany's colonialism, lasting just around thirty years, was not of *longue durée*, the mode of colonial rule and labour regulation in the respective colonies show neither of the regulation patterns.

With a view to the mentioned academic dispute about legal transplants (see above), we can draw the following conclusions. *Time* obviously plays a decisive role—compare the Algerian case both with the German colonies' cases and with the younger French colonies' cases (Le Crom et al., 2017, p. 288). The *labour law cultures* of the colonial powers play a role—compare the interventionist French labour law culture and the proactive German labour law culture with the abstentionist British one. These cultures are mirrored, though broken in a multi-fold manner, in their colonial counterparts.

Our findings clearly provide evidence of the impact of external colonial violence on domestic labour regulation in colonies (Hay & Craven, 1993, 2004; Le Crom et al., 2017; Schröder, 2006).²¹ However, the research question was more specified. It wanted to test the possible transfer of SER configurations²² to the respective African colonies from the three European colonisers using a long-term observation. With respect to this specification, our findings are ambivalent. Clearly, we observe changes in the colonised countries which move in the direction of the European SER constructs. However:

1. These changes do not at all fulfil the SER ideal type of the respective coloniser. Interestingly, they frequently emphasise the worker status of native workers—which seems to follow less an SER concept, but rather the intention to register the indigenous workforce for purposes of exploitation in plantations and mining companies.

²¹ International labour law (particularly ILO rules) and their impact on colonial norm-setting does not form part of our study. This would imply the question—as raised by Hahs and Mückenberger (2022)—of the extent to which the ILO conveyed the concept of an SER. This also requires an analysis of ILO Convention Nr. 82–86, which is beyond our current work capacity.

²² Focusing on individual labour law, not the interaction with other areas of law, collective agreements, among others.

2. The African colonies did not always follow a consistent pattern of employment regulation. Only the British colonies show one single fuzzy-set ideal type. The French colonies' ideal types differ—(with the outstanding Algerian case) according to length of colonisation, while German colonies' SER approximation took place in an inconsistent manner.
3. In addition to this inconsistency, SER approximation in the colonies only partially matches that of the respective coloniser. This is not surprising in the British case where domestic British abstentionism in labour affairs was accompanied by indirect rule in most British colonies, thereby leaving a slimly regulated SER as a homogenous negative outcome. More astonishing is the picture of the SER outcome in France, a nation with a high level of state labour regulation and ambitions of direct colonial rule. Three of the French ex-colonies (Gabon, Republic of Congo, Ivory Coast), in their weak SER approximation, fully correspond to the British homogenous colonial ideal type. Only two colonies (Algeria and Tunisia, particularly Algeria, with long-standing colonial status) follow the French path of colonial employment regulations.

These findings confirm that the European colonisers did not, at least not systematically, transplant their respective employment law cultures, their combination of protecting and privileging employment regulation, specifically with regard to their particular SER (or its historical forerunners), into their respective colonies. They made instrumental and occasional use of employment law—for example by registering native workers—as opposed to forcing labourers to work via tax and housing laws (Fechner, 2022). Besides being instrumental, restricting employment matters to native workers also followed racist and domination objectives. For the purpose of producing an obedient and submissive workforce, however, the colonial powers simultaneously, whenever it seemed necessary, could—and did—make recourse to pure private or military violence. SER approximation was just one—and not the most important—instrument in their imperialist toolbox. This obviously differed from the role of the SER in the labour regulation of the European ex-coloniser countries. We consider this difference in our concluding remarks.

Our observations can be deepened by a reflection on the cultural embeddedness of the European SERs and the fundamental difference to the African case (for social protection in general, cf. the comparative

remarks by Nowak-Garmer, 2023, pp. 114–115). As theoretical and segmentative the European SER constructs may be, they enjoy strong legitimacy among working people—even among those who are excluded from its coverage and benefits. The SER forms part of the productivist work culture, of what Max Weber analysed as the “Protestant Ethic” (Weber, 1930). This ethic—as analysed in Chap. 2 of this volume (c.f. Fechner et al. 2025, in this volume)—renders legitimate the primary orientation of protection towards commodified labour, the achievement principle in paid labour, the classification and distinction of working people according to their market merits and the exclusion of and discrimination against other, particularly care work. In other words, this work ethic is highly gendered. Within the “new spirit of capitalism” (Boltanski & Chiapello, 2005), these basic capitalist values are continuously reshaped by social protest, opposition and the ‘voice’ of the workers and other disadvantaged groups and, paradoxically, thus maintained, renewed and secured. This work cultural architecture, as exemplified by the full SER regulation, while perhaps contradictory, requires an industrial basis and, in the course of its evolution, a democratically constituted frame for work culture (Boltanski & Chiapello, 2005); neither of which can be ‘transplanted’ into areas that do not possess these prerequisites. Moreover, a transplant was neither intended as protection—even if segmented—nor equipped with chances for implementation where indigenous people lacked democratic ‘voice’. The dominating colonial powers could arbitrarily take recourse to pure private or military violence whenever non-compliance, protest or opposition came to the fore. This brute force colonialism does not allow for the legitimacy of the SER, fictional and gendered as it is, to be enjoyed in the same manner as in the Western hemisphere.

Under these circumstances, the pure effort of colonial powers to install parts of the SER into the working life of their colonies may have had a disastrous effect, however, possibly with a paradoxical perspective.²³ On the one hand, it may have contributed to building a colonial, even native, elite and thus to highly individualised legal benefits and advantages. Bruce E. Kaufman, in his historical account of the global evolution of industrial relations, hints at the other, paradoxical, side of the coin (Kaufman, 2004, pp. 517–527). The French African colonies, under the governance of individualising state labour law and direct colonial rule, suffered from

²³ Similar effects have been shown for social protection policies and their transfer by Nowak-Garmer (2023) and Leisering (2023).

individualisation and non-emergence of collective organisation. In British colonies, however, abstentionist law culture and indirect rule could not effectively stop all collective articulation, thus also voice and protest of the oppressed people. British indirect rule—adds Immanuel Geiss (2002, p. 491)—thus may even have contributed to the emergence of African nationalism and demands for autonomy which lateron developed into the anticolonial independence movements and achievements. Certainly, all our findings bring to the fore one side of the coin only: formal statutory law. In reality, they coincided, from the first until the last day of colonisation, with a *plurality of rules*—including *indigenous* and *Islamic* rules and their tribal executors, whose activity continued before, throughout and after times of colonialism whatever normative imports were made or intended.

REFERENCES

- Abdesselem, M., & Charfi, M. (1973). Tunisia. In U. Drobnig, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema, & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. T-31–T-44 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Abel, R. L. (1982). Law as lag: Inertia as a social theory of law. *Michigan Law Review*, 80(4), 785–809.
- Adams, Z., Bastani, P., Bishop, L., & Deakin, S. (2017). The CBR-LRI dataset: Methods, properties and potential of lexicometric coding of labour laws. *International Journal of Comparative Labour Law and Industrial Relations*, 33(1), 59–92.
- Auge, L. (1976). Gabon. In U. Drobnig, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema, & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. G1–G7 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Bakardjieva Engelbrekt, A. (2015). Legal and economic discourses on legal transplants: Lost in translation? *Scandinavian Studies in Law*, 60, 111–140.
- Becker, B. (2019). Introducing COLDAT: The Colonial Dates Dataset. *SOCIUM SFB 1342 Working Papers*, 2, Bremen: SOCIUM, SFB 1342. Consulted online at 18 July 2024. <https://www.socialpolicydynamics.de/f/6132a6548d.pdf>

- Bedjaoui, M. (1970). Algeria. In U. Drobniġ, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema, & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. A17–A28 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Benton, L. (2001). *Law and colonial cultures: Legal regimes in world history, 1400–1900*. Cambridge University Press.
- Bercusson, B., Mückenberger, U., & Supiot, A. (1992a). *Application du droit du travail et diversité culturelle en Europe, Étude réalisée pour le Ministère du Travail*, Tome I: Rapport comparatif, A. R. S. H.
- Bercusson, B., Mückenberger, U., & Supiot, A. (1992b). *Application du droit du travail et diversité culturelle en Europe, Étude réalisée pour le Ministère du Travail*. Tome II: Rapports nationaux, A. R. S. H.
- Blanc-Jouvan, X., & Boulouis, J. (1972). France. In U. Drobniġ, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. F-47–F-87 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Boltanski, L., & Chiapello, E. (2005). *The new spirit of capitalism*. Verso.
- Butler, M. (2018). *Labour law in Great Britain* (7th ed.). Kluwer Law International.
- Carlino, M., Fechner, H., & Schäfer, A. (2025). Using leximetrics for coding legal segmentation in employment law: The development and potential of the Worlds of Labour dataset. (in this volume)
- Chanock, M. (1985). *Law, custom, and social order: The colonial experience in Malawi and Zambia*. Cambridge University Press.
- Conrad, S. (2023). *Deutsche Kolonialgeschichte*. (Beck'sche Reihe), C.H. Beck-Verlag.
- Cotran, E. (1970). Kenya. In U. Drobniġ, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. K-1–K-9 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Cotterrell, R. (2001). Is there a logic of legal transplants? In D. Nelken & J. Feest (Eds.), *Adapting legal cultures* (pp. 71–92). Hart Publishing.
- De Oliveira, O. P. (2021). *Handbook of policy transfer, diffusion and circulation*. Handbooks of research on public policy series. Elgar.

- Deakin, S. (2018). The use of quantitative methods in labour law research: An assessment and reformulation. *Social & Legal Studies*, 27(4), 456–474.
- Despax, M., Laborde, J.-P., & Rojot, J. (2022). *Labour law in France* (3rd. ed.). Kluwer Law International.
- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2022). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(3), 560–597.
- Doyle, M. W. (1986). *Empires* (1st ed.). Cornell University Press.
- Ewald, W. (1995). Comparative jurisprudence (II): The logic of legal transplants. *The American Journal of Comparative Law*, 43(4), 489–510.
- Fechner, H. (2022). Standard-setting in colonial labour regulation and the Great Depression. In F. Nullmeier, D. González de Reufels, & H. Obinger (Eds.), *International impacts on social policy. Global dynamics of social policy* (pp. 331–344). Palgrave Macmillan.
- Fechner, H., Mückenberger, U. & Dingeldey, I. (2025). *Historical emergence of legal segmentation in global North and South and tentative theoretical explanations* (in this volume).
- Fitzpatrick, P. (1990). Custom as imperialism. In J. M. Abun-Nasr, U. Spellenberg, & U. Wanitzek (Eds.), *Law, society and national identity in Africa* (pp. 15–30). Helmut Buske Verlag.
- Fudge, J. (2017). The future of the standard employment relationship: Labour law, new institutional economics and old power resource theory. *Journal of Industrial Relations*, 59(3), 374–392.
- Gabou, A. (1977). Congo. In U. Drobnig, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema, & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. C-79–C-85 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Geiss, I. (2002). *Geschichte griffbereit. Staaten. Die nationale Dimension der Weltgeschichte* (5th ed.). Wissen Media Verlag.
- Ghai, Y. P. (1973). Tanzania. In U. Drobnig, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, pp. T1–T-8 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Guha, R. (1998). *Dominance without hegemony: History and power in colonial India*. Harvard University Press.

- Hahs, J., & Mückenberger, U. (2022). Segmenting and equalizing narratives in the ILO's standard-setting practice. *International Labour Review*, 161(4), 635–655.
- Hay, D., & Craven, P. (1993). Master and servant in England and the Empire: A comparative study. *Labour/Le Travailleur*, 31, 175–184.
- Hay, D., & Craven, P. (Eds.). (2004). *Masters, servants, and magistrates in Britain and the Empire 1562–1955*. The University of North Carolina Press.
- Hepple, B., & Veneziani, B. (2009a). Introduction. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 1–29). Hart Publishing.
- Hepple, B., & Veneziani, B. (Eds.). (2009b). *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004*. Hart Publishing.
- Joko Smart, H. M. (1985). Sierra Leone. In U. Drobnig, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema, & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024. https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. S-47–S-53 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Kaufman, B. E. (Ed.). (2004). *Theoretical perspectives on work and the employment relationship*. Cornell University Press.
- Le Crom, J.-P., Auvergnon, P., Barragan, K., Blonz-Colombo, D., Boninchi, M., Clément, A., & Couderc-Morandeau, S. (2017). Histoire du droit du travail dans les colonies françaises (1848–1960). *Rapport de Recherche pour la Mission de Recherche Droit et Justice*. <https://halshs.archives-ouvertes.fr/halshs-01592836/document>.
- Legrand, P. (1997). The impossibility of ‘legal transplants’. *Maastricht Journal of European and Comparative Law*, 4(2), 111–124.
- Legrand, P. (2001). What ‘legal transplants’? In D. Nelken & J. Feest (Eds.), *Adapting legal cultures* (pp. 55–70). Hart Publishing.
- Leisering, L. (2023). The state of social protection around the world. In L. Patel, S. Plagerson, & I. Chinyoka (Eds.), *Handbook on social protection and social development in the global South* (pp. 64–96). Edward Elgar Publishing.
- Linossier, L. (1972). Ivory Coast. In U. Drobnig, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema, & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024. https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. I-117–I-124 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Marshall, H. H. (1974). United Kingdom dependent territories. In U. Drobnig, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda,

- S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024. https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. U-107–U-130 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Medicus, D. (1972). Federal Republic of Germany. In U. Drobniç, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024. https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. F-1–F-27 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Merry, S. E. (1991). Law and colonialism. *Law & Society Review*, 25(4), 889–922.
- Miller, J. M. (2003). A typology of legal transplants: Using sociology, legal history and Argentine examples to explain the transplant process. *The American Journal of Comparative Law*, 51(4), 839–886.
- Mückenberger, U. (1985). Die Krise des Normalarbeitsverhältnisses—Hat das Arbeitsrecht noch Zukunft? *Zeitschrift für Sozialreform*, 31(7), 415–433; 31(8), 457–474.
- Mückenberger, U., & Deakin, S. (1989). From deregulation to a European floor of rights: Labour law, flexibilisation and the European single market. *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht*, 3, 153–207.
- Mückenberger, U., & Dingeldey, I. (2022). Introduction: Worldwide patterns of legal segmentation in employment law. *International Labour Review*, 161(4), 511–534.
- Mückenberger, U., & Supiot, A. (1999). Ordre public social et communauté: Deux cultures du droit du travail. In B. Zimmermann, C. Didry, & P. Wagner (Eds.), *Le travail et la nation: Histoire croisée de la France et de l'Allemagne* (pp. 81–105). Éditions de la Maison des Sciences de l'Homme.
- Nelken, D. (2001). The meaning of success in transnational legal transfers. *Windsor yearbook of access to justice*, 19, 349–366. <https://heinonline.org/HOL/P?h=hein.journals/windyrbj19&i=353>
- Nowak-Garner, R. (2023). Social protection in Africa. In L. Patel, S. Plagerson, & I. Chinyoka (Eds.), *Handbook on social protection and social development in the global South* (pp. 112–129). Edward Elgar Publishing.
- Nylander, A. V. J. (1993). Nigeria. In U. Drobniç, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024. https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018

- Ocran, M. (2006). The clash of legal cultures: The treatment of indigenous law in colonial and post-colonial Africa. *Akron Law Review*, 39(2), 465–482.
- Pakenham, T. (2011). *The scramble for Africa, 1876–1912*. The Folio Society.
- Posch, M. (1976). German Democratic Republic, In U. Drobniġ, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024. https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. G-13–G-32 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Ragin, C. C. (2006). Set relations in social research: Evaluating their consistency and coverage. *Political Analysis*, 14(3), 291–310.
- Ragin, C. C. (2008). *Redesigning social inquiry: Fuzzy sets and beyond*. University of Chicago Press.
- Ragin, C. C., & Davey, S. (2022). *Fuzzy-set/qualitative comparative analysis 4.0*. University of California.
- Rittich, K., & Mundlak, G. (2017). The challenge to comparative labor law in a globalized era. In M. W. Finkin & G. Mundlak (Eds.), *Comparative labor law* (pp. 88–111). Edward Elgar.
- Schröder, P. J. (2006). *Gesetzgebung und “Arbeiterfrage” in den Kolonien. Das Arbeitsrecht in den Schutzgebieten des deutschen Reiches*, LIT-Verlag.
- Simmonds, K. R. (1976). United Kingdom. In U. Drobniġ, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. U-50–U-102 (in *International encyclopedia of comparative law* (1970), vol. 1).
- Supiot, A. (2001). *Beyond employment: Changes in work and the future of labour law in Europe*. Oxford University Press.
- Trikoz, E. N., & Gulyaev, E. N. (2023). The communicative function of legal transplants in mixed legal systems. *Kutafin Law Review*, 10(3), 515–543.
- Twining, W. (2006). Diffusion of law: Global perspective. *Journal of Comparative Law*, 1(2), 237–260.
- Vergnaud, P., & Monie, J. N. (1975). Cameroon. In U. Drobniġ, R. David, H. H. Egawa, R. Graveson, V. Knapp, A. T. Von Mehren, Y. Noda, S. Rozmaryn, V. M. Tschchikvadze, H. Valladão, H. Yntema, & K. Zweigert (Eds.), *International encyclopedia of comparative law online*, consulted online on 18 July 2024; https://doi.org/10.1163/2589-4021_IECO_COM_01TUN, first published online: 2018, p. C-1–C-9 (in *International Encyclopedia of Comparative Law* (1970), vol. 1).

- Vosko, L. F. (2010). *Managing the margins: Gender, citizenship, and the international regulation of precarious employment*. Oxford University Press.
- Watson, A. (1993). *Legal transplants: An approach to comparative law* (Second version). University of Georgia Press.
- Weber, M. (1930). *The protestant ethic and the spirit of capitalism*. Routledge.
- Webster, T. (2006). Legal excisions omissions are not accidents. *Cornell International Law Journal*, 39(2), 435–455.
- Weiss, M., Schmidt, M., & Hlava, D. (2020). *Labour law and industrial relations in Germany* (5th ed.). Kluwer Wolters.
- Wise, E. M. (1990). The transplant of legal patterns. *The American Journal of Comparative Law*, 38, 1–22.

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The Evolution of Standard and Non-standard Employment Regulation Around the World: A Sequence Analysis of Regulation Trajectories over Four Decades

Jean-Yves Gerlitz and Irene Dingeldey

I INTRODUCTION

The global economic crisis of the 1970s marked the end of Keynesian policies and welfare state expansion (Obinger & Starke, 2015) and shifted the focus to globalisation. The political discourse in the 1980s was then

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dominated by the position that social policies and labour regulation primarily represent costs to the state and employers, and as such presented obstacles to employment creation and international competitiveness. Hence, national governments and various international organisations supported the flexibilisation of labour markets, referring both to the loosening of legal protection of the so-called standard employment relationship (SER), i.e. full-time permanent employment, and the promotion of non-standard forms of employment (NSER) such as fixed-term, part-time and agency work (Mückenberger & Deakin, 1989). These changes towards supply-side policies were intended to create employment, lower unemployment and (re-)establish high economic growth (OECD, 1994). They formed part of a paradigm shift from the Keynesian welfare state towards more neo-liberal variants that—since the 1990s—were discussed as the activating or social investment welfare state in the Global North (GN) (Hemerijck, 2012).

This transformation was marked by diverging and in part reflexive re-regulation policy initiatives producing different patterns of inclusive and exclusive employment law. For example, in the European Union the concept of ‘flexicurity’ has spurred policies to facilitate the use of non-standard employment and to flexibilise working time at least since the 2000s (Deakin & Reed, 2000). These policies were readopted in response to the 2008 financial crisis to ‘cure’ particularly high unemployment in the Mediterranean countries (Heyes & Lewis, 2013). At the same time, policy reforms demanding gender-equal employment (Wahl, 2005), working time restrictions and equal treatment of non-standard employees (Walby, 2004) began in 1975 and culminated in various new EU directives between 1993 and 2019. Similar ideas were promoted by the International Labour Organization (ILO, 2016), taken up by other international organisations such as the OECD (2018, 2019) and—albeit with less emphasis—the World Bank and the International Monetary Fund (Anner & Caraway, 2010; Duval & Loungani, 2019; World Bank, 2019). This signalled a kind of reactive attempt to limit the increase of flexible forms of employment and the deepening of labour market segmentation (Rogowski, 2013, 25) on a global scale. And although, historically, labour market segmentation in the Global South (GS) followed different patterns—as outlined in the introduction to this book—since the early 1980s, the neo-liberal policy approach of the International Monetary Fund and the World Bank, but also national governments, contributed to a dismantling of existing welfare programmes and labour regulation and further increased the

precarisation and informalisation of work (Schmidt, 2006). Since the 1990s, left-wing governments in some Latin American countries followed a post-neo-liberal route to reverse some of the previous policies (Ruckert et al., 2017).

With its decline in the wake of the rise of other forms of employment in the GN (Heyes & Lewis, 2013), the SER was often stylised as a kind of gold standard for protective labour regulation, ignoring its inherent segmenting function (as discussed in the introduction by Dingeldey et al.). In what follows we do not enter into the debate on this controversy and therefore do not want to analyse the different legal functions of the SER itself and their respective inclusiveness or selectivity. We rather focus on global patterns in the development of labour regulation and the question whether there is any employment protection at all; the fact that we consider both the SER and NSERs nevertheless takes into account potential selectivities.

Taking the 1970s as a starting point, we ask which patterns of labour regulation existed at that time and which regulation trajectories can be observed since. The 1970s were chosen, on the one hand, because they marked both the peak of the Keynesian welfare state and the consolidation of decolonialisation for many countries of the GS, on the other hand, because of data availability. In line with studies limited to the protective function or the strictness of regulations, we look at two exemplary indicators that highlight the level of labour standards in the SER (dismissal protection and working time restrictions). However, we complement this perspective by considering measures that indicate the extent to which that protection is also extended to NSERs. We perceive a high degree of SER regulation in combination with no or weak restrictions or equalising regulations of NSERs as an indication of legal exclusion or a lack of social protection coverage. The term ‘inclusiveness’ here refers to the inclusion of workers in employment protection. Being aware that this is a very restricted understanding, we nevertheless assume that an explorative analysis will provide new insights into the patterns of how inclusive and exclusive labour regulation developed in a global perspective.

Extending global studies on labour regulation as a topic in social policy research, we particularly analyse trajectories of change. We aim to identify whether countries follow global trends of (a) more flexible and exclusive regulation demands or (b) equalising demands, or (c) whether they just reflexively re-regulate their standards according to timely developments.

Furthermore, we ask whether the respective patterns can be explained by legal origin, economic status or membership in regional organisations. This sheds light on whether employment law develops path dependently or according to global guidelines such as a general extension of social protection. Alternatively, (reflexive) re-regulation would suggest ‘stop and go’ reforms that either follow transnational or international demands, or react to negative consequences of previous national legislation.

As this study was conducted at an early stage of the Worlds of Labour (WoL) project, we limited our analyses to indicators from the Cambridge Centre for Business Research Labour Regulation Index (CBR-LRI) and assessed the levels of SER and NSER regulation between 1970 and 2013 for 86 countries. The dataset measures national *de jure* regulation, which does not necessarily reflect the *de facto* implementation of employment law. With a sequence and cluster analysis, we identified regulation trajectories and applied bivariate analysis to explore the capacity of indicators to predict the observed trajectories. After assessing baselines of protective and inclusive regulation in 1970, changes were followed up until 2013 to identify common regulation trajectories. To explain the observed trajectories, we explored three different theories in order to set a starting point for further research: we used single indicators representing the legal origin theory that would assume a path-dependent development (Deakin et al., 2007); we considered the world systems theory, suggesting different trajectories according to a country’s position within the world economy (Wallerstein, 1974); and we explored the impact of transnational integration into regional organisations and trajectories as an outcome of diffusion (Börzel et al., 2015; Kaasch et al., 2019). These three approaches were chosen to explore the explanatory power of different relevant theories, namely institutional path dependency, the level of economic development, and integration in transnational organisations and their dissemination function on labour law as an element of inclusive or exclusive social policy. With this explorative approach, we aimed at widening explanations of social policy change in a global perspective.

The chapter is structured as follows: first, we discuss the results of existing studies with respect to labour regulation and its trajectories as a particular field of social policy (Sect. 2). Drawing on existing theories, we outline our theoretical approach and assumptions concerning regulation trajectories (Sect. 3). After discussing the research design and methods (Sect. 4), we present our empirical findings (Sect. 5) and close with a final discussion (Sect. 6).

2 DIVERGING RESULTS ON THE DEVELOPMENT OF LABOUR REGULATION

Studies on how social policy trends have influenced the development of employment regulation around the world mostly focus on the protection or ‘restriction’ level of legal regulation and present contradictory results. In general, employment protection and codetermination laws seem to be more protective in the GN than in developing countries, but the gap is not large (Deakin, 2016).

In line with the different datasets and indicators used, empirical results diverge with respect to the development of employment law: using the OECD’s Employment Protection Legislation (EPL) summary indicator for 14 countries, Emmenegger and Marx (2019, p. 708) find a steady average increase in labour regulation in the post-war period until the end of the 1990s, followed by a slight decrease, overall due to a flexibilisation of fixed-term contracts until 2008 (confirmed by Gebel & Giesecke, 2016). However, Allard (2005) points out a general increase in labour regulation between 2000 and 2005 on the basis of the same dataset by including more broadly equal treatment regulations between 1993 and 2013. This result has been confirmed by Adams, Bastani, et al. (2017) and Fenwick et al. (2015) using the summary index of the CBR-LRI. This dataset has differentiated indicators suitable for exploring patterns of regulation and divergent regulation trajectories in single countries between 1970 and 2010 (Deakin et al., 2014, 9ff.).

Shortcomings of these studies include that most of them either cover a rather selective set of countries, observe a rather short time period (Nicoletti et al., 2000, 48) that at best starts in the 1990s (Deakin et al., 2014; Cooney et al., 2014; C. Fenwick et al., 2015; Adams et al., 2015) or use various data sources (Emmenegger & Marx, 2019). Hence, there is a lack of systematic and longitudinal evaluations of regulation trajectories of labour standards and their inclusiveness across countries with highly diverse economic and political conditions. We know little about the patterns of changes in this field of regulatory social policy and their possible drivers.

3 THEORETICAL BACKGROUND AND ASSUMPTIONS

Theoretical approaches in comparative political economy that combine *institutionalist* with *political-economic* and *power-related explanations* see employment law as the outcome of macroeconomic conditions, interest

group configurations and legal-political structures that are embedded in particular national contexts (Amable et al., 2007). *Legal origin theory* can be perceived as a variant of new institutionalist economics as both share basic assumptions. Legal origin theory highlights the divide between civil and common law families and often associates the former with sharply stronger labour regulations than the latter. The tradition of legal regulation—in many countries inherited from colonisers—is assumed to influence economic development and the trajectory of legal development (Botero et al., 2004). Labour law families supposedly have an impact on long-run institutional development and economic growth—emphasising path dependency. Accordingly, it is claimed that systems of common law origin enjoy a comparative advantage over their civil law counterparts when processes of market liberalisation are politically demanded (La Porta et al., 2008). Accordingly, we assume,

1a, a strong path-dependent development of legal standards is to be expected resulting in a more or less dual pattern of regulation trajectories according to the still strong influence of legal families.

However, this view is criticised by other institutionalist and political-economic scholars who point out the dominance of mixed or hybrid systems, so that the difference between common and civil law is one of degree (Deakin & Sarkar, 2008). Although it is admitted that the common/civil law divide has had an influence on early industrialisation and that legal forms have been transplanted or diffused to colonies (Deakin, 2009), the development of labour law is understood to interact with other (labour) market regulations and corporate governance rules (Deakin & Sarkar, 2008, 454). The understanding is that in the GN the core institutions of the SER were introduced at different historical moments in response to industrialisation (Aleksynska & Cazes, 2014), the rise of collective bargaining and vertical integration of industrial enterprises in the late nineteenth and early twentieth centuries. Labour rights as part of welfare state development were related to democratisation and the rise of working-class politics in the different countries (Deakin, 2016). These arguments challenge a strict path-dependent or institutionally dominated theory of change (Emmenegger & Marx, 2019) and support studies from political economy and welfare state research emphasising the distribution of power resources, particularly in industrial relations systems and their influence on labour regulation (Hall & Soskice, 2001; Palier & Thelen, 2010; Schmalz et al., 2019; Thelen, 2014).

In contrast, the theory of reflexive labour law explains legal development within a system-based approach and views economic development as well as power resources as only indirect influences on its development (Rogowski, 2013). Accordingly, legal innovations result from the acknowledgement of the limits and problems of previous legal regulation: allowing fixed-term contracts can be a reaction to problems with employment protection measures, but, equally, increasing these forms of employment can provoke reflexive regulation in the form of restrictions (Rogowski, 2013, 91; 100). Hence, at least some reform trajectories would display ‘stop and go’ reforms. Moreover, the interaction with reflexive international and global labour law is emphasised, e.g. new forms of governance in accordance with the guidelines of international organisations, social clauses in trade agreements on a transnational level, etc. (Rogowski, 2013, 228ff.). Combining these theoretical approaches, a competing assumption with respect to the development of regulation trajectories can be formulated:

1b, an evolutionary development of regulation standards is to be expected, resulting in rather diverging reform trajectories due to reflexive law development being inspired by domestic constellations and/or the interactions of national and international law diffusion.

Furthermore, international norm-setting and a country’s position within the global economy might explain the development of regulation patterns. Drawing on Wallerstein’s *world systems theory*, three regions or hierarchically organised tiers are to be distinguished that reflect the status of single countries within the global division of labour and the derived organisation of production, namely the ‘core’, the ‘semi-periphery’ and the ‘periphery’ (Wallerstein, 1974). The respective regions are associated with a particular international division of labour and different methods of labour control in the historical context. In comparison to core regions, the ‘semi-periphery’ and the ‘periphery’ are expected to secure a comparative advantage for labour costs by rather low regulation standards. If divergent economic status in the world system were the dominant influence on labour regulation

2. a correlation between (high) economic status and (strong and inclusive) labour regulation is to be expected, both with respect to the baseline in the 1970s and the reform trajectory afterwards.

While the ILO is unquestionable a decisive international influence, different regulation trajectories cannot simply be explained by membership. Hence, we emphasise the geopolitical aspect of countries' membership in international organisations as a strategy to improve or consolidate their position within the world system. We know that *international, continental* and *regional supranational organisations* play an important role as norm entrepreneurs for governance transfer and norm diffusion (Kaasch et al., 2019, 92; Börzel et al., 2015). Global social policy highlights membership in regional transnational organisations as a particular dimension of international integration (Yeates, 2007, 2019). Continental organisations are among the oldest regional organisations since World War II. From early on, most of them promoted human rights at the national and regional levels. With the end of the Cold War, they extended the scope of their efforts (Börzel et al., 2015). Furthermore, trade agreements are relevant as some continental organisations evolved to supranational organisations, the EU being a most prominent example. In both forms, the inclusion and promotion of non-trade issues (Lechner, 2016; van der Vleuten, 2016) and consequently global labour governance (Meardi & Marginson, 2014)—or multi-level governance arrangements—increased. Supplementing previous assumptions,

3. we expect that membership in transnational regional organisations reflects commonalities, interrelations and joint political-economic action within the respective economic and geopolitical zones and thus influences labour standards that follow similar change trajectories.

The selected theories and their operationalisation reflect various explanatory patterns that are relevant in welfare state research in an exemplary way.

4 RESEARCH DESIGN AND METHODS

4.1 Data

We combined data from the Cambridge Centre for Business Research Labour Regulation Index 2017 (CBR-LRI 2017; Deakin et al., 2017; Adams, Bastani, et al., 2017) to measure the change in labour regulation (dependent variable) with the Quality of Government Standard Dataset 2019 (QoG 2019; Teorell et al., 2019) and data from the International

Labour Organization (ILO) on cooperation agreements with other international organisations (ILO, 2019) that contain the independent variables. The CBR-LRI is a database of individual and collective *de jure* labour regulation in 117 countries covering the period from 1970 to 2013 and represents the backbone of the WoL dataset. Adams, Bishop, and Deakin (2017) quantified 40 regulations and measured them on scales from ‘0’ to ‘1’, with ‘0’ meaning low and ‘1’ high levels of regulation. Our sample encompasses the 86 countries that have full information for the period from 1970 to 2013 and with the regions Western Europe and North America, Latin America, North Africa and the Middle East, Sub-Saharan Africa, East Asia, South Asia, South-East Asia, and the Caribbean covers almost all of the world; countries from East Asia and Eastern Europe are missing as they were included in the CBR-LRI only after the Fall of the Iron Curtain. As this was an exploratory analysis of patterns of labour law, we saw no reason to further narrow down the available period, e.g. to take important events into account. We assumed that fundamental political or economic changes would also be reflected in changes to the scope of protection.

The QoG is a meta-dataset with 211 current and historical countries. It covers the period from 1946 to 2016 and includes data from international organisations such as the *World Bank* and from comparative scientific projects such as the *Luxembourg Income Study*. For our analysis, we used indicators from the *Quality of Government* data (La Porta et al., 1999) to capture legal origin and the *Expanded Trade and GDP Data* (Gleditsch, 2002) to address economic development for the period between 1960 and 1970. In the first case we obtained data for all 86 countries; in the second case data on 4 countries (Angola, Bangladesh, Qatar and St. Lucia) are missing.

4.2 Indicators

We focused on individual labour regulation, which in the CBR-LRI is measured by three dimensions: dismissal protection and working time restriction—which we used as measures for SER regulation—and NSER regulation. In the case of the first two dimensions, we replicated Adams, Bastani, et al. (2017) and measure them as the mean of equally weighted indicators. We split up the third dimension since it measures three aspects: whether employee status is defined by law or not, NSER equal treatment and NSER restriction. We disregarded the first and focused on NSER

regulation, again by calculating the mean of equally weighted indicators. The final SER and NSER regulation indices were computed by taking the means of the two sub-indices. The scale of the SER and NSER regulation indices range from '0' to '1', with values closer to '1' indicating high regulation levels. The measurement concept is presented in Table 8.1

'SER regulation' represents the level of labour standards for permanent full-time employees, i.e. high values represent high labour standards. In contrast, 'NSER regulation' measures the extent to which non-standard forms of employment such as part-time, fixed-term and agency work are covered by those labour standards—either by restriction or equal treatment policies. Thus, it measures the degree of inclusion, where high values mean inclusive labour regulation and low values exclusive regulation. For the further analysis, we split both scales three ways and label them 'low', 'medium' and 'high' regulation. Their development was followed for each country over time as a reform trajectory. In line with the limitations of our research already formulated above, we are aware that this is a rather broad approach to measuring 'inclusiveness', albeit useful to indicate change in regulative patterns over time.

Legal origin is measured by an indicator used by La Porta et al. (1999) that categorises countries according to English, French, German, Scandinavian and Socialist law traditions, referring to national commercial law. As most theories are concerned with French civil and English common law at opposing ends and as the majority of observed countries belong to these two legal families (54% and 31%, respectively), we combined the remaining options in one category. We measured economic development by real gross domestic product (GDP) per capita estimated by Gleditsch (2002). To determine whether countries belong to the (economic) centre, semi-periphery or periphery (Wallerstein, 1974), we created terciles and distinguished between low, medium and high GDP.

To look at international diffusion, we limited the selection to regional political and economic institutions founded some time before 1970 that then had a considerable number of members at that time. The rationale was that there should be some lead time that could explain base levels of labour regulation, that most exchange and diffusion occurs in smaller settings with spatial and cultural proximity, while very small units (e.g. only two countries) would make it impossible to generalise common trends and very large units (e.g. almost all countries) would probably show high internal, but low external variance. In the end, we chose five regional organisations founded between 1948 and 1963 that cover almost all

Table 8.1 Indicators for SER and NSER regulation

	<i>(Sub-)dimension</i>	<i>Indicator</i>
SER regulation	Dismissal protection <i>[high value = high protection]</i>	• Legally mandated notice period • Legally mandated redundancy compensation • Minimum qualifying period of service for normal case of unjust dismissal • Law imposes procedural constraints on dismissal • Law imposes substantive constraints on dismissal • Reinstatement normal remedy for unfair dismissal • Notification of dismissal • Redundancy selection • Priority in re-employment
	Working time regulation <i>[high value = high restriction/more leisure time]</i>	• Annual leave entitlements • Public holiday entitlements • Overtime premiums • Weekend work • Limits to overtime working • Duration of the normal working week • Maximum daily working time
NSER regulation	NSER equal treatment ^a <i>[high value = equal treatment as SER]</i>	• Part-time workers have the right to equal treatment with full-time workers • The cost of dismissing part-time workers is equal in proportionate terms to the cost of dismissing full-time workers • Fixed-term workers have the right to equal treatment with permanent workers • Agency workers have the right to equal treatment with permanent workers of the user undertaking
	NSER restriction ^a <i>[high value = high restriction]</i>	• Fixed-term contracts are allowed only for work of limited duration • Maximum duration of fixed-term contracts • Agency work is prohibited or strictly controlled

Source: CBR-LRI (2017); (Adams, Bishop, & Deakin, 2017)

^aAuthors' classification

regions of the world and 71 of our 86 countries: the *Council of Europe* (CoE), the *Organization of African Unity* (OAU), the *Organization of American States* (OAS), the *League of Arab States* (LAS) and the *Asian Organization of Productivity* (AOP).¹ All have cooperative agreements with the ILO which guarantee the relevance of labour standards in negotiations. A comprehensive categorisation of all countries in terms of their legal origin, membership in regional organisations and economic status can be found in Table 8.3 in the supplement.

While the three described indicators might explain specific aspects of labour regulation trajectories, we also wanted to develop a condensed measure that combines the features in a meaningful way and to use it as an aggregated independent variable. To this end, we conducted a hierarchical cluster analysis with dummy variables for each category of the three indicators (here it was possible to take dual memberships in regional organisations into account). To obtain clusters of approximately equal size, we used Ward's linkage, a variance method that minimises within-cluster variation and calculates the distance as the distance of all clusters to the grand average of the sample (1963). We extracted solutions from three to ten clusters and chose the five-country cluster solution which combined parsimony with informative value, i.e. a minimum number of distinct and meaningful country clusters. The five clusters and their primary features are presented in Table 8.2.

4.3 Methods

We perform the analysis in three steps: (1) definition of regulation levels for each country-year, (2) sequence and cluster analysis for the whole observation period to identify regulation trajectories and (3) bivariate analysis with macro-indicators to explore associated factors.

In the *first step*, we identified annual labour regulation patterns by combining SER and NSER regulation levels and categorised each country-year as one of the following: low SER/low NSER (LL), low SER/medium NSER (LM), low SER/high NSER (LH), medium SER/low NSER (ML), medium SER/medium NSER (MM), medium SER/high NSER (MH), high SER/low NSER (HL), high SER/medium NSER (HM),

¹The effective number of members (joined by 1971) in our dataset ranges between 9 and 18; in cases of dual membership (5 countries), the country was assigned to the smaller organisation. The 15 countries we could not assign were combined in a remainder category.

Table 8.2 Country clusters by features and country

<i>Cluster</i>	<i>Features</i>	<i>Countries</i>
Cluster 1	English law	Australia, Botswana, Canada, Cyprus, Ghana, India, Ireland, Israel, Kenya, Lesotho, Malaysia, New Zealand, Nigeria, Pakistan, Saudi Arabia, Singapore, South Africa, Sri Lanka, Sudan, Tanzania, Thailand, Uganda, the UK, the USA, Zambia
Cluster 2	Other law, rather CoE, rather high GDP	Austria, Cuba, Denmark, Finland, Germany, Iceland, Japan, Myanmar, Norway, South Korea, Sweden, Switzerland, Taiwan
Cluster 3	French law, OAS, medium GDP	Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Nicaragua, Panama, Peru, Uruguay
Cluster 4	French law, rather low GDP	Afghanistan, Algeria, Cameroon, Democratic Republic of the Congo, Egypt, Ethiopia, Gabon, Honduras, Indonesia, Iran, Ivory Coast, Jordan, Mali, Mexico, Morocco, Paraguay, Philippines, Portugal, Rwanda, Senegal, Spain, Syria, Tunisia, Venezuela
Cluster 5	French law, CoE, medium to high GDP	Belgium, France, Greece, Italy, Luxembourg, Malta, Netherlands, Turkey

Sources: Quality of Government; Expanded Trade and GDP Data 2019; ILO (2019)

high SER/high NSER (HH). With an observation period from 1970 to 2013, this resulted in sequences with 44 measurement points—a rather modest duration when one intends to study changes to the law.

In a *second step*, we performed sequence cluster analysis to identify labour regulation trajectories. Sequence analysis maps successions of states—here annual regulation—and compares similarities by calculating their distance from each other, i.e. the *substitution costs* required to transform one sequence into another. From the range of available optimal matching operations, we chose Lesnard's (2010) dynamic Hamming distance measure which is suitable for sequences of equal length and timing. The dynamic Hamming approach calculates state spaces, i.e. the degree of similarity at a specific time. It ignores similarities displaced in time and produces a distance measure that is the sum of empirical transition probabilities between states at each time point. We chose this relatively rigid matching algorithm over more flexible methods as we were interested in both succession and simultaneity of regulation patterns. Furthermore, the

method is attractive as substitution costs are based on time-variant probabilities drawn from the empirical data. The dynamic Hamming distances were the basis for calculating the regulatory change clusters. Again, we performed cluster analysis using Ward's (Ward Jr., 1963) algorithm, extracting solutions that ranged from 5 to 12 clusters. Again, we decided for the solution that combined parsimony with informative value, i.e. a minimum number of distinct and meaningful trajectories, which was the nine-cluster solution, representing nine distinct trajectories of labour regulation.

In a *third step*, we conducted bivariate analysis to assess to what extent legal origin, membership in regional organisations, economic status and country clusters before 1970 triggered certain trajectories. We refrained from using more advanced methods such as ordinal or multinomial regression models as the medium sample size of 86 cases and a dependent variable with 9 categories inevitably would result in cell sizes too small for inferential statistics.

5 FINDINGS

In the following, we present results of the SER/NSER protection-level categorisation of country-years, the sequence cluster analysis of global regulation trajectories and the association of the trajectories with legal origin, colonialisation and economic development—thus contributing to an advancement of this particular field of social policy.

5.1 *Trends in SER and NSER Regulation*

Figure 8.1 presents the strength of SER and NSER regulation for the sample in the years 1970 and 2010. With the help of reference lines that mark low, medium and high regulation levels, we observe that in 1970 about two-thirds of countries had low levels of NSER regulation and had either medium (44%; e.g. France) or low (22%; e.g. GB and the USA) SER regulation, while one fourth experienced both medium NSER and SER regulation (e.g. Germany). By 2010, there had been a major shift towards medium SER regulation (80%), leaving only very few countries with weakly regulated SERs. Equally, only few countries have strong SER protection. With respect to the regulation of NSERs, we see wide variation: of the countries with medium SER regulation 26% have low levels of NSER regulation, 35% medium levels and 20% high levels. All 19 European

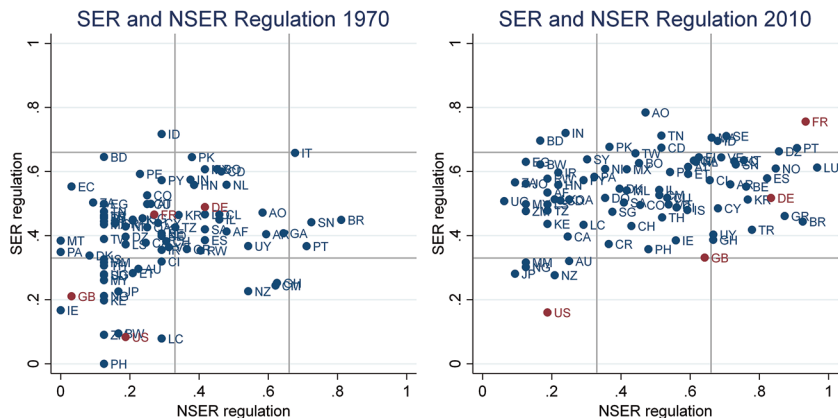


Fig. 8.1 Dimensions of SER and NSER regulation by period. (Source: CBR-LRI 2017, authors' calculation; SER = standard employment relationship, NSER = non-standard employment relationship)

countries, including the UK, moved to medium- or high-level NSER regulation (in 1970, 74% had low levels).

Overall, this picture indicates that the legal protection provided by the SER converges towards a medium level of regulation with respect to dismissal protection and working time regulation as major components. In contrast, a highly differentiated pattern for the divergent treatment of NSER exists, indicating that countries with low NSER regulation rather follow an exclusionary strategy, and others—among them many European countries—have a highly inclusive legal approach. However, we want to underline again that these findings are limited to formal legal regulation. *De facto* work protection varies substantially because the enforcement of the existing regulations is still deficient—often leaving the majority of workers in the GS without protection.

5.2 Labour Regulation Trajectories

Figure 8.2 shows the nine labour regulation trajectories extracted by the sequence cluster analyses. Trajectories are characterised by their most common baseline and development. We observe three pairs of more common trajectories (at least eight countries) that start with identical baselines and split up into stayers and movers. The move is always towards higher

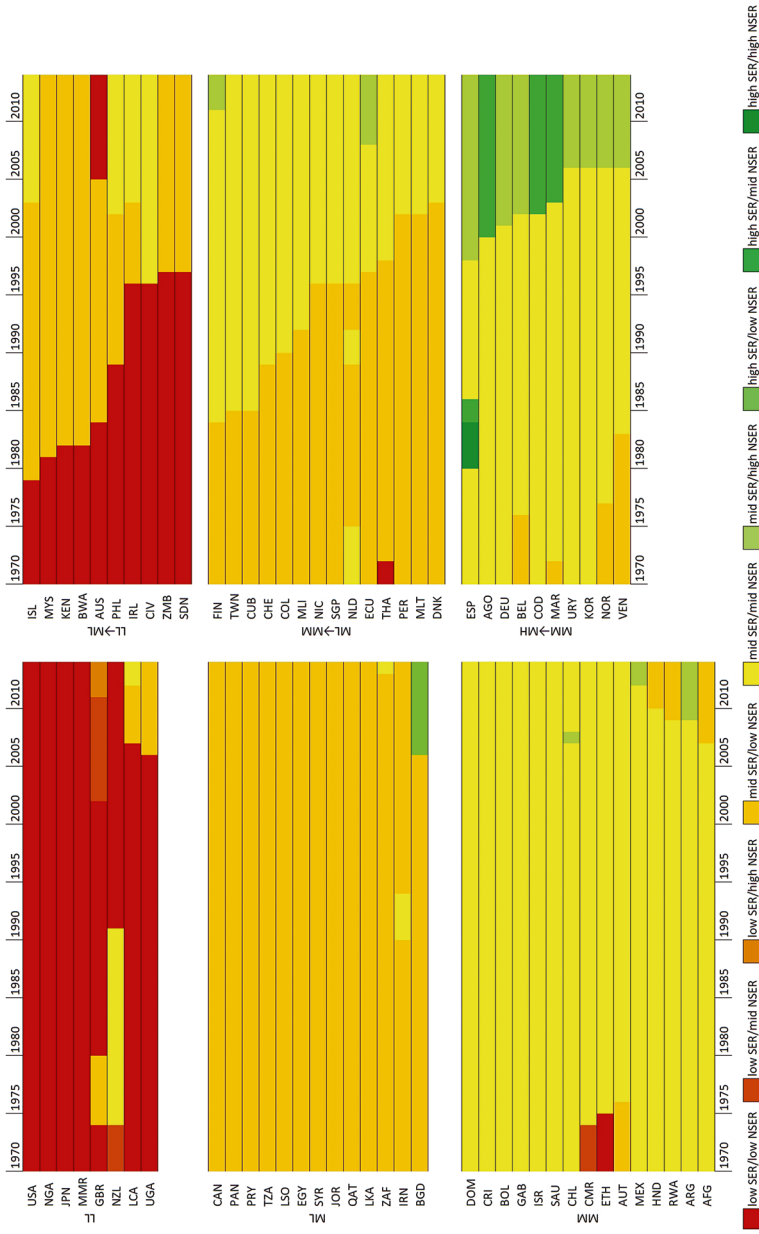


Fig. 8.2 Trajectories of SER and NSER regulation. (Source: CBR-LRI 2017; authors' analysis; SER = standard employment relationship, NSER = non-standard employment relationships, LL = low SER/low NSER, ML = mid SER/low NSER, MM = mid SER/mid NSER, MH = mid SER/high NSER, HH = high SER/high NSER)

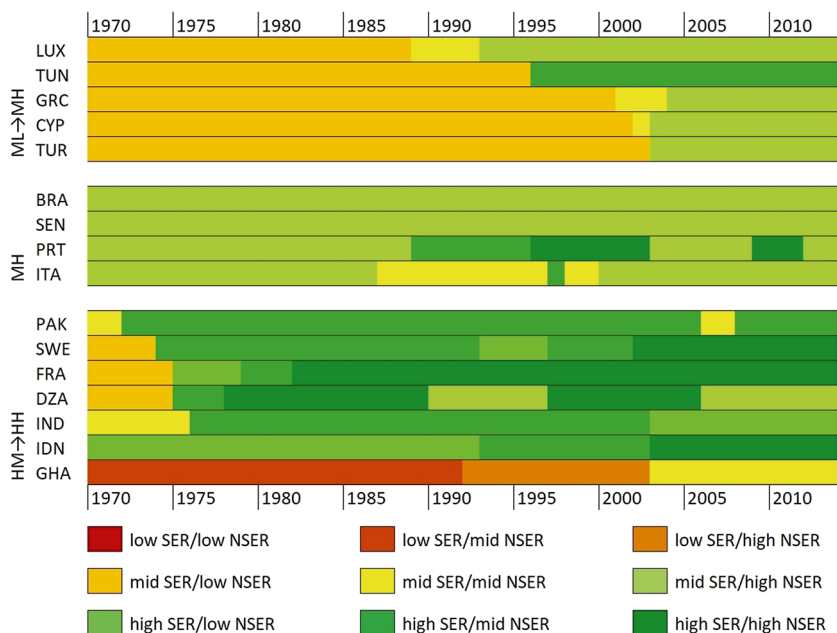


Fig. 8.2 (continued)

regulation of either labour standards or inclusion, or of both. While a differentiated analysis of the continuous scale might reveal minor reductions in regulation, they are not substantial enough to show on our categorised scale.

In addition, there are three less common trajectories with six countries or fewer. The first two clusters start off with low levels of both SER and NSER regulation (LL) in 1970. In the first cluster, this remains mostly constant over time. It contains liberal welfare states such as the USA, Great Britain and New Zealand, but also Japan, Nigeria, Uganda, Myanmar and St. Lucia. In accordance with the results in Fig. 8.1, in the second pattern (LL→ML) the labour standards only increase to a medium level over time, creating an exclusive legal regulation regime since NSERs do not profit from extended regulation. This development starts in Iceland already in the late 1970s, mainly took place in Sub-Saharan African countries (55%), while Zambia and Sudan are latecomers at the end of the 1990s.

The baseline of the next two trajectories is medium-level SER and low-level NSER regulation (ML). The cluster whose regulation stays constant over time largely consists of countries in North Africa and the Middle East (38%) and Sub-Saharan Africa (23%), such as Egypt, Qatar, Tanzania and South Africa, as well as the liberal welfare state Canada. The other cluster moves towards medium-level NSER regulation (ML→MM), i.e. more inclusive protection. It consists two equal parts (each 36%) of Latin American countries such as Cuba and Colombia, and Western European countries such as the Netherlands and Switzerland. Here, Finland was the pioneer and Denmark the latecomer with increased NSER regulation in the mid-1980s and mid-2000s, respectively.

The last pair of trajectories starts off with medium-level SER and NSER regulation (MM), i.e. a medium level of labour standards that were only partly extended to non-standard employees. The two main groups of stayers are countries from Latin America (47%) such as Mexico and Chile, and countries from Sub-Saharan Africa (27%) such as Cameroon and Ethiopia. The movers show a trend towards high-level NSER regulation (MM→MH), turning towards highly inclusive employment law. This cluster consists mainly of Western European countries (40%) such as Germany and Spain, and countries from Latin America and Sub-Saharan Africa (each 20%). In this cluster, Spain already increased both SER and NSER regulation at the end of the 1980s, flexibilised it some years later, and again was the first in the group that strongly increased inclusiveness in the late 1990s. In contrast, Norway, Uruguay, Venezuela and Korea share the last place with reforms in the late 2000s.

Turning to the three remaining labour regulation trajectories, the first is a variation of the ML-baseline couple that moves towards a strong inclusion of non-standard employees (ML→MH) between the mid-1990s and mid-2000s and includes countries such as Luxembourg and Turkey. The second pattern consists of stayers that had medium labour standards and high inclusiveness already in 1970 (MH), amongst others Brazil and Italy. Portugal created most of its equal and inclusive employment regulation only for some intermediary years. The last pattern already sets out with high SER regulation, but only medium-level NSER regulation, and becomes highly inclusive over time (HM→HH); however, regulation trajectories indicate many legislative changes to lower or higher levels of NSER regulation. This cluster, which eventually grants high labour standards to all kinds of employment relationships, consists of countries such as France, Sweden and India.

Generally, the convergence towards stronger regulation is based on maintaining a stable level of labour standards, in combination with a tendency to readjust the protection of flexible forms of employment to the level of the SER, thus increasing inclusiveness in employment law. With respect to the regulation of the NSER, however, we do not only see that countries maintain different levels of protection, but we also observe up-and-down-scaling reforms. These results partly support both of our competing assumptions (1a and 1b): we find distinct meta-trajectories in the form of ‘stayers’ and ‘movers’, with most of the former belong to the common law family, but we also see diverging reform trajectories with several re-regulations over time that may be related to reflexive law development inspired by domestic or international influences.

5.3 *Labour Regulation Trajectories and Legal Origin, Economic Status and Transnational Diffusion*

To gain more insight into the extracted trajectories, we relate them to our indicators for legal origin, economic status and international diffusion, and look at whether the distribution of employment regulation sequences differs by law traditions, GDP per capita or membership in regional organisations. The results are presented in Fig. 8.3.

The association between legal origin and regulation trajectories seems to be mainly focused on baseline regulation levels in the 1970s, while developmental trends within this pattern strongly vary. Countries with English common law are centred around trajectories with low or at best medium SER and NSER regulation baselines in the 1970s (they make up 70% of the patterns LL, LL→ML and ML), i.e. they mainly move between combining low standards with low inclusion or a more exclusive medium-standard low-inclusive option. Countries with French civil law cluster around medium SER and NSER baselines (ML→MM, MM, MM→MH, ML→MH and MH make up 74%), and a certain degree of inclusion either already exists or is being sought. Furthermore, countries with other legal traditions (German, Scandinavian or Socialist) show rather medium-level baselines (69%), too, while there is a strong tendency to move from medium standards and low inclusion towards medium-level NSER regulation (ML→MM, 38%). Hence, legal origin seems to be influential in the 1970s but hardly explains commonalities and disparities in the development thereafter—indicating the lack of a path-dependent development.

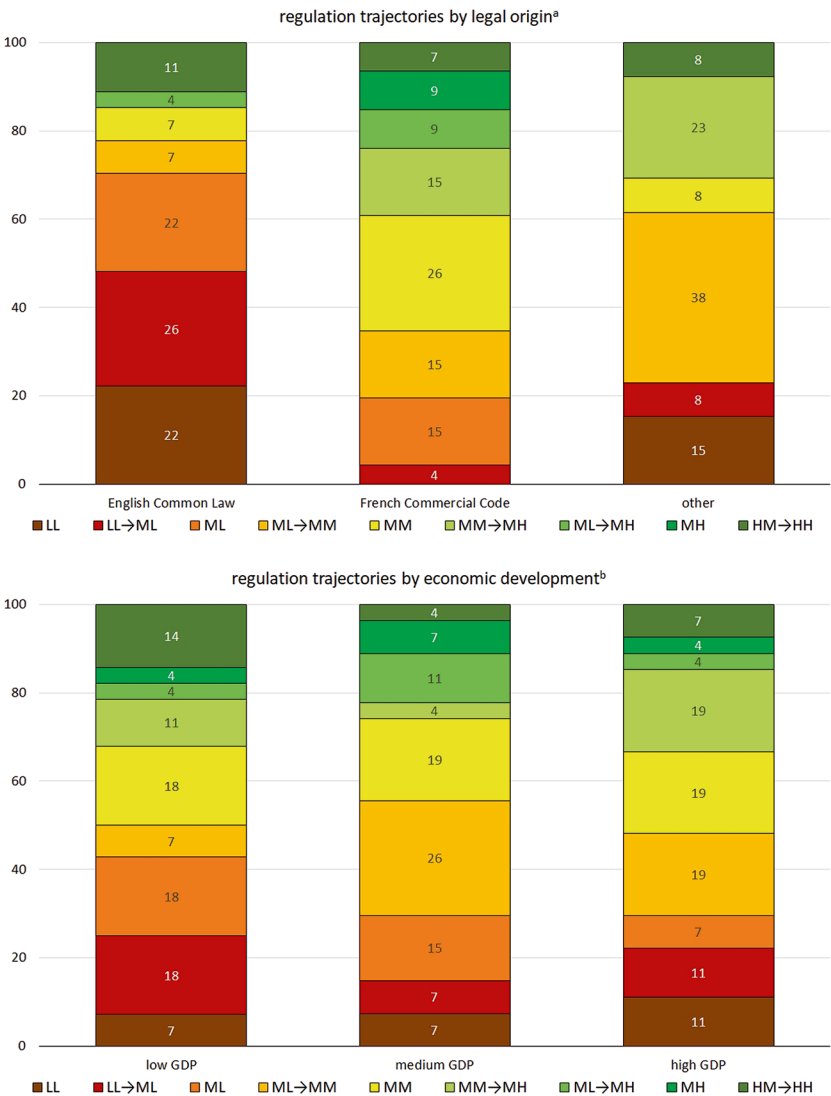


Fig. 8.3 Regulation trajectories by legal origin, economic development and membership in regional organisations. (Sources: CBR-LRI 2017, ^aThe Quality of Government, ^bExpanded Trade and GDP Data, ‘ILO (2019)’; $N = 86$; authors’ analysis; LL = low SER/low NSER, ML = mid SER/low NSER, MM = mid SER/mid NSER, SER = standard employment relationship, NSER = non-standard employment relationships)

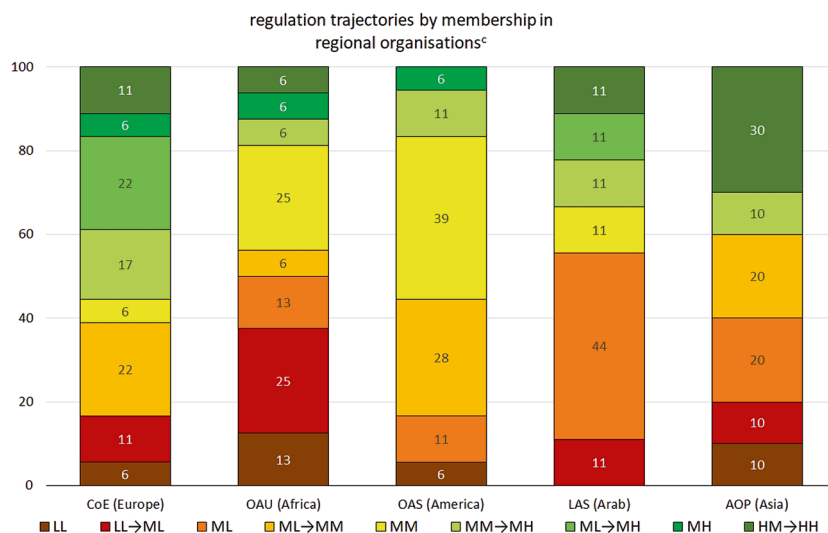


Fig. 8.3 (continued)

Turning to the level of economic development, we again find some association with baselines—if less pronounced than in the case of legal origin—and some indication for specific trends. Among low GDP countries we find relatively high shares of lowly regulated movers that improved their labour standards as well as stayers with medium-low levels of regulation (LL→ML and ML, each 18%)—the former probably representing a sort of catch-up development. Surprisingly, there is also a comparatively large percentage of highly regulated movers (14% of HM→HH, namely Ghana, India, Indonesia and Pakistan). Thus, there is a strong contrast between countries who introduce basic standards while others follow highly inclusive regulative social policies—albeit only on the *de jure* level. Compared to the two other groups, countries with medium GDP show relatively high shares of movers that started out with medium standards and increase low NSER regulation over time, either to a medium (26%) or even high (11%) level. Among high GDP countries, we again find a slightly higher baseline, mainly grouped around medium-level SER and NSER regulation, while the share of movers that increased their inclusiveness was comparatively high (MM→MH, 19%). Corresponding to the considerable number of movers towards high regulation among low GDP countries, a

substantial proportion of states with a high GDP—namely the liberal market economies with liberal welfare states New Zealand, the UK and the USA (Esping-Andersen, 1990; Hall & Soskice, 2001)—are low-regulated stayers (11% of LL). These ambiguous results hint at a limited influence of economic position on labour regulation, rejecting assumption (2). However, in the periphery and semi-periphery, neither the assumed costs of high labour regulation nor the implied labour market inclusion may materialise because of low enforcement of legal protection—and thus would not influence (collective) actors' decisions (ILO, 2016).

Differentiation by membership in regional organisations reveals tendencies regarding both baseline levels and trends. Most European countries that were members of the CoE centred around medium levels of labour standards and inclusiveness, either as starting points, midpoints or endpoints (67%; ML→MM, MM, MM→MH and ML→MH). The vast majority of CoE members (83%) showed upward trends in becoming more inclusive, while the two most common trajectories, ML→MM and MM→MH, together made up 44%. As membership intersects with that of the European Union, this seems to reflect the impact of the EU's equal treatment policies (see Dingeldey & Gerlitz, 2022).

Among the African countries of the OAU, two trajectories were prominent and could each be found in 25% of the member states: the mover that increased its standards from low to medium level, but remains exclusive, and the stayer with medium regulation of both SER and NSER, i.e. increased inclusiveness. With 39%, persistent medium standards and modest inclusion (MM) was also the most common trajectory of the American countries of the OAS. Here, another 28% transformed towards this regulation pattern by becoming more inclusive (ML→MM), probably a process of catching up. Turning to the Arab countries of the LAS, we find that the by far most common pattern was that of the stayer with medium standards and low inclusiveness, amounting to 44%. It is noteworthy that the corresponding value among OAU countries, in which a substantive part of LAS states were members as well, was relatively low (13%). The picture among the Asian countries of the AOP is less clear: here, a comparatively large share of almost one third started out with already high standards and transformed their medium-level inclusion towards a high level. Another 40% set out from medium SER and low NSER regulation and split up in equal parts into stayers and countries that became more inclusive (ML→MM). All in all, there is some evidence for our last assumption that labour standards of members in transnational regional organisations

follow similar trajectories. Smaller organisations and those with common legal frameworks seem to be even more homogeneous than larger organisations when it comes to the development of labour regulation as social policy.

5.4 The Combined Approach—Labour Regulation Trajectories and Country Clusters

The extracted country clusters combine the three observed characteristics (independent variable in Table 8.2) and sort them according to similarities and dissimilarities. Overall, we observe a clearer picture than for the single factors, expressed in a stronger tendency to dominant regulation trajectories and generally lower intra-cluster and higher inter-cluster variance (see Fig. 8.4).

The common feature of the countries in the first cluster is their English legal tradition. Consequently, the distribution of trajectories strongly

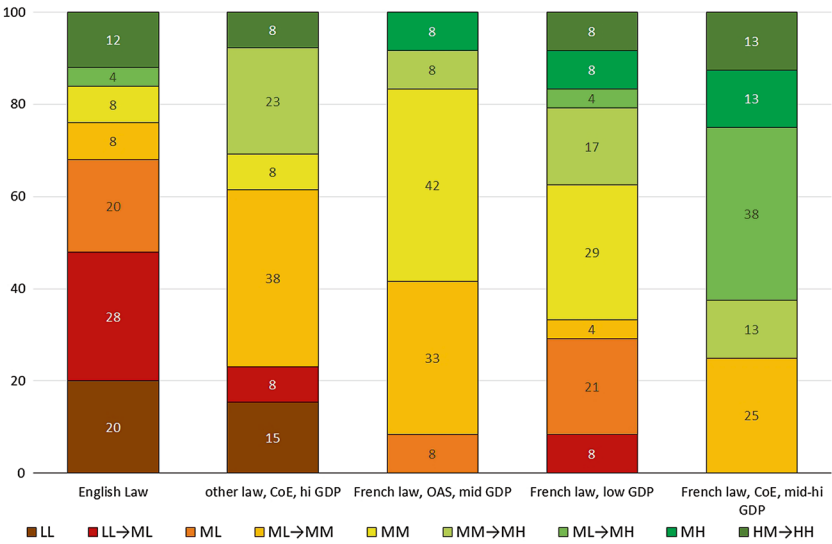


Fig. 8.4 Regulation trajectories by country cluster. (Sources: CBR-LRI 2017, QoG, 2019; ILO, 2019; N = 82; authors' analysis; LL = low SER/low NSER, ML = mid SER/low NSER, MM = mid SER/mid NSER, SER = standard employment relationship, NSER = non-standard employment relationships)

resembles that of their respective legal origin: the most common pattern being that with a baseline of low SER and NSER regulation which over time increases its inclusiveness to a medium level (LL→ML; 28%), while low-standard/non-inclusive and medium-standard/medium-inclusive stayers share the second position (each 20%). In this respect, the common law tradition, strongly associated with rather low regulation in 1970, seems to further influence regulation trajectories, namely a commitment to relatively low to medium labour standards and low inclusiveness.

The second cluster consists of countries with German, Scandinavian or Socialist law traditions that were members of the CoE and had rather high GDP per capita. Here, the two most common trajectories set out with medium-level labour standards and strengthen their NSER regulation over time (38% ML→MM, 23% MM→MH)—introducing more inclusive employment laws. Countries with French civil law that were OAS members with medium economic development make up the third cluster. Amongst these countries, we find a strong association with medium-level SER and NSER regulation, expressed in large shares of stayers (42% MM), but also movers that change towards this regulation pattern (33% ML→MM).

The fourth cluster consists of countries with a French legal tradition and rather low GDP per capita. Here, we observe more variation, but a tendency towards stayers with medium labour standards, divided into those with mid-level or low inclusiveness (29% MM, 21% ML). Another 17% set out with medium regulation of both kinds of employment relationships and create highly inclusive labour regulation over time (MM→MH). Countries in the fifth cluster were CoE members with a French legal origin and medium to high economic strength. Within this cluster of forerunners of inclusive regulations, the vast majority (87%) are movers, and most set out with medium labour standards and low NSER regulation and increased the latter, either to a medium (25%) or even a high (38%) level.

6 CONCLUSION

Focusing on *de jure* labour regulation, we found that between 1970 and 2013 neo-liberal demands for a full flexibilisation of labour standards were widely ignored: most of the 86 observed countries maintained their standards, while some less regulated countries even increased them in an attempt to catch-up development. Moreover, the competing demands for flexibility and gender equality can be clearly observed to develop towards

more equal treatment and stricter regulation of NSERs. Beyond the general trend of convergence in this social policy field towards more protective and inclusive employment law, we can identify countries that hardly changed and others that realised several re-regulations over time. This provides evidence for both path-dependent and reflexive employment law development. While the former is related to regulative stagnation after the 1970s, the latter might mirror reactions to previous regulation and its consequences for changing domestic constellations in interaction with internationally developed norms since then. Thus, our findings support both competing assumptions concerning trajectories, indicating the plural nature of social policy development in the field of employment labour law in a global perspective, or to put it differently, the interplay of path dependency, reflexive national reforms and interaction with international influences.

Considering multiple quantitative approaches, we applied single indicators for legal origin, the world systems theory, institutional diffusion and a combination of the three. Our findings support those of previous studies (Deakin & Sarkar, 2008; La Porta et al., 2008) on the explanatory strength of legal origin theory with respect to the different regulations in 1970, when low standards and low inclusion were associated with English common law, followed by other law traditions (German, Scandinavian, Socialist) with medium standards and low inclusion, and French civil law countries with medium standards and medium inclusion. After 1970, only countries with an English law tradition followed a path-dependent trajectory as they either remained less regulated or improved their standards only modestly. Thus, we could only partly confirm the assumption of path dependency.

Furthermore, economic development did not explain the level nor the inclusiveness of labour standards. Surprisingly, we found a certain polarisation within countries at the centre and the periphery: both low and high GDP countries tended to be divided into states with weak and strong regulation baselines in 1970, where the former remained less regulated or developed towards medium standards, while the latter strived for high inclusiveness. Countries at the semi-periphery often had medium labour standards and progressed towards medium-level inclusion. These findings contrast with our original assumption about the connection between economic position and the level and inclusiveness of labour regulation.

Turning to the transnational level, members of regional organisations showed tendencies for similar regulation trajectories, such as countries of the CoE that started out with medium-level standards and varying levels

of NSER regulation and became more inclusive, a strong drive towards both medium-level standards and inclusion among members of the OAS, and medium standards and low inclusiveness among LAS members. This supports our third assumption that transnational regional organisations are relevant for certain labour regulation developments. Moreover, it is in line with theories of diffusion by regional organisations (Yeates, 2007, 2019) and the influence of reflexive international law (Rogowski, 2013).

However, the best prediction of employment law development is given by a combination of the three factors. While English common law countries remained a single category, countries with French civil law split up into three types, where OAS members belonging to the semi-periphery clearly strived for a regulation pattern with both medium-level standards and inclusion, and CoE members at the centre and the semi-periphery, also equipped with medium-level standards, became highly inclusive. In this regard, a mix of legal origin, economic position and membership in regional organisations impacted both the point of departure and arrival over the four decades of the observation period—confirming the multi-causality of social policy development.

Our results are surprising in many respects. However, low compliance and enforcement in the GS (ILO, 2016) lead to a very different picture in respect to *de facto* conditions. But even in the GN, countries with a medium or even high level of protective and inclusive employment regulation nevertheless have high shares of NSERs (see, e.g. France or Spain). This indicates that employers' interests and motives and—with respect to part-time employment—those of employees are extremely relevant for the use of these forms of employment (Rubery & Piasna, 2016).

Our study faced several methodological limitations. One challenge was the small number of explanatory indicators: global trend analysis still faces serious problems regarding coverage (beyond the OECD) and historical depth (time before the 1980s) of covariates. While the chosen variables seem to be suitable proxies for the concepts at hand, it would have been more satisfying to have used more robust concepts and introduced controls. This directly leads to another limitation concerning the complexity of the analysis: unfortunately, a medium sample size in combination with a dependent variable with nine categories only allowed for bivariate descriptive statistics. Nevertheless, under these difficult conditions, it is even more remarkable that we could demonstrate considerable differences in countries' passages along regulation trajectories. Further research could explore how other significant determinants of social policy contribute to

explaining change trajectories, i.e. the level of protection and coverage of employment regulation, such as the party composition of governments, the strength of trade unions, welfare state typologies, institutional settings related to colonialism or trade relations and inclusion in world markets, insofar these kind of data are available on a global scale.

REFERENCES

- Adams, Z., Bastani, P., Bishop, L., & Deakin, S. (2017). The CBR-LRI dataset: Methods, properties and potential of leximetric coding of labour laws. *International Journal of Comparative Law and Industrial Relations*, 33(1), 59–92.
- Adams, Z., Bishop, L., & Deakin, S. (2017). CBR Labour Regulation Index (Dataset of 117 Countries). *CBR-Index*. Retrieved August 1, 2019, from <https://doi.org/10.17863/CAM.9130>
- Adams, Z., Bishop, L., Deakin, S., Fenwick, C., Martinsson, S., & Giudetta, R. (2015). Labour regulation over time: New leximetric evidence. *Regulation*. Accessed November 27, 2019, from www.rdw2015.org/uploads/submission/full_paper/382/labour_regulation_over_time_rdw.pdf
- Aleksynska, M., & Cazes, S. (2014). Comparing indicators of labour market regulations across databases: A post scriptum to the employing workers debate. Retrieved August 15, 2019, from https://www.ilo.org/wcmsp5/groups/public/%2D%2D-ed_protect/%2D%2D-protrav/%2D%2D-travail/documents/publication/wcms_245349.pdf
- Allard, G. J. (2005). Measuring job security over time: In search of a historical indicator for EPL (Employment Protection Legislation). *SSRN Journal*. <https://doi.org/10.2139/ssrn.1016327>
- Amable, B., Demmou, L., & Gatti, D. (2007). Employment performance and institutions: New answers to an old question.
- Anner, M., & Caraway, T. (2010). International institutions and workers' rights: Between labor standards and market flexibility. *Studies in Comparative International Development*, 45, 151–169.
- Börzel, T. A., van Hüllen, V., & Lohaus, M. (2015). *Governance transfer by regional organizations: Following a global script?* SUB Hamburg Carl von Ossietzky. http://www.sfb-governance.de/publikationen/working_papers/wp42/SFB-Governance-Working-Paper-42.pdf
- Botero, J. C., Djankov, S., La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2004). The regulation of labor. *The Quarterly Journal of Economics*, 1339–1382.
- Cooney, S., Mahy, P., Mitchell, R., & Gahan, P. G. (2014). The evolution of labor law in three Asian nations: An introductory comparative study. *Comparative Labor Law and Policy Journal*, 36(1), 23–68.

- Deakin, S. (2009). Legal origin, juridical form and industrialization in historical perspective: The case of the employment contract and the joint-stock company. *Socio-Economic Review*, 7(1), 35–65.
- Deakin, S. (2016). Labour law and development in the long run. In S. Marshall & C. F. Fenwick (Eds.), *Labour regulation and development: socio-legal perspectives* (pp. 33–59). Edward Elgar Publishing; International Labour Office.
- Deakin, S., Armour, J., & Siems, M. (2017). CBR leximetric datasets. *Leximetrics*. Retrieved August 15, 2019, from <https://doi.org/10.17863/CAM.9130>
- Deakin, S., Lele, P., & Siems, M. (2007). *The evolution of labour law: Calibrating and comparing regulatory regimes* (Centre for Business Research, University of Cambridge. Working Paper No. 352). Centre for Business Research.
- Deakin, S., Malmberg, J., & Sarkar, P. (2014). How do labour laws affect unemployment and the labour share of national income? The experience of six OECD countries, 1970–2010. *International Labour Review*, 153(1), 1–27.
- Deakin, S., & Reed, H. (2000). *The contested meaning of labour market flexibility: Economic theory and the discourse of European integration* (ESRC Centre for Business Research Working Paper No. 162). ESRC Centre for Business Research Cambridge.
- Deakin, S., & Sarkar, P. (2008). Assessing the long-run economic impact of labour law systems: A theoretical reappraisal and analysis of new time series data. *Industrial Relations Journal*, 39(6), 453–487.
- Dingeldey, I., & Gerlitz, J.-Y. (2022). Labour market segmentation, regulation of non-standard employment, and the influence of the EU. In F. Nullmeier, D. Reufels, & H. Obinger (Eds.), *International impacts on social policy* (pp. 247–260). Palgrave Macmillan.
- Duval, R. A., & Loungani, P. (2019). *Designing labor market institutions in emerging and developing economies: Evidence and policy options*. International Monetary Fund.
- Emmenegger, P., & Marx, P. (2019). Regulierung der Arbeitswelt: Der Kündigungsschutz. In H. Obinger & M. G. Schmidt (Eds.), *Handbuch Sozialpolitik* (pp. 697–718). Springer.
- Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Polity Press.
- Fenwick, C., Martinsson, S., Pignatti, C., & Rusconi, G. (2015). Labour regulation and employment patterns. *World Employment and Social Outlook*, 2015(2), 111–129.
- Gebel, M., & Giesecke, J. (2016). Does deregulation help? The impact of employment protection reforms on youths' unemployment and temporary employment risks in Europe. *European Sociological Review*, 32(4), 486–450.
- Gleditsch, K. S. (2002). Expanded trade and GDP data. *Journal of Conflict Resolution*, 46(5), 712–724.

- Hall, P. A., & Soskice, D. (2001). An introduction to varieties of capitalism. In P. A. Hall & D. Soskice (Eds.), *Varieties of capitalism: The institutional foundations of comparative advantage* (pp. 1–68). Oxford University Press.
- Hemerijck, A. (2012). Two or three waves of welfare state transformation? In N. Morel, B. Palier, & J. Palme (Eds.), *Towards a social investment welfare state? Ideas, policies and challenges* (pp. 33–61). Policy Press.
- Heyes, J., & Lewis, P. (2013). Employment protection under fire: Labour market deregulation and employment in the European Union. *Economic and Industrial Democracy*, 35(4), 587–607.
- ILO. (2016). *Non-standard employment around the world: Understanding challenges, shaping prospects*. International Labour Organization.
- ILO. 2019. ILO cooperation agreements with other international organizations. Retrieved October 28, 2019, from https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/jur/legal-instruments/WCMS_442247/lang%2D%2Den/index.htm
- Kaasch, A., Koch, M., & Martens, K. (2019). Exploring theoretical approaches to global social policy research: Learning from international relations and inter-organisational theory. *Global Social Policy*, 19(1–2), 87–104.
- La Porta, R., Lopez de Silanes, F., Shleifer, A., & Vishny, R. (1999). The quality of government. *Journal of Law, Economic and Organization*, 15(1), 222–279.
- La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2008). The economic consequences of legal origins. *Journal of Economic Literature*, 46(2), 285–332. <http://www.aeaweb.org/articles.php?doi.org/10.1257/jel.46.2.285>
- Lechner, L. (2016). The domestic battle over the design of non-trade issues in preferential trade agreements. *Review of International Political Economy*, 23(5), 840–871.
- Lesnard, L. (2010). Setting cost in optimal matching to uncover contemporaneous socio-temporal patterns. *Sociological Methods & Research*, 38(3), 389–419.
- Meardi, G., & Marginson, P. (2014). Global labour governance: Potential and limits of an emerging perspective. *Work, Employment and Society*, 28(4), 651–662.
- Mückenberger, U., & Deakin, S. (1989). From deregulation to a European floor of rights: Labour law, flexibilisation and the European single market. *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht*, 3(3), 153–207.
- Nicoletti, G., Scarpetta, S., & Boylaud, O. (2000). *Summary indicators of product market regulation with an extension to employment protection legislation* (Economics Department Working Papers No. 226). OECD.
- Obinger, H., & Starke, P. (2015). Welfare state transformation: Convergence and the rise of the supply-side model. In S. Leibfried, E. Huber, M. Lange, J. D. Levy, & J. D. Stephens (Eds.), *The Oxford handbook of transformations of the state* (pp. 465–481). Oxford University Press.
- OECD. (1994). *The OECD jobs study*. OECD.

- OECD. (2018). *The future of social protection: What works for non-standard workers?* Organisation for Economic Co-operation and Development.
- OECD. (2019). *OECD employment outlook 2019: The future of work*. OECD Publishing Paris.
- Palier, B., & Thelen, K. (2010). Institutionalizing dualism: Complementarities and change in France and Germany. *Politics & Society*, 38(1), 119–148.
- Rogowski, R. (2013). *Reflexive labour law in the world society*. Edward Elgar.
- Rubery, J., & Piasna, A. (2016). Labour market segmentation and the EU reform agenda: Developing alternatives to the mainstream. *etui Working Paper* 2016.10.
- Ruckert, A., Macdonald, L., & Proulx, K. R. (2017). Post-neoliberalism in Latin America: A conceptual review. *Third World Quarterly*, 38(7), 1583–1602.
- Schmalz, S., Ludwig, C., & Webster, E. (2019). Power resources and global capitalism. *Global Labour Journal*, 10(1), 84–90.
- Schmidt, J. D. (2006). Flexicurity, casualization and informalization of global labour markets. In B. N. Ghosh & H. M. Guven (Eds.), *Globalization and the third world: A study of negative consequences* (pp. 129–147). Springer.
- Teorell, J., Dahlberg, S., Holmberg, S., Rothstein, B., Alvarado Pachon, N., & Svensson, R. (2019). The quality of government standard dataset. version Jan19. <http://www.qog.pol.gu.se>
- Thelen, K. (2014). *Varieties of Liberalization and the new politics of social solidarity*. Cambridge University Press.
- van der Vleuten, A. (2016). Regional social and gender governance. In T. A. Börzel & T. Risse (Eds.), *The Oxford handbook of comparative regionalism*. Oxford University Press.
- Wahl, A. v. (2005). Liberal, conservative, social democratic, or... European? The European Union as equal employment regime. *Social Politics: International Studies in Gender, State & Society*, 12(1), 67–95.
- Walby, S. (2004). The European Union and gender equality: Emergent varieties of gender regime. *Social Politics: International Studies in Gender, State & Society*, 11(1), 4–29. <https://doi.org/10.1093/sp/jxh024>
- Wallerstein, I. (1974). The rise and future demise of the world capitalist system: Concepts for comparative analysis. *Comparative Studies in Society and History*, 16(4), 387–415.
- Ward, J. H., Jr. (1963). Hierarchical grouping to optimize an objective function. *Journal of the American Statistical Association*, 58(301), 236–244.
- World Bank. (2019). *World development report 2019. The changing nature of work*. World Bank.
- Yeates, N. (2007). The social policy dimensions of world-regionalism. Special issue. *Global Social Policy*, 7(3), 251–385.
- Yeates, N. (2019). World-regional social governance, policy and development. In J. Midgley, R. Surender, & L. Alfes (Eds.), *Handbook of social policy and development* (pp. 224–246). Edward Elgar.

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The Development of Coverage and Generosity of Employment Regulation Around the Globe

Jean-Yves Gerlitz and Ulrich Mückenberger

1 INTRODUCTION

In this chapter, we reconstruct employment law policy and examine approaches to explaining its development. We analyse this part of social policy according to the criteria of generosity and coverage vis-à-vis

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legitimate security expectations of working people in countries around the world. By ‘generosity’ we refer to the degree of *de jure* security provided by employment laws and their implementation. By ‘coverage’ we mean the share of people enjoying labour protection rights in relation to those who equally require them but remain outside the ambit of the protecting norms. Universal coverage by generous employment norms (i.e. without legal segmentation, see Chaps. 1 and 2 of this volume) would correspond to universal labour-related welfare-state social policy.

With generosity and coverage, we here mainly refer to two of the three functions of employment law developed by Dingeldey et al. (2020, 2022). Coverage varies, ideal-typically from universal to exclusive. Without coverage there is no generosity. But generosity also varies—it can be graded for groups of recipients. Standard-setting employment norms, above all working time and dismissal protection regulation, provide a more or less generous degree of social security for workers. In contrast, privileging employment norms, above all rules conditioned by length of service (seniority) or selectivity (size of enterprise), only favour workers with higher seniority or employed in firms above specific size thresholds, while excluding all other workers. Obviously, the generosity and coverage of employment law are impacted by the two functions in diverse, often opposing manners. Standard-setting norms, at first glance, seem ‘innocent’ with regard to coverage. They merely describe different levels of generosity without addressing the question of coverage. However, they regularly focus upon workers/employees only, thus requiring access to formal employment. Privileging norms, as generous as they may be, exclude some workers from coverage, thus leading to inequalities among them. Of course, equalising norms, above all anti-discrimination rules in access to work and working conditions and rules limiting the flexibility and inequalities of workers, tend to extend generosity and coverage as well, be it only to compensate for previous inequalities among workers. However, because equalising norms limit or compensate for inequalities produced either by law or by factual labour market behaviour, we perceive them historically as an ‘additional layer’ of employment law (see also Mückenberger, 2022; Hahs & Mückenberger, 2022; Dingeldey & Gerlitz, 2022a).

Here, we focus on the standard-setting and privileging functions of employment law. We ask how these two functions have developed across the world and what might explain their development. We critically analyse employment regulation with regard to its modes of limiting coverage and hence monopolising generosity to those ‘privileged’ individuals who enjoy

entitlement to these norms. Hence, our approach is social policy oriented in that it applies criteria and patterns of distributive justice to the employment laws of the world, independently from their effectiveness and performance. This approach leads us to a dual logic in regarding employment law and in assessing our data material. First, we observe whether and how employment regulation *de jure* widens its coverage and generosity for workers in general. Second, we observe whether there is a parcelling out of legal generosity via privileging norms or via norm components limiting its coverage. Since the latter logic is more specific to our approach than the former one, we call the approach ‘legal segmentation’ in the worlds of work (Mückenberger & Dingeldey, 2022; Dingeldey et al., 2022; Chaps. 1 and 2 of this volume). The approach puts the issue of distributive justice regarding equal or unequal distribution of coverage and generosity advantages in employment law policy among working people onto the agenda. Both described logics coexist in today’s labour regulation.

With regard to the development of the standard-setting and privileging functions, we examine a number of potential explanations. Specifically, we consider hypotheses related to the development and dissemination of labour law from Europe (Dingeldey et al., 2022; Hepple, 2005; Finkin & Mundlak, 2015), as well as those related to economic power, economic development (Janos, 1986; Eisenstadt, 2010; Fukuyama, 1992) and weight the value chains of the global economy (Ponte et al., 2019; Gereffi, 2019; Rossi, 2019), and to gender agency impact (Esping-Andersen, 1990; Mückenberger, 2022; Hahs & Mückenberger, 2022).

To retrace the development of labour law, we use data from the Worlds of Labour (WoL) database and operationalise the standard-setting and privileging functions based on the ‘Standard-Setting, Privileging and Equalising’ (SPE) concept of labour law (see Dingeldey et al., 2022). In order to provide explanations for the observed developments and test our hypotheses, we merged the data on our functions with other available country-level data such as economic indicators from the World Bank (WB, 2024), UNCTAD-Eora (Casella et al., 2019) and the Global Gender Gap Index (Welzel, 2013; World Economic Forum [WEF], 2021). Applying parametric and non-parametric methods of comparing means, we compare index values of 84 countries of both the Global North (GN) and the Global South (GS) for the two measurement points 1970 and 2013. Overall, we find evidence for a still ongoing worldwide increase in the standard-setting and privileging functions. And while none of our hypotheses is supported, our results provide material for new research questions and deeper understanding.

2 THEORETICAL BACKGROUND

Everywhere in the world, norms dealing with work have emerged and spread. A wide variety of norms—social, cultural and legal norms with a range of validity perceptions and means of application and enforcement—have dealt with the great diversity of work—paid or unpaid, on a voluntary basis or not, in households or outside, formal or informal (see Trebilcock, 2018; Finkin & Mundlak, 2015; Teklè, 2010; Pries, 2019). A coherent labour law system consists of a comprehensive legal framework for the market exchange of freely commodified labour, with agents competent for setting up and enforcing these rules, and with bureaucratic means of dealing with conflicts accompanying the application and implementation of these rules. There are particular prerequisites for such a system to emerge, and these are unevenly given in the different world regions. Most of these prerequisites seem to be provided—though never fully, in a wide variety of forms and in uneven historical order—by capitalist industrialisation (Mundlak & Finkin, 2015, p. 1): “Labor law arose as a consequence of the rise of capitalism and industrialization—both global phenomena.” Capitalist industrialisation brings forth a type of abstract societal labour (Falk et al., 1990) allowing for interpersonally measurable and comparable value-building as a commonly shared reference point for a societal normativity. It thereby is able to bring together masses of working people, outside their living spaces, in sorts of public spaces where a republic of labour (Trentin, 1997) can emerge. The so unified and socialised workers can build collectives and agencies agglomerating interests and issuing protests, claims and enforceable normative demands. Capitalist industrialisation has been capable of, at least partly and temporarily, integrating both capitalist accumulation and expansion as well as certain countervailing movements and demands into a commonly shared frame based on the understanding and acceptance of ‘fairness’ (Rawls, 1971). This can coincide with societal recognition of industrial citizenship (Marshall 1950) and a common spirit of capitalism (Weber, 2013; Boltanski & Chiapello, 2005). This societal recognition, again, seems to help capitalist industrialisation, despite all conflicts and aporias inherent to its mode of development, not only to survive but also to prosper, expand, modernise and gain legitimacy. Labour law, as a component of this mode of development, builds on and contributes to this legitimacy. By ordering working life it pacifies it. At least under republican or democratic conditions, labour law—as part of social policy—provides the common acceptance of both capitalist

exploitation and opposition against it. There is a functional linkage between both modes of acceptance: While legalising certain forms of opposition against capitalist exploitation, labour law legitimises this exploitation. This development has been studied, transnationally, for collective labour law, i.e. law concerning industrial relations and conflicts (e.g. Kaufman, 2004; Hepple, 2005). Here, we focus more on the level of individual labour law—the law of the employment relationship, whose development has been gaining ground in literature more recently (e.g. Hepple & Veneziani, 2009; Finkin & Mundlak, 2015).

As opposed to collective labour law, employment law is often regarded as having a less direct political dimension: Working time arrangements, job contours and protection seem farther away from societal power centres than trade unions, workers' representatives, strikes, lock-outs, etc. However, questions of social justice—particularly of equality, not only between capital and labour but also among working people—are very much enshrined in individual rights and duties within the labour relationship. This is why employment law in particular *is* social policy. Here the discussed functions of employment law—standard-setting (S), privileging (P) and equalising (E)—are paramount; so are the combination of the three functions in SPE types (Dingeldey et al., 2020, 2022).

The standard employment relationship (SER) is paradigmatic for distributive justice in employment law. It originated in Europe, but further expanded to other countries of the GN and finally the GS (Hahs & Mückenberger, 2022; see also Chap. 6 of this volume).¹ The SER construct focuses legal advantages on commodified labour, thus excluding all other societally necessary forms of work. It functions as a gate-keeper to other social security, consumer and even family law benefits. With the SER's focus on long and steady service, it favours male, and particularly male breadwinner work, thus stabilising paternalistic work-life patterns (Vosko, 2010; Dingeldey & Gerlitz, 2022b). With its focus on employment in larger enterprises, it excludes the bulk of often female workers outside urban areas.

The advantages of SER employment are at the cost of non-standard employment relationships (NSERs) or, even more so, non-commodified

¹ Beyond national specificities, SERs consist of the following legal constituents: (1) formal contract-based dependent employment, (2) with long and steady service ('seniority'), (3) full-time, (4) in-house in a medium- or large-sized establishment, (5) adult age, (6) on a skilled base (Hahs & Mückenberger, 2022).

work. This contributes to capitalist work ethics in that it enhances productivity work incentives by spreading permanent competition for SER jobs among working people, and by threatening exclusion from employment-related advantage and welfare for all those who could not (or were not willing to) successfully compete for SER jobs. Mückenberger (1989) has shown that the SER, as a societally dominant fiction, combines work incentive, discriminatory and exclusionary components. Capitalist productivity was accompanied by a continuous ‘performance principle’ in working life that was shared by large parts of the working population. Thus, the SER became accepted by those governed by it, even by most of those who were losers in the competitive game.² This, at least partly, makes plausible the success story of the SER construct which has gained momentum in labour law worldwide despite the fact that conditions of work and life differ so much from those of industrialised capitalism where the SER construct had its origin.

The previous general considerations concerning the current academic debate are not subject to empirical verification in this chapter. However, they give rise to hypotheses that can be tested with our WoL data and material.

(a) European Origin of Segmenting Employment Law

Our first hypothesis states that standard-setting and privileging employment norms, thus legal segmentation, originated in Europe and, from there, have been disseminated into countries outside Europe including those of the GS (Dingeldey et al., 2022; Hepple, 2005; Finkin & Mundlak, 2015). In general, this hypothesis is motivated by the insight that market-oriented individual labour law historically and geographically required capitalist industrialisation (Finkin & Mundlak, 2015). Moreover, that an increase in standard-setting employment norms (mainly working time regulation and dismissal protection) accompanies this norm dissemination is consensus among comparative labour law scholars (Mundlak & Finkin, 2015), and we shall provide quantitative evidence for this. In contrast, the

²As developed in Chap. 2 (in this volume), this is a striking example of what historical institutionalism (Fioretos et al., 2016) calls ideational institutions (Blyth et al., 2016) and ideational power (Pierson, 2016). Hahs and Mückenberger (2022) concluded that power and dominance do not necessarily consist in obligating measures or rules. The ideas so inculcated can become part of the “new spirit of capitalism” (Weber, 2013; Boltanski & Chiapello, 2005).

increase in privileging—hence segmenting—employment law norms is considered less often by the labour law community (e.g. Howe et al., 2015). We assume, however, that the segmenting components of employment law (particularly linking coverage by protecting norms to formal employee/worker status; assigning the degree of coverage by rights and benefits according to seniority rules; firm size thresholds as prerequisites for coverage by protecting norms) are also very much connected with the rise of standard-setting norms. These norms cause what we call “indirect legal segmentation” (Chap. 2 of this volume), i.e. norms that comply with the democratic requirement of formal equality but structurally favour certain groups of employees (particularly male breadwinners) vis-à-vis the non-included groups of working people.³ We also assume that the worldwide dissemination of employment norms implies the transnational transfer of these segmenting components (see Vosko, 2010; Hahs & Mückenberger, 2022 for the role of the ILO as a disseminator; Hepple, 2005 for the role of global trade as a disseminator; Mückenberger & Schäfer (in this volume) for the role of colonialism as a disseminator). This far-reaching assumption will also be tested, quantitatively and historically, with the WoL database.

(b) Economic Power and Development Thesis

We do not follow a modernisation approach—i.e. claiming that the developing worlds just follow the paths prepared by the developed worlds of capitalism (see Janos, 1986, pp. 44–64; Eisenstadt, 2010, pp. 1–15; Fukuyama, 1992, pp. 68–69, 133–134). Nor do we follow, in our assumptions, an isomorphic view à la Meyer et al. (1997) claiming that via adopting abstract Western values, countries of the GS approximate Northern universal patterns and values. These approaches would imply that a worldwide dissemination of modern employment norms takes place—independently from the degree of economic development or other national characteristics. Instead, in the light of the theory of historical institutionalisms, we prefer to explain ideational transfer by a power-related approach, stating that power also functions via ideas and their global transfer (see Chaps. 1 and 2 of this volume). This theoretical point of departure leads us to two verifiable assumptions.

³ In contrast, direct legal segmentation is present when certain groups of working people (like black people in the Apartheid system; people of various castes in the caste system) are excluded *per se* from the entitlements provided for by a norm.

The first is that the degree of capitalist development over the last decade or so prompts countries to adapt their legal employment infrastructure to that of the most dominating countries of the world (i.e. the GN; the triangle Europe, Japan, the US). This would not only include the standard-setting (= protecting) norm component, but above all the privileging one. The reason is that the typical capitalist coexistence of legal inclusion and exclusion creates incentives for competitive behaviour among workers as an outcome of ideational inculcation (Boltanski & Chiapello, 2005). If labour law follows capitalist industrialisation, it can be assumed that the more momentum countries gain in their gross domestic product (GDP), the more they will tend to introduce productivist, competitive and excluding, but for all parties reliable and fair-seeming legal standards and procedures—provided by the interplay of both standard-setting and privileging norms. To test this assumption, we look at OECD countries and non-OECD countries with high and low growth in GDP, comparing them under the aspect of emergence and type of standard-setting and privileging employment regulation.

The other test is more specific in that it follows the weight of countries in worldwide value chains (i.e. global value chains—GVCs). We assume that non-OECD countries with a strong involvement in GVCs are more prone to adapt to the labour regulation of the countries they are connected with than those with a weaker involvement—again with respect to both standard-setting and privileging norms. The basis of this assumption is—besides historical institutionalism involving ‘ideational transfers’—GVC theory (Ponte et al., 2019). This theory postulates that the lead firms in GVCs have the power to influence the norm-setting behaviour (‘upgrading’) of subordinate members of the value chain and make use of this power. Upgrading, in this theory, means that the non-OECD GVC member adapts and modernises in a direction which fits into the product planning and the corporate design of the lead firm (Gereffi, 2019; Rossi, 2019). This can hold for adaptation to both standard-setting and privileging norms. This is why we compare non-OECD countries with different degrees of involvement in GVCs under the aspect of emergence and type of standard-setting and privileging employment regulation.

(c) Gender Agency Impact

Our final hypothesis focuses on the internal conditions in the countries that are receptors of ideational normative transfer. The triggers for

transferring legal segmentation equally depend on the domestic economic, political, social and cultural conditions in the destination countries of these transfers (Nullmeier et al., 2022). Among these domestic factors, according to our assumption, the (non-)existence and the forms of segmenting employment law strongly depend on how societies deal with the gender issue (cf. Rubery & Figueiredo, 2018; Sainsbury, 1994). This implies both factual gender-related conditions (e.g. the degree and forms of women's economic participation, the gender pay gap in the broad sense of conditions of female work, cultural patterns of a patriarchal or egalitarian society like the male breadwinner family model, etc.) and gender-related political attitudes and measures (e.g. the visibility of men and women in the public spaces and media, emphasis on patriarchal or egalitarian norms in education, care, social insurance, housing and city-dwelling, tax policies, etc.). We assume that these factual and political gender-related domestic conditions are mirrored in the type of employment law in these countries. The more the factual patterns and the policy orientations are gender egalitarian in a given country, the less privileging the established and implemented employment norms are. Or, vice versa, the more factual and policy conditions are shaped by gender disparities in the country, the more employment law is shaped by privileging components.

This assumption, on the one hand, seems more than obvious (for equality law in general, see Banks et al., 2015, 230ff.). On the other hand, such a complex correlation is not easy to verify. In his comparative approach, Esping-Andersen (1990) mainly dealt with social insurance, its coverage and generosity—widely ignoring gender inequality. In contrast, we reconstruct this correlation in the direct field of commodified labour by making use of publicly available data. We break down the factual and political gender-related domestic conditions according to the databases on female participation in the formal labour market and the gender gap in working conditions in countries around the world, comparing these conditions over time with forms and levels of segmenting employment law.

3 METHODS

We operationalise the standard-setting and privileging functions of employment law according to the SPE typology (Dingeldey et al., 2020, 2022). The two functions were measured by 20 indicators—of which 16 stem from the CBR-LRI 2017 (Adams et al., 2017) and 4 were collected by the Worlds of Labour project (Dingeldey et al., 2022), with 13

representing the standard-setting and 7 the privileging function. The standard-setting function is captured by indicators such as the maximum daily working time and the application of a legally mandated notice period, the privileging function by indicators such as the use of seniority as a decisive selection criterion in case of redundancy and the application of minimum qualifying periods for dismissal protection (see Table 9.2 in the Appendix). The two indices were calculated according to the concept and method presented in detail in Dingeldey et al. (2020, 2022), with the exception that the privileging item P7 ('Minimum qualifying period of service for normal case of unjust dismissal') was assigned to the dimension 'Seniority' instead of 'Selectivity'. All norms that require a minimum qualifying period of service in order to be applied depend rather on objective selection criteria of the firm, on the worker having a certain continuity of service, hence on seniority. Both indices range from 0 to 1, where 0 constitutes the minimum (i.e. absence) and 1 the maximum levels of standard-setting and privileging, respectively. To analyse the development of the two functions of labour law, we kept the 84 countries with valid values for 1970 and 2013, which define our sample.

Our indicator representing European origin is a simple categorisation of our sample into 19 European countries, 12 non-European OECD countries and 53 non-European non-OECD countries based on geography and OECD membership (Organisation for Economic Co-operation and Development [OECD], 2024). The differentiation between OECD and non-OECD countries in a way stands for non-European countries of the GN and the GS. Turning to the economic indicators, we defined high economic growth as being a non-OECD country whose consumer price adjusted GDP per capita at least doubled between 1970 and 2013. Data from the World Bank (WB, 2024) covered information for 74 of our 84 countries, which we categorised into 30 OECD members, 22 non-OECD high-growth countries and 22 non-OECD other-growth countries. Our second economic indicator 'involvement in GVCs' is based on data from the UNCTAD-Eora Global Value Chain database (UNCTAD-Eora GVC; Casella et al., 2019). In the following, we focused on the GVC participation index, which sums the foreign value added embodied in a country's exports and the domestic value added in the exports of other countries. The index was available for all of our 54 non-OECD countries, with yearly

values from 1990 to 2018. We used the mean value of the period from 1990 to 2013 and created an indicator with the three categories, ‘OECD member’, ‘non-OECD strong GVC’ ($\text{GVC} \geq 2$ billion USD; 25 countries) and ‘non-OECD other GVC’ ($\text{GVC} < 2$ billion USD; 29 countries). Again, in the case of the two economic indicators, the distinction between OECD and non-OECD countries mainly coincides with the GN and the GS.

The indicator that measures the degree of inequality between women and men is based on the Economic Participation and Opportunity Subindex of the Global Gender Gap Index (Welzel, 2013; WEF, 2021), incorporated in the Quality of Government Standard Dataset 2023 (Teorell et al., 2023). The index combines female-to-male ratios of the wage-equality-for-similar-work indicator based on World Economic Forum data and ILO’s labour force participation rate, earned income estimates, and female/male shares among legislators, senior officials and managers, and professional and technical workers (WEF, 2021). As such, it represents the distribution of (paid and unpaid) work in societies and the resulting employment patterns, such as the traditional male breadwinner model at the one end and the dual earner/carer model at the other. Index values are available for 77 of our 84 countries and cover the period from 2006 to 2021. As measurement points per country range from three to seven, we decided to take the mean of all observations between 2006 and 2013. The index ranges from ‘0’ to ‘1’, where ‘1’ indicates no gap between men and women. We divided the index values into terciles and labelled them ‘low gender gap’ (values > 0.67), ‘medium gender gap’ (values $0.59\text{--}0.67$) and ‘high gender gap’ (values < 0.59). Our data, i.e. all the above-described indicators by country, can be found in Table 9.3 in the appendix.

To test our hypotheses, we used bivariate comparisons of means and compared the standard-setting and the privileging function for the years 1970 and 2013, as well as their development in the form of the difference between both time points (here, the values of 1970 were subtracted from those of 2013). Comparisons of means are used to test whether the mean values of two samples are the same or different. To take the possibility of measurement errors into account, confidence intervals are calculated around the observed values. Only if the confidence intervals of two mean values do not overlap, they are considered to be significantly different from each other. The significance level indicates the maximum probability that equal means will be falsely rejected, with probabilities of error of less than

or equal to 5% being the convention. As we compare more than two groups, we conducted one-way analyses of variance (Fisher, 1925) and pairwise comparisons of means (Tukey, 1949) and—because in some cases the assumption of homogeneous variances had to be rejected—non-parametric Kruskal–Wallis equality-of-populations rank tests (Kruskal & Wallis, 1952, 1953) were also used. While the results of both methods are largely consistent, we only present those of the more conservative Kruskal–Wallis tests.

4 FINDINGS

Table 9.1 summarises our findings and shows the results of the comparisons of means. In the following section we will discuss what the tests of significance mean for our hypotheses and use additional figures to illustrate the results. One overall finding is that we see a tendency to more

Table 9.1 Comparison of means

<i>l</i>		<i>S</i> 1970	<i>S</i> 2013	<i>S</i> Diff	<i>P</i> 1970	<i>P</i> 2013	<i>P</i> Diff	<i>N</i>
2	European	0.502	0.660**	0.157**	0.361	0.569*	0.208*	19
3	non-European OECD	0.468	0.532**	0.065**	0.345	0.379*	0.034*	12
4	non-European non-OECD	0.488	0.691**	0.203**	0.296	0.423*	0.128*	53
5	OECD member	0.488	0.612*	0.124+	0.351	0.481	0.130	30
6	non-OECD high growth	0.520	0.684	0.164+	0.324	0.473	0.149	22
7	non-OECD other growth	0.455	0.677	0.222+	0.237	0.372	0.135	22
8	non-OECD strong GVC	0.522	0.726*	0.204+	0.307	0.442	0.135	25
9	non-OECD other GVC	0.460	0.657*	0.197+	0.291	0.424	0.133	29
10	low gender gap	0.392**	0.591*	0.199	0.292	0.463	0.171	25
11	mid gender gap	0.524**	0.686*	0.161	0.304	0.411	0.107	26
12	high gender gap	0.559**	0.704*	0.145	0.360	0.486	0.126	26

Sources: WoL, CBR-LRI, OECD, QoG, The World Bank, UNCTAD-Eora

N = 84; authors' analyses; means and Kruskal–Wallis test; significance levels: **p* < 0.10, ***p* < 0.05, ****p* < 0.01

S = standard-setting function, *P* = privileging function, Diff = difference

regulation over time, i.e. only positive differences between the index values from 1970 and 2013. Nevertheless, none of our hypotheses is supported by our analyses. However, our findings indicate important new research questions.

Lines two to four of Table 9.1 and Fig. 9.1 refer to our first hypothesis about the European origin of segmenting employment law that is subsequently disseminated to non-European countries. It has to be borne in mind that our material does not allow for assessments of the evolution of segmenting employment law before 1970. Looking at the index values of the standard-setting and privileging functions in 1970, we do not find significant differences between European, non-European OECD and non-European non-OECD countries. Regarding the dissemination of norms to the GS, we find no significant difference between the development in European countries and non-European non-OECD countries, i.e. they continued to develop in almost equal measure (in the case of standard-setting, the latter group even outperformed the former; in the case of

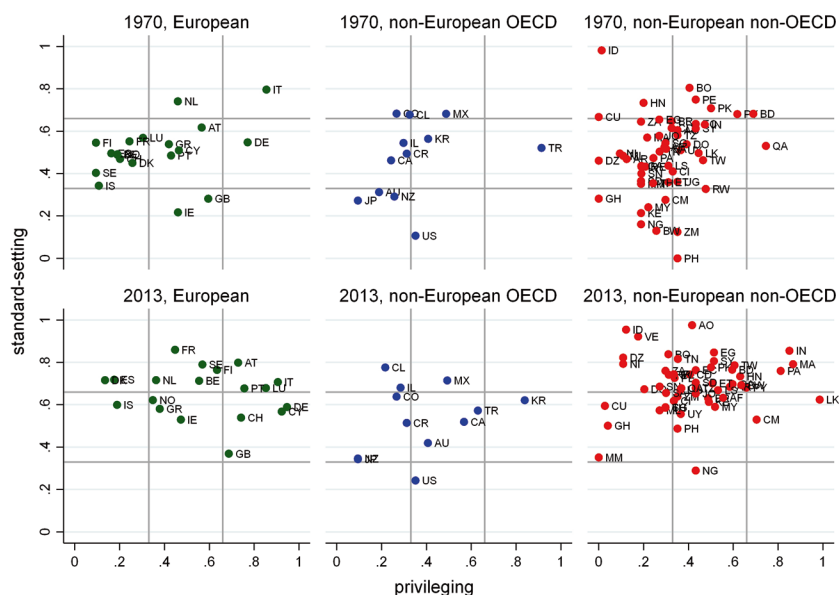


Fig. 9.1 European origin. (Sources: WoL, CBR-LRI, OECD; N=84; authors' analyses)

privileging, the former group outperformed the latter). In fact, the greatest differences appear between the non-European OECD members and the two other groups: Here, both standard-setting and privileging regulation increased only slightly, partly stagnated (e.g. Costa Rica) or even decreased (e.g. Turkey). However, we can observe significant differences in the development of standard-setting and privileging regulation over time up to 2013: Non-European OECD countries show both a significantly lower increase in protective standard-setting norms than non-European non-OECD countries and a significantly lower increase in privileging regulation than European countries—making their labour regulation more egalitarian. With a value of 0.20, standard-setting grew most strongly in non-European non-OECD countries; however, the growth did not significantly differ from that in European countries (0.16 index points). On the other hand, privileging norms grew most strongly in European countries (0.21 index points), but their growth did not significantly differ from that of non-European non-OECD countries (0.13 index points). In 2013, these developments result in standard-setting norms that are significantly lower in non-European OECD countries (0.53 compared to 0.66 and 0.69) and privileging norms that are significantly higher in European countries (0.57 compared to 0.39 and 0.42) than in the other country groups. In summary, employment rights are not lower in non-European countries as opposed to privileging norms, which are indeed lower. The degree of legal segmentation in Europe, hence, is not fully mirrored in the non-European countries.

That there is a lower increase in standard-setting norms in non-European OECD countries than in non-European non-OECD countries is associated with the fact that non-European OECD countries predominantly comprise Anglo-Saxon countries or liberal welfare states (see also Gerlitz and Dingeldey in this volume). These countries, adhering rather to deregulation than to reregulation, consider working time and dismissal protection legislation as an obstacle to worldwide market forces and avoid it as much as possible (Bonfanti et al., 2015, pp. 65–69; Howe et al., 2015: pp. 292–295; on the critique of Anglo-Saxon deregulation theory see Mückenberger & Deakin, 1989; Hepple, 2005). Astonishingly, standard-setting grew stronger in non-European non-OECD countries, i.e. mainly GS countries. This means that they less strongly follow the strategy of achieving comparative advantage via liberal or deregulated labour markets. Instead, they tend to hold the ILO in higher esteem as a

vanguard of labour regulation rather than following a purely national or OECD-hemisphere orientation—all the more since they often do not bear the implementation costs of this legislation, due to their poor enforcement means (see Hepple, 2005; chapters in Teklè, 2010). They thus can use labour standards as a showcase vis-à-vis world institutions (like ILO, WB, the International Monetary Fund—IMF). A clear outcome is that privileging norms grew most strongly in European countries. It hints at a hierarchical patriarchal model of labour regulation for the social protection systems on the European continent. This legislative model is associated with the preponderance of the SER in Europe as a gender-related indirectly segmenting tool of labour market policy (see Chap. 1 of this volume). That this European growth of privileging norms did not differ significantly from that of non-European non-OECD countries requires explanation. Maybe the GS countries are more strongly impacted by European legal segmentation because of their historically stronger political and economic dependency—through colonialism plus economic and political imperialism. That non-European OECD countries are marked by their lower tendency towards regulation and lower standard-setting values results in a general low level of protection and may equally be the reason why they showed a lower level of legal segmentation. Since legal segmentation is often associated with SER-oriented dismissal protection, a general low degree of this protection does not require further distinction via privileging legislation.

These findings are all the more thought provoking since they shed a sort of ‘backlight’ on the currently discussed expectations. It has to be kept in mind, however, that all these (and the following) findings are limited to the time period between 1970 and 2013.⁴

Whereas Table 9.1 contains aggregated values, the following figures break these values down according to the individual countries in our sample and their standard-setting and privileging norm-building in 1970 and 2013. This allows for a more specific observation of the contribution of

⁴If data for a longer time period were available—e.g. between 1880 and 2024 (which we plan to achieve in the WoL database)—we would possibly be able to identify legislative tendencies corresponding more closely to the expectations arising from our hypotheses. It might well be that Europe comes up as a worldwide precursor in both standard-setting and privileging individual labour law in the pre-1970 period or certain parts of it. And it might well be that non-European non-OECD countries, or some of them, speeded up their SER-like privileging normative activities in the post-2013 years as a sort of adaptation to ‘Western’ modes of regulation. But these are questions outside the ambit of our materials.

specific countries to the aggregated values over time. Figure 9.1, for example, shows that the change over time towards increasing standard-setting and privileging labour legislation follows an individualised pattern in European and non-European OECD countries whereas the upward trends in both standard-setting and privileging legislation in most cases are more homogenous. This may, again, confirm that common external triggers (ILO, WB/IMF, General Agreement on Tariffs and Trade (GATT)/World Trade Organisation (WTO), legacies of colonialism), rather than internal national triggers were responsible for these changes. In order to grasp individual states' norm-setting behaviour, qualitative legal-empirical and sociological methods are required, which will be pursued in other parts of the Worlds of Labour project. Since this chapter's hypotheses, however, focus on (and limit themselves to) quantitative trends at the worldwide level, we do not enter into the qualitative step of analysis.

Lines five to seven of Table 9.1 and Fig. 9.2 refer to our second hypothesis that links the development of labour regulation to economic growth. Again, in 1970, we find no significant differences in the level of standard-setting and privileging norms between our three comparison groups, this time OECD members and non-OECD countries with either high or other economic growth. The same holds true for the regulation status of the three groups in 2013. However, at a 10% level we find significant differences in the development of the standard-setting function: Between 1970 and 2013, there was a significantly stronger increase in standard-setting norms in non-OECD other-growth countries than in OECD countries (0.22 index points compared to 0.12), while we find no significant difference between non-OECD countries with high growth (0.16 index points) and the other two groups. Thus, our findings do not support the second hypothesis. There is no evidence for adaptation to European protecting and segmenting employment rules in other regions of the world according to GDP growth.

All countries show increases in both standard-setting and privileging—and (apart from the OECD countries) a higher increase in standard-setting than in privileging. This is in line with our expectation that there has been an increase in employment regulation over time, in all countries of the world. That the increase in standard-setting was significantly higher in non-OECD other-growth countries than in OECD countries requires explanation (again, we here refer to both the comparison of means in Table 9.1 and the development per

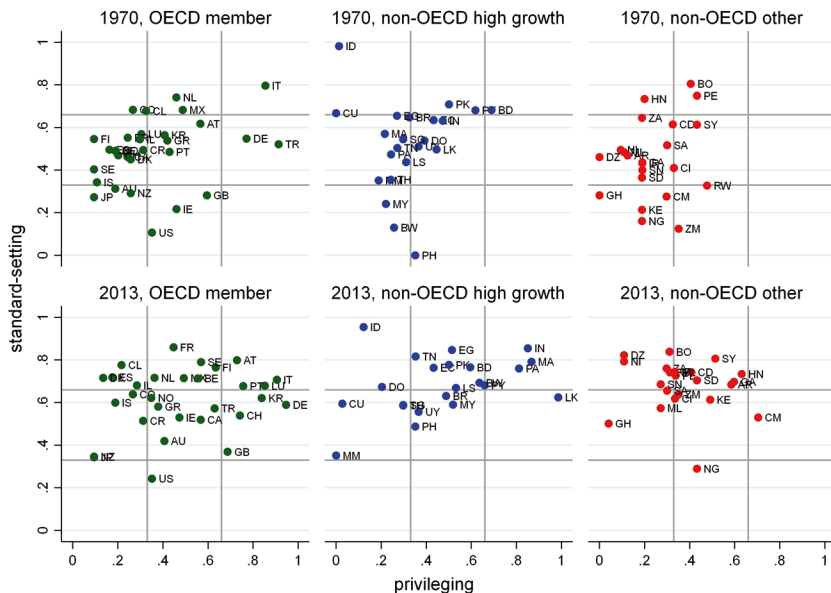


Fig. 9.2 Economic development. (Sources: WoL, CBR-LRI, OECD, the World Bank; N = 74; authors' analyses)

country in Fig. 9.2). One explanation could be that their relatively high position in standard-setting is an obstacle to their economic growth. This neoliberal argument was empirically rejected by the CBR-LRI research team (Adams et al., 2017; Deakin et al., 2017, 2023). Another explanation could be that these countries try to achieve better economic performance via better employment standards. A complementary explanation could be that these economically weak countries follow incentives from sponsoring international institutions (WB, IMF, ILO), which suggest to them to ameliorate their labour standards according to ILO standards (e.g. Hepple, 2005). These possible explanations can be viewed as hints to be followed up in further qualitative research. The objective would be to explain why countries with low or moderate economic growth such as Kenya, Zambia or Algeria (see Fig. 9.2) have a high increase in standard-setting employment law. That OECD countries show a higher increase in privileging norm-building than in standard-setting norm-building over time, whereas the two non-OECD coun-

try groups, although on a higher level, show a higher increase in standard-setting than in privileging over time, equally requires explanation. The OECD countries seem to ‘export’ standard-setting more than privileging. Possibly, privileging continues to be associated with the accumulated status of workers and their rights in the GN (see the cases of Portugal, Luxemburg, Austria and Switzerland, but also South Korea, catching up with Germany and Italy) whereas the GS, while increasing its privileging over the average of the North (see India, Panama, Morocco, Sri Lanka in Fig. 9.2), still focuses more on making up for its delayed standard-setting (see Indonesia, India, Egypt, Morocco, Pakistan, Bangladesh, Tunisia, etc.).

Although our findings do not support the second hypothesis, they nevertheless provide unexpected results which provide impetus for further reflection and research. Among them are the pertinence of legal segmentation with a strong increase in privileging legislation in the OECD area, and a particularly strong increase in labour regulation in non-OECD countries without high economic growth. The triggers to standard-setting employment law seem to stem less from internal or external economic and trade conditions or pressures, but rather from the international order marked by international institutions. Whether colonialism had a particular impact on legal segmentation in the colonised territories under the respective coloniser’s rule is dealt with in another chapter of this volume (Mückenberger & Schäfer 2025).

Lines five, eight and nine of Table 9.1 and Fig. 9.3 relate to our third hypothesis that it is particularly the involvement in GVCs that drives labour regulation. Here, we compare OECD members with non-OECD countries that are either strongly or differently integrated in GVCs. Again, we find no significant differences between the base level of our comparison groups in 1970, but for the standard-setting function significant differences at the 10% level for the development between 1970 and 2013 and at the 5% level for the situation in 2013: In both cases, we find significantly higher values for non-OECD countries with strong GVCs than for OECD members (0.20 compared to 0.12 and 0.73 compared to 0.61, respectively). So, at first sight, our third hypothesis seems to be supported: That the increase in protective norms follows the degree of involvement of non-OECD countries in GVCs. However, other countries from the GS show relatively high increases in standard-setting as well, irrespective of their

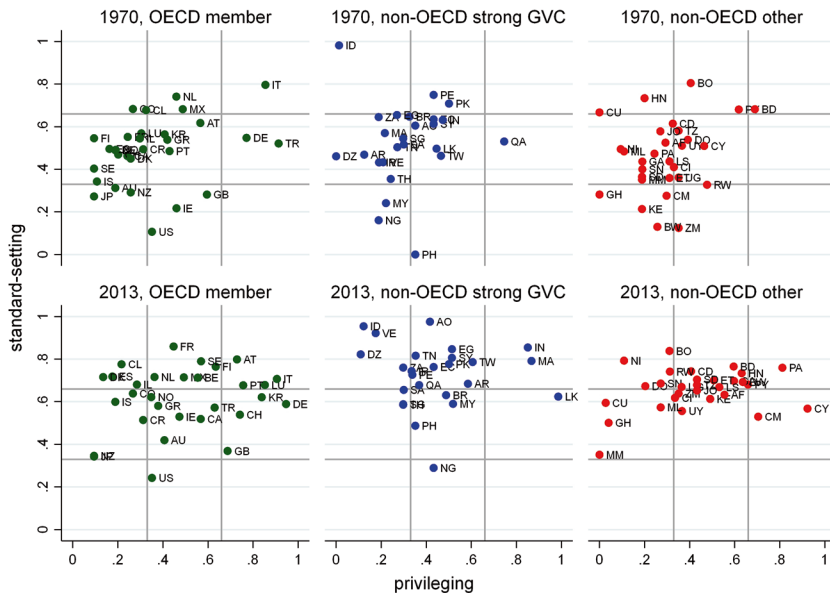


Fig. 9.3 Involvement in GVCs. (Sources: WoL, CBR-LRI, OECD, UNCTAD-Eora; N = 84; authors' analyses)

GVC involvement. Thus, there is no support for hypothesis three, but rather an indication for different developments in the GN and the GS.

On a more detailed level, we found that all three groups of countries (OECD members, non-OECD strong GVC and non-OECD other GVC) without exception show a substantial increase in employment standards between 1970 and 2013—namely in both standard-setting and privileging. The OECD members have already been discussed. Interestingly, the standard-setting difference is around 60% higher for non-OECD-countries than for OECD members, regardless of their degree of GVC participation. In contrast, the increase in privileging shows a similar level (P Diff around 0.13) in all three groups.

That there is a strong increase in standard-setting in non-OECD countries irrespective of their GVC involvement hints at explanations similar to those offered in the context of hypothesis two. There we stated that the level of employment legislation seems not to be driven by growth or productivity but rather influenced by external factors. That this equally holds

for the GVC involvement indicator leads to specific conclusions. According to recent findings from GVC theory (Ponte et al., 2019), value chains are strongly associated with various types of upgrading in the countries in the chain—namely economic (Gereffi, 2019), social (Rossi, 2019), livelihood (Neilson, 2019), environmental (Marchi et al., 2019) and gender upgrading (Barrientos, 2019). These findings prompted our expectation in the third hypothesis that a high degree of GVC participation is accompanied by a high increase in the level of employment standards. This expectation seems to have been proved at least incomplete in that the increase in legal regulation holds in non-OECD countries in general, independently from their participation in GVCs: There is certainly a high increase in the standard-setting difference, but it is obviously not limited to the countries' strong GVC participation ratio. Maybe upgrading via GVC participation could be demonstrated in the level and quality of employment, in wages and skill provision, and in institutional infrastructure. But these indicators would not be visualised by the evolution over time of employment law standards, which is what we consider in our study. Regarding the employment law standards, then, we can again formulate the assumption that it is not the logic of economic flows—particularly those increasingly built by global value linkages—which leads to changes in statutory employment standards, but, again, rather impacts of other international linkages, institutions, epistemic communities, etc. This does not exclude that employment standards on a sub-statutory level, e.g. Multinational Corporations' (MNC) codes of conduct or Corporate Social Responsibility (CSR) standards (see Hepple, 2005; Lund-Thomsen, 2019), have an upgrading impact in high GVC countries. But these standards do not form part of our sample.

This again calls for deeper qualitative research on the individual countries shown in Fig. 9.3. The figure demonstrates the strong increase in both standard-setting and privileging employment legislation over time, in all three groups of countries. Despite a general heterogeneity in the increase in both standard-setting and privileging in all three groups, two specific features stand out. Firstly, the upward trend in standard-setting over time among non-OECD other countries presents a more homogeneous picture than in the two other groups. Here our observation is confirmed that it is more the external impact of international organisations, rather than economic levers, that leads to higher employment standards. Second, the trend towards higher privileging norms is more dispersed in all three groups of countries. Particularly OECD countries like Germany,

Italy, Luxembourg, Portugal, Switzerland, the UK, Austria but also South Korea are leading (whereas in the S-ratio France is on top). Both other groups show a smaller number of outliers—particularly India, Morocco and Sri Lanka (strong GVC) and Cyprus, Panama and Cameroon (other). These specific features, again, can only be studied in a qualitative manner.

Finally, lines ten to twelve of Table 9.1 and Fig. 9.4 refer to our final hypothesis concerning the relation between a highly gendered division of labour and especially privileging norms. Interestingly, we find no significant differences for the privileging function between countries with a low, moderate and high gender gap in economic participation and opportunities, but highly significant differences in the standard-setting values for 1970 and 2013.

All countries (low, medium and high gender gap) show a substantial increase in both standard-setting and privileging employment legislation. One difference, however, stands out. In the privileging legislation,

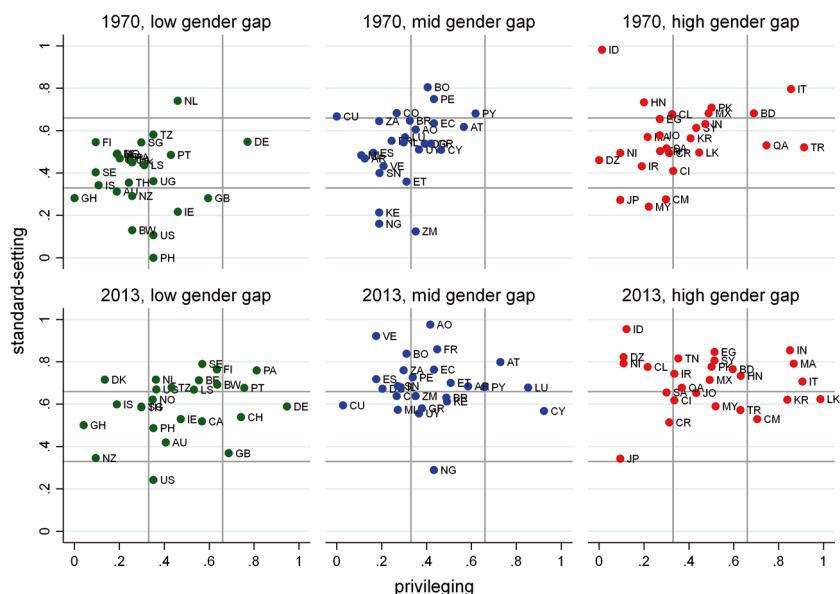


Fig. 9.4 Female economic participation and opportunities. (Sources: WoL, CBR-LRI, QoG; N = 77; authors' analyses)

all three groups of countries both at the beginning (1970) and at the end of our inquiry period (2013) show a comparable ratio. One difference concerning the privileging function is that the low gender gap countries, which started from the lowest level, caught up most substantially and in the end situated themselves between the two other groups. These differences—though not statistically significant—may prompt an important reflection. That low gender gap countries caught up most in privileging employment legislation seems counterintuitive: Do these countries regard their low gender gap as a comparative disadvantage which they want to overcome by introducing more privileging norm-setting? This is all the more interesting because this group includes highly developed and export-oriented countries like Germany, Switzerland, Portugal and Great Britain.

A significant second difference concerns the standard-setting function, whose increase is remarkably different. The low gender gap countries start with a significantly lower average (0.39 vs. 0.52 and 0.56) and end up still as the lowest (0.59 vs. 0.69 and 0.70), however, with the highest standard-setting increase over time (0.20 vs. 0.16 and 0.15). An increase in standard-setting accompanied by more privileging seems to have taken place.

It is not by chance that the Scandinavian countries (Sweden, Finland, Denmark and Netherlands) are among these low gender gap and high standard-setting increase countries. Figure 9.4 also shows that the increases in standard-setting and privileging are more homogenous in low gender gap countries in relation to those with medium and high gender gaps. Only in the privileging function does Germany extend its leading role. Prime examples of countries with a medium gender gap are Austria, Cyprus and Luxembourg. In contrast, high gender gap countries show a relatively homogenous upward trend in standard-setting, but a remarkable dispersal in privileging: with the forerunners being Sri Lanka, India, Morocco, Italy and South Korea. These findings also provide material for further qualitative legal research.

Hence, we find no association between the division of labour and the privileging function, and our fourth hypothesis is only partly supported. There is no clear-cut relationship between a strong equality culture and the absence of privileging employment legislation. This finding may have different explanations. Possibly, there is no linkage at all between a country's equality culture and its privileging/egalitarian employment legislation. This would be highly counterintuitive, but could of course not be

excluded from being a finding. It could have to do with the attitude that societal institutions other than employment law should be held responsible for gender culture and should effectively provide for this achievement. Market-egalitarian protagonists may even find an argument in our finding that the common law countries (the US, the UK, Australia, New Zealand) not only find themselves among the low gender gap countries but also among those that score lowest both in standard-setting and in privileging. It would thus be good to test our findings against the backdrop of the legal origin debate (e.g. Banks et al., 2015). However, other kinds of explanations point at non-legislative means of achieving gender equality. Probably, countries with relatively high gender equality in the labour market do not require the strong legislative protection of the male breadwinner who has to support the whole family and that in other countries is provided by the strong protecting and privileging norms. Testing the validity of these explanations lies beyond the scope of this chapter.

5 DISCUSSION

We asked how the generosity and coverage of employment protection, expressed through the standard-setting and privileging functions of labour law, have developed worldwide. Based on well-established explanations, we investigated four assumptions about how this development might have unfolded: (1) that standard-setting and privileging law originated from Europe and spread across the globe; (2) that it was a byproduct of economic development; (3) that it was applied in conjunction with involvement in global value chains; and (4) that it was associated with the impact of gender agency. We tested our assumptions by combining WoL trend data on 84 countries for the period from 1970 to 2013 with other available data sources and comparing means.

Interestingly, none of our four assumptions for explaining the development of protecting and segmenting employment legislation worldwide was supported. Already our basic assumption that standard-setting and privileging originated in the GN—specifically Europe—and then was somehow disseminated proved to be wrong, at least when taking 1970 as a starting point: In 1970, there were no significant differences in the levels of standard-setting and privileging between the GN and the GS; the only difference that could be observed was lower levels of standard-setting in countries with a low gender gap in employment and opportunity. Consequently, we found no significant changes in standard-setting or

privileging according to expectations: Hence, no ‘exported’ European difference between employment legislation developments in the three groups of countries can explain this development. Neither could the impact of recent economic growth, nor the degree of involvement in GVCs, nor the already existing gender equality in the labour markets serve as explanations for the overall rise.

However, we did find unexpected developments which open the door to alternative explanations: Compared to other countries, non-European OECD countries lagged behind in the development of standard-setting and privileging and showed much lower levels than the rest of the world in 2013. Furthermore, compared to OECD countries, in non-OECD countries there was a relatively strong increase in standard-setting, irrespective of economic performance or involvement in GVCs.

That domestic factors in all countries (political constellations, bargaining power of collective actors, etc.⁵) were responsible for the increase in employment legislation is not plausible since the studied countries represent the diversity of existing territories, hence let us expect a similar diversity of legislative activities, which in fact could not be observed. What seems more plausible to assume is that the commonly shared worldwide development of employment law was accompanied by international organisations (ILO, WHO, regional trade zones, etc.) and their normative impact (to be further studied—see Hahs & Mückenberger, 2022; Mückenberger, 2024). This could be an expression of the success story of the ILO and their normative instruments. But there is still the question whether the adaptation of employment law to a worldwide shared and ILO-administered corpus of rules actually expresses social progress for working people.

We come back to the world polity theory of Meyer et al. (1997), which we did not consider in our theoretical frame. Our diverging results, however, could possibly lead us to interpret the adapted employment law anew according to Meyer and Edelman’s old paradigm of “the symbolic use of politics” (Edelman, 1964; Meyer et al., 1997). Edelman regarded politics (including norm-setting) less as a means of solving a given problem

⁵ Our WoL data, contrary to the CBR-LRI data, do not include collective bargaining and collective agreements. This is why the combined dataset does not clearly demonstrate the power of collective agreements over daily working life in the states of the world. Collective agreements are possibly a better indicator of *de facto* work order while the legislative element as a *de jure* indicator of the work order is a more formal one which does not express very much about the ‘real’ (= valid, implemented and enforced) work order.

but rather as a means of demonstrating state activity in order to achieve other practical ends than those indicated by the set norm. These other ends, in the case of improving employment standards, could imply achieving internal or external prestige and legitimacy, attaining funding from international organisations, or network effects within given groups of countries, etc. The symbolic use of employment law is not necessarily without practical consequences—if the SER, e.g., is diffused in many states of the world via the symbolic use of labour law, it can actually strengthen action-leading cultural patterns (like the ideal of the male breadwinner family, etc.) and thus impact societal relations and developments. This is the message from the modern variant of Edelman in Meyer et al.'s (1997) world polity and isomorphism theory. They postulate that the worldwide diffusion of general normative patterns (norms, values, etc.) leads to a global amalgamation or assimilation of values which can have practical outcomes favourable to a world society. The impact of such a development, which here is only hinted at, would require more far extensive study. It would have to be assessed not in a legal-normative manner (i.e. as a hermeneutically guided extrapolation of norm-results according to norm-objectives as contained in the norm-texts), but rather by looking at the legal, cultural and social impact of normative constructs (like the standard employment relationship pattern) on patterns of everyday life.

Our analyses face severe limitations related to data availability. Regarding labour law, there are currently only data for 84 countries that go back to 1970. Of course, it is possible that our assumptions would be supported if we could go back to 1900 or earlier. Compared to other indicators, the situation of labour law data is actually quite good: While the World Bank offers GDP figures that go back to the 1950s for a few countries, other indicators have been developed only recently such as those on GVCs and the gender gap. By applying explanatory variables that represent rather recent states or countries, we might overlook important developments, too. However, in quantitative global social policy research, you have to play with the cards you are dealt. We close with the call for more globally comparable indicators that will enable researchers to address questions like ours more appropriately in the future.

APPENDIX

Table 9.2 Dimensions and indicators of the functions of labour law

<i>FUNCTION/ Dimension</i>	<i>Indicator</i>
STANDARD- SETTING	
Working time	S.1: Annual leave entitlements S.2: Public holiday entitlements S.3: Overtime premia S.4: Weekend working S.5: Limits to overtime working S.6: Duration of the normal working week S.7: Maximum daily working time
Dismissal	S.8: Legally mandated notice period S.9: Legally mandated redundancy compensation S.10: Law imposes procedural constraints on dismissal S.11: Law imposes substantive constraints on dismissal S.12: Reinstatement normal remedy for unfair dismissal S.13: Notification of dismissal
PRIVILEGING	
Seniority	P.1: The legally mandated notice period for employees increases with seniority P.2: Legally mandated severance/redundancy payments for employees increase with seniority P.3: Seniority is a decisive selection criterion in case of redundancy P.4: Priority in re-employment P.7: Minimum qualifying period of service for normal case of unjust dismissal
Selectivity	P.5: General dismissal protection depends on the size of the enterprise P.6: The law, as opposed to the contracting parties, determines the legal status of the worker

Table 9.3 Indicators by country

Country	European/OECD	OECD/econ. growth	OECD/GVC	Gender gap	S 1970	S 2013	P 1970	P 2013
Afghanistan (AF)	No/no	–	No/other	–	0.53	0.63	0.29	0.55
Algeria (DZ)	No/no	No/other	No/strong	High	0.46	0.82	0.00	0.11
Angola (AO)	No/no	–	No/strong	Medium	0.60	0.98	0.35	0.42
Argentina (AR)	No/no	No/other	No/strong	Medium	0.47	0.68	0.12	0.58
Australia (AU)	No/yes	Yes/–	Yes/–	Low	0.31	0.42	0.19	0.41
Austria (AT)	Yes/yes	Yes/–	Yes/–	Medium	0.62	0.80	0.57	0.73
Bangladesh (BD)	No/no	No/high	No/other	High	0.68	0.77	0.69	0.60
Belgium (BE)	Yes/yes	Yes/–	Yes/–	Low	0.49	0.71	0.19	0.55
Bolivia (BO)	No/no	No/other	No/other	Medium	0.80	0.84	0.40	0.31
Botswana (BW)	No/no	No/high	No/other	Low	0.13	0.69	0.26	0.64
Brazil (BR)	No/no	No/high	No/strong	Medium	0.65	0.63	0.33	0.49
Cameroon (CM)	No/no	No/other	No/other	High	0.28	0.53	0.30	0.70
Canada (CA)	No/yes	Yes/–	Yes/–	Low	0.46	0.52	0.24	0.57
Chile (CL)	No/yes	Yes/–	Yes/–	High	0.68	0.78	0.33	0.22
Colombia (CO)	No/yes	Yes/–	Yes/–	Medium	0.68	0.64	0.27	0.27
Costa Rica (CR)	No/yes	Yes/–	Yes/–	High	0.49	0.51	0.31	0.31
Cuba (CU)	No/no	No/high	No/other	Medium	0.67	0.59	0.00	0.03
Cyprus (CY)	Yes/yes	–	No/other	Medium	0.51	0.57	0.46	0.92
Denmark (DK)	Yes/yes	Yes/–	Yes/–	Low	0.45	0.72	0.26	0.13
Domin. Republic (DO)	No/no	No/high	No/other	Medium	0.54	0.67	0.39	0.20
DR Congo (CD)	No/no	No/other	No/other	–	0.61	0.74	0.33	0.41
Ecuador (EC)	No/no	No/high	No/strong	Medium	0.63	0.76	0.43	0.43
Egypt (EG)	No/no	No/high	No/strong	High	0.65	0.85	0.27	0.51
Ethiopia (ET)	No/no	–	No/other	Medium	0.36	0.70	0.31	0.51
Finland (FI)	Yes/yes	Yes/–	Yes/–	Low	0.55	0.76	0.09	0.63
France (FR)	Yes/yes	Yes/–	Yes/–	Medium	0.55	0.86	0.24	0.45

(continued)

Table 9.3 (continued)

<i>Country</i>	<i>European/OECD</i>	<i>OECD/econ. growth</i>	<i>OECD/GVC</i>	<i>Gender gap</i>	<i>S 1970</i>	<i>S 2013</i>	<i>P 1970</i>	<i>P 2013</i>
Gabon (GA)	No/no	No/other	No/other	–	0.44	0.70	0.19	0.60
Germany (DE)	Yes/yes	Yes/–	Yes/–	Low	0.55	0.59	0.77	0.95
Ghana (GH)	No/no	No/other	No/other	Low	0.28	0.50	0.00	0.04
Greece (GR)	Yes/yes	Yes/–	Yes/–	Medium	0.54	0.58	0.42	0.38
Honduras (HN)	No/no	No/other	No/other	High	0.73	0.73	0.20	0.63
Iceland (IS)	Yes/yes	Yes/–	Yes/–	Low	0.34	0.60	0.11	0.19
India (IN)	No/no	No/high	No/strong	High	0.63	0.85	0.47	0.85
Indonesia (ID)	No/no	No/high	No/strong	High	0.98	0.95	0.01	0.12
Iran (IR)	No/no	No/other	No/strong	High	0.43	0.74	0.19	0.33
Ireland (IE)	Yes/yes	Yes/–	Yes/–	Low	0.22	0.53	0.46	0.47
Israel (IL)	No/yes	Yes/–	Yes/–	Medium	0.54	0.68	0.30	0.28
Italy (IT)	Yes/yes	Yes/–	Yes/–	High	0.80	0.71	0.85	0.91
Ivory Coast (CI)	No/no	No/other	No/other	High	0.41	0.62	0.33	0.33
Japan (JP)	No/yes	Yes/–	Yes/–	High	0.27	0.34	0.09	0.09
Jordan (JO)	No/no	–	No/other	High	0.58	0.65	0.27	0.43
Kenya (KE)	No/no	No/other	No/other	Medium	0.21	0.61	0.19	0.49
Lesotho (LS)	No/no	No/high	No/other	Low	0.44	0.67	0.31	0.53
Luxembourg (LU)	Yes/yes	Yes/–	Yes/–	Medium	0.57	0.68	0.30	0.85
Malaysia (MY)	No/no	No/high	No/strong	High	0.24	0.59	0.22	0.52
Mali (ML)	No/no	No/other	No/other	Medium	0.48	0.57	0.11	0.27
Mexico (MX)	No/yes	Yes/–	Yes/–	High	0.68	0.71	0.49	0.49
Morocco (MA)	No/no	No/high	No/strong	High	0.57	0.79	0.22	0.87
Myanmar (MM)	No/no	No/high	No/other	–	0.35	0.35	0.19	0.00
Netherlands (NL)	Yes/yes	Yes/–	Yes/–	Low	0.74	0.72	0.46	0.36
New Zealand (NZ)	No/yes	Yes/–	Yes/–	Low	0.29	0.35	0.26	0.09
Nicaragua (NI)	No/no	No/other	No/other	High	0.49	0.79	0.09	0.11
Nigeria (NG)	No/no	No/other	No/strong	Medium	0.16	0.29	0.19	0.43
Norway (NO)	Yes/yes	Yes/–	Yes/–	Low	0.49	0.62	0.19	0.35

Pakistan (PK)	No/no	No/high	No/strong	High	0.71	0.78	0.50	0.50
Panama (PA)	No/no	No/high	No/other	Low	0.47	0.76	0.24	0.81
Paraguay (PY)	No/no	No/high	No/other	Medium	0.68	0.68	0.62	0.66
Peru (PE)	No/no	No/other	No/strong	Medium	0.75	0.73	0.43	0.34
Philippines (PH)	No/no	No/high	No/strong	Low	0.00	0.49	0.35	0.35
Portugal (PT)	Yes/yes	Yes/-	Yes/-	Low	0.49	0.68	0.43	0.76
Qatar (QA)	No/no	-	No/strong	High	0.53	0.68	0.75	0.37
Rwanda (RW)	No/no	No/other	No/other	-	0.33	0.74	0.48	0.31
Saudi Arabia (SA)	No/no	No/other	No/strong	High	0.52	0.66	0.30	0.30
Senegal (SN)	No/no	No/other	No/other	Medium	0.40	0.69	0.19	0.27
Singapore (SG)	No/no	No/high	No/strong	Low	0.54	0.59	0.30	0.30
South Africa (ZA)	No/no	No/other	No/strong	Medium	0.65	0.76	0.19	0.30
South Korea (KR)	No/yes	Yes/-	Yes/-	High	0.56	0.62	0.41	0.84
Spain (ES)	Yes/yes	Yes/-	Yes/-	Medium	0.50	0.72	0.16	0.18
Sri Lanka (LK)	No/no	No/high	No/strong	High	0.50	0.62	0.45	0.99
Sudan (SD)	No/no	No/other	No/other	-	0.36	0.70	0.19	0.43
Sweden (SE)	Yes/yes	Yes/-	Yes/-	Low	0.40	0.79	0.09	0.57
Switzerland (CH)	Yes/yes	Yes/-	Yes/-	Low	0.47	0.54	0.20	0.74
Syria (SY)	No/no	No/other	No/strong	High	0.61	0.81	0.43	0.51
Taiwan (TW)	No/no	-	No/strong	-	0.46	0.79	0.47	0.61
Tanzania (TZ)	No/no	-	No/other	Low	0.58	0.68	0.35	0.43
Thailand (TH)	No/no	No/high	No/strong	Low	0.35	0.59	0.24	0.30
Tunisia (TN)	No/no	No/high	No/strong	High	0.50	0.82	0.27	0.35
Turkey (TR)	No/yes	Yes/-	Yes/-	High	0.52	0.57	0.91	0.63
Uganda (UG)	No/no	-	No/other	Low	0.36	0.67	0.35	0.36
The UK (GB)	Yes/yes	Yes/-	Yes/-	Low	0.28	0.37	0.60	0.69
Uruguay (UY)	No/no	No/high	No/other	Medium	0.51	0.56	0.37	0.37
The USA (US)	No/yes	Yes/-	Yes/-	Low	0.11	0.24	0.35	0.35
Venezuela (VE)	No/no	-	No/strong	Medium	0.43	0.92	0.21	0.18
Zambia (ZM)	No/no	No/other	No/other	Medium	0.12	0.64	0.35	0.35

Sources: WoL, CBR-LRI, QoG, The World Bank, UNCTAD-Eora; authors' categorisation.

REFERENCES

- Adams, Z., Bastani, P., Bishop, L., & Deakin, S. (2017). The CBR-LRI dataset: Methods, properties and potential of leximetric coding of labour laws. *International Journal of Comparative Labour Law and Industrial Relations*, 33(1), 59–92.
- Banks, K., Nunin, R., & Topo, A. (2015). The lasting influence of legal origins: Workplace discrimination, social inclusion and the law in Canada, the United States and the European Union. In M. W. Finkin & G. Mundlak (Eds.), *Comparative labor law* (pp. 220–267). Edward Elgar Publishing.
- Barrientos, S. (2019). Gender dynamics in global value chains. In S. Ponte, G. Gereffi, & G. Raj-Reichert (Eds.), *Handbook on global value chains* (pp. 324–338). Elgar.
- Blyth, M., Helgadottir, O., & Kring, W. (2016). Ideas and historical institutionalism. In O. Fioretos, T. G. Falletti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 142–162). Oxford University Press.
- Boltanski, L., & Chiapello, E. (2005). *The new spirit of capitalism*. Verso.
- Bonfanti, S., Estlund, C., & Garoupa, N. (2015). Comparative labor and employment law in developed market economies: Fostering market efficiencies or repairing market failure? In M. W. Finkin & G. Mundlak (Eds.), *Comparative labor law* (pp. 62–79). Edward Elgar Publishing.
- Casella, B., Bolwijn, R., Moran, D. D., & Kanemoto, K. (2019). Improving the analysis of global value chains: The UNCTAD-Eora database. *Transnational Corporations*, 26(3), 115–142.
- Deakin, S., Armour, J., & Siems, M. (2017). CBR leximetric datasets. [Data set]. Apollo—University of Cambridge Repository. <https://doi.org/10.17863/CAM.9130>
- Deakin, S., Armour, J., & Siems, M. (2023). CBR leximetric datasets [Updated]. [Data set]. Apollo—University of Cambridge Repository.
- Dingeldey, I., & Gerlitz, J. (2022a). Labour market segmentation, regulation of non-standard employment, and the influence of the EU. In F. Nullmeier, D. González de Reufels, & H. Obinger (Eds.), *International impacts of social policy: Short histories in global perspective* (pp. 247–260). Palgrave Macmillan.
- Dingeldey, I., & Gerlitz, J. (2022b). Not just black and white, but different shades of grey: Legal segmentation and its effect on labour market segmentation in Europe. *International Labour Review*, 161(4), 593–613. <https://doi.org/10.1111/ilr.12336>
- Dingeldey, I., Fechner, H., Gerlitz, J., Haas, J., & Mückenberger, U. (2020). *Measuring legal segmentation in labour law*. Socium-SFB 1342. <https://www.socialpolicydynamics.de/f/90e3891ffd.pdf>.
- Dingeldey, I., Fechner, H., Gerlitz, J., Haas, J., & Mückenberger, U. (2022). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(3), 560–597. <https://doi.org/10.1093/indlaw/dwab016>

- Edelmann, M. (1964). *The symbolic uses of politics*. University of Illinois Press.
- Eisenstadt, S. N. (2010). *Modernity and modernization* (pp. 1–15). *Sociopedia.isa*.
- Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Polity Press.
- Falk, W., Behrend, H., Duparré, M., Hahn, H., & Zschaler, F. (Eds.). (1990). *Marx-Engels-Gesamtausgabe: Abteilung 2, Band 9 Capital: A critical analysis of capitalist production, London 1887*. De Gruyter.
- Finkin, M. W., & Mundlak, G. (Eds.). (2015). *Comparative labor law*. Edward Elgar Publishing.
- Fioretos, O., Falleti, T. G., & Sheingate, A. (2016). Historical institutionalism in political science. In O. Fioretos, T. G. Falleti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 1–28). Oxford University Press.
- Fisher, R. A. (1925). *Statistical methods for research workers*. Oliver & Boyd.
- Fukuyama, F. (1992). *The end of history and the last man*. The Free Press.
- Gereffi, G. (2019). Economic upgrading in global value chains. In S. Ponte, G. Gereffi, & G. Raj-Reichert (Eds.), *Handbook on global value chains* (pp. 240–254). Elgar.
- Hahs, J., & Mückenberger, U. (2022). Segmenting and equalizing narratives in the ILO's standard-setting practice. *International Labour Review*, 161(4), 635–655. <https://doi.org/10.1111/ilr.12344>
- Hepple, B. (2005). *Labour laws and global trade*. Hart Publishing.
- Hepple, B., & Veneziani, B. (2009). Introduction. In B. Hepple & B. Veneziani (Eds.), *Transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* (pp. 1–29). Hart Publishing.
- Howe, J., Sánchez, E., & Stewart, A. (2015). Job loss. In M. W. Finkin & G. Mundlak (Eds.), *Comparative labor law* (pp. 268–295). Edward Elgar Publishing.
- Janos, A. C. (1986). *Politics and paradigms: Changing theories of change in social science*. Stanford University Press.
- Kaufman, B. E. (2004). *Theoretical perspectives on work and the employment relationship*. In B. E. Kaufman (Ed.), *Theoretical perspectives on work and the employment relationship* (pp. 293–320). Cornell University Press.
- Kruskal, W. H., & Wallis, W. A. (1952). Use of ranks in one-criterion variance analysis. *Journal of the American Statistical Association*, 47, 583–621.
- Kruskal, W. H., & Wallis, W. A. (1953). Errata: Use of ranks in one-criterion variance analysis. *Journal of the American Statistical Association*, 48, 907–911.
- Lund-Thomsen, P. (2019). Corporate social responsibility in global value chains. In S. Ponte, G. Gereffi, & G. Raj-Reichert (Eds.), *Handbook on global value chains* (pp. 285–295). Elgar.
- Marchi, V., Di Maria, E., Krishnan, A., & Ponte, S. (2019). Environmental upgrading in global value chains. In S. Ponte, G. Gereffi, & G. Raj-Reichert (Eds.), *Handbook on global value chains* (pp. 310–323). Elgar.
- Marshall, T. H. (1950). *Citizenship and social class: And other essays*. Cambridge University Press.

- Meyer, J. W., Boli, J., Thomas, G., & Ramirez, F. (1997). World society and the nation state. *American Journal of Sociology*, 103(1), 144–181.
- Mückenberger, U. (1989). Non-standard forms of employment in the federal republic of Germany: The role and effectiveness of the state. In G. Rodgers & J. Rodgers (Eds.), *Precarious jobs in labour market regulation: The growth of atypical employment in Western Europe* (pp. 267–286). ILO.
- Mückenberger, U. (2022). A quest for equity: Labour standards on the transnational move. In F. Nullmeier, D. González de Reufels, & H. Obinger (Eds.), *International impacts of social policy: Short histories in global perspective* (pp. 463–476). Palgrave Macmillan.
- Mückenberger, U. (2024). Les dialogues sociaux transnationaux comme leviers des normes mondiales du travail. In M. Dhermy-Mairal, S. Kott, I. Lespinet-Moret, & M. Louis (Eds.), *Mondialisation et justice sociale. Un siècle d'action de l'Organisation internationale du travail* (pp. 247–264). Éditions de la Sorbonne.
- Mückenberger, U., & Deakin, S. (1989). From deregulation to a European floor of rights: Labour law, flexibilisation and the European single market. *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht*, 3, 153–207.
- Mückenberger, U., & Dingeldey, I. (2022). Introduction: Worldwide patterns of legal segmentation in employment law. *International Labour Review*, 161(4), 511–534. <https://doi.org/10.1111/ilr.12355>
- Mückenberger, U., & Schäfer, A. (2025). Genesis and forms of standard employment relationships in three European colonial powers and their ex-colonies. In I. Dingeldey, H. Fechner, & U. Mückenberger (Eds.), *Constructing worlds of labour: Coverage and generosity of labour law as outcomes of regulatory social (chapter 7, in this volume)*. Palgrave Macmillan.
- Mundlak, G., & Finkin, M. W. (2015). Introduction to the comparative labor law handbook. In M. W. Finkin & G. Mundlak (Eds.), *Comparative labor law* (pp. 1–17). Edward Elgar Publishing.
- Neilson, J. (2019). Livelihood upgrading. In S. Ponte, G. Gereffi, & G. Raj-Reichert (Eds.), *Handbook on global value chains* (pp. 296–309). Elgar.
- Nullmeier, F., González de Reufels, D., & Obinger, H. (2022). *International impacts of social policy: Short histories in global perspective*. Palgrave Macmillan.
- Organisation for Economic Co-operation and Development. (2024). Our global reach—Member countries. <https://www.oecd.org/about>
- Pierson, P. (2016). Power in historical institutionalism. In O. Fioretos, T. G. Falletti, & A. Sheingate (Eds.), *Oxford handbook of historical institutionalism* (pp. 124–141). Oxford University Press.
- Ponte, S., Gereffi, G., & Raj-Reichert, G. (Eds.). (2019). *Handbook on global value chains*. Elgar.
- Pries, L. (2019). *Erwerbsregulierung in einer globalisierten Welt: Theoretische Konzepte und empirische Tendenzen der Regulierung von Arbeit und Beschäftigung in der Transnationalisierung* (3rd ed.). Springer VS Wiesbaden.

- Rawls, J. (1971). *A theory of justice*. Belknap Press/Harvard University Press.
- Rossi, A. (2019). Social upgrading. In S. Ponte, G. Gereffi, & G. Raj-Reichert (Eds.), *Handbook on global value chains* (pp. 272–284). Elgar.
- Rubery, J., & Figueiredo, H. (2018). Gender, employment and social policy. In S. Shaver (Ed.), *Handbook on gender and social policy* (pp. 129–152). Edward Elgar Publishing.
- Sainsbury, D. (1994). Women's and men's social rights: Gendering dimensions of welfare states. In D. Sainsbury (Ed.), *Gendering welfare states* (pp. 150–169). Sage.
- Teklè, T. (Ed.). (2010). *Labour law and worker protection in developing countries*. ILO.
- Teorell, J., Sundström, A., Holmberg, S., Rothstein, B., Alvarado Pachon, N., Mert Dalli, C., & Meijers, Y. (2023). *The Quality of Government Standard Dataset* (Version Jan23) [Data set]. University of Gothenburg. <https://doi.org/10.18157/qogstdjan23>.
- Trebilcock, A. (Ed.). (2018). *Comparative labour law*. Edward Elgar Publishing.
- Trentin, B. (1997). *La Città Del Lavoro. Sinistra E Crisi Del Fordismo*. Feltrinelli.
- Tukey, J. (1949). Comparing individual means in the analysis of variance. *Biometrics*, 5(2), 99–114.
- Vosko, L. F. (2010). *Managing the margins: Gender, citizenship, and the international regulation of precarious employment*. Oxford University Press.
- Weber, M. (2013). *The protestant ethic and the spirit of capitalism*. Routledge.
- Welzel, C. (2013). *Freedom rising: Human empowerment and the quest for emancipation* (1st ed.). Cambridge University Press.
- World Bank. (2024). GDP per capita (Constant 2015 US\$) [Data set]. World Bank https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=VN&name_desc=false&view=chart
- World Economic Forum. (2021). *The global gender gap report 2021*. World Economic Forum. <https://www.weforum.org/reports/ab6795a1-960c-42b2-b3d5-587eccda6023>

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PART III

Towards a Socio-Political Paradigm
Shift?



Beyond National and Global Labour Policy: The Future of Work and Employment Governance

Ludger Pries

1 INTRODUCTION

Many chapters in this volume outline the relevance of legal segmentation of labour law hand in hand with the (segmented) regulation of social policy. As social policy in general and regulatory labour policy in particular were established and developed mainly in the context of nation-state building, international comparison of types of national governance of work and employment regulations is relevant and leads to new insights. In this chapter we argue that the focus on legal segmentation is relevant and fruitful; it could even benefit from being related to sociological

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institutionalist thinking. In this approach, various social institutions, in addition to legal segmentation, structure the actual regulation of labour as multi-level arrangements. Therefore, improving coverage and generosity of social policy worldwide requires not only ‘better norms’ but also better knowledge of the diversity of labour-regulating institutions, especially of the actors, levels and mechanisms involved in actually shaping the practical contours of cross-border social policy. As outlined in several chapters in this volume, segmented labour law works as a mechanism for differentiating social inequality. Segmentation of labour law along the lines of the standard employment relationship might have generalising functions—with protecting effects for the privileged groups addressed and excluding consequences for marginalised groups. This invites us to draw specific attention to the societal and institutional embedding of labour law and its segmented character. The latter, as with all formalised law, can be understood as the sedimented outcome of economic, political, cultural and social interests, struggles and power relations over time.

In what follows, we first reflect on conceptual framings of national and global labour policy and regulation and propose a multi-level and multi-dimensional approach to cross-border labour regulation (Sect. 1). We then argue that we do need such a differentiated approach due to the increasing complexity of labour and labour mobility at national and cross-border level. Therefore, we outline some recent trends in the globalisation of work and employment conditions such as intra-organisational cross-border expatriate mobility, posted work and the precarious work of migrants in agribusiness. We argue that national and international legal regulations and initiatives hardly keep pace with these trends (Sect. 2). In order to scientifically analyse and politically regulate the increasing volumes and differentiated forms of global labour mobility, we have to reflect on the limits and opportunities of legal-formalised labour regulation. Therefore, to differentiate the scope of social mechanisms and feasible fields relevant for labour regulation, we present an institutional approach involving five social mechanisms that structure labour and its regulation. Based on different logics of generalising norms as outlined in Chap. 1 of this volume and, for example, in Dingeldey et al. (2021), these institutions can help to reduce legal segmentation by standard-setting and equalising at regional, national, transnational or global level, and they often are interwoven in a multi-level way (Sect. 3). Some final reflections on the significance of a wider institutional approach for research and social policy indicate how this could be related to the approach that considers the coverage and generosity of formal labour regulation and protection as an

important element of global social policy (Sect. 4). The chapter proposes an integrated and extended institutional and multi-level analytical framework for labour regulation.

2 CONCEPTUAL REFLECTIONS: TYPES AND LEVELS OF LABOUR REGULATION

In a global view, the standard employment relationship as full-time, dependent, formal-regular, masculine employment could be interpreted as a generalised normative frame that reflects the long-lasting dominance of the Global North (GN), especially of the early industrialised countries of Western capitalism. During the twentieth century, this normative *de jure* setting became strong in international organisations, namely the United Nations, and also in many nation-states as the cognitive frame of reference for norm development and collective regulations. Nevertheless, the *de facto* reality of work and employment relations did not adapt to this regulative, normative and cognitive figure. Economic globalisation and cross-border value chains went hand in hand with increasing international labour migration and transnational work and employment relations.¹ At the same time, digitalisation and new business models like outsourcing, subcontracting and the platform economy have further differentiated labour conditions and their regulation all over the world. Since the end of the twentieth century, the contradicting trends of ongoing globalisation (of value chains, use of energy and raw materials, pandemics, etc.) and of strengthening re-nationalisation and nationalisms (by accentuated privileging and segmenting in social policy, e.g. via restricting migration) have become stronger.

This leads to new challenges for social policy, especially in the field of labour regulation. Social policy in general has been considered as mainly structured by collective and corporate actors organised at the national level (Bilecen et al., 2019).² This tradition holds true for systems of

¹There is insufficient space here for a specific discussion of the (local, regional, national, supranational, transnational and global) multiple levels of internationalisation, for details see Pries (2005).

²As *collective actors*, we understand organisations such as trade unions, employers' and other interest groups, as well as political parties, whose resources depend primarily on their members and their mobilisation, and where members' organisation-related interests and preferences are quite similar; in contrast, *corporate actors* are organisations whose members may have divergent interests and yet are able to achieve their goals through external resource mobilisation (e.g. corporations, public administrations, universities).

healthcare, unemployment insurance and pension funds—but also for trade unions and cooperatives. In terms of labour regulation, however, there are long-term efforts by international organisations, as exemplified by the regulations of the International Labour Organization (ILO) and OECD stipulations like the Guidelines for Multinational Enterprises.³ Nevertheless, compared with the actual degree of growth of global interchanges of goods, information, cognitive maps and persons, the scale of effective individual and collective cross-border labour regulation remains considerably ‘underdeveloped’. Social policy, especially labour policy and regulation, and its scientific study seem to be entrenched by “methodological nationalism” (Wimmer & Glick Schiller, 2002). As will be demonstrated in the next section, cross-border labour mobility has intensified and become significantly differentiated, while the regulation of minimum standards for decent work remains fragmented and weak. This requires an extended approach in terms of social policy and labour regulation (Bommes & Geddes, 2000). Despite the relatively high level of labour regulation in the EU, even labour migration from one EU member state to another is, in practice and in view of the mobility of social rights, a challenging endeavour despite the many formal efforts to achieve harmonisation within the EU (De Lange, 2018; Dickmann & Andresen, 2018, p. 156f.; Moriarty et al., 2016).

A broader approach to social policy is necessary not only due to globalisation but also in order to integrate the perspective on legal rules (*de jure*) with an approach based on institutionalised mechanisms that regulate social practice (*de facto*). The coverage and content of national labour law and international regulatory frameworks has to be combined with the actual normative and cognitive embedding and social practice of collective and corporate actors able to demand or enforce such provisions. In a neo-institutional perspective of organisation research, cross-border social policy has to rest not only on formalised regulative stipulations but also on a normative and a cognitive pillar (Scott, 2001). Besides legality, labour policy and the regulation of work and employment relations in social practice are based on legitimacy. Legitimacy is produced and negotiated in social fields, where collective and corporate actors perceive each other on the basis of commonly accepted social institutions. In a sociological perspective, institutions are action programmes as frameworks of formal and

³ See <https://www.ilo.org/global/standards/lang%2D%2Den/index.htm>; <https://www.oecd.org/corporate/mne/> and <https://www.oecdwatch.org/>.

informal norms, routines and expectations that structure specific areas of social life; they can be considered an evolutionary replacement for instincts as they are transferred not by genes but by learning and culture; institutions offer identity, cohesion and integration for extended networks of interaction; they are taken for granted ‘until further notice’ as self-evident facts of everyday life (for the general concept of social institutions see Miller, 2019; as an example of labour regulation in Germany see Pries & Lansbury, 2019 and Pries, 2019b).

Some proponents of a neo-institutionalist approach have argued that in the context of globalisation, a more or less homogeneous and coherent ‘world order’ of global social institutions would emerge (e.g. Meyer et al., 1997). They gave the example of the public education system that since the nineteenth century spreads all over the world and represents the most important social institution for intergenerational transmission of cultural learning and socialisation (Meyer et al., 1997). However, an approach of converging and diverging types of multi-level and flexible entanglements of labour regulation with trends ranging from increasing globalisation over re-nationalisation to complex transnationalisation (Hauser-Ditz et al., 2016) seems more adequate. In an organisation studies perspective, Besio and Meyer (2015, p. 237) argue: “Instead of looking for an encompassing, stable order as an explanation for this stability, we claim that modern society has developed ways of mediating heterogeneous logics by generating fragmented and temporary orders.”

Such an institutional approach is positioned between two extremes: that of looking exclusively at nation-states (methodological nationalism) and that of positing the existence of an integrated world polity as institutionalised governance. It proposes focusing on the *emerging multi-level texture of labour regulation and social policy in general*. This is built by quite different types of regulation (ranging from soft law to hard law, from rule-setting to monitoring and campaigning), by different time lines of emergence and stabilisation, by narrow and broad ranges of themes to regulate, by various spatial scopes (from global to supranational to organisational reach), by a continuum from weak to strong control of norms (from legal/court enforcement to public discourse) and by contrasting actor constellations (states, unions and employer/business associations, NGOs, companies; see Table 10.1).

Concerning the relation between social movements and international organisations, Tarrow (2005) argued that established organisations could be considered the relatively stable ‘coral reef’ vis-à-vis the volatile waves of

Table 10.1 Types and characteristics of cross-border labour regulation

Type of regulation	Crucial characteristics					
	Emerging since	Thematic scope	Spatial scope	Strength of control	Main actor groups	Example
Global minimum standards	1910s	Broad	Global	Moderate	States, social partners	ILO Core Conventions
Other relevant international norms	1990s	Narrow	Global to macro-regional	Weak	States	Labour-related norms of the World Bank
Supranational labour regulation	1980s	Broad	Macro-regional	Strong	States, social partners, NGOs	European Works Council (EWC)
Company-related declarations	1990s	Intermediate	Global to consortium-related	Moderate	Companies, unions	International Framework Agreements
Labels, monitoring, certifications	1990s	Broad	Global to local	Strong	Experts, NGOs, business organisations	Fair trade
Public campaigns, social movements	1960s, then 1990s	Broad	Global to local	Medium	NGOs, the media, the public	Clean Clothes Campaign
Supra/transnational governance	Twenty-first century	Broad	Global to macro-regional	Strong	States, social partners, NGOs, MNC	OECD Multinational Guidelines

Source: Author's own elaboration

social movements that come and go. Taking this as an image for the relation between structure and agency, we could argue that formalised law is like the ‘coral reef’ that structures the actual behaviour and movement of collective and corporate actor groups. The examples mentioned in Table 10.1 even go beyond such a dichotomy because different characteristics of applicable institutionalised regulations can be recognised (such as different degrees of strong and weak control; for details see Pries, 2020, p. 4f.). In a neo-institutionalist view, each type of regulation constitutes a generic organisational field with institutionalised rules, norms and cognitive mappings of behaviour and expectations. As will be demonstrated in the following section, the current trends in cross-border labour mobility and migration are becoming differentiated to an extent and speed that is hardly covered by legal rule-setting.

3 CROSS-BORDER LABOUR MOBILITY: A CHALLENGE TO SOCIAL POLICY AND LABOUR REGULATION AT NATIONAL AND CROSS-BORDER LEVEL

Cross-border employment relations and international migration are of increasing relevance in terms of both volume and content. Migrant workers are leaving their countries of origin in search of employment in other countries. Companies and other organisations (such as universities, professional associations and NGOs) are active in more than just one country and send their expatriates abroad. Employees of organisations cooperate transnationally with colleagues in other countries on a daily basis. Supply and value chains are becoming increasingly transnational across many countries and locations. All these cross-border developments make work and employment an increasingly transnational affair as a brief look at empirical trends illustrates. Considering the quantitative development of international migration, we observe a steady rise above the global population growth rate, reaching some 281 million or 3.6 per cent of the world population in 2020, with nearly 170 million classified as explicit labour migrants (IOM, 2024, p. 4). This means that the number of persons residing in a country other than that of their birth and citizenship almost doubled during the last three decades.

The majority of international migrants live in the USA, with Saudi Arabia, Germany, the Russian Federation, the United Kingdom and the United Arab Emirates being the next most important destination

countries (*ibid.*, p. 25). In 2018 (last year of consolidated data), the annual inflow of foreign nationals into OECD countries reached almost eight million (*ibid.*, p. 31). For many countries of origin, transit and arrival, international migration has now become a significant economic factor. This can be seen in the remittances of migrant workers, which reached a volume of more than 700 billion USD with almost 540 billion USD sent to low- and middle-income countries. Whereas India, China, Mexico, the Philippines and Egypt are the top receiving countries, the USA, the United Arab Emirates, Saudi Arabia, Switzerland and Germany are the top sending countries.⁴ In 2020, incoming remittances represented more than a fifth of total GDP for twelve countries (*ibid.*, p. 42). Considering the extended family networks that depend on international migration and remittances, almost one out of seven to ten people in the world are affected. Contrary to many forecasts, COVID-19 did not lead to a substantial decrease in remittances (KNOMAD, 2022, p. 2).

In addition to this impressive and increasing volume, the types of international migrants are becoming increasingly differentiated. In addition to individual migration, organised international labour mobility induced by an organisation (either for-profit or non-profit) is of increasing importance (Adick et al., 2015). Expatriates and inpatriates, posted workers, third-country nationals, commuting assignees and frequent business travellers represent different categories of organised labour mobility (Dickmann & Andresen, 2018, p. 153f.; McNulty & Brewster, 2017, p. 24; De Wispelaere et al., 2022). Hence, as economic, social, cultural and political globalisation progresses, cross-border migration is becoming increasingly relevant. It is structured within social and organisational networks and various types can be differentiated, ranging from mostly privileged and voluntary intra-organisational international mobility of expatriates over the often precarious labour of the posted worker to seasonal irregular or forced migrants lacking almost all aspects of decent work. A common denominator of these different types is the very fact that labour law and labour regulation are still structured predominantly at the national level. In general, social welfare and social security systems are organised at the level of territorial states. This holds even for the highly integrated EU. Anybody who has worked outside of their country of citizenship has experienced the problems of having these employment

⁴ See IOM (2024, p. 36) and <https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>

periods abroad recognised for social security entitlements. Only in the case of classical expatriate contracts can it be easier to claim the time spent abroad as creditable for pension funds or unemployment insurance. Individual labour migrants and their households are often lost in limbo between different national systems of social welfare and corresponding labour regulations; they find themselves often beyond any legal control and rights.

This is especially true for those who work without a legal permit or informally without access to social security provisions in another country. There are almost ten million Mexicans living and working in the USA without legal registration (Pries, 2019a). Hundreds of thousands of—mainly female—care workers from Eastern EU member states are engaged in Western EU countries informally and without access to relevant welfare state entitlements (Lutz & Palenga-Möllenberg, 2010). The *caporalato* system in Italy and similar arrangements for informal employment in other Mediterranean countries cover significant parts of the labour force in the agrobusiness (Fanizza & Colloca, 2020). Even inside a country like China, informal labour could exclude more than two hundred million workers, who left their rural *hukou* in order to work in a city, from basic benefits like education, health and pension funds (Chan, 2021).

Given this variation in labour contexts, we have to broaden our understanding of social policy and social welfare and shed light on the social mechanisms and structures for personal and collective social security that exist *beside* the formalised national systems.⁵ In addition to the meanwhile abundant literature on transnational family social security strategies (Amelina et al., 2019; Bilecen et al., 2019), this relates to local informal social networks of solidarity and mutual help organised at the level of families or the neighbourhood and also includes organisational structures such as cooperatives or mutual associations (e.g. Broek et al., 2012). We should also consider new actors in transnational social policy like the growing networks of transnational migrant organisations that facilitate information exchange, organising remittances or collective public projects in both the countries of origin and of arrival (Portes et al., 2007; Van Dam, 2016). Based on these different streams of efforts to broaden the scope of social security and social policy and release it from a narrow approach of state

⁵This is also relevant given the twin trends of digitalisation and greening of the economy and related challenges of informalising, subcontracting and platform organising of work and employment, see, e.g. Bednorz et al. (2022).

and legal regulations, in the following section we present conceptual reflections on social institutions that are actually crucial for structuring work and employment relations and labour regulation.

4 FIVE SOCIAL INSTITUTIONS STRUCTURING LABOUR AND THE ECONOMY

In a neo-institutional perspective as sketched out above, formal-legal rules are only one pillar of labour regulation, while normative orientations of behaviour and taken-for-granted cognitive maps are the other columns. Based on the examples of the empirical trends in cross-border labour mobility outlined in the previous section and revisiting the international literature on social policy and labour regulation, in addition to the formal regimes of labour regulation and welfare dealt with so far, we can identify four other social institutions that structure labour and social policy: (1) social networks, (2) professions, (3) markets and (4) organisations. In social science research relating to labour mobility and labour regulation, most attention has been paid to markets, hierarchies (i.e. organisations) and the state or public regime (Kerr, 1954; Hall & Soskice, 2001). Additionally, the crucial role of professions and occupations in structuring labour and also social security was underlined, for example, by Lutz and Sengenberger (1974) and Sengenberger (1981). Esping-Andersen (2002), and Pfau-Effinger and Rostgaard (2011) highlighted the significance of family and wider social networks for social policy and work.

Therefore, from a holistic perspective we can identify five labour-structuring institutions that vary according to the main actor groups and their relevant regulative, normative and cognitive pillars. These social institutions are relevant to some extent almost all over the world, although their specific relative weight, composition and characteristics vary as well as the spatial level they are relevant at. According to the specific regional and temporal context, these social institutions could have standard-setting, privileging or equalising functions (Dingeldey et al., 2021). However, a differentiated discussion cannot be provided here and would require a separate study. Table 10.2 lists these institutions and summarises their four defining elements: dominant action resources, regulative pillar, normative pillar and cognitive pillar (for similar attempts see Crouch, 2010; Mingot & Mazzucato, 2018).

Table 10.2 Five social institutions structuring labour and labour regulation

<i>Basic pillars Social institution</i>	<i>Action resource</i>	<i>Regulative pillar</i>	<i>Normative pillar</i>	<i>Cognitive pillar</i>
Social network	Social capital	Informal rules, law	Long-term non-specific reciprocity	Trust, 'exchange of gifts'
Profession	Cultural capital	Formal and informal rules, law	Professional ethics, expertise, skills	Certificates, reputation, honour
Market	Economic capital	Law, formal rules, contracts	Individual interest, optimising benefit	Money, exchange of equivalences
Organisation	Organisation-positional capital	Law, organisational rules	Organisation-specific norms, loyalty	Hierarchy, position-role, decisions
Public regime	Political capital	Constitution, law, legality	Legitimacy, public discourse, conflicts	Interest representation, ideologies

Source: Author's compilation

4.1 (*Primary and Secondary*) *Networks as a Social Institution*

The life context of the extended family, as the *primary social network*, is the oldest social institution organising life and labour.⁶ The capacity of the actors involved is determined primarily by their social capital, in the sense that the number and quality of their social relations are dominated by the behavioural norm of long-term, non-specific reciprocity. The main 'currency' through which communication is effected consists of trust and the exchange of non-monetised gifts in an 'affectual framing'. With regard to work and gainful employment, the rights and obligations of each member of the social network depend on traditional values and the personal needs of group members. Social networks are characterised by the dominant normative logic of generalised reciprocal commitment, favour and solidarity. As in the classic exchange of gifts, members of the network who 'help out' do not ask for specific compensation for their work (but expect a

⁶ In social sciences, the market is often depicted as the 'natural environment' of human economic activity, although it only started to play an important role as a social institution a few hundred years ago.

similar generosity and mutuality when they are in need). For example, parents do not consider the monetary value of rearing their children nor of providing eldercare, nor do they expect specified favours in return.

In the institutional context of social networks, trust—in the sense of a non-formalised, non-specific expectation and exchange relation—is the most important medium used to communicate claims and expectations concerning work and a gainful employment. According to Marshall (1964), in family life and family work, it is one's status rather than the contract that determines the conditions of gainful employment and work behaviour in a non-standardised, unquantifiable exchange context. Such an exchange has a long-term perspective, that is working people contribute some of their income with the expectation that they will get something back from the next generation when they reach old age. In the views of Bourdieu (1983) and Coleman (1988), trust—as the essential resource that individuals accumulate and mobilise—might be referred to as 'social capital', which is then 'stored' in the social relationships between people in the form of reciprocal expectations with respect to familiarity, solidarity and support. Because such capital is acquired through interpersonal relationships, it can only to a certain degree be transferred to other social relationships; however, unlike money, it cannot be exchanged anonymously with just anyone or be 'hoarded'. *Secondary network relationships* are formed outside the family, such as the *compadrazgo* (godparent) system in Mexico (Nutini & Bell, 1989) or the *guanxi* as the network of personal relations in China (Yeung & Tung, 1996).

In the twenty-first century, social networks are of crucial significance—at the local as well as at the transnational level. The ever-increasing level of transnational remittances from labour migration can be considered a worldwide social policy system based mainly on the institution of social and especially family networks. Remittances are designated primarily to maintaining households in the countries of labour migrants' origin, but also contribute to education or healthcare needs. Levitt et al. (2017) underlined that social protection for migrants does not consist only of the formal state provisions but that the complex 'resource environment' also includes informal social networks (also: Amelina et al., 2019). Mingot and Mazzucato (2018, p. 2128) focus on social-network-based mechanisms of social protection in the context of the other four relevant institutions and define transnational social protection (TSP) as the combination of provisions provided by the state, the market, the third sector (i.e. NGOs, churches, international organisations), and family and social networks to

protect individuals and families against declining living standards arising from a number of basic risks and needs (e.g. employment, healthcare, housing, nourishment, education and social participation) in a transnational manner.

Based on extensive multi-sited fieldwork in Sudan and the Netherlands, the authors found that formal public structures of social policy enter into symbiotic arrangements with migrants—in which mutual trust, knowledge of the current welfare and migration regimes, and social needs are essential elements [...] migrants are not simply receivers of support from the ‘protective arm’ of the state [...] but are also the providers of services to state-linked institutions. (ibid., p. 2140)

4.2 *Professions (and Occupations) as a Social Institution*

From a historical perspective, labour regulation is deeply institutionally embedded not only in social networks but also in the *professionalism of work*, that is in the occupational structuring of skills, knowledge, training and recruitment. Crafts and guilds have expressed this social institution of structuring and regulating work and labour for more than a thousand years.⁷ Ulrich Beck and his colleagues developed the concept of ‘professionalism of work’ as a third form of organising gainful employment, which is an alternative to the *familial* and the *feudal* (or, in today’s societies, state-controlled) forms:

In addition to the ‘familial’ and ‘feudal’ forms of organisation, a new type of categorisation based on (historical) ways of organising working capacity has proved to be practical, which is independent of and, one might say, runs at odds with the traditional differentiation of the contents, functions and activities involved in the division of labour—this is the categorisation into professions. (Beck et al., 1980, p. 40)

Professions can be understood as specific, socially standardised categories of activities that are institutionalised as a result of differentiation, specialisation, separation and standardisation. In the Middle East, China and Europe, professions involving manual work and craftsmanship emerged more than a thousand years ago, whereas most of the academic professions did not begin to develop until the rise of modern societies during the Age

⁷ See <https://en.wikipedia.org/wiki/Guild>; Sennett (2008).

of Enlightenment (late seventeenth to early eighteenth centuries). Along with Pierre Bourdieu (1983) we can refer to the action resource that is dominant for the social institution of professions as ‘cultural capital’. Bourdieu (1983) distinguishes between three forms of cultural capital: (1) objectivised cultural capital (e.g. works of art, books), (2) institutionalised cultural capital (e.g. certificates of educational attainment, PhDs) and (3) incorporated cultural capital (e.g. skills, knowledge).

Professionalism of work refers to both institutionalised and incorporated cultural capital—that is to knowledge, proficiency, experience and skills—which, at least when it comes to professionalism in the narrower sense, are certified by appropriate organisations or through appropriate procedures. In this case the dominant action norm is not to maximise individual monetary profits but to comply with specific occupational standards and to strive for professional honour and respect. Professionalism not only refers to the questions of skill categories and skill acquisition but is a pattern for coordinating the whole of economic activity and gainful employment. It represents an alternative to the models of pure state control and of purely market-liberal competition (Abbott, 2005).

Currently, professions are not disappearing but remain crucial for certain fields of activity (such as lawyers, physicians, research and teaching) and in several countries in a broader sense for all work and employment (as in Germany, where almost four out of five manual workers have a professional certificate). Professional action norms and institutional arrangements are crucial for social protection and policy in that, for example, health insurance or pension funds are organised by professional associations. The logic of professionalism also works when, for example, migrant physicians attend their co-nationals in their countries of arrival (due to their irregular status or lack of health insurance) or engage in improving and developing medical services in their regions of origin (for the career thinking of physicians, cf. e.g. Becker, 2022).

4.3 *Markets as a Social Institution*

The *market* as a social institution has expanded over the past two centuries. The term ‘market’, originally derived from the Latin verb ‘to trade’, has, since the Middle Ages, come increasingly to mean the act of offering and acquiring goods in the form of merchandise, albeit separate from

spatial, temporal or any other aspects of life. Money, as the most important medium of communication in the institution of the market, represents economic capital and as such has a great benefit: it can be converted and accumulated in almost any way, shape or form. The fundamental normative pillar is the pursuit of individual interests by way of temporally and spatially specific exchange operations. Market-based exchange relationships, unlike those in social networks, can be quantified and calculated; they are explicitly aimed at short-term reciprocity. Barter is a process in which goods are directly exchanged for other goods. Although monetary exchange that takes place through a medium (such as money or seashells) is generally recognised and has been used for thousands of years, it was not until the eighteenth century with the emergence of industrial capitalism that the market became an important institution, structuring gainful dependent employment and thus society as a whole.

Markets did not always provide the original contexts of socialisation; in fact, in order for them to become social spaces of action, they had to be wrested by force from the tenacious grip of the political and social rulers. Historically, markets have always developed on the basis of other social institutions that structure people's everyday lives as well as their work and gainful employment. From the perspective of historical and economic sociology, markets are social institutions embedded in complex institutional settings. It was not until the abolition of serfdom and slavery and the rise of modern wage labour with capitalism that 'working capacity' became a marketable good (whereas in the days of slavery the workers *were* the goods). What made the new type of good so special is that it could not be separated from its owner. As modern capitalism grew in importance, so did the market logic in its function of structuring work and employment. Opportunities for gainful employment no longer presented themselves exclusively or primarily through land ownership, family context or relations of personal favour. Entrepreneurs had become a new social type, and individuals who tried to find gainful employment were now able—and were forced—to offer their knowledge, talents and skills directly in the form of marketable working capacity.

In the twenty-first century the logic of marketisation is crucial for labour and also for social policy. Even where differentiated social welfare states exist, retirement arrangements increasingly rely on a mix of state-guaranteed minimum and market-driven additional private pension insurance.

4.4 *Organisations as a Social Institution*

Another factor of historical importance alongside social networks, professions and markets was the structuring of work and gainful employment by *organisations*. With the rise of modern factory production (if not before), specific work, employment and participation relations developed that were no longer defined by networks, professions or markets (alone). As a result, working processes became structured by organisations—in the sense of durable cooperative entanglements with specific objectives, structures and members in a certain division of labour. Especially in countries where professionalism of work did not have a strong tradition (such as in France and, particularly, in the USA), company-internal labour markets emerged as an important complement or even alternative to the labour-regulating institutions of professions and markets.

No matter how the individual rules of the company-internal labour market were set or who set them—whether through unilateral decree by general management, through external recruitment and internal occupational mobility under union control, or through formalised negotiations—the rise of industrial capitalism and of wage labour organised in factories led to the emergence of an extremely important, independent and complex set of rules for work, employment and participation. To a certain degree, the corresponding logics made factories and companies as organisations independent of social networks, professions and markets. Employment relationships established by organisational agreements are based on the principle of reciprocity *specified* by organisations. This is of a more general nature than time-space-selective market reciprocity and of a more restricted nature than generalised network reciprocity. The dominant media of communication in this social institution are hierarchy, organisational positions, organisational norm-setting (in the sense of instruction or rule) and loyalty. The context of action is not primarily emotional and affectual (as in the network), nor is it anonymous and atomised (as in the market), nor is it status-based (as in the case of professions). Rather, it is shaped by the organisational structures of roles, positions and functions. The most important action resource that is mobilised might be called ‘organisationally-bound positional capital’—a term that denotes the rights, entitlements, expectations and responsibilities ascribed to persons as position holders within the organisational hierarchy. Positional capital cannot be transferred to other organisations but may be transferred to other individuals.

4.5 *States and Public Regimes as Social Institutions*

The fifth social institution that plays a major role in labour regulation is the public regime. This term refers to the dynamics involved in the legal and public regulation of work, employment and participation, initially at the level of constitutions and states. In some regions, the public regime existed before the nation-state. In medieval Europe, work and occupations were strongly regulated, although the system of regulations and contracts was by no means limited to the agricultural-feudal context usually associated with this period. Strict regulations issued by territorial sovereigns (such as kings, territorial princes and the rulers of free cities) governed not only the rights to hold markets or to mint coins, the movement of goods and the right to work in certain professions, but also the right of mining at a time when, for almost everyone, work activities took the form of serfdom; for example, in Germany, mining rights and the working conditions of miners were regulated in the minutest detail by feudal state authorities (Ließmann, 1997, p. 19, 22f.). Other precursors to the modern social policy public regime include the medieval system of guilds and the system of free imperial cities.

Over the last century, the public regime approach has extended towards regulatory claims at international and supranational levels.⁸ The ILO, founded in 1919, can be considered the first and most important agency promoting an international public regime of labour regulation. Over recent decades, the EU has developed a genuine supranational space for a public regime. The idea of human rights as well as ideas of decent work and the *Global Compact for Migration* could emerge as defining a global public regime regulating labour and migration. Thinking of contemporary, more or less democratic countries that have a minimal welfare system in place, the governmental and legal norms (as laws and regulations), as well as negotiated, legally binding contracts and agreements (such as collective bargaining agreements and company agreements), turn out to be of significance for structuring general normative legitimacy and cognitive expectations of normality. These norms include time-related factors (e.g. minimum age for employment, retirement age); a variety of regulations regarding workplace health and safety and employment protection; systems of short-time work, retirement, health and long-term care insurance

⁸ Because of these supranational and international levels of labour regulation, we prefer the term public regime as compared to state—as shown in Table 10.1, current labour regulation is developing increasingly as a multi-level texture.

in connection with formal gainful employment. In some regions of the world, supranational regulations (such as the European Union Council Directive 94/45/EC of 22 September 1994 on the establishment of European Works Councils) and mechanisms for monitoring their implementation (such as the European Court of Justice) are becoming increasingly important as well.

Finally, the public regime also includes directives and minimum standards that are globally adopted and ratified by a considerable majority of nation-states at the level of the international community, such as the United Nations (UN) Declarations and the ILO Minimum Standards. All these elements could be considered under the term ‘public regime’ because they encompass more than just the immediate activities and legal provisions of the state and government. Public discourses, social movements and other civil society actors have a crucial influence on defining legitimacy. The common feature of the various forms of public regimes is that they are based on political capital—that is, the effectiveness of state legality and public legitimacy. National laws, international law, supranational law as in the EU, collective and other employment-related formal agreements represent its regulatory and normative pillars. Power struggles, diverging ideologies and struggles between interest organisations (such as unions and employer associations) are taken for granted as the legitimate cognitive pillar.

In an integrated perspective, all five social institutions are relevant in ways that vary by country and over time. As a general tendency, since the beginning of the twentieth century, formal regulation of labour by a multi-level *public regime* is of increasing relevance. Nevertheless, since the 1980s the trend to neoliberalism moved the *market* forward as a regulating institution. Concerning *organisations*, since the mid-twentieth century multinational companies are of increasing relevance for regulating formal employment, pushing smaller second- or third-tier companies under increasingly difficult conditions and often into the sphere of informal and precarious employment lacking any kind of collective regulation. As a certain counterbalance, non-profit organisations active across borders like *OECD Watch* or the *Clean Clothes Campaign* gained relevance in partly filling the gap in public regime regulation.⁹ For decades, *professions* as a regulative, normative and cognitive institutional pillar of labour regulation

⁹ See, e.g. <https://www.oecdwatch.org/>; <https://cleanclothes.org/>.

have been established not only as lawyers but also as specialist thinking and practical activism in ‘epistemic communities’, promoting, for example, decent work, social justice or human rights.¹⁰

5 TOWARDS AN INSTITUTIONAL APPROACH TO MULTI-LEVEL LABOUR REGULATION

The model of the five institutions of labour regulation outlined above allows for a closer differentiation of somewhat oversimplified dichotomies like market versus state or market-liberal versus interventionist regulation. Its explanatory value can be illustrated by looking at some of the arenas and actors involved in labour regulation. For example, the *Core Labour Standards* defined in the *ILO Declaration on Fundamental Principles and Rights at Work*¹¹ gained the status of quasi-legal public international law in an international *public regime* because they were ratified by the vast majority of members of the international community of states, with binding effect on all UN member states. However, despite their significant influence on the global regulative level and the remarkable amount of political capital they involve, their actual influence ultimately depends on the activities of a large number of *organisations* as actors in institutional contexts other than that of public regimes, such as International Framework Agreements (IFA) between MNC and Global Union Federations (GUF), in which the ILO Minimum Labour Standards are usually a fundamental point of reference (Papadakis, 2008; Platzer & Müller, 2009). IFA do not have a direct binding effect, so they cannot be enforced by a court of law; however, depending on the organisational capital (i.e. the power of the organisations involved), they can still exert a substantial influence on the groups of actors involved on the normative level of public regimes (Dehnen, 2013; Rüb et al., 2011).

At the institutional level of the *market*, we find mechanisms such as the UN *Global Compact*, the voluntary declarations of commitment to *corporate social responsibility*, *brand labels* such as Fairtrade and stock market indices such as the *Dow Jones Sustainability Index* (DJSI), which also usually refer to the ILO Minimum Standards, and compliance with them is

¹⁰ See, e.g. <https://unglobalcompact.org/what-is-gc/our-work/social/labour>; https://international-partnerships.ec.europa.eu/policies/sustainable-growth-and-jobs/employment-and-decent-work_en; MacNaughton & Frey (2011).

¹¹ See <http://www.ilo.org/declaration/lang%2D%2Den/index.htm>.

widely promoted. At this level, economic capital has a strong regulating effect as a resource whenever changes in other areas make themselves felt, such as when the DJSI drops, when the image of a brand suffers noticeably owing to bad press, when sales decline, or when consumers are actively urged to boycott products or manufacturers in response to public campaigns organised by *social networks* of activist groups that lobby for decent work. Among other things, the latter activities can be used not only to bring to the public's attention normative-cognitive concepts such as that of *decent work* but also to establish such normative and cognitive concepts as points of reference for organisational activists.

We can also identify individuals in a wide variety of different organisations whom we might refer to as *issue professionals*—that is professionals for whom compliance with the ILO Minimum Standards is fundamental to their understanding of work, employment and participation. Such experts may be found in the GUF, at the European Trade Union Institute in Brussels, in the EWC, in non-governmental organisations, and, of course, in the relevant technical departments of companies and corporations. The individual and organisational cultural capital they represent manifests itself in such things as training certificates, specific bodies of knowledge and appropriate professional ethics. Social capital, in connection with the ILO Minimum Standards, is accumulated not only in the social networks of activist groups but also within and through the work-related activities of issue experts in organisations. All five labour-regulating social institutions are crucial for analysing not only formal labour law but its actual enforcement and regulating mechanisms beyond the formal-legal apparatus.

6 CONCLUSION

As could be demonstrated, the arenas and actors involved in labour regulation are highly differentiated, and social networks are relevant at and between local, national, supranational, transnational, glocal and global levels. As we have seen, neither simple methodological nationalism nor replacing it with methodological globalism can do justice to the object of our study. Indeed, a large proportion of arenas and actor constellations, such as labour laws, collective agreements, trade union organisations, national traditions of regulation, shared ideologies and the dynamics of public discourses, still continue to be strongly structured national-level

phenomena. At the same time, however, we also note seeds of an increasing influence of supranational actors (e.g. on the regulative and normative levels of the EU; cf. Platzer, 2010; Rosenbohm, 2013) and transnational textures of labour regulation (e.g. company-related regulation structures in relation to International Framework Agreements; cf. Hessler, 2012). For centuries, with the process of nation building, institutional work (Lawrence & Suddaby, 2006) was mainly done at the national level. There is still a long road to travel before institutional work at the transnational and global levels can be consolidated.

Nevertheless, if a more substantial world social policy of some kind eventually does come about, it will probably not be the outcome of a global world state but will instead be based mainly on such multi-level and multi-actor institutional work. The chapter demonstrates how the coverage and generosity of formal labour regulation and protection as an important element of global social policy could be related to broader social institutions and multi-level societal contexts. At its origin, the standard employment relationship was intended to generalise labour norms. As this volume demonstrates, it actually has had and still has quite ambivalent effects and functions. In spite of privileging norm-setting and social closure for specific groups, the world needs more global standard-setting and equalising mechanisms of labour regulation to reduce the degrees of legal segmentation.

REFERENCES

- Abbott, A. (2005). Sociology of work and occupations. In N. J. Smelser & R. Swedberg (Eds.), *The handbook of economic sociology* (2nd ed., pp. 307–330). Princeton.
- Adick, C., Gandlgruber, B., Maletzky, M., & Pries, L. (2015). *Cross-border staff mobility: A comparative study of profit- and non-profit organisations*. Palgrave Macmillan.
- Amelina, A., Carmel, E., Runfors, A., & Scheibelhofer, E. (2019). *Boundaries of European social citizenship: EU citizens' transnational social security in regulations, discourses and experiences*. Routledge.
- Beck, U., Brater, M., & Daheim, H. (1980). *Soziologie der Arbeit und der Berufe: Grundlagen, Problemfelder, Forschungsergebnisse*. Rowohlt.
- Becker, R. (2022). Does it pay off? Understanding subjective employment mobility of European physicians in Germany. *International Migration Review*, 57(3), 1099–1131.

- Bednorz, J., Sadauskaitė, A., Czarzasty, J., & Surdykowska, B. (2022). *Unionisation and the twin transition. Good practices in collective action and employee involvement*. Policy Department for Economic, Scientific and Quality of Life Policies/European Parliament.
- Besio, C., & Meyer, U. (2015). Heterogeneity in world society: How organizations handle contradicting logics. In B. Holzer, F. Kastner, & T. Werron (Eds.), *From globalization to world society: Neo-institutional and systems-theoretical perspectives* (pp. 237–257). Routledge.
- Bilecen, B., Bargłowski, K., Faist, T., & Kofman, E. (2019). Gendered dynamics of trans-national social protection. *Comparative Migration Studies*, 7(47), 1–14.
- Bommes, M., & Geddes, A. (2000). *Immigration and welfare. Challenging the borders of the welfare state*. Routledge.
- Bourdieu, P. (1983). Ökonomisches Kapital, kulturelles Kapital, soziales Kapital. In R. Kreckel (Ed.), *Soziale Ungleichheiten* (pp. 183–199). Schwartz.
- Broek, S., Buiskool, B.-J., Vennekens, A., & van der Horst, R. (2012). *Study on the current situation and prospects of mutuals in Europe*. Final report, Zoetermeer: Panteia-EIM.
- Chan, K. W. (2021). *Internal migration in China: Integrating migration with urbanization policies and Hukou reform*. KNOMAD Policy Brief 16, 17 December. Retrieved June 12, 2024, from <https://blogs.worldbank.org/peoplemove/chinas-hukou-reform-remains-major-challenge-domestic-migrants-cities>
- Coleman, J. S. (1988). Social capital in the creation of human capital. *The American Journal of Sociology*, 94, 95–S120.
- Crouch, C. (2010). Flexibility and security in the labour market: An analysis of the governance of inequality. *Journal for Labour Market Research/Zeitschrift für ArbeitsmarktForschung*, 43(1), 17–38.
- De Lange, T. (2018). Concluding remarks. Is the intra-corporate transfer directive welcoming international talent? In P. Minderhoud & T. de Lange (Eds.), *The intra corporate transferee directive: Central themes, problem issues and implementation in selected member states* (pp. 155–165). Wolf Legal Publishers.
- De Wispelaere, F., De Smedt, L., & Pacolet, J. (2022). *Posted workers in the European Union. Facts and figures*. POSTING.STAT project VS/2020/0499.
- Dehnen, V. (2013). Transnational alliances for negotiating international framework agreements: Power relations and bargaining processes between global union federations and European works councils. *British Journal of Industrial Relations*, 51(3), 577–600.
- Dickmann, M., & Andresen, M. (2018). Managing global careerists: Individual, organizational and societal needs. In M. Dickmann, V. Suutari, & O. Wurtz (Eds.), *The management of global careers. Exploring the rise of international work* (pp. 149–181). Springer VS.

- Dingeldey, I., Fechner, H., Gerlitz, J.-Y., Hahs, J., & Mückenberger, U. (2021). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal*, 51(3), 560–597.
- Esping-Andersen, G. (2002). *Why we need a new welfare state*. Oxford University Press.
- Fanizza, F., & Colloca, C. (2020). Entrepreneurial practices between socio-territorial capital and multicultural dynamics in fragile areas of southern Italy. *Sociologia e ricerca sociale*, 121, 134–151.
- Hall, P. A., & Soskice, D. (2001). *Varieties of capitalism: The institutional foundations of comparative advantage*. Oxford University Press.
- Hauser-Ditz, A., Hertwig, M., Pries, L., & Rampeltshammer, L. (2016). *A solution for transnational labour regulation? Company internationalization and European works councils in the automotive sector*. Peter Lang.
- Hessler, S. (2012). *Arbeitnehmerrechte weltweit stärken? Die Umsetzung der Internationalen Rahmenvereinbarungen in Mexiko*. Campus.
- IOM (International Organization for Migration). (2024). *World Migration Report*. IOM.
- Kerr, C. (1954). The Balkanization of labour markets. In E. W. Bakke et al. (Eds.), *Labour mobility and economic opportunity* (pp. 92–110). The MIT Press.
- KNOMAD (Global Knowledge Partnership on Migration and Development). (2022). *A war in a pandemic. Implications of the Ukraine crisis and COVID-19 on global governance of migration and remittance flows*. Migration and Development Brief 36. May 2022, KNOMAD-World Bank online publication May 11. <https://www.knomad.org/publication/migration-and-development-brief-36>.
- Lawrence, T. B., & Suddaby, R. (2006). Institutions and institutional work. In S. R. Clegg, C. Hardy, T. B. Lawrence, & W. R. Nord (Eds.), *The SAGE handbook of organization studies* (2nd ed., pp. 215–254). Sage.
- Levitt, P., Viterna, J., Mueller, A., & Lloyd, C. (2017). Transnational social protection: Setting the agenda. *Oxford Development Studies*, 45(1), 2–19.
- Ließmann, W. (1997). *Historischer Bergbau im Harz: Ein Kurzführer* (2nd ed.). Springer.
- Lutz, H., & Palenga-Möllenberg, E. (2010). Care work migration in Germany: Semi-compliance and complicity. *Social Policy and Society*, 9(3), 419–430.
- Lutz, B., & Sengenberger, W. (1974). *Arbeitsmarktstrukturen und öffentliche Arbeitsmarktpolitik*. Otto Schwartz.
- MacNaughton, G., & Frey, D. F. (2011). Decent work for all: A holistic human rights approach. *American University International Law Review*, 26(2), 441–483.
- Marshall, T. H. (1964). *Class, citizenship, and social development*. Doubleday.
- McNulty, Y., & Brewster, C. (2017). The concept of business expatriates. In Y. McNulty & J. Selmer (Eds.), *Research handbook of expatriates* (pp. 21–60). Cheltenham/Northampton.

- Meyer, J. W., Boli, J., Thomas, G. M., & Ramirez, F. O. (1997). World society and the nation-state. *American Journal of Sociology*, 103(1), 144–181.
- Miller, S. (2019). Social institutions. Entry in the Stanford encyclopedia of philosophy, 9 April. Retrieved June 12, 2024, from <https://plato.stanford.edu/entries/social-institutions>.
- Mingot, E. S., & Mazzucato, V. (2018). Providing social protection to mobile populations: Symbiotic relationships between migrants and welfare institutions. *Journal of Ethnic and Migration Studies*, 44(13), 2127–2143.
- Moriarty, E., Wickham, J., Bobek, A., & Daly, S. (2016). Portability of social protection in the European Union. In A. Amelina, K. Horvath, & B. Meeus (Eds.), *An anthology of migration and social transformation* (pp. 201–216). European Perspectives, Cham.
- Nutini, H. G., & Bell, B. (Eds.). (1989). *Parentesco ritual. Estructura y evolución histórica del sistema de compadrazgo en la Tlaxcala rural*. FCE.
- Papadakis, K. (2008). *Cross-border dialogue and agreements: An emerging global industrial relations framework?* International Labour Organization.
- Pfau-Effinger, B., & Rostgaard, T. (2011). *Care between work and welfare in European societies*. Palgrave Macmillan.
- Platzer, H.-W. (2010). *Europäisierung der Gewerkschaften: Gewerkschaftspolitische Herausforderungen und Handlungsoptionen auf europäischer Ebene*. Friedrich-Ebert-Stiftung.
- Platzer, H.-W., & Müller, T. (2009). *Die globalen und europäischen Gewerkschaftsverbände: Handbuch und Analysen zur transnationalen Gewerkschaftspolitik*. edition sigma.
- Portes, A., Escobar, C., & Radford, A. W. (2007). Immigrant transnational organizations and development: A comparative study. *International Migration Review*, 41(1), 242–281.
- Pries, L. (2005). Configurations of geographic and societal spaces: A sociological proposal between ‘methodological nationalism’ and the ‘spaces of flows’. *Global Networks*, 5(2), 167–190.
- Pries, L. (2019a). The momentum of transnational social spaces in Mexico-US-migration. *Comparative Migration Studies*, 7(1), 7–34.
- Pries, L. (2019b). Workers’ participation at the plant level in Germany—Combining industrial democracy and economic innovation? In S. Berger, L. Pries, & M. Wannöffel (Eds.), *Companion of workers’ participation at plant level* (pp. 343–362). Palgrave.
- Pries, L. (2020). Sewing transnational textures of labour regulation: Towards an integrative perspective. *International Journal of Anthropology and Ethnology*, 4(5), 1–18.

- Pries, L., & Lansbury, R. (2019). Works councils as crucial social institutions of labor regulation and participation. Friedrich Fürstenberg's concept of works councils as 'boundary spanning institutions'. In S. Berger, L. Pries, & M. Wannöffel (Eds.), *The Palgrave handbook of workers' participation at plant level* (pp. 131–147). Palgrave.
- Rosenbohm, S. (2013). Verhandelte Arbeitnehmerbeteiligung: Ein empirischer Vergleich der Formen vor und nach der Gründung einer Europäischen Aktiengesellschaft. *Industrielle Beziehungen*, 20(1), 8–35.
- Rüb, S., Platzner, H.-W., & Müller, T. (2011). *Transnationale Unternehmensvereinbarungen: Zur Neuordnung der Arbeitsbeziehungen in Europa*. edition sigma.
- Scott, W. R. (2001). *Institutions and organizations: Ideas, interests, and identities*. SAGE.
- Sengenberger, W. (1981). Labour market segmentation and the business cycle. In F. Wilkinson (Ed.), *The dynamics of labour market segmentation*. Academic Press.
- Sennett, R. (2008). *The craftsman*. Yale University Press.
- Tarrow, S. G. (2005). *The new transnational activism*. Cambridge University Press.
- Van Dam, S. (2016). *Challenges and capabilities: Real opportunities of migrant organisations and intervention strategies for local target-group driven poverty alleviation*. PhD dissertation, Department of Sociology, University of Amsterdam.
- Wimmer, A., & Glick Schiller, N. (2002). Methodological nationalism and beyond: Nation-state building, migration and the social sciences. *Global Networks*, 2(4), 301–334.
- Yeung, I. Y. M., & Tung, R. L. (1996). Achieving business success in Confucian societies: The importance of guanxi (connections). *Organizational Dynamics*, 25(2), 54–65.

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Reflections on the Future of Legal Segmentation: Three Frontiers of Investigation

Kerry Rittich

1 INTRODUCTION

The segmentation of labour is both a subject of deep interest in itself and one that is complexly related to pressing questions of distributive justice within the global political economy.

The Worlds of Labour project tackles the problems raised by segmentation by tracking the regulation of labour standards at a global level. It asks whether patterns or clusters in labour standards can be identified, and whether their diffusion might be associated with origins and histories of colonial dependence or the activities of international organisations such as the International Labour Organization (ILO). The project takes as its starting point the proposition that labour standards play a pivotal role in the segmentation of work, alternatively preventing, encouraging or counteracting labour market segmentation. It investigates this role from a number of standpoints, including by deploying systems of legal metrics to

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assess three discrete functions or properties of labour standards that might contribute to segmentation in the world of work: the standard-setting function; the privileging function and the equalising function. Imagining how these different functions might be combined, it further specifies eight ideal types of employment regulation anchored in the sphere of social policy and welfare regimes.

What is effectively mapped through these metrics are these functions in relation to the standard employment relationship (SER). As the authors note, the enduring significance of the SER derives not from its salience or persistence in practice but because of its centrality as a point of reference in the design of labour law and social security law (Dingeldey et al., 2022, p. 8). The further assumption is that the SER has a significant impact on labour standards even in the GS, notwithstanding that high—sometimes very high—levels of informality at work mean that labour standards do not actually touch most workers in many countries in that region.

The project raises critical questions, for legal scholars, political scientists and others concerned with work and its governance. Can we identify patterns in the segmenting properties of labour regulation? If so, are there traceable lines of influence in the diffusion of law and the creation of those patterns, whether due to legal origins and colonial uptake of metropolitan norms or the activities of international organisations such as the ILO? Still more, a question the authors pose for future work, might we trace connections between these regulatory patterns and the *de facto* segmentation of work in particular locales, even systematic effects that can be associated with particular national or regional systems?

Following these animating intuitions the suggestion here is that the project be extended, to encompass the broader political economy of work and to bring more of the norms and institutions that operate on work and on labour markets into view.

Three initial trajectories of investigation concerning segmentation can be imagined and outlined at this point. We might define the analytic task as moving: beyond the focus on labour market work (1); beyond labour standards in the regulation of work (2); and beyond the international institutions explicitly consecrated to consider questions of labour standards and social protection to those institutions involved in the effective governance of work (3). These moves are particularly significant to the analysis of work beyond the industrialised North, where in addition to non-standard forms of waged work, subsistence work, informal work and work that traverses households and markets dominate the landscape. Such

types of work are poorly captured by frameworks of labour protection modelled on the SER; novel approaches to the delivery of social benefits and social protection are often in order to serve the affected populations as well.

It should be observed that none of these frontiers is entirely unmapped; to the contrary, some have already been not only identified but investigated (Fechner, 2022). Pursuing questions of the labour market down these further paths nonetheless requires some (re)setting of the methodological assumptions and starting points from which the legal analysis of work and labour markets typically proceeds.

Two conceptual points of fundamental interest can be signalled at the outset. The first is the significance of legal rules and norms to the formation of work itself as well as to the varied terms and conditions under which it is performed. The case for moving beyond the market for waged labour, beyond labour standards, and beyond labour and other social institutions in the analysis of segmentation rests on: (a) the foundational role that law plays in the constitution, and by extension the segmentation, of relations at work, those beyond the labour market included, and (b) the wide range of legal rules, norms and institutions involved in the process. Put simply, if the investigation of segmentation is rightly understood as a legal enterprise at its core, the role that law plays in processes of segmentation is both wider and more significant than generally appreciated.

The second point of interest concerns the interaction of formal law with other normative systems, those typically styled social, customary or traditional. While the latter are often distinguished from legal rules and institutions, they are not only significant normative forces in themselves. They, too, operate to segment work relations, sometimes in ways that run parallel to legal norms and institutions. Because they operate in conjunction with formal law, studying these norms is arguably indispensable to tracking the effects of legal segmentation, particularly where they appear to play an outsize role in social and economic relations.

The examination of the legal constitution of work serves as a preamble to discussion of the three frontiers of segmentation that follows.

Drawing on that analysis, the section *Beyond labour market work* examines the significance of work at the margins or beyond the labour market, highlighting how such work is affected by—and even incorporated into—law, policy and official practice and marking the extent to which it remains normatively and practically connected to work in the market economy. It then briefly sets out two forms of analysis that seem pertinent to

illuminating the processes by which labour markets become legally segmented. The first explores the legal foundations of markets and market power; the second considers the interaction of state and non-state normative systems governing work.

Exploring the legal foundations of segmentation further, the next section, *Beyond labour standards*, identifies the adjudication of labour standards as itself a potential site of segmentation. It then takes up the legal foundations of bargaining power at work in more detail, making the case for the adoption of a broader 'law of work' in the analysis of segmentation. Drawing on a model already employed to taxonomise family law, it illustrates a range of ways in which rules and norms might indirectly as well as directly govern work.

On the basis of this reconceived legal foundation of segmentation, the final substantive section, *Beyond labour and social institutions*, explores the effects of the governance projects and interventions of the international financial institutions on the segmentation of work and the distribution of benefits and losses among workers, drawing by way of illustration on the segmenting effects of the policy and regulatory management of recent economic and epidemiological crises.

2 THE LEGAL CONSTITUTION OF WORK

The Worlds of Labour project already takes as its grounding premise the foundational role of law not only in social policy and the protection of workers but in processes of labour market segmentation. Yet if segmentation is conceptualised as a legal endeavour, then further exploration requires setting out both its legal foundations and its effects on the world of work with more completeness.

We might begin with the most basic observation: distinctions among workers are an omnipresent characteristic of labour markets. In retrospect, they appear as an inextricable part of their creation: in the periphery as in the centre, marked differences in the status and entitlements of workers are inseparable from the functioning of labour markets themselves. Yet far from natural or inevitable developments, these differences have to be created, and legal norms, rules and institutions are among the central mechanisms of their production and reproduction. Indeed, the point can be put more strongly with respect to some forms of work: slavery and indenture, for example, are inseparable from the legal forms which enact them. But if these work relations are essentially, and recognisably, legal in creation,

other forms of work turn out to be indebted to legal forms and decisions too.

As Polanyi reminds, the emergence of markets as a generalised mode of organising labour has everywhere been catalysed by transformations in the governance of economic life (Polanyi, 1944). Official decisions and state practices played a central rather than ancillary or peripheral role in the commodification of labour: in many contexts, there simply were no (significant) labour markets before or apart from the legislative, regulatory and administrative interventions that brought them into being. Those interlinked interventions were, moreover, to a point: they were designed in the first instance to aid capitalists in advancing their commercial aims. Labour standards and social protection, to the extent that they were present at all, were second in the order of concerns.

The co-emergence of labour markets with the spread of capitalist enterprise is now recognised as an endeavour that was transnational in scope and colonial in character (Lowe, 2015). It is, in addition, now understood that there are enduring structural differences in the position of labour in the Global North and South (GN and GS), some of which can be traced to the practice of extracting profits to the benefit of the economies and elites of the metropolises, as well as to the specific modes of organising labour across colonial and metropolitan settings.

While the segmentation of labour markets is a feature of work everywhere, its legal constitution or production is perhaps easiest to perceive in colonial settings, if only because there it was such an explicit objective. As contemporary accounts (Furnivall, 1948; Lugard, 1922; Woolf, 1920) and retrospective analyses all confirm (Cooper, 1996; Bellucci & Eckert, 2019; Rittich, 2019; Fechner, 2022; Mückenberger and Schäfer in this volume), varied forms of labour were introduced or attempted to advance commercial enterprise in the colonies. As a result, distinctions in the terms and conditions on which work was available and performed were present from the very beginning. Within sectors and enterprises, enslaved, forced or conscripted labour co-existed with waged labour, while work in the labour market took forms ranging from indentured to ‘free’ (Lugard, 1922; Steinfeld, 1991; Tomlins, 2010). Policy and regulatory interventions, moreover, typically aimed to mobilise particular groups, for example ‘native’ or indigenous as distinct from European labour, for particular types of work. Determinations about those terms and conditions, from modes and rates of compensation to whether workers were subject to forced labour or were under any obligation to work at all, were often

justified with reference to characteristics ascribed to each group. Gender provided an additional fault line, serving as a basis on which to confer on women responsibility for ‘reproductive’ tasks, consign them to the domain of the household, and/or allocate them specific niches within the market.

The differentiation of work and workers, once instituted as a matter of officially created or sanctioned practice, itself produces not just differences but hierarchies that tend to consolidate and endure over time. Even contingent connections between persons and forms of work can leave an inheritance of accumulated benefits and deficits that casts a long shadow over labour markets and the organisation of work. This is precisely the world in which we find ourselves.

These tight interconnections between segmentation and the operation of markets for labour are not easily, if at all, broken by the extension of labour standards alone.

3 BEYOND LABOUR MARKET WORK

It is worth recalling that the mobilisation of populations for waged work was, and remains, partial. Even while some are drawn into the world of capitalist production and exchange, others have always laboured on its fringes, trading in local markets or working outside the market economy entirely.

Because of the extent to which it dominates the economies of the GS, there is now recognition that some of this work merits greater attention. Informal work has become a significant frontier of investigation for the purposes of law and policy, whether because of the absence of labour protections (Global Commission on the Future of Work, 2019) or concerns about productivity within informal markets (World Bank, 2019). Subsistence work occasionally surfaces as a subject of interest too, while unpaid household care comes into discussions around work primarily where it impacts upon women’s labour market participation. Thus, forms of work that have been peripheral to the project of labour law or outside its concerns entirely now attract analysis, either in themselves or because of their impact on the market for labour or the prospects for economic growth. Their inclusion seems indispensable to inquiries into segmentation as well, particularly given the extent to which such work is populated by groups that are economically, socially and politically disenfranchised.

What warrants highlighting in the examination of segmentation is that most if not all of this work is connected in some way to the structure of

work in the formal market economy, to the entitlements of its workers and to the value people derive from their labour. Both labour and resources flow across the borders between markets and non-market spaces. Many of those flows, however, are not adequately tracked and valued, where they are noticed at all (Rittich, 2023a).

Rather than of ‘merely cultural’ origin, much non-market labour, too, was marked by official practice, and sometimes it was a matter of intentional design. For example, while colonial authorities in Sub-Saharan Africa recruited migrant male workforces to deploy in sectors such as mining and agriculture, disciplining them through pass laws and penal sanctions for desertion or abandonment of contracts of employment, women often remained in the homestead growing food, tending livestock and performing other tasks essential to the emerging economic as well as the social order (Bryceson, 2019; Cooper, 1996). If only because they may be imagined as repositories of tradition, it seems important to observe that these work arrangements had to be produced, if produced as ‘natural’. Recall that these practices in the colonies followed in the wake of the fictive distinction already established in the metropole between ‘productive’ waged labour and ‘unproductive’ housewifery (Federici, 2004; Folbre, 1991). Here, the commodification of labour *itself* appears as an exercise in segmentation; it may even be the most fundamental. Distinguishing between those who are, or could become, engaged in commercially productive labour and those who are not, commodification revalues work and remakes identity, engendering new flows of resources and causing some work to disappear from view while creating the category of work we recognise as labour.

Two points would seem to matter for the purposes of tracing the paths of segmentation. First, in the present as in the past, much of this marginal or non-market labour itself feeds back into the market, sustaining the participation of those visibly engaged in its labour and underwriting processes of economic growth. For example, it hardly needs restating at this point that markets are dependent, even parasitic, upon unpaid household care labour: a direct input into the market, this work literally produces the labour force itself (Federici, 2004; James, 2012; Beneria et al., 2015). It is well-understood that unpaid work is highly gendered; how that unpaid work is connected to the constraints and disadvantages women systematically experience within the labour market has been detailed at length by feminist labour lawyers (Blackett, 2019; Conaghan & Rittich, 2005; Fudge & Owens, 2006). Slave trading, more specifically the labour of

those enslaved, was similarly foundational to the establishment of transnational capitalist enterprise (Lowe, 2015; Tomlins, 2010). These origins are indispensable to understanding the continuing legal exceptionalisation of paid care work and its relatively low market value, as well as the role that the provision of care services now plays within the labour markets of post-industrial economies such as the United States (Winant, 2021). But slave trading, along with the profits that accrued from that trade, also belongs to the origin story of free labour and the welfare state regimes of the GN (Ashiagbor, 2024). How those origins mark current entitlements at work and the distribution of social benefits for populations of workers in Europe and the UK remains to be excavated.

Subsistence work and informal labour within and beyond the household also perform important functions within market economies. As countries industrialise and the waged labour force expands, households often supplement the income from market labour by raising crops on family land, producing rather than purchasing other household goods, and engaging in informal trade and barter; indeed, reliance on such non-waged sources of provisioning may be an explicit part of the industrialisation model itself (Amsden, 2001). During economic downturns and times of crisis, such ‘marginal’ forms of work can take on outsized importance, especially where income from waged labour falls off or dries up entirely. Indeed, subsistence work can remain an important part of how low-wage workers survive during normal times even in ‘advanced’ economies; in the United States, for example, low-wage workers, women in particular, routinely move in and out of work in the formal economy (Williams, 2005).

Second, these forms of work can all be understood as legal productions too. As the historical entanglement of structural disadvantage with the creation of waged labour itself suggests, *all labour market segmentation is, at some level, legal*. And if those excluded or left to the side in the process of producing labour are now recognised as *workers* (Standing, 2011), the SER as a regulative ideal notwithstanding, segmentation starts to look entirely normal. Take informal work. Even where it lies beyond the reach of labour standards, informal work *is* regulated, and it is typically regulated by a wide range of formal laws as well as customary and social norms (Rittich, 2017). To reiterate, much of this labour is connected to the formal economy and to the allocation of profits and losses within it, even if because of decisions and disputes about where to place the production boundary, its economic contribution remains controversial to assess and value (Mazzucato, 2018).

Thus, for the purposes of tracking segmentation, the conceptualisation of labour, and by extension the work that attracts attention, itself demands reconsideration and expansion. As described below, at this point in time virtually all forms work, those performed outside as well as inside the labour market, can be usefully conceptualised and analysed as legal constructions.¹ The social norms governing work are marked by legal norms and institutions just as social norms have continuing force within ‘regulated’ markets. And apparently, natural, traditional practices may persist, and even flourish, as a result of state practice. All this normative imbrication and interaction invites excavation: how, in legal terms, does this labour enter into the labour market and the economy writ large? By what rules are some enriched and empowered while others are, whether in relative or absolute terms, dispossessed? How exactly is it that some activities attract compensation, while others do not?

These are, fortunately, questions about which existing scholarship provides some assistance. The deep entanglement of the law in structural disadvantage within market economies has been analysed within legal scholarship in a variety of ways. Here I briefly review two approaches that seem relevant to the analysis of segmentation at work. The first explores the idea that like other markets, labour markets are themselves legal constructs; the second focuses attention on non-state normative systems and their interaction with formal law.

The claim that markets operate in and through legal norms and institutions in ways that make them, at some level, inseparable from those norms and institutions has a long pedigree in legal thought. The legal counterpart to varieties of capitalism literature (Hall & Soskice, 2001), scholars on both sides of the Atlantic (Davis & Klare, 2019; Deakin & Wilkinson, 2005; Lang, 2017) have described the varied forms that markets and economies can and do take and the crucial, if somewhat contingent, role that law plays in their construction and operation. This insight concerning the central role of legal norms and institutions in the constitution of work relations and, by extension, processes of labour market segmentation itself rests on earlier analyses of the place of private law rules of property and contract in the constitution of social and economic power and the distribution of material resources by institutional economists and Legal Realists. As they established, putatively neutral legal rules are pivotal to the

¹The point here is not to claim that they are exclusively legal productions, only that law is internal to their creation, and in ways that help illuminate processes of segmentation.

creation, entrenchment and/or mitigation of advantages and disadvantages of the parties to market transactions, those involving transactions over work included (Cohen, 1927; Hale, 1923).

The *standard-setting*, *privileging* and *equalising* functions anchoring the analysis of legal segmentation in the Worlds of Labour study might all be thought of as examples of those constitutive or productive properties of labour law and social policy ‘in action’. In different ways, they capture the manner in which the design of labour standards and determinations about the reach and generosity of social policy create distinctions among workers, distinctions that ultimately cash out in the distribution of material rewards and symbolic capital, thereby contributing to the disadvantages experienced by populations of workers in ways that might be described as ‘structural’ (Dingeldey et al., 2022). Yet these standards and policies operate on private law rules that *already* function as powerful engines of segmentation, if only because they repose so much legal authority in those who hold capital. Recall, for example, the power that employers hold in virtue of their property rights to determine the structure and operation of their enterprises; absent some countervailing legal constraint, those rights normally grant them the ability to determine, and differentiate, the respective entitlements of their workers. There can be little doubt that those possibilities have been maximally exploited in recent years (Weil, 2014). Moreover, myriad other legal rules stand to contribute to these processes of differentiation as well.

And as labour law—in conjunction with social protection systems—regulates the terms and conditions of (a subset of) work relations, it borders and constructs its outside or exterior, constituting the class of un- or less-protected workers at the same time. The current disputes, raging across multiple jurisdictions, around the legal status of gig or platform workers reveal precisely this process in operation. This of course occurs at the threshold question of labour law—determining the classes of workers to which labour standards apply and social rights are assigned—but it takes place at myriad further points, in the application of rules and standards in specific cases as well. Determinations about what forms of inequality at work constitute legally impermissible discrimination will similarly leave some workers without a remedy, blocking material redress and setting up or entrenching lines of segmentation in the process. As Marx first recognised, most economic differences will not be touched by the recognition of liberal equality rights, even where discrimination on ascriptive grounds

is outlawed. We might even think of such rights as *licensing* economic (and others) forms of differentiation among workers.

The basic point would be this: as they are designed, interpreted and applied, legal rules and norms involve processes of sorting and exclusion. The ways in which they classify and sort make them mechanisms for the regulation of excluded or unrecognised forms of work, even where such work is not their direct object of attention; in some cases, legal distinctions themselves constitute the very differences between forms of work.

But this is a general property of law, not a specific attribute of labour law; other legal rules function in similar ways. Prohibiting some things, they sanction others; empowering some, they place others under constraints; compelling payment for some things, they effectively treat other resources as 'free'. As those other rules and policies both do independent work, sometimes in outsized ways, and interact with labour law and social policy, they stand as important sites of investigation in the examination of segmentation.

A second key site of interest when it comes to segmentation is the analysis of non-state normative systems and their interaction with formal law, often described as the study of legal pluralism.² Social norms are manifestly powerful determinants of relations at work, as in society at large. Nor is their power limited to informal economies or household labour; even within highly regulated labour markets, it can be difficult to make sense of the structure of the workplace and the dynamics of workplace disputes in their absence (Solow, 1990). Their imprint can be detected in virtually any worksite: formal anti-discrimination law notwithstanding and whether based on gender, caste, race, religion, ethnicity or some other trait deemed socially salient, norms concerning entitlements to leisure and

²The Worlds of Labour study differentiates segmentation by legal rules and norms, referred to as 'legal pluralism', from the segmentation that occurs as a result of non-legal social norms, entitled 'normative pluralism', or indeed from market forces (see Chapter 2, 'Legal Segmentation in the Global North and South: Concept, Historical Emergence and Tentative Theoretical Explanations'). In this chapter, the term legal pluralism is employed in its classic sense to refer simply to the presence of more than one normative system operating within a social field (Merry, 1988); it thus may encompass both formal state law and a range of social, customary, traditional and other norms and practices. Legal pluralism as used in the former sense is described here as the legal constitution or construction of labour market segmentation.

obligations to labour, who is a leader or ‘boss’ and who properly takes orders, who does what and who gets what pervade the organisation of work.

In the analysis of national labour regulation, one suggestion is that we distinguish the forms of segmentation and structural disadvantage that can be attributed to persons from those that are contractual or statutory in origin or basis. While the latter are recognisably products of law, the former can be figured as exogenous, the result of social rather than legal norms and institutions (Dingeldey et al., 2022). Yet it turns out that social norms are themselves always *also* partly legal in origin. Thus, the challenge for studies of segmentation is to study these norms not just ‘in themselves’ but in their interaction with other normative forces and structures and as part of the legal analysis of segmentation itself.

One starting point here might be to notice how much social and legal norms are *already* in conversation. Like markets, social norms and practices are not hermetically sealed from official practice. Just as markets and market forces have a legal scaffolding that renders them in effect legal constructs, legal and social norms cannot easily be disentangled either. Indeed, once states and administrators are in the business of regulating the domains in which they operate, it is no longer possible to classify those norms as merely social, traditional or cultural; at that point, both what is modified and what is left intact become, to some extent, artefacts of state policy and decision.

As legal sociologists and anthropologists have repeatedly established, what we know as custom or social practice is itself invariably (re)shaped in the encounter with formal legal rules and policies. In colonial as well as modern settings, social norms operate in conjunction with legal norms; in this conjunction or encounter, norms and practices are stabilised and entrenched or alternatively undercut, modified, transformed and sidelined in virtually limitless combinations of ways (Merry, 1988). In short, it is unsafe to assume that social norms are just that, purely conventional and non-legal, even where it looks like they are untouched by state practice. We might instead think of the workplace as a social field (Moore, 1973), one that is an unusually dense and important site of interaction between formal laws and informal norms and that is itself capable of producing distinct and durable norms and practices.

4 BEYOND LABOUR MARKET RULES

This section takes up the legal foundations of segmentation at work in more detail, making the case that the adoption of a broader ‘law of work’, one that extends well beyond labour standards and social policy, is ultimately required for the analysis of processes of segmentation. The claim, in brief, is that a wide range of forces and factors contribute to parties’ capacity to bargain over work and that those resources derive their power in part from the legal as well as non-state norms through which they are marshalled and deployed. Drawing on a model already employed to taxonomise family law, the following discussion illustrates some of the ways in which rules and norms such as tax, family, corporation law and beyond might indirectly as well as directly govern work, thereby contributing to the production or entrenchment of segmentation.

Before exploring the complex ways that rules may interact in ways that bear on segmentation, it is perhaps worth noting the limitations of such structural analyses, if only to observe another avenue by which the segmentation of labour might be legally introduced or supported.

One difficulty arises because the application and effects of labour standards, and indeed other legal rules, and thus their consequences for the terms and conditions under which workers labour, can be endlessly varied and complexified in the course of application and adjudication. Due to what is sometimes referred to as the open texture of legal rules (Hart, 1961), labour standards do not simply apply themselves. Even where they seem clear, either the workers or workplace scenarios to which they apply may be ambiguous and open to question; there may be hidden or overt conflicts, either among labour standards themselves or with other norms and rules that apply in the workplace; there may be gaps or limits in coverage that adjudicators feel bound to police and respect or alternatively compelled to remediate (Davis & Klare, 2019). The adjudication of rules and standards at work is thus an unavoidably interpretive exercise. Here, decision-makers may occupy a pivotal role in labour market segmentation, especially when it comes to work arrangements that raise novel legal questions. They may resolve the open questions before them in starkly opposing ways, alternatively including or excluding groups of workers or simply reading labour standards in ways that, rather than transform existing entitlements, largely confirm the structure of workplace power already in place and reinforce the classic deficits workers face when contracting over the sale of their labour (Klare, 1978). These dynamics of moderation,

empowerment and legitimation may confirm, alter or even reverse the aims that labour standards are expected to further (Kennedy, 1997).

Notwithstanding these challenges, it seems important to discern what we can about the distinctive contribution of the design of legal rules to the terms on which work is conducted.

One way to more effectively study that contribution is to attend to the extended normative and institutional environments in which work is conducted. The wide range of legal norms and institutions affecting the organisation and allocation of labour has already been noted with respect to the GS, attributed to the express objective of extracting economic value in colonial contexts (Fechner, Mückenberger and Dingeldey in this volume). However, a wide range of norms and institutions also operates on labour markets in the GN and with similarly powerful effects.

This broader range of norms and institutions, comprising the ‘effective’ law of work, might be allocated foreground and background roles. Contract and labour law operate in the foreground, directly regulating the terms and conditions on which some types of work, in general those covered by the employment relationship, are conducted.

Social policy sits at one stage of remove, operating further on labour market work in both well- and less-understood ways. For example, social programmes may provide resources which either supplement labour market income or supplant the need for it entirely. Unless universal by design, they are available in some circumstances and to some persons but not others, and thus operate as incentives to enter, or stay in, the labour market or alternatively exit or stay out. Hence, they enter into the segmentation equation.

Attending to those possibilities, more specifically, ‘making work pay’ by ensuring that social policies do not function as a barrier to labour market participation, has been an explicit labour market governance norm for the last generation (OECD, 1994). Yet it is already clear that social policies may either operate against this objective or produce cross-cutting effects among workers. Take conditional cash transfers, a form of social policy popular with both states and development agencies that are designed, *inter alia*, to improve the future labour market prospects of children by ensuring that they attend school, receive health and wellness checks, and otherwise develop their human capital (Cookson, 2018; Molyneux, 2006). Because they directly allocate resources to women yet place compliance and community work obligations on them at the same time, such programmes stand to create impediments to the labour market

participation of women. In some cases, the new resources that they provide to the household simply induce men to earn less income than they otherwise would (Molyneux, 2006); in short, their consequences are ambiguous, whether assessed from the standpoint of total workload, labour market participation or the delivery of better social and human capital outcomes (Rittich, 2010). Studies of experiments in India suggest that even the effects of unconditional cash transfers are both less and different than expected; in their wake, women have expressed a desire not simply for cash but for public investments in basic infrastructure that enable them to more securely and easily perform their work (Kotiswaran, 2022).

These transfer programmes represent tremendously significant experiments in the design and delivery of social policy, particularly outside the industrialised world where conventional social benefits linked to labour market participation and modelled on the SER have never been available to the vast majority of workers. Both conditional and unconditional cash transfers underscore the importance of attending to the total workload of those affected, not merely their work in the labour market; indeed, they confirm that the continued focus on market work alone may generate policies that are incoherent even on their own terms. At the same time, experience so far highlights the extent to which workers themselves understand the importance of other expenditures and policy decisions, public as well as private, to their work options. How such transfers operate on labour market choices—including what they complement and displace in the way of alternative policies and investments—are particularly pressing questions when it comes to segmentation along gender lines.

Tax laws are obviously relevant to decisions about how, where and when to work, and for similar reasons: at the margins, they create both incentives and disincentives to labour market participation. For example, determinations about whether child care is a deductible business expense and whether an unpaid household caregiver is treated as a dependent of the household income earner or, conversely, as a source of imputed income will, given the gendered distribution of care labour, in the aggregate affect women's labour market decisions. Earned income tax credits and other programmes that effectively subsidise low-wage employment might surface as points of inquiry too. But the obligation to pay taxes in cash has itself historically been used to catalyse movement into the waged labour market (Fechner, 2022; Lugard, 1922), and current drives to register

informal enterprises (Perry et al., 2007; World Bank, 2019) may also influence how, where and even whether work is performed as well.

To the extent that such rules map on to patterns of labour market participation or modes of organising the delivery of labour services, differentiating the terms and conditions of work in any systematic way, they can be conceived as mechanisms of segmentation. Yet not infrequently, they generate unexpected and even perverse consequences. And to notice how these policies function in relation to work is to signal the possibility that *other* rules and policies yet further in the background or out of view entirely might also produce labour market cleavages, and in significant rather than trivial ways.

How might these rules enter into the equation? One question is how they affect parties' bargaining strength when it comes to work. Like the segmentation to which it is intimately related, parties' capacity to bargain over work is not a function of social arrangements or the distribution of material resources simpliciter. Instead, that bargaining power finds its roots in widely dispersed rules, regimes and policies and in their interactions. These legal arrangements are said to dispose distributive stakes; that is, they can be linked to social and economic outcomes in systematic ways, producing recognisable classes of actors with relatively greater or lesser entitlements, opportunities and constraints. Here, the allocation of entitlements across many different legal regimes comes into play, affecting people's capacity to influence their status, powers and responsibilities as well as the rewards they derive from their labour.

In work as in other social relations, rights, powers and immunities as well as disabilities and constraints are conferred through a mix of public and private law rules and doctrines. It has long been observed that these rules function in correlative or relational ways, in that what empowers one party imposes some disability or constraint on the other (Hohfeld, 1913). Historically, some of the most trenchant illustrations of these correlative powers and disabilities in action have arisen in the context of legal disputes between labour and capital. The law of property has been described as a mode of exercising state-sanctioned coercion, one that in allocating owners control over access to resources, effectively compels the performance of labour by others (Cohen, 1927; Hale, 1923). These legal entitlements serve as bargaining endowments that parties deploy in their negotiations over the terms of work; they also help determine their options and fallback or exit positions if and when negotiations fail (Mnookin & Kornhauser,

1979). Thus, legal entitlements constitute part of the value of resources, and they are resources of value in themselves.

Social norms enter into the bargaining calculus as well: along with legal rules and institutions, they form part of the normative structure by which labour and resources connected to labour are created, accessed, valued and deployed by different actors in and around work. As described above, those norms themselves are best imagined as forces that function in conjunction with legal norms; put otherwise, they too can be placed within the matrix of rules operating on transactions for work.

The significance of social norms is best appreciated by observing the wide range of factors that might, depending on the circumstances, function as determinants of parties' bargaining power at work. These factors range from tangible resources and access to assets such as land to community support networks to perceptions and ideologies concerning the value of labour contributions and needs of the parties (Agarwal, 1997). Whether they emanate from public/communal or private sources and whether they are symbolic and ideological or material in character, they are destined to affect the bargains that are struck, the obligations that are imposed and the powers that are exercised around work.

One key insight, pertinent especially to the position of women, is that options inside the household are intimately tied to the available options outside (Agarwal, 1997). Notice also that bargaining may occur across the boundaries of apparently separate spaces, such as households, communities and markets; here, distinctions between the public and private spheres may dissolve or themselves be renegotiated. Observe how much this bargaining revolves around questions of work: who labours, who enjoys leisure, who gets what rewards and who must contribute what, etc. Some work for 'free' while depending on others for access to income; others draw either income from their labour, but under vastly different terms and expectations, while a privileged few, drawing rent from resources such as land and capital, are exempt from the obligation to labour entirely.

Notice how much apparently disparate, separate forms of work may be enmeshed, functioning in deep interaction and interconnection with each other. It is simply impossible to make sense of labour market segmentation affecting women, or indeed women's labour market participation at all, apart from the distribution of unpaid work, for example. But the size of informal markets, too, is destined to shrink or grow in close relation to options for labour in the formal economy. The failure to track those flows of informal labour, observing the extent to which they provide a fluid and

disposable reservoir of workers, may well render the picture of labour in the formal economy unreliable (Standing, 2011).

The key point here for the investigation of legal segmentation is that all of these powers, relations and resources that affected the design, allocation and performance of work are to some degree legal artefacts; here, recall the foundational role of legal rules in the constitution and mobilisation of market power. Whether marked by formal law, social entitlements or some hybrid or amalgam of both, what appear to be external determinants of workplace relations rooted simply in social and economic power are, on deeper inspection, themselves products of law.

Notice, next, how many different rules turn out to operate on the universe of work relations and the significance of far-flung rules and policies, both to the work options and to the bargaining positions people adopt.

Imagine this as a standpoint from which to analyse segmentation: what the relevant norms are, legal, social and hybrid, in any given context will itself be a key question.

This complex network of foreground and background rules has already been modelled in respect of the household and family as part of an inquiry into family law's exceptional legal status (Halley & Rittich, 2010). Two starting points animated the inquiry into family law exceptionalism (FLE). The first is that so many legal issues of central concern to the family, along with many of the legal rules that actually bear on family relations, turn out to be located outside rather than within what we recognise as family law. The second is that family relations are routinely classified and differentiated in legal form and substance —'exceptionalised'—from those in other domains in ways that carry symbolic as well as material consequences or 'stakes' for its members.

In order to bring these rules into view, to trace the interactions among them, and thereby assess their import, the rules governing the family were taxonomised as follows: Family Law I (the rules directly establishing obligations between husbands and wives, such as those concerning the formation and dissolution of marriage); Family Law II (those rules that directly reference family membership and relationships); Family Law III (rules that do not mention the family but that impinge on or reconstitute it in significant ways); and Family Law IV (the social norms that independently operate on the family and/or affect the operation of Family Law I, II and III) (Halley & Rittich, 2010).

The claim here is that we could imagine the legal relations concerning work as operating in analogous ways, so: 'Work Law' I, II, III and

IV. Turning the lens slightly, the FLE taxonomy might even look like a way to map the legal structure of household or family work relations—market, non-market and hybrid; indeed, one of the purposes of the FLE project was to bring the labour and economic functions of the household back into view.

Thus, beyond labour standards and other labour laws (WLI), marriage and divorce laws and reproductive rights come into play as WLII, placing on women obligations for unpaid care of children and setting the conditions on which financial support flows to a former spouse. “Maternalizing” women (Frug, 1992), these laws might well affect the terms on which employment is accepted or declined, while the gendered terms of work themselves may induce women to perform less paid and more unpaid work.

Yet other laws will be similarly operative on options and decisions concerning work, in both direct and less direct ways: hence the importance of WLIII. For example, changes to land law, along with any other rules and policies affecting land use, can be expected to impact the performance of subsistence and household labour, especially where they are designed to commodify land and reallocate labour in response to market demand.; however, in addition to generating new forms of paid work, they may produce more informal work as well. Property and licensing laws may determine the location of informal markets and, in conjunction with criminal law and police practice, affect the conditions under which some forms of work, such as sex work, are performed (Kotiswaran, 2011).

Corporate law and other rules concerning business operations are intuitively important sites of investigation, even—perhaps especially—where they make no mention of workers at all, as in addition to property and contract law, they provide the legal infrastructure—and the legal powers—in which decisions about production, including the allocation of labour, are made. Recent labour market trends have disclosed how important those powers can be to questions of segmentation. One link lies with general trends in the distribution of gains from growth. Here, workers in general are faring badly, failing to benefit from productivity gains driving economic growth (Jacobs & Mazzucato, 2016); any gains that *do* flow to workers are overwhelmingly concentrated at the top of the labour market (Milanović, 2016). Some of it is due to processes of financialisation: the widespread adoption of predatory strategies to boost profits or otherwise extract value from firms at the cost of productive investment as well as jobs (Lazonick, 2023).

This (mal)distribution of wages between labour and capital shows up in the form of sharp divisions among workers too. Along with the outsourcing of work, a much remarked cause is the rise and normalisation of precarious forms of work throughout the labour market rather than merely on its periphery. A major technique is the fragmentation or fissuring of the workplace (Weil, 2014): the institution of multiple work arrangements, organised under myriad contractual arrangements, in a single industry, enterprise or work site. Collective bargaining and the extension of labour standards have, so far, placed limited constraints on the use of such strategies. As they are all enabled by the underlying legal powers, at least some of remedies for affected workers may ultimately lie in the rearrangement of those powers. Where, in the GS (and now in the GN as well), workers are not easily identified or distinguished on the basis of their employment or legal status, the best approach may be to reverse the lens entirely, asking simply what rules and policies *are* of interest when it comes to setting the terms and conditions of work.

The general points would be these. The list of rules, policies and institutions that are at least potentially significant to segmentation is much broader than conventionally conceived. While there are sure to be common norms at work in processes of segmentation, variation among them across contexts is to be expected as well. Background rules and norms, those governing the allocation of economic resources and powers in particular, are important sites of attention; the failure to examine their operation and interaction may well block key determinants of segmentation from view.

5 BEYOND LABOUR AND SOCIAL INSTITUTIONS

As the breadth of legal norms, rules and institutions in play in the segmentation of work suggests, the next move is to look at how those rules and norms are themselves generated, authorised and disseminated. There are two levels of interest here: first, what different institutions have to say about the regulation of work and the governance of labour markets, labour standards and social policy in particular; second, what other institutional projects and interventions might portend for the segmentation of work. Here, the role of background norms and rules comes clearly into view; even restricting the discussion to developments within international institutions, there is a great deal to observe.

Among international institutions, the most longstanding, the International Labour Organization has historically played the primary role in the development and global diffusion of labour standards and social policy (Maul, 2019; Sinclair, 2017). The ILO of course remains active in this endeavour, issuing technical reports on labour market questions, commissioning reports on both emerging and longstanding labour market questions (Global Commission on the Future of Work, 2019), and promulgating new labour conventions and declarations such as the Centenary Declaration on the Future of Work (ILO, 2019). Yet as an appreciation of the role of legal norms in the constitution of work suggests and the Worlds of Labour project confirms, ILO standard-setting may itself contribute to segmentation (Hahs & Mückenberger, 2022). And despite its historically dominant role, it would be a mistake to confine attention to the ILO, particularly if a broad rather than narrow conception of work is taken as the subject of attention; once segmentation is linked to forces that transform the political economy writ large, attention decisively shifts to other institutions, those concerned with finance and development in particular.

Although they once understood themselves to be constitutionally barred from intervening in such matters, the World Bank and the International Monetary Fund have been engaged in steering labour market governance and social policy for over three decades; other multilateral institutions such as the OECD are active on this front as well (OECD, 1994). This is a function of the general turn to matters of governance within the Bretton Woods Institutions (BWIs) and the related ‘discovery’ that law and institutions, as key to the management of the economy and thus to economic development, are properly within their institutional mandates. As labour law itself has been (re)conceived as a subset of good economic management (Rittich, 2008), the BWIs have issued reports about what is required to increase labour market productivity, how labour figures in the pursuit of technological innovation, and what such imperatives imply for the cultivation of human capital (World Bank, 2013, 2019).

When it comes to labour market governance, at this point the BWIs are best imagined as competitor institutions to the ILO, even supervening sources of normative, institutional and regulatory authority. The conceptions of good economic governance they advance are explicitly designed to discipline and move state policy, for example via metrics and indicators of ‘best practice’ as well as loan conditions, moreover in ways often opposed to those advanced by the ILO. They have long campaigned against ‘rigid’ labour market regulations—think labour standards—a

position now linked to the theory that they constitute impediments to innovation and, by extension, productivity gains (Rittich, 2023b). According to a recent World Bank report, “‘regulating’ innovation is likely to cost jobs, while informality could rise due to ‘distorting’ labor market regulations” (World Bank, 2019, p. 31); thus, there are “questions about the relevance of current labor laws *tout court*” (World Bank, 2019, p. 27). At the same time, the new human capital index aims to advance future worker productivity through targeted early childhood health and education interventions.

Such experiments, to the extent that they do enter the regulatory and policy calculus of states, would seem to have obvious implications for labour market segmentation. They should be understood as labour policy by another name: diverting attention from the direct pursuit of better work via labour standards, they aim instead to ‘improve’ workers.

Yet when it comes to segmentation, direct normative intervention in labour standards and social policy is neither their only nor always their most significant role. As suggested above, other regulatory questions on which they have staked out positions, such as data governance and the regulation of digital innovation and intermediation (World Bank, 2021), are poised to contribute to or alternatively remediate segmentation too. Consider, for example, how the regulation of AI and the legal powers—whether enabling or constraining—of those designing or using digital platforms stand to affect workers in post-industrial as well as developing states. The import and impact of these rules extend well-beyond the current legal debates about whether gig workers should be classified as employees or independent contractors. For example, hiring and firing protocols have already been profoundly altered by the legal power employers possess to introduce digital and algorithmic sorting and ranking of workers and job applicants; with their introduction, both gain and loss of employment may occur with no necessity—or even possibility—of human decision or intermediation (Rogers, 2023). It is well-recognised that algorithms carry and entrench biases of various kinds, those embedded in the large language models and data sets on which they are trained. Thus, these algorithms seem destined to serve as vectors of labour market segmentation, raising questions *inter alia* about how they allocate work and where to locate legal responsibility for adverse labour market (and other) outcomes.

Arguably, most important, if at yet a further stage of remove, are how such international institutions approach and advance their ‘core’

mandates. Put differently, even if the finance and development institutions had not weighed in heavily on the merits of decentralised bargaining, the optimisation of labour standards, the proper function of social policy and the dangers of ‘regulating’ innovation, there would still be good reasons to attend to the impact of their interventions on labour market segmentation. Indeed, behind the ILO’s call for greater policy ‘coherence’ among international organisations is the realisation of precisely this risk: regulatory and policy objectives, including the pursuit of higher labour standards, advanced by one institution can be undercut, if not defeated entirely, by initiatives underway elsewhere.

These disparate, often disadvantageous, consequences for workers of intersecting monetary, fiscal and trade rules have been highly visible in the management of the late twentieth and early twenty-first centuries’ crises: the East Asian financial crisis of 1997, the global financial crisis of 2008–9 and the recent Covid-19 pandemic. Recall that (a) legal rules dispose distributive stakes and that (b) many legal rules and institutions stand to bear on the processes that produce or entrench labour market segmentation. Like other legal rules and institutions, the legal infrastructure implementing trade, investment and monetary policy allocates powers and opportunities and imposes risks and disabilities that fall unequally on social groups. There will be losers as well as winners; if this observation seems banal, it is nonetheless worth underscoring because of the persistent tendency to represent such regimes and interventions as costless as well as collectively beneficial.

For example, the East Asian financial crisis was produced by huge capital outflows from the region, a result, *inter alia*, of the prior removal of capital controls in many states. This reversal of investment exacted a heavy price in the form of declining growth and significant job losses; at the same time, access to financial support from the IMF required to service debt provided an occasion to push through deeply unpopular labour law reforms. Novel approaches to monetary policy in the form of quantitative easing introduced by many central banks during the global financial crisis a few years later, in addition to inflating the cost of assets of all kinds, exacerbated already-growing income inequality between labour and capital (Crouch, 2013; Milanović, 2016). The fiscal support for households rolled out in the context of the pandemic actually alleviated poverty levels in jurisdictions such as the United States, notwithstanding the many costs imposed on workers by other decisions such as the shutdowns of schools and businesses.

As much as they roil labour markets in general, policy and regulatory choices at these moments often affect subsets of the working population in distinct ways. Decisions to do nothing also matter; indeed, for the purposes of segmentation, such decisions should be understood as relevant policies in themselves. For example, during the pandemic care home workers in the UK, Canada and the United States were subject to terrible working conditions and were unusually exposed to heightened health risks, a risk they shared with those they cared for. This was a result of the funding models and management of long-term care facilities and their intersection with decisions about the allocation of hospital and medical resources both prior to and during the pandemic. Warehouse workers were subject to acute risks of infection and heightened risk of death, as governments sought to minimise disruption to supply chains. In the province of Ontario and beyond, racialised workers suffered more job losses than white workers, a function of their concentration in the low-wage service sector. At the same time, low-wage workers lost work at a far higher rate than higher wage employees, and unrepresented workers experienced greater income losses than those represented by unions (Stanford, 2020). Because of the gendered assumptions about the locus of responsibility for care across all spheres of life, school closures and the turn to hybrid education severely dented women's employment and earning possibilities across the globe, a phenomenon known as the 'she-cession'.

If such outcomes were randomly distributed across labour markets, they would not necessarily raise questions of interest for the purposes of studying segmentation. However, they tend to form patterns; in some cases, they seem entirely predictable. At minimum, they underscore the significance of how power in the workplace is legally organised when it comes to the distribution of gains and losses. Where significant power lies with employers, even if only as a matter of corporate or business law, workers can expect to lose; those 'at the bottom' of the labour force can, in general, expect to lose more.

Moreover, the immediate impact of such policy and regulatory decisions is not only significant in itself. There is every reason to think that, as in the past, some will produce enduring rather than transitory labour market consequences; they may well cumulate as they interact with other rules and policies. All suggest new frontiers of inquiry into segmentation at work, especially if rather than rare events, these crises are harbingers of the future. However complex the task, those researching segmentation going forward need to be alert to developments far beyond the fields of labour

law and social protection. Or perhaps the better way to put it would be to notice how many projects and far-flung initiatives are, in the end, labour and social projects too.

6 CONCLUDING WAYPOINTS

The three frontiers of analysis identified here—beyond labour market work, beyond labour standards, and beyond labour and social institutions—are intertwined. When their full reach is considered, labour standards turn out to operate on forms of work well beyond their immediate target, employment; rendering some forms of work un- or less-protected, they help constitute the zone of informal and non-market work too. But there is another question of interest when it comes to segmentation as well: how, as a matter of law and policy, non-market labour enters into market processes and profits and how, if at all, those who engage in such labour receive any of its returns.

If the question is the legal infrastructure by which forms of work become differentiated, powers around work are allocated and the profits of work delivered, it seems clear that the norms and institutions of interest now extend well beyond labour standards and social policy. This is the case, moreover, in the GN as well as the GS. For better and for worse, workers' status, bargaining power and economic fates turn as much, if not more, on other rules and decisions governing the organisation of the economy as on labour standards and social policy. While this is especially evident in the GS, even in the GN, recent events suggest that corporate powers, fiscal limitations, monetary interventions and trade policy may all be critical fault lines in the production of segmentation.

Finally, the fact that a wide array of rules might prove pertinent to the introduction or consolidation of differences among workers, whether as a general matter or in particular contexts, implies that institutions with a stake in the direction of those rules should become a (more) routine subject of investigation.

These might all be conceptualised as spatial investigations, extending the inquiry into segmentation to more forms of work, a broader array of legal norms and doctrines, and a larger complex of institutional practices. Yet they do not exhaust the inquiries of interest, even within this spatial dimension. For example, figuring out the import of labour standards and other rules touching on labour may involve some assessment not merely of their structural properties but how they are received, taken up and

acted upon by workers themselves in specific contexts. While this takes the inquiry of legal segmentation into new directions and might involve the adoption of distinct epistemological and analytic methods (Jasanoff, 2004), such inquiries seem nonetheless compatible with the ambitions of the World of Labour project.

In the end, it is worth recalling that labour standards, along with the SER that anchored their development, are products of work arrangements in the industrialised North. Yet emerging scholarship indicates that labour law as we now know it is itself marked by colonial practices, while at least some labour practices associated with the colonies have their roots in the earlier laws of the metropole. For example, the law of service and indenture in the British colonies emerged from master and servant law of the United Kingdom (Steinfeld, 1991; Tomlins, 2010), while the legal foundations of slavery within parts of the British Empire find their origins in older common law forms that were repurposed as a means of recovering debt (Brewer, 2022). In other imperial contexts, however, legal forms and traditions play both distinct and related roles. These entangled origins suggest that further historical excavation of the transplantation and evolution of legal forms will prove fruitful to understanding the conditions out of which segmentation emerge. In addition to discrete inquiries pursued on different tracks, legal segmentation as it played out in the colonies and in the metropole might even be imagined as a joint project, its investigation to be pursued in tandem and with attention to its world-making aims and enduring effects.

REFERENCES

- Agarwal, B. (1997). 'Bargaining' and gender relations: Within and beyond the household. *Feminist Economics*, 3(1), 1–51.
- Amsden, A. (2001). *The rise of "the Rest": Challenges to the West from Late-Industrialization economies*. Oxford University Press.
- Ashiagbor, D. (2024). Rethinking EU social and labour law through racial capitalism. In H. Eklund (Ed.), *Colonialism and the EU legal order*. Cambridge University Press.
- Bellucci, S., & Eckert, A. (Eds.). (2019). *General labour history of Africa: Workers, employers and governments, 20th–21st centuries*. Boydell & Brewer.
- Beneria, L., Berik, G., & Floro, M. (2015). Paid and unpaid work: Meanings and debates. In *Gender, development and globalization: Economics as if all people mattered* (2nd ed., pp. 179–226). Routledge.

- Blackett, A. (2019). *Everyday transgressions: Domestic workers' transnational challenge to international labor law*. Cornell University Press.
- Brewer, H. (2022). Creating a common law of slavery for England and its New World Empire. *Law and History Review*, 39(4), 765–834.
- Bryceson, D. F. (2019). Domestic work. In S. Bellucci & A. Eckert (Eds.), *General labour history of Africa* (pp. 301–332). Boydell and Brewer.
- Cohen, M. (1927). Property and sovereignty. *The Cornell Law Quarterly*, 13, 8–30.
- Conaghan, J., & Rittich, K. (2005). *Labour law, work, and family: Critical and comparative perspectives*. Oxford University Press.
- Cookson, T. (2018). *Unjust conditions: Women's work and the hidden costs of cash transfer programs*. University of California Press.
- Cooper, F. (1996). *Decolonization and African society: The labor question in French and British Africa*. Cambridge University Press.
- Crouch, C. (2013). Entrenching neo-liberalism: The current agenda of European social policy. In N. Countouris & M. Freedland (Eds.), *Resocialising Europe in a time of crisis* (pp. 36–60). Cambridge University Press.
- Davis, D. M., & Klare, K. (2019). Critical legal realism in a nutshell. In E. Christodoulidis, R. Dukes, & M. Goldoni (Eds.), *Research handbook on critical legal theory*. Edward Elgar Publishing.
- Deakin, S., & Wilkinson, F. (2005). *The law of the labour market: Industrialization, employment and legal evolution*. Oxford University Press.
- Dingeldey, I., Fechner, H., et al. (2022). Worlds of labour: Introducing the standard-setting, privileging and equalising typology as a measure of legal segmentation in labour law. *Industrial Law Journal (London)*, 51(3), 560–597.
- Fechner, H. (2022). Legal segmentation and early colonialism in Sub-Saharan Africa: Informality and the colonial exploitative legal employment standard. *International Labour Review*, 161(4), 615–634.
- Fechner, H., Mückenberger, U., & Dingeldey, I. 'Legal Segmentation in the Global North and South: Concept, Historical Emergence and Tentative Theoretical Explanations', Chapter 2, this volume
- Federici, S. (2004). *Caliban and the witch: Women, the body and primitive accumulation*. Autonomedia.
- Folbre, N. (1991). The unproductive housewife: Her evolution in nineteenth-century economic thought. *Signs: Journal of Women in Culture and Society*, 16(3), 463–484.
- Frug, M. J. (1992). A postmodern feminist legal manifesto (an unfinished draft). *Harvard Law Review*, 105(5), 1045–1075.
- Fudge, J., & Owens, R. (Eds.). (2006). *Precarious work, women, and the new economy: The challenge to legal norms*. Hart Publishing.
- Furnivall, J. S. (1948). *Colonial policy and practice: A comparative study of Burma and Netherlands India*. Cambridge University Press.

- Global Commission on the Future of Work. (2019). *Work for a brighter future*. International Labour Organization.
- Hahs, J., & Mückenberger, U. (2022). Segmenting and equalizing narratives in the ILO's standard-setting practice. *International Labour Review*, 161(4), 635–655.
- Hale, R. (1923). Coercion and distribution in a supposedly noncoercive state. *Political Science Quarterly*, 35(3), 470–494.
- Hall, P. A., & Soskice, D. (2001). *Varieties of capitalism: The institutional foundations of comparative advantage*. Oxford University Press.
- Halley, J., & Rittich, K. (2010). Critical directions in comparative family law: Genealogies and contemporary studies of family law exceptionalism. *The American Journal of Comparative Law*, 58(4), 753–776.
- Hart, H. L. A. (1961). *The concept of law*. Clarendon Press.
- Hohfeld, W. N. (1913). Some fundamental legal conceptions as applied in legal reasoning. *Yale Law Journal*, 23(1), 16–59.
- International Labour Organization. (2019). ILO centenary declaration for the future of work, 2019. <https://www.ilo.org/global/about-the-ilo/mission-and-objectives/centenary-declaration/lang%2D%2Den/index.htm>
- Jacobs, M., & Mazzucato, M. (2016). Rethinking capitalism: An introduction. In M. Jacobs & M. Mazzucato (Eds.), *Rethinking capitalism: Economics and policy for sustainable and inclusive growth*. Chichester, West Sussex.
- James, S. (2012). *Sex, race and class: The perspective of winning*. PM Press.
- Jasanoff, S. (2004). The idiom of co-production. In *States of knowledge: The co-production of science and social order* (pp. 1–12). Routledge.
- Kennedy, D. (1997). Part IV. In *A critique of adjudication* (pp. 215–263). Harvard University Press.
- Klare, K. E. (1978). Judicial deradicalization of the Wagner Act and the origins of modern legal consciousness, 1937–1941. *Minnesota Law Review*, 62(3), 265–339.
- Kotiswaran, P. (2011). Born unto brothels: Sex work in a Kolkata red-light area. In *Dangerous sex, invisible labor* (pp. 137–182). Princeton University Press.
- Kotiswaran, P. (2022). Revaluing unpaid work through unconditional cash transfers: The case of the Orunodoi scheme in Assam. *Economic & Political Weekly*, 57(26–27), 14–19.
- Lang, A. (2017). Market anti-naturalism. In J. Desautels-Stein & C. Tomlins (Eds.), *Searching for contemporary legal thought* (pp. 312–329). Cambridge University Press.
- Lazonick, W. (2023). *Investing in innovation: Confronting predatory value extraction in the US corporation*. Cambridge University Press.
- Lowe, L. (2015). *The intimacies of four continents*. Duke University Press.
- Lugard, F. D. (1922). *The dual mandate in British tropical Africa*. William Blackwood and Sons.

- Maul, D. (2019). *The international labour organization: 100 years of global social policy*. International Labour Organization.
- Mazzucato, M. (2018). *The value of everything: Making and taking in the global economy*. Penguin Books.
- Merry, S. E. (1988). Legal pluralism. *Law & Society Review*, 22(5), 869–896.
- Milanović, B. (2016). *Global inequality: A new approach for the age of globalization*. Harvard University Press.
- Mnookin, R. H., & Kornhauser, L. (1979). Bargaining in the shadow of the law: The case of divorce. *The Yale Law Journal*, 88(5), 950–997.
- Molyneux, M. (2006). Mothers at the service of the new poverty agenda: Progresá/Oportunidades, Mexico's conditional transfer programme. *Social Policy & Administration*, 40(4), 425–449.
- Moore, S. F. (1973). Law and social change: The semi-autonomous social field as an appropriate subject of study. *Law & Society Review*, 7(4), 719–746.
- OECD. (1994). The OECD jobs study. In *OECD economic outlook* (Vol. 1994 Issue 1, pp. 1–4). OECD Publishing.
- Perry, G., Bosch, M., et al. (2007). *Informality: Exit and exclusion*. World Bank.
- Polanyi, K. (2001). *The great transformation: The political and economic origins of our times*. Boston: Beacon Press. (Original work published 1944).
- Rittich, K. (2008). Global labour policy as social policy. *Canadian Labour & Employment Law Journal*, 14, 227–276.
- Rittich, K. (2010). Black sites: Locating the family and family law in development. *American Journal of Comparative Law*, 58, 1023–1054.
- Rittich, K. (2017). Formality and informality in the law of work. In S. Archer, D. Drache, & P. Zumbansen (Eds.), *Daunting enterprise of the law* (pp. 109–123). McGill-Queen's University Press.
- Rittich, K. (2019). Historicising labour in development: Labour market formalisation through the lens of British colonial administration. In D. Ashiagbor (Ed.), *Re-imagining labour law for development: Informal work in the global North and South* (pp. 21–50). Hart Publishing.
- Rittich, K. (2023a). In the middle of things: The political economy of labour beyond the market. *European Law Open*, 1. <https://doi.org/10.1017/elo.2023.14>
- Rittich, K. (2023b). Two institutional paths toward the future of work – A view from the edge of the field. In B. Langille & A. Trebilcock (Eds.), *Social justice and the world of work: Possible global futures* (pp. 43–54). Hart Publishing.
- Rogers, B. (2023). *Data and democracy at work: Advanced information technologies, labor law, and the new working class*. The MIT Press.
- Sinclair, G. F. (2017). *To reform the world: International organizations and the making of modern states*. Oxford University Press.
- Solow, R. M. (1990). *The labor market as a social institution*. Basil Blackwell.
- Standing, G. (2011). *The precariat: The new dangerous class*. Bloomsbury Academic.

- Stanford, J. (2020). 10 ways the COVID-19 pandemic must change work for good. Centre for Future Work. https://centreforfuturework.ca/wp-content/uploads/2020/06/10Ways_work_must_change.pdf
- Steinfeld, R. (1991). *The invention of free labor: The employment relation in English and American law and culture, 1350–1870*. University of North Carolina Press.
- Tomlins, C. L. (2010). *Freedom bound: Law, labor, and civic identity in colonizing English America, 1580–1865*. Cambridge University Press.
- Weil, D. (2014). *The fissured workplace: Why work became so bad for so many and what can be done to improve it*. Harvard University Press.
- Williams, L. (2005). Poor women's work experiences: Gaps in the 'work/family' discussion. In J. Conaghan & K. Rittich (Eds.), *Labour law, work, and family: Critical and comparative perspectives* (pp. 195–214). Oxford University Press.
- Winant, G. (2021). *The next shift: The fall of industry and the rise of health care in rust belt America*. Harvard University Press.
- Woolf, L. (1920). *Empire and commerce in Africa, a study in economic imperialism*. Labour Research Dept.
- World Bank. (2013). *World development report 2013: Jobs*. World Bank Group.
- World Bank. (2019). *World development report 2019: The changing nature of work*. World Bank Group.
- World Bank. (2021). *World development report 2021: Data for better lives*. World Bank Group.

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Conclusion and Outlook: Overcoming Segmentation Within Regulative Social Policy on a Global Scale

Ulrich Mückenberger, Irene Dingeldey, and Heiner Fechner

1 INTENTION AND ACHIEVEMENTS

The intention of this volume was to identify worlds of labour within the broader framework of regulative social policy, of which individual labour law is a component. Corresponding with other work on global social policy conducted by the Collaborative Research Centre 1342 in Bremen (see, for example, Nullmeier et al., 2022), but also beyond (Patel et al., 2023), we want to highlight different degrees of coverage and generosity of employment law in a global perspective. We propose an approach anchored in a transdisciplinary discourse, focusing on a broad notion of ‘work’

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vis-à-vis employment, labour markets and different welfare state types and models of capitalism.

Distinction is immanent to any legal regulation. Coverage and generosity of legal instruments play a double role: While they ‘include’ certain groups of working people, they also ‘exclude’ others from entitlements, benefits and advantages. But when it comes to the structural stigmatisation of groups of working people—according to gender, race, social status, geographical categorisation, etc.—we speak of segmentation. When segmentation is exerted by the law itself, we speak of legal segmentation (see Chaps. 1 and 2 in this volume).

Legal segmentation with respect to work is systematically linked to the particular understanding of employment law, especially to the figure of the Standard Employment Relationship (SER) as a specific form of legal segmentation, whose role, however, we highlighted as diverging between the Global North (GN) and Global South (GS) (see Chaps. 1 and 2 in this volume). Moreover, we showed that the focus on legal segmentation can help to explain particular patterns of development and to cluster certain types of labour regulation going beyond only their protective function. Combining the application of historical institutionalism on a national scale with forms of international (inter-)dependencies and laying particular emphasis on international organisations and colonialism proved to be useful here.

In order to meet the challenges described in the Introduction and to better grasp legal segmentation in the labour field, we discussed a whole range of questions: How can legal segmentation be conceptualised both on a historical timescale and with a global perspective integrating the GN and GS? Which methods and tools can be used to internationally compare, measure and explain the phenomenon of legal segmentation? Is there any pattern of worldwide distribution of segmenting work-related law that could offer an explanation of its diffusion? Which are the triggers and trajectories through which legal segmentation gains momentum and ground? Moreover, from a broader perspective, the question whether the phenomenon of legal segmentation requires research beyond employment law in order to develop new forms of regulation and implementation that would tackle its segmentative effects both *de jure* and *de facto* was discussed. These questions shaped the structure and the horizon of the contributions contained in this book.

2 WHAT HAVE WE LEARNT, WHICH QUESTIONS ARE STILL OPEN?

The results of the empirical studies—presented in the middle part of the volume—gave interesting answers: frequently not the expected ones, often only partial answers, but always answers which show that the research path was fruitful and merits attention and further scientific effort.

2.1 *The Concept of Legal Segmentation Helps Understanding Employment Law Better*

But before presenting empirical results, the first section of the book provided the ground both for the understanding of the phenomenon of legal segmentation in the GN and GS, its theoretical framing and the discussion of the leximetric approach that makes law comparable by means of quantitative methods. First, we gave an in-depth insight into our thoughts on the history and theory of legal segmentation (Chap. 2 by *Heiner Fechner, Ulrich Mückenberger and Irene Dingeldey*). This included relevant definitions of segmentation by norms, and the distinction between legal and normative pluralism. Moreover, we provided an overview on the historical development of legal segmentation in line with industrialisation and the spread of capitalist production. Here, a first central concern was to indicate the development of the three functions of legal segmentation, namely standard-setting, privileging and equalising: the basic components of the development of labour law in the GN. A second concern was to highlight that the GS did not simply follow legislation in the GN. Although legislation in the GS nowadays shows similar normative structures of *de jure* legal segmentation, both the circumstances of its introduction and its *de facto* application differ clearly. As in the GN, different types of legal segmentation can also be observed in the GS, namely in Latin America, sub-Saharan Africa and India, due to colonial legal segmentation. Legal or in a wider sense normative pluralism plays a central role in explaining this development, namely the conjunction of legal regulations in different fields used to commodify labour for extractive production during colonialism and subsistence work, but also pre-colonial customary practices, for example, related to tribal or religious norms. We furthermore argue that these historical developments still influence *de facto* labour market segmentation by gender or race until today. Beyond the different types of legal segmentation to be found both within the GN and GS, we identify

different historical trajectories as two broad logics of legal segmentation and their connectedness via international dominance. What we can build on now is a both historically and globally enriched notion and concept of legal segmentation (Chap. 2).

Contrary to commonly shared opinions that employment law is protective law, it was confirmed that employment law (particularly that establishing and securing the SER) has a segmenting function, where gender, race and other categories play a decisive role. Segmenting employment law in the GN mainly creates general incentives for full-time and permanent employment through a grading of protection. In the countries of the GS, it is used to contract a workforce for producing raw materials and thus primarily supports an extractivist mode of production. In both parts of the world, however, this displays the commodifying role of labour law. This insight about legal segmentation has gained clearer contours throughout the contributions to our book.

2.2 *Leximetrics Helps Ascertaining Legal Segmentation on a Large Scale*

Our understanding of legal segmentation and its application to a global context implied the necessity of both qualitative and quantitative methods. On the one hand, the overall relevance of legal pluralism in explaining the phenomenon of legal segmentation in its full meaning required in-depth qualitative historical legal analysis. On the other hand, it was necessary to use quantitative methods to be able to provide evidence on legal development in countries around the world. Only large-N analyses, namely the full inclusion of the countries of both the GS and the GS, allow us to identify worlds of labour, namely to recognise different types and developments of legal segmentation on a global scale. This also enables explorative attempts to explain such regulative types or development patterns around the world by quantitative methods using other indicators provided on a quantitative scale, such as economic development, trade relations, membership in international organisations, political regimes, etc. All this indicates the usefulness of a quantifying approach towards labour law.

This is why we both introduce and critically evaluate the leximetric approach and display in detail how the Worlds of Labour (WoL) dataset, the basis for our quantitative analysis of legal segmentation, has been created. *Marina Carlino, Heiner Fechner and Andrea Schäfer* (Chap. 3) start the discussion on the potential and limitations of the leximetric approach.

In order to introduce the particular dataset produced by the WoL project, a detailed description of the coding process is given. This included introducing the data sources used, how categories were established and quantified in the coding process, as well as how templates, coding instructions and indicator descriptions were developed—all this in relation to the compilation of the WoL dataset. This is accompanied by a broad literature discussion on legal approaches to investigating segmentation and using leximetrics as a method. All in all, the authors of this chapter highlight the potential for further research, for example, to estimate legal segmentation as an explanatory factor for discrimination-based employment segregation, to analyse the evolution of legal segmentation in employment protection legislation, to describe the impact of labour law as a factor in explaining typologies of welfare capitalism and to explore legal discourse variation globally and historically.

In Chap. 4, *Simon Deakin* presents the Cambridge University's Centre for Business Research Labour Regulation Index (CBR-LRI), created by him and his team, which was an important role model and source for the WoL dataset. The contribution starts with a critique of previous datasets that either did not fully explain the process of data creation and or were based on normative assumptions not fully elaborated. Deakin then introduces the methodology and 'construct validity' underlying the CBR-LRI, highlighting that it was used to chart the overall trajectory of laws related to the SER. Deakin also gives an overview on the controversial discussion whether deregulation of protection via employment law could be used to stimulate employment and growth, indicating that the positive answer advanced by the OECD, World Bank and IMF since the 1990s is not clearly supported by a range of empirical studies. After an account of the main themes in the econometric literature using the index to explore the social and economic impacts of labour law, Deakin presents central findings from analyses based on the CBR-LRI. They indicate that the strategy of normalising the so-called non-standard employment forms, by aligning part-time, fixed-term and temporary agency work with aspects of the regulations applying to the SER, was widely adopted around the world, beginning in Europe and then diffusing to other regions, in particular Latin America and parts of Asia and Africa, from the 1980s onwards. This leads him to the fundamental conclusion that there is econometric evidence to suggest that this strategy, rather than introducing rigidities or inflexibilities into labour markets, was consistent with employment growth, and with the reduction of labour informality. Despite all critique,

Deakin underlines that the SER is still regarded as a focal point in labour regulation, albeit recognising that it is under pressure as a future model of labour regulation due to attempts to shore it up by flexibilisation.

Both the leximetrics method and the WoL project's particular approach to it are critically discussed by *Tzezhainesh Teklè* (Chap. 5). Drawing on the literature on leximetrics and labour law, this chapter explores both the merits of the leximetric method when applied to the examination of legal segmentation and its limitations for a full understanding of the underlying dynamics of employment regulation. According to Teklè, leximetrics is inherently unable to give an account of the complexity of labour law and its relation with the broader multidimensional context in which it operates, and of how this affects the ability of the law to achieve the assigned objectives. It also says nothing about whether and how the law is applied—and thus *de facto* influences people's employment situations. The unavoidable selectivity of indicators homogenises the objects of the comparison, overlooking the realities in which they are inserted and biasing such comparison. Within the WoL triad of standard-setting, privileging and equalising functions, the author overall criticises the operationalisation of the equalising function. Teklè argues that the leximetric method alone cannot capture the diverse notions of equality that have evolved over time and the reasons behind their adoption and institutionalisation (or non-adoption) in different world regions and countries. These analyses, however, are required—according to Teklè—to assess their outcomes in terms of legal and social segmentation in different contexts. Hence, qualitative, locally informed systems of knowledge production are relevant for a broader understanding. Drawing on De Leonadis (2022), the author finally expresses her concerns that measurements of law can 'obfuscate' unmeasurable parameters and thus miss a broader understanding of the complex reality of people's lives. However, she also acknowledges that measurements have the advantage of giving 'visibility' to their objects.

Altogether, the added value of the use of quantifying methods when dealing with legal segmentation has been confirmed by the contributions to this volume—though controversial, and with stark relativisation (Chaps. 3, 4, and 5). Leximetrics had gained its merits in the controversy between market-liberal and institutionalist researchers working with indices, in that the CBR-LRI has provided evidence that employment regulation is not an obstacle, but rather a means of enhancing productiveness. Our SPE index was able to extend the CBR-LRI by the privileging, hence segmenting component. We could therefore also provide a tool not only to document,

code and measure but also to map legal segmentation. Cartography provides a ‘picture’, an impression of the quantitative distribution of legal segmentation everywhere in the world, which had never before existed and which would be unfeasible without the quantification of the content of legal norms. Combined with and building upon earlier outcomes of the Worlds of Labour project—the article in the *Industrial Law Journal* (Dingeldey et al., 2021) and the *International Labour Review*’s special issue “Overcoming legal segmentation” (Mückenberger & Dingeldey, 2022a, 2022b)—we believe the concept of legal segmentation to now be thoroughly elaborated and exemplarily applied with the support of lexicometrics, both over time and worldwide, so that it now should serve as a solid ingredient for both further research and political reasoning.

All reservations vis-à-vis lexicometrics as applied by the WoL project do not impinge upon these merits. Certainly ‘coding’ legal norms according to quantifying coding instructions implies simplification and schematisation. Moreover, the approach fully remains within the realm of the written law. Particularly in the sphere of gender governance, this coding does not grasp the interplay between written and unwritten norms, between law and obstacles to implementation, between law and reality, or its impact in interaction with gender roles and (family) employment structures. But nobody has ever postulated that lexicometrics and the SPE index tell the ‘whole truth’ about legal segmentation and its impact on working life. What we postulate is that the quantitative representation and visualisation of segmentation in the regulation of work, worldwide and over time, provides us with a new and fruitful indication and incentive to conduct qualitative and quantitative historical and analytical work about how these quantitatively indicated phenomena came about, how they can be understood and explained, and how they impact societies and their members. Understood this way, lexicometrics does not provide the correct answers yet, but rather—as a prerequisite for those answers—the correct research method when dealing with worldwide social regulation and its particular functions. With this reservation in mind we can also assess our findings about both the pattern of the worldwide distribution of segmenting work-related law and the triggers/trajectories through which legal segmentation gains momentum and ground.

2.3 *Steps Forward Towards Describing and Explaining Worldwide Diffusion of Legal Segmentation*

The middle part of the book is dedicated to empirical studies dealing with the development and dissemination of both the social protecting and segmenting functions of employment law. It aims to combine qualitative and quantitative studies of legal segmentation mainly in regions of the GS. Limited in scope, the historical-qualitative study by *Heiner Fechner* (Chap. 6) concentrates on exemplary developments in Latin American countries. His qualitative approach, however, allows him to include in the analysis additional excluding and non-protecting legal norms in several fields plus an exploration of the path-dependent impact of already abolished discriminating law. Highlighting critical junctures, Fechner mirrors legal changes with respect to the first introduction of colonial regulation of work, including segregating and segmenting divisions, the factors upholding and deepening racial and gender segmentations during the abolition of slavery and the introduction of civil codes after independence. But he also documents relevant legal changes that have maintained segmenting functions during the introduction of modern labour and social legislation, the parallel introduction of human rights and neoliberal reforms, and the potentials of the inclusive reforms of the early twenty-first century.

Focusing on three European colonial powers and twelve of their African colonial territories, *Ulrich Mückenberger and Andrea Schäfer* (Chap. 7) address three SER patterns in the GN and the assumed transfer, into the respective colonies, of their segmenting labour regulation, namely the SER. They apply a fuzzy set analysis using WoL data. The results show three different paths to the SER for the European colonial states Germany, France and Great Britain from 1880 to 2021, depending on their respective labour law cultures or paradigms. They discover, however, that the assumed transfer to the colonies by the respective European colonial power does not show a clear and systematic pattern. Only in some colonies can changes reflecting the respective SER configuration be identified according to the particular form of colonial rule and the duration of occupation. This leads to the conclusion that colonial employment law-making pursues other objectives than a mere reproduction of the structure of the colonisers' law. Legal segmentation here is rather a function of domination and violence due to colonial extractivist objectives than a

(counterfactual) reproduction of the social integrative process the SER has in the European territories.

Answering the question “Which patterns of labour regulation existed in 1970 and which regulation trajectories can be observed up to 2013?”, *Jean-Yves Gerlitz and Irene Dingeldey* use a time series analysis with 86 countries based on CBR-LRI data (Chap. 8). They focus on the development of the protective and exclusive functions of the SER, the latter being defined as high level of protection for the SER in combination with no or weak restrictions or equalising regulations for Non-SERs (equated with low social protection). As a result, a general convergence trend towards more protective and inclusive employment law in a global perspective is to be noted. This, surprisingly, indicates that, in an extended temporal perspective, neoliberal demands for a full flexibilisation of labour standards in the past decades were not pursued with full vigour *de jure*. However, change trajectories vary strongly as some countries have hardly changed at all and others, like the European Union countries, implemented several re-regulations over time. The explorative testing of three explanatory theories, namely legal origin, the world systems theory (economic position) and institutional diffusion (via membership in international organisations) could not sufficiently explain the respective patterns. Only a combination of the three explanations impacted the regulation patterns found both at the point of departure and arrival over the four decades of the observation period—confirming the multi-causality of (regulative) social policy development.

With a focus on legal segmentation, *Jean-Yves Gerlitz and Ulrich Mückenberger* explicitly address the central question of the project, namely how the generosity and coverage of employment protection, expressed through the standard-setting and privileging functions of employment law, have developed worldwide (Chap. 9). Their analyses combine WoL trend data on 84 countries for the period from 1970 to 2013 with other available data sources which were evaluated according to significant correspondences. The results show that, compared to other countries, non-European OECD countries lagged behind in the development of standard-setting and privileging and showed much lower levels than the rest of the world in 2013. Furthermore, compared to OECD countries, in non-OECD countries there was a relatively strong increase in standard-setting, irrespective of economic performance or involvement in global value chains (GVCs). To explain the more segmentative patterns of protecting and privileging norms, the authors tested explanations prevalent in

the current literature, focusing on four assumptions: (1) That standard-setting and privileging employment law originated from Europe and spread across the globe; (2) that it was a by-product of economic development; (3) that it was applied in conjunction with a country's integration into global value chains; and (4) that it was associated with the impact of gender agency. Based on the empirical analysis, all four assumptions were rejected. This highlights that standard theories and explanations, when related in general to functionalist arguments of economic development or trade integration, often fall short in explaining regulative social policy when applied to large-N country samples.

The empirical studies presented in this section underline a general increase in protective and inclusive employment law since the 1970s, albeit with differences among certain groups of countries with respect to change of both the level of protection and segmentative effects. Moreover, the multi-causality of labour law development, according to previous results from other social policy fields, can be stated. The aforementioned aspect of legal pluralism including the interaction with other fields of social or market policy is highlighted, too. Additionally, the increasing relevance of international arenas for regulation or policy-making and the relevance of actors from that level were recognised—including the still effective influence of colonial power on present developments. However, many questions remain: The finding that African colonies' employment laws did not 'properly' mirror their European colonisers' SERs (Chap. 7) leads to the question of which role work-related law played in the respective extractivist colonial regime and why it differed from domestic rule. The effects and variations of the interplay of law-based introductions of racist social orders and the displacement of institutions by formally neutral orders without compensating justice, i.e. equalising legislation (Chap. 6), would profit from a quantitative comparative analysis as well as qualitative in-depth long-term analyses.

Standard-setting and privileging employment law is gaining ground all around the world. Contributions to this volume show that this development cannot be explained solely by a European origin or by economic prosperity, by the degree of integration into global value chains or by female agency in the respective countries (i.e. Chap. 9). This leads to the question of what role other factors such as international organisations, social movements or epistemic communities play in the worldwide diffusion of segmenting employment law. That supranational social law-setting and law-implementing by the European Union implies a better result in

containing precarious employment (Chap. 8), leads to the questions how supranational agency came about and which degree of *de facto* improvement has been achieved.

All analyses applying the SPE index have and maintain a focus on an analysis of the *de jure* status of employment law, worldwide and over time. They therefore raise the question whether an appropriate analysis of legal segmentation has to continue with research beyond (positive) employment law in order to mirror the reality of employment practice. The last two chapters of this book give good reasons for and wider perspectives on what has to be included and which interactions between employment law and other (regulative) policies have to be included. This wider perspective is also necessary to fully understand why law is operating in a segmenting rather than in a Durkheimian ‘organic’ or overall manner.

2.4 *An Upheaval of the Relation Between Work and Law Is Required*

In the final section of the book, this question is addressed when a socio-political paradigm shift is proposed. This is due to the fact that employment law not only *de jure*, but even far more with respect to *de facto* employment practice fails to provide a sufficient level of protection to the majority of the world population. Our research underlines that this—apart from societal, economic and political factors—is also rooted in the law itself and its *de jure* segmenting functions. However, for changing this major shortcoming of labour law as social policy that should protect the weakest, the focus is shifted towards the different levels of policy-making and the variety of relevant institutions and actors—highlighting the international level both with respect to policy action and further research.

Ludger Pries presents (Chap. 10) a sociological institutionalist conceptual framework underlining not only the multi-causality of *de facto* labour market segmentation, but also the multi-level nature of relevant developments. Going beyond the somewhat oversimplified dichotomies such as market versus state or market-liberal versus interventionist regulation, he proposes five social institutions on different levels that structure labour and its regulation: social networks, professions, markets, organisations and public regimes. All five labour-regulating social institutions are crucial for analysing not only formal labour law, but its actual enforcement and regulating mechanisms beyond the formal-legal apparatus. Pries calls for more global standard-setting and equalising mechanisms of labour regulation in

spite of privileging norm-setting and social closure for specific groups in order to reduce the degrees of legal segmentation and *de facto* inequality. He notes, however, that a possibly more substantial world social policy will probably not be the outcome of a global world state, but will instead be based mainly on multi-level and multi-actor institutional work.

That the WoL project clarifies the constitutive—and varied—role that labour standards play in the global phenomenon of structural disadvantage experienced by marginalised social groups is underlined in the contribution by *Kerry Rittich* (Chap. 11). The search for patterned differences in the legal segmentation of work has revealed significant diversity and contingency in how the SER is itself constituted through law and policy. These insights provide a helpful corrective to contemporary claims—normative as well as positive—about the convergence of labour standards and the optimal direction of workplace governance in the future. They may also prove useful to efforts to ‘decolonise’ labour law as well as to unpack the legal infrastructure by which forms of inequality among workers are sustained. Rittich proposes further inquiries to be integral to comprehending processes of legal segmentation of work. The animating intuition of the WoL project should be extended to encompass the broader political economy of work and its norms and institutions. She considers three trajectories: (1) segmentation at work as a product of legal rules and institutions beyond labour law: tax and family law, corporation law and regimes of private law, also monetary, fiscal and trade policy, along with the management of social and economic crises. (2) Across jurisdictions, segmentation is traceable to the unpaid work obligations historically borne by women. Workplace segmentation may be linked to forms of labour that we neither recognise nor count *as* work. (3) A full picture of legal segmentation requires that the aims and objectives of international organisations other than the ILO be located on the map. Financial, economic and development institutions, for example, now routinely weigh in on matters of social as well as economic governance—thus equally producing legal segmentation.

We do not perceive a conflict between our focus on employment law and these extended lines of research necessarily connected with legal segmentation. On the contrary, we see a complementary relationship between the two. The intention was to prepare the ground for an analysis of legal segmentation in the labour laws of nearly all countries of the world by providing the coded standard-setting, privileging and equalising employment norms worldwide and over time as a prerequisite for (further)

analysis of the extent to which and why employment law has systemically implied both inclusive and exclusive components. Moreover, we wanted to support a discussion on what is needed to further develop employment law in a manner which might lead to social justice in the sphere of work regulation. Hence, the gender- or race-segmenting implications of existing positive employment laws have to be first made visible, particularly where indirect legal segmentation is concerned. Only then we can contextualise them in other legal, normative and social areas. Even if we start the analysis elsewhere (e.g. in gender studies, development theory, colonial and postcolonial studies), at a certain point we shall have to end up, among other things, at the positive employment laws and their radical adaption towards not segmenting, but rather egalitarian dispositives. That is what we learnt from the two last chapters and hoped to learn when we invited their authors to partake in our reflection on legal segmentation.

In the light of all these considerations and relativisations, we are convinced that the legal segmentation approach—with its both conceptual and methodological novelty—has proved its merits via a first series of scientific tests. This is why we feel happy to be able to present it in this book.

One subject affected by the book, but not addressed in its chapters, stems from the very approach, even the notion, of legal segmentation. The respective findings are in obvious contrast to official policy and law documents of the United Nations (UN) and/or the ILO, with an overall integrative ‘universalist’ claim. How, then, is segmenting law perceived and dealt with, within the affected territories and populations, within the norm-setting international organisations and within the epistemic communities dealing with these normative phenomena? We shall end by offering an outline of our legal-political reflection on these questions, knowing that this was not our proper field of research.

3 POLITICAL IMPLICATIONS OF THE LEGAL SEGMENTATION-APPROACH

The contributions to this volume demonstrate that social progress was triggered by the increasing and global diffusion of labour standards in nearly all countries of the world. They also indicate, however, that protection has hitherto remained segmented in that protecting labour standards—although very differently, directly or indirectly, fully or partly—exclude large proportions of the population, be it from their

coverage, or by limiting generosity. Currently, the labour standards of most territories impose a split between the better-off insiders who enjoy legal advantages and the worse-off who are still outsiders. This split is obviously associated with segregated labour markets, deficient care provision and unequal employment conditions for men and women, on the one hand, and with racial divisions, often with a colonial background, on the other.

These often mutually reinforcing forms of gender- and race-segmenting employment law contradict the spirit of fundamental international norms like those in the ILO Constitution (Preamble) and the Declaration of Philadelphia (section II a), human rights norms against gender¹ and racial discrimination,² and further specific anti-discrimination instruments of the UN, ILO and regional organisations. These international legal principles are intended to prohibit the unequal coverage and/or unequal generosity of legal treatment both between men and women and between people of different colour, in all countries of the world. By banning all forms of discrimination they imply regulatory universalism (Maupain, 2013, pp. 8–11). Their effective translation into national and regional regulatory frameworks, though, is evidently deficient.

Overcoming legal segmentation obviously requires radical reforms in both the fields and instruments of labour policies as well as new horizons to be achieved in work-related law (cf. the contributions in Mückenberger & Dingeldey, 2022a). There is no way to avoid a universalist perspective containing and abolishing the segmentative components of not only current employment regulation worldwide, but also of other areas of law (tax law, family law, housing law and social insurance law) and of social policies supporting these segmenting outcomes. But, as e.g. Fechner (Chap. 6) shows, the abolition of discriminating legal institutions accompanied with formal equality before the law is not sufficient to eradicate the effects of legal segmentation if extra-legal structures and behavioural path dependencies uphold inequalities that have been legally developed. Examples are gender roles, racial discrimination, etc.

¹International Covenant on Civil and Political Rights (ICCPR) Art. 26, International Covenant on Economic, Social, and Cultural Rights (ICESCR) Art. 2 II, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

²ICCPR, ICESCR, International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

3.1 *A Case for Transnational Rights of Citizenship*

The battle against the exclusion of working people from employment rights through informality of economies and work, against the *de jure* and *de facto* disadvantages of ‘atypical work’, encounters resistance. This is true not only in less-developed economies, but also in developed ones which generally provide for state standard-setting and standard-enforcing in favour of the weaker parties on the labour market (Mundlak & Rittich, 2015). Moreover, such resistance gains superior strength when economies become transnational, thus transcending the jurisdiction of nation-states and fostering enormous asymmetries of power between working people and employing organisations. Since there is no powerful worldwide supra-national welfare agency and since there will not be in the near future, we are condemned to live with a competition-driven collaboration between poor or failing states and powerful transnational employers, at the cost of the weak parties on the labour markets (Hepple, 2005, 9 ff.). Under such conditions, the objectives both to achieve generous employment rules with high coverage and to render these rules effective require changing the modes and instruments for norm-building and norm-enforcement.

Theoretically, this development can build on the, though fundamentally widened, concept of citizenship as outlined by T. H. Marshall (1950; see analysis in Mückenberger, 2015, p. 8 ff.). According to Marshall, citizenship expresses a universalist and egalitarian status “in terms of legal rights to which all men are entitled” (p. 76). Three historical layers of rights are associated with citizenship: civil rights (mainly eighteenth century) including property, freedom, freedom of contract, etc.; political rights (mainly nineteenth century) with universal suffrage, participation in the exercise of political power; and social rights (mainly twentieth century) including rights to economic welfare and security and “a universal right to real income which is not proportionate to the market value of the claimant” (p. 106). Social rights only emerged through what Marshall calls “industrial citizenship” (p. 104): Democratic reforms legalised workers’ collectives, allowing them to act in the market as coalitions and conclude collective agreements which brought social progress.

Obviously, Marshall’s approach is a national and therefore a state-centred one. However, it also highlights the relevance of workers’ political collective representation via free elections and the organisation of labour parties, as well as the rights to organise in free trade unions in order to represent their interests in the political sphere and in the collective

bargaining arena. Moreover, on the level of the enterprise, the regulation of works councils or other forms of employees' representation is indispensable to effectively implementing labour law and collective agreements—in order to not only rely on labour inspection provided by the state. A challenge for twenty-first century citizenship policy in transnationalised economies and labour relations is to both fundamentally widen Marshall's concept of citizens' rights and to extend their origin and effectiveness beyond the nation-state.

Research has highlighted coalitions of private actors acting transnationally in favour of the weaker parties (Blackett & Trebilcock, 2015; Hepple, 2005; Keck & Sikkink, 1998; Mückenberger, 2010; Pries, 2019; Trubek et al., 2000). These coalitions can comprise international trade unions, international non-governmental organisations (INGOs), advocacy networks or epistemic communities; they can act with or without states and International Organisations (IOs), with or without multinational corporations. Frequently, their presence and their collaboration are the only way to facilitate the emergence, the gaining ground and the effectiveness of work-related standards for commodified or non-commodified labour, with equality-oriented coverage and high generosity as relevant elements of social policy (Hepple, 2005, p. 78 and 93 ff.). This is of major importance, as work standards are reference points for social security systems that are also being introduced in emerging economies of the GS (Leisering, 2023; Patel et al., 2023). Hence, Marshall's insight that collective interest representation and their coalition with other powerful social actors are prerequisites for *"the universal right to real income which is not proportionate to the market value"* (p. 106) is topically paramount and a still promising means for understanding, explaining and widening the worldwide development of social rights.

3.2 *Strengthening Employment-Decoupled Rights in the Work Area*

Moreover, work-related social policy protection can no longer be coupled only with commodified work, with a formal employee or worker status, with the adherence to the formal economy—if it ever could. Especially in the GS, the universal human right to work under just and favourable

working conditions paired with social security³ has so far remained an unfulfilled promise of modernisation theory (Ashiagbor, 2019; Breman et al., 2019; Filali Meknassi, 2010; Munck, 2019; Teklè, 2010). To concretise this general point of departure is certainly a far-reaching and sophisticated enterprise. It has to consider not only the various arenas of labour regulation (Pries, Chap. 10), but also the fields of legal policy which, though having an impact on labour relations, are not regarded as fields of labour, let alone employment policies (family, tax, housing, infrastructure, etc. laws and policies—see Rittich, Chap. 11).

This is why the conclusions of our research have to imply—besides measures to ‘de-segment’ employment law—challenges lying beyond employment and beyond regulation. For example, data suitable for adequately assessing legal segmentation and the legal and practical fields they stem from have to be prepared and made available. This includes data about both the direct and indirect practical impact of regulation on segmentation and the implementation/enforcement of regulation in the different regions of the world. Another important challenge is to raise awareness among experts and stakeholders for the phenomenon of legal segmentation, its overall impact, its historical and current foundations. This implies creating spaces, fora and laboratories to discuss, exchange good and bad practices, develop methodological approaches and tools to discover and to fight forms of and reasons for legal segmentation.

It is necessary to shape employment law in such a manner that it does not continue to systemically reproduce the inequalities inherent and even constitutive for legal segmentation.

- This implies pushing back the legal instruments that ‘produce’ and expand legal segmentation. The worldwide expansion of privileging norms, let alone the SER, into areas of the world where they only produce detrimental results, due to the predominance of informal and precarious labour relations, cannot be maintained.
- A key role in legal segmentation in the field of labour is played by the category of ‘employee’. This is the gatekeeper of labour-related, not only labour law, but also social security law. It only ‘includes’ those working activities and persons for coverage who qualify. It thus ‘excludes’ all forms of non-commodified labour, informal work,

³Articles 6 and 7 and 9 of the International Covenant on Economic, Social and Cultural Rights.

large parts of precarious work. It is true that the category of ‘worker’—as compared with the category of ‘employee’—broadens the scope of application of social norms, but still excludes, particular in the GS, the majority of working people needing protection. This equally affects social protection beyond labour law (Leisering, 2023). It is high time to open the scope of application of social protection to those groups of persons who perform societally necessary work. One first element—although a recommendation only—is the introduction of universal social protection floors as proposed by ILO Recommendation 202 (2012). Specific instruments on the other hand have to be developed for the specific dangers or problems related to the respective forms of work, be they paid or unpaid.

- Precarious employment, contemporary forms of forced labour, shadow work and other forms of (severe) exploitation gaining ground in both the GS and GN have to be contained and defeated. Many expert reports and proposals exist in this regard (cf. Chen et al., 2020; ILO, 2018). ILO Convention No. 189—the Convention concerning Decent Work for Domestic Workers—has been an important step in this direction for one vulnerable group of workers.
- Other components of existing labour law are also affected by our findings. In many countries of the world, employment contract law exempts small or mediums sized firms from legal protection coverage. Many others provide advantages for employees with a long length of service (‘seniority’, ‘*ancienneté*’) (see Gerlitz & Mückenberger and Mückenberger & Schäfer in this volume). There are many—and good—reasons for these rules. But they, again, systematically link the degree of social protection to the continuity of employment in the formal economy. It can be assumed that this is systematically at the cost of female workers and of black, indigenous and migrant workers in large parts of the world. Here too, alternatives have to be found.
- It is not enough to simply abolish legislation in these areas. Legally established inequalities based on gender, race and similar differentiations have not been erased by merely repealing laws. On the contrary: Working out labour standards, on a national, regional and global level, is required in such a manner that their application leads to self-determined, socially, societally, and ecologically sustainable and adequately protected work for all.

3.3 *Going Beyond Employment Law*

It has already been underlined that changes in existing employment law do not suffice to cope with legal segmentation—and even less with *de facto* labour market segmentation. It is necessary to develop other instruments alongside legal ones to fight the social, economic, political and cultural conditions that ‘produce’ and expand legal segmentation. This includes introducing and enhancing instruments capable of overcoming the effects produced by historical forms of legal segmentation (particularly as produced by colonial powers, see Fechner and Mückenberger & Schäfer in this volume).

Moreover, compliance with and control of legal regulation has to be improved in order to successfully implement new forms of regulation. In the field of work this is not only to be improved by state action, such as an increase in labour inspectors and efficiently working labour courts, but is also dependent on elected works councils (or equivalent institutions for worker self-organisation) to represent the interests of employees in the enterprise as well as free trade unions or other civil society organisations to represent all workers’ (also self-employed workers like in the case of the ‘Self-Employed Womens’ Association’ <SEWA> in India) interests not only vis-a-vis employers, but also in the public and political sphere.

Since publication of the first Ruggie report on business and human rights (Ruggie, 2008), it has been clear that securing workers’ rights on the national level is not sufficient if global value chains and transnational corporations often use gaps in workers’ protection and avoid contributing to social security systems. The human rights-related ‘protect, respect and remedy’ framework needs to be filled with normative life, including supply chain regulation that guarantees effective remedies to victims of abusive practices throughout the supply chains. Nonetheless, supply chain legislation should refrain from repeating colonial practices of legislating for the GS without effective participation of peoples and governments from the GS (Lichuma, 2021). This also includes the support of free trade unions and elected workers’ representation on firm level or other civil society organisations to secure compliance surveillance (see above).

We furthermore have to consider models of social protection transgressing the field of labour law. Just to name some examples: The system of ‘microcredits’ allows (often female) workers in the informal sector to set up production units with access to markets, thus facilitating access to resources combined with an autonomous work order (Yunus, 2017). This

can be successful if it is embedded in wider sets of cultural, social and economic empowerment (Aguilar-Pinto et al., 2017). Another example is the triangle agreement between the Cambodian textile industry, the ILO and the United States (Hepple, 2005): Cambodian textile entrepreneurs who comply with the ILO's core labour standards (supported by the technical help of the ILO staff) receive a higher share of tax-free access to US textile markets. A third example is to pay poor GS children (often forced to work in order to offer their parents a minimum income) a 'school salary' enabling them and their parents to afford schooling instead of paid work—this measure could be based on Art. 7 of the ILO Convention 182 'Worst Forms of Child Labour' (1999).

These examples presuppose a responsibility of the GN for improving working life in the GS—a responsibility which goes beyond the cooperation in IOs like the ILO. Moreover, they also presuppose an understanding of 'development' and 'development aid' which does not consist in norm-setting only (prohibition of child labour, of forced work, etc.), but rather in measures which contribute to fostering self-help among working people. Such responsibility stems from the fact that colonialism and the ongoing exploitation of the GS countries by multinational companies controlled by GN countries have led to an extremely skewed distribution of wealth and poverty that requires political and economic compensation. The rationale for this compensation is built into Art. I lit. c of the Declaration of Philadelphia: "Poverty anywhere constitutes a danger to prosperity everywhere."

We introduced these final considerations with the proviso of outlining legal-political reflections while being fully aware that this was not our proper field of research. We regard the lines we identified as parameters for further research—research not remaining restricted to descriptive empirical work on legal regulation or changes in labour and social policy, but rather equally daring to study the feasibility of normative intuitions and concepts capable of overcoming legal and also *de facto* labour market segmentation. Taking the Declaration of Philadelphia seriously implies a radical research agenda.

REFERENCES

- Aguilar-Pinto, E. C., Tuñón-Pablos, E., Zapata-Martelo, E., & Evangelista-García, A. A. (2017). Women, empowerment and microcredit: Banmujer's social microenterprise program in Chiapas. *Agricultura, Sociedad Y Desarrollo*, 14(3), 479–501.
- Ashiagbor, D. (2019). Introduction: Narratives of informality and development. In D. Ashiagbor (Ed.), *Re-imagining labour law for development: Informal work in the global North and South* (pp. 1–18). Hart.
- Blackett, A., & Trebilcock, A. (2015). Conceptualizing transnational labour law. In A. Blackett & A. Trebilcock (Eds.), *Research handbooks in international law. Research handbook on transnational labour law* (pp. 3–31). Edward Elgar Publishing.
- Breman, J., Harris, K., Lee, C. K., & van der Linden, M. (2019). Postscript: The social question in its global incarnation. In J. Breman, K. Harris, C. K. Lee, & M. van der Linden (Eds.), *The social question in the twenty-first century: A global view* (pp. 244–250). University of California Press.
- Chen, M., Carré, F., & Roeber, S. (2020). Conclusion. In M. Chen & F. Carré (Eds.), *The informal economy revisited: Examining the past, envisioning the future* (pp. 257–268). Routledge.
- Dingeldey, I., Grimshaw, D., & Schulten, T. (2021). *Minimum wage regimes: Statutory regulation, collective bargaining and adequate levels*. Routledge.
- Filali Meknassi, R. (2010). The effectiveness of labour law and decent work aspirations in the developing countries. In T. Teklè (Ed.), *Labour law and worker protection in the developing countries* (pp. 51–91). Hart Publ.
- Hepple, B. (2005). *Labour laws and global trade*. Hart Publishing.
- ILO. (2018). *Ending forced labour by 2030: A review of policies and programmes*. ILO.
- Keck, M. E., & Sikkink, K. (1998). *Activists beyond borders: Advocacy networks in international politics* (Vol. 1998). Cornell University Press.
- Leisering, L. (2023). The state of social protection around the world. In L. Patel, S. Plagerson, & I. Chinyoka (Eds.), *Edgar handbooks in social policy and welfare. Handbook on social protection and social development in the global South* (pp. 64–96). Edward Elgar Publishing.
- de Leonardis, O. (2022). Quantifying inequality: From contentious politics to the dream of an indifferent power. In A. Mennicken & R. Salais (Eds.), *The new politics of numbers: Utopia, evidence and democracy* (pp. 135–166). Palgrave Macmillan.
- Lichuma, C. O. (2021). (Laws) made in the 'First World': A TWAIL critique of the use of domestic legislation to extraterritorially regulate global value chains. *Zeitschrift Für Ausländisches Öffentliches Recht Und Völkerrecht / Heidelberg Journal of International Law*, 81(2), 497–532.

- Marshall, T. H. (1950). *Citizenship and social class and other essays* (Vol. 45). Cambridge University Press.
- Maupain, F. (2013). *The future of the international labour organization in the global economy*. Hart.
- Mückenberger, U. (2010). Civilising globalism: Transnational norm-building networks as a lever of the emerging global legal order? *Transnational Legal Theory*, 1(4), 523–573.
- Mückenberger, U. (2015). Non-state actors within the dynamics of hybrid global labour law. *International Journal of Business Governance and Ethics*, 10(3), 248–263.
- Mückenberger, U., & Dingeldey, I. (2022a). Introduction: Worldwide patterns of legal segmentation in employment law. *International Labour Review*, 161(4), 511–534.
- Mückenberger, U., & Dingeldey, I. (Eds.). (2022b). *Overcoming Legal Segmentation: Extending Legal Rules to All Workers? Special Issue: International Labour Review No. 3*. ILO.
- Munck, R. (2019). The labor question and dependent capitalism: The case of Latin America. In J. Breman, K. Harris, C. K. Lee, & M. van der Linden (Eds.), *The social question in the twenty-first century: A global view* (pp. 116–133). University of California Press.
- Mundlak, G., & Rittich, K. (2015). The challenge to comparative labor law in a globalized era. In M. W. Finkin & G. Mundlak (Eds.), *Research handbooks in comparative law. Comparative labor law* (pp. 80–113). Edward Elgar Publishing.
- Nullmeier, F., González de Reufels, D., & Obinger, H. (Eds.). (2022). *International impacts of social policy: Short histories in a global perspective*. Palgrave Macmillan.
- Patel, L., Plagerson, S., & Chinyoka, I. (Eds.). (2023). *Edgar handbooks in social policy and welfare. Handbook on social protection and social development in the global South*. Edward Elgar Publishing.
- Pries, L. (2019). *Erwerbsregulierung in einer globalisierten Welt. Theoretische Konzepte und empirische Tendenzen der Regulierung von Arbeit und Beschäftigung in der Transnationalisierung* (3rd ed.). VS Verlag für Sozialwissenschaften.
- Ruggie, J. (2008). *Protect, respect and remedy: A framework for business and human rights: Report of the special representative of the secretary-general on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*. UN-Doc A/HRC/8/5. UN HRC.
- Teklè, T. (Ed.). (2010). *Labour law and worker protection in the developing countries*. Hart Publishing.
- Trubek, D. M., Mosher, J., & Rothstein, J. S. (2000). Transnationalism in the regulation of labor relations: International regimes and transnational advocacy networks. *Law & Social Inquiry*, 25(04), 1187–1211.
- Yunus, M. (2017). *A world of three zeroes: The new economics of zero poverty, zero unemployment, and zero carbon emissions*. Scribe Publications.

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