

Normative structures of pre-industrial wage labour

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Introduction

Recent historical research suggests that forms of wage labour have been more prominent in the early socio-economic development of parts of Western Europe than has been assumed before. Kuijpers, for instance, in her paper estimates that at the 16th century countryside of Holland about half of the labour consisted of wage labour. In England the situation seems to have been much the same (Dyer 2005, 220). We further know that even in much earlier stages of development forms of ‘working for wages’ have been present.

Social relations, in these cases between ‘principals’ who want the work get done and workers who want to get paid, tend to be normatively structured, in one way or the other. Can we thus, retrospectively, infer the existence of ‘pre-industrial labour contracts’? On the one hand we know that as from the 13th century written contracts have been made about exchanges between duties to be performed, and remuneration for performance (Bean 1989). On the other hand, on ‘working for wages’ only few contracts have been found, and in some areas substantial public regulation of these relations started only in the 16th century or later, at a stage of development when they must have been prominent already for some time.

In this paper, I go into some of the problems of adequately analyzing the way these early forms of working for wages have been conceived and normatively structured by contemporaries. My aim is to contribute to making way for a comparative analysis of forms of pre-industrial wage labour that does not erase this normative component. I cannot circumvent starting with some conceptual notes. I argue, second, for a non-reductionist conception of the normative dimension of labour relations and hope to make a convincing case for the importance of legal notions in the structuring of these relations. Third, I propose a typology of working relations on the basis of five dimensions and I finally try to structure the contents of regulation into a typology of issues.

1 Conceptual issues

Although the concept of ‘pre-industrial labour contract’ is nice shorthand for what we are aiming at, we should not be carried away by it. Both elements of the concept are anachronistic in so far as they refer to (socio-economic / legal) developments that have given them their full significance only much later.

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What kind of 'labour' is a 'labour contract' about? A general concept of '**labour**' in its present meaning has only gradually emerged in the course of a process of differentiation, in which certain activities are put together under specific viewpoints, thereby excluding other activities from the notion of 'labour'. At least from the sixteenth century, in written sources the traditional view of labour as manual work associated with toil, curse and hardship gradually made way for a conception that did not do away with hardship, but saw labour also as an important way of human self-realization.¹ In the public sphere this transformation ushered firstly in a negative way: in the public condemnation and prohibition of forms of idleness², and only in the late eighteenth century in positively valued concept of gainful, market-related work.

The notion of 'wage labour' is often used as a very generalizing category, apparently only meaning that people get paid by others for the work they do, whether by task rates, piece rates or by the day, week or half year. It abstracts from the rather different institutional structures into which labour relations used to be embedded. The positions of a journeyman in an urban guild, of an in-house servant at the agricultural countryside, of an East India Company's sailorman or that of a day labourer who daily offers himself at an Amsterdam bridge, seem to me to differ considerably, although they can technically all be said to 'offer wage labour'. These institutional differences should be kept in mind, particularly in case one should be tempted to associate 'wage labour' with the existence of 'labour markets'.³ It is questionable to what extent it would be correct to talk of 'markets' in an economic sense: recruitment may to some extent have been free (though probably not in the countryside), but the terms and conditions of work including payment rates seem to have been defined to a large extent by other institutional frameworks than markets.

Commodification of labour took place under very different conditions, and usually long before industrialization. At that stage, market-related labour was not seldom performed besides other gainful activities, in particular agricultural work of peasants-smallholders.

As to the other element, '**contract**', we have a comparable problem. It is hardly possible to retrospectively project our current concept on medieval and early-modern relations. At the same time elements of the current notion, like 'free' commitment for a restricted time and reciprocity are clearly to be recognized as part of arrangements under corporative institutional structures. Conceptually this combination of resemblances and differences tends to be accounted for by using a simplified distinction between 'status contract' and 'market contract', under the first type of which one would only have consented to entering into an institutionally predefined relation.

One reason why this distinction does not suffice, is that it insufficiently distinguishes between types of institutional embedding, for instance between doing service in an agricultural setting and being a craftsman in a medieval city. In both cases there are sets of predefined reciprocal duties to which one submits by agreeing to enter into a position, but the craftsman thereby enters into membership of a to a certain degree self-steering community, while the servant submits to the authority of the master. In the city, work was neither differentiated from the formal position as citizen nor from the social position of craft membership in the city. Nowadays, it is often said that work has gained so much in importance for the self-

¹ Cf. C. Lis & H. Soly, in: Kocka & Offe (2000).

² According to Huizinga, p. 184, it has for the first time been at the end of the 14th century that an English poet praises the 'holiness of labour' and sets it off against practices of *validi mendicantes* (able-bodied beggars). Dyer (2005, 213) notes that as from the 12th century writers sometimes depict God as a craftsman.

³ Knotter (2001, 142) criticizes Macfarlane for presupposing the functioning of complex markets from the mere existence of wage labour.

definition and personal identification of individuals. If one compares medieval cities with current times, this would, however, not be generally correct; as to part of the work one would rather have to say that it is the former connection with other elements (religion, corporate standing) that has been lost.

Biernacki even challenges the connection between contract and reciprocity: in 17th century England contract would have been understood primarily in a biblical sense of having committed oneself and thus being accountable before God, or of having to fear from loss of public repute in case of non-performance, rather than in terms of reciprocal deliveries of private partners.⁴ Others too note that 'contract' has been one of those ritual devices that transformed commitment into socially recognized duty, in a way that both effected a change in the legal and social identity of the committer and functioned socially as a communicative device. By entering into a 'status contract' one operated a change of *habitus*, one 'lets another spirit move into oneself'.⁵ "The actor may not have been free to change anything in the 'script', but in the act of performing the ritual there was awareness of choice and of transformations occurring in the wake of the ritual engagement. The ritually taken liability and duty was an action of self-limitation and self-restraint." (Petkov 2003, 331).

It is in particular the lowest echelons of workers, according to Castel (1995) a stable ten percent of the (French) working population, that has been first confronted with the idea of a 'contractual' relation as to dependent work. Traditionally, higher service work professionals are keeping up the appearance of independency by the notion of *honorarium*, originally an explicitly non-contractual recompense for services rendered, only later to be subjected to fixed tariffs. Contract was a notion mainly applied to task or piece work by artisans and craftsmen. In the lowest region of the market the notion of service, of making a man's labour power available to someone who thereby takes the position of lordship over that power, was being fused with that of 'contract'. Interestingly, this model 'of low origin' has subsequently spread over higher echelons and finally become dominant in the 20th century western labour markets.

It may be, however, that this is in part a too individualistic account of its origins. Several reports mention small bands of workers, brought together by a local, or otherwise to these men familiar leader/broker who makes them work, cashes the payment from the principal and divides it between 'his' men (examples: army, construction, public utility works).

So while we should be careful in, and probably try to avoid using the term 'contract', it seems less problematic to talk of the normative structuring of labour relations, provided that we conceive of 'labour' and 'normative structure' in a wide sense and avoid modern connotations. The main question underlying a project on 'pre-industrial labour contracts' can then be formulated as follows:

In what ways have terminable relations concerned with performing labour in exchange for wages been normatively structured in Europe, as from the High Middle Ages until the Industrial Revolution ?

In the next paragraphs, a closer look is taken at four elements of this question (relations, terminable, performing labour, wages).

⁴ R. Biernacki, recording of a lecture at his website.

⁵ Weber (1976, 401): "eine andere 'Seele' in sich einziehen lassen". Weber notes that legal orders typically distinguish themselves by what they make 'contract' available for, in history typically for those areas where it has now disappeared or been reduced to a minimal role (public law, legal procedure, family law).

1.1 'relations'

One of the most prominent reasons to normatively structure - and in certain conditions: to formalize - labour relations, is the need for *temporal stabilization* of the relationship. Adopting, for a moment, our current individualistic mode of treating these issues, one might explain this need as follows: if the worker knows he gets paid at the end of the day, and the principal knows he can withhold payment if the worker does not do what he is required to do, then there is hardly reason to formalize their respective duties of today, or, as economics would say: the transaction costs of formalizing do not weigh up against the expected costs of non-performance. But as soon as a project lasts for some time and profits from increased experience and skills of a worker who somehow invests in acquiring them, tomorrow's and next week's duties may require some temporal stabilization, so as to confirm each one's commitment to his own, and legitimate expectation of the other's performance for a certain amount of time.

Commonly this stabilization implies some kind of formalization, a symbolic act which serves to give the commitment a public character, or, at least, to involve some kind of 'third party' who can act as a guarantor. Religious models (commitment by oath) and different forms of association have, in the history of labour relations, played a much more important role in generating this commitment than our current, 'contractualized' perception is ready to allow for.⁶

1.2 'terminable'

An essential element of these relations is that they are either entered into for a period fixed in advance, or, if for an indeterminate period, can be terminated one-sidedly, though *not* that they should be *freely* terminable to each of the parties. Relations constituted by being born into a family or territorial domain, and implying the performance of labour, are thus not within the scope of our definition. It should be noted, however, that types of relations of which the termination is normatively impossible, nevertheless are being terminated one-sidedly, and *vice versa*.⁷ The extent to which one-sided termination is actually possible, partly determines the level of interdependency between 'parties' and, thereby, notions of their mutual (conventional) rights and duties.⁸

It may also be worth while to point here to some – historically far from self-evident – presuppositions that underlie this possibility of one-sided termination. The ability of workers to engage themselves in a terminable relation normally presupposes that a number of legal preconditions, in particular as to citizenship and the power to commit and engage oneself, have been fulfilled:

(a) a negative precondition is that the worker should, at the moment of engagement, not be bound by other commitments (f.i. those based on the status of 'being born into', in the Middle Ages compensated for by the institutional arrangement known by the slogan that 'city air makes one free')⁹;

⁶ Cf. a.o. Oexle (2001) and Truant (1994). Our common notion that a given word should be kept (in legal terms known as the principle of *pacta sunt servanda*) is itself a comparatively late social achievement, accomplished by the 13th century reception of a rule of canonical law as a common legal duty, and foreign to most other legal cultures (Berman 1983).

⁷ Prakash (1996) analyzed the relation between *malik* and *kamia* in India: up to the mid 19th century a relation of patronage, binding workers to land-owners for their entire life, has been reconstructed by British colonial rule as a debt-bondage, legally – but actually: not – terminable.

⁸ Already Weber (1976 [1921], 583) has analyzed the quasi 'natural' development of claims to reciprocity as from situations of formally hierarchical relations.

⁹ A common rule is that whoever has actually withdrawn himself from the authority of his lord by staying in the city for one year and one day, is free. Among many other examples f.i. ordered in Ghent in 1185, cf. *Recht en*

(b) the worker should, as a citizen, be attributed the legally acknowledged power to dispose of his/her own working capacities (except in case of minority: parents commit sons as pupils to guild masters);

(c) the worker should be able to dispose of the institutionalized option of a symbolic act of entering into a labour relation, of committing himself in such a way that socially respected mutual claims and duties result;

(d) the worker should be provided with an institutionalized power to mobilize sanctions in case the other party does not perform his duties.

The third condition (c) functionally requires a sufficient level of shared meanings about both the formal requirements of such a symbolic act and the consequences of its performance. In the context of the medieval cities, and in a situation of increasing levels of trade and of labour migration, this requirement may not easily be fulfilled. Not surprisingly, in Western Europe symbolic acts of a religious origin seem to have significantly contributed to early forms of legally binding commitments.¹⁰ As to labour relations, the symbolic transfer of some amount at the moment of commitment (in Dutch: “godspenning” (‘God’s penny’)) has been, much more than ‘contract’, an important way of formalization of commitment, which has retained its function way into the 19th century.

1.3 *‘performing labour’*

The relation concerns the performance of labour, but it is, unfortunately, far from self-evident what this exactly means. We might, however, agree about some elements. First, that the relation implies in its normative aspect the commitment of a worker to put his physical or mental capacities into use in such a way that the result will come to the benefit of a principal. Secondly, by implication, the principal is empowered and legitimated to somehow set the conditions of this performance in order to influence the chance that he will profit from its results. Finally, that the worker has a legitimate claim to be remunerated in some form by the principal.

But at the same time, there are a lot of elements we might disagree about. First, what is it that is being transferred by the worker to the principal? Biernacki (1995) has argued that there are fundamental differences in this respect between Britain and Germany, that have far-reaching consequences for the organization of the labour process: in textile industries in Britain, what is being transferred is labour as it is embodied in products delivered to the owner of the plant; in Germany, on the contrary, it is all about transfer of the control over the use of workers’ labour power. One important difference regards the extent of supervision by the owner of the way workers do their job that may legitimately be exerted. Another regards the way of remuneration of working time during which a worker is present and available to do his job, but cannot perform due to defective machinery, lack of raw materials or other ‘external’ circumstances. According to the German ‘logic’, workers should consider themselves to be subordinated to, and ought to be prepared to accept and execute instructions of the owner and his foremen, and should be remunerated for the working time they make available to them, regardless of whether the owner succeeds in making productive use of it. According to British ‘logic’ the owner takes care of the infrastructure, makes available the machinery, allows the workers to add their labour, and pays them, not according to time made available, but on the basis of their output, which is considered to consist of condensed labour.

instellingen in de oude Nederlanden tijdens de Middeleeuwen en de Nieuwe Tijd (liber amicorum Jan Buntinx), Leuven: Univ. Pers Leuven, 1981, p. 84.

¹⁰ F.i. the oath as an act of peace-making (Petkov 2002) or of commitment to the legal order of the medieval city (Oexle). In general: Berman (1983).

So the way that the principal may legitimately set the conditions of workers' performance (the second element above), can differ considerably, the principal categories being control and supervision of the way of performing the job, or defining the requirements the result of the work has to meet.

In the (legal) literature, one of the basic distinctions being made is that between 'employed' and 'self-employed' persons. The latter are supposed to differ principally from the first in that they are deemed to participate independently in economic traffic, bearing the full risk of their own activities. As we can infer from the preceding discussion of what is being transferred, this distinction is not to be made so easily, neither nowadays nor in the past. It is rather diffuse, in respect both of the relations of actual dependency that are being found under the banner of '(self-)employment' and of (the external recognition of) the legal status that workers themselves presume to have.¹¹

Tomlins (1993) notes that the current criterion for employment in the US is that the worker is subjected to the "order, control and direction" of the employer; "a contract to deliver labor for money delivers the employee's assent to serve; assent, that is, that for as long as the relationship continues the employer shall control and direct the disposition of the labor to be delivered". During the main part of the 18th century, however, wage labourers seemed to be absent from US cities; they overwhelmingly consisted of independent artificers. While in 1790 almost everyone was registered as a 'master', nearly a quarter of a century later wage labour had earned a majority. The tendency of lawyers "to construe the broad spectrum of employment relationships using a comprehensive common law discourse of master and servant" had in short time won over the public resistance to conceive labour relations in these terms.¹²

1.4 'wages'

The remuneration for the work done may take several forms, of which the currently usual money wage is only one. It may also consist of part of the harvest or yield, of goods or of services to the worker. We encounter problems of demarcation here as well, for instance if performance of labour is a condition for being allowed to cultivate a field, on the yield of which one has to live.¹³ Although it was a common element of high-medieval relations, can 'protection' still be considered a way of remuneration? Or if the terms of leasehold order that the complete harvest is being delivered to the lord, in exchange for a prefixed payment in money – how is this payment to be distinguished from a wage? It seems to me, at the least, that, if an agricultural worker does not work under control or supervision, and in recompense for the use of the field only transfers goods or money to the land owner, there is no use in talking about 'working for wages'.

The measure of the wage has not always been fixed in advance, but rather, in particular if it was in agriculture paid out at the end of a half year's term, been dependent upon the size of the harvest (and upon conventional notions of its fair division between the parties involved). In crafts and early industries, wage was often measured by piece rather than by working hours. The latter option was dependant upon both the availability of technical means and the development a social time consciousness, and therefore only gradually spread, in the aftermath of the gradual spread of clocks, over medieval Europe.¹⁴

¹¹ Cf. Aerts 2007; Freedland 2006, 5. In the UK both categories have been recently, for legislative-practical reasons, brought together under the concept of 'workers', as used in the National Minimum Wage Act and in the Working Time Regulations of 1998.

¹² Tomlins 1993, 111f, 226-7.

¹³ I borrow this example from Amin & van der Linden (1996).

¹⁴ Dohrn-van Rossum (1992); Elias (2007); Landes ().

2 *Interdependency and the normative dimension of labour relations*

The complexity of labour relations is a result of a process of social differentiation, in which a division of labour has developed. This differentiation process can only develop if certain conditions are fulfilled, in particular if the activities that people used to perform to meet their daily needs, are to a sufficient level being performed by others and can to a sufficient extent as products be bought or otherwise appropriated. The division of labour thus increases levels of interdependency. Curiously, in sociology and history this differentiation process has been predominantly conceived of (organizationally) as the development of an increasingly complex division of activities and tasks or (psycho-socially) as one of multiplying social roles and identities, much less (normatively) as that of an increasingly complex division of competences, responsibilities and liabilities.¹⁵

There are several reasons why relations of interdependency, like labour relations, tend to be normatively structured. One is categorization: the need for those involved to mentally build a coherent representation of the relations that they are involved in. A second is temporal stabilization: the need to arrange for some kind of guarantee that the action of others, that one has become dependant upon, can also tomorrow, next week or in a still farther future be counted upon. Normative notions tend, as soon as they have succeeded in structuring social relations, to 'step back', take off their normative cloth and wait in the wings until they are being called upon. This may explain why law is usually experienced primarily as a *restraint* upon power and freedom, while it is at the same time generating "a relatively unfocused experience of general security." (Cotterrell 1995, 5).

2.1 *Legality*

For reason of exposition, the reasons mentioned above have been formulated in an individualistic way, but they actually refer to social accomplishments. The first of these has been the subject of a long tradition of sociological research, often gathered under the methodologically defined, general term of 'qualitative' studies. Society is then considered to be composed of nothing but relations between people, human individuals are bound to create interpretative frameworks to be able to orient themselves in an otherwise chaotic world, and relations can thus be analyzed as essentially 'socially constructed'.¹⁶ This sociological approach has also been applied in historical research, for instance by Oexle (2001) who uses the concept of 'interpretive schemes' to analyse contemporary views of social structure in the Middle Ages. Although the start of this tradition may in part be attributed to the work of Max Weber, who in the first decades of the 20th century conceived a sociology of law, it has in its later development not paid much attention to legal phenomena - probably because these were already explicit and seen as important anyhow, and the thrust was towards a cartography of hidden conceptual areas.

The second, temporal stabilization, has always been one of the subjects of law (as a practice and a theory) and, in a later development, become part of the interests of sociology. The problem of social order, and more in particular the role of law in mastering it, has been prominent in the early sociology of law, for instance that of Durkheim (1895) and Weber (1976 [1921]), and it still is in the systems theory approach of Luhmann (1997). For a long

¹⁵ Niklas Luhmann, however, developing a theory in which acription of action is a central (legal) category, considers a differentiation of competences to be one of three fundamental elements of social differentiation. Cf Gephart 1993, 108.

¹⁶ Prominent representatives of this stream are Goffman (1967) and Berger & Luckman (1990 [1966]).

time during the 20th century socio-legal research has mainly departed from a “law first” paradigm (Sarat & Kearns 1993), concentrating on the ‘gap’ between (the program of) positive law and (the effects of) its implementation and administration in society. Since the eighties, however, partly under the influence of legal anthropology and of ‘qualitative’ research, a ‘bottom up’ approach of the normative structuring of daily life has gained ground. There is now more room for a pluralistic conception of law, that takes account of the possible social relevance of paratactic, partly conflicting legal or otherwise normative frameworks. The elements of these frameworks are not seen as external and given, but rather as the “emerging” results of practices in social fields, that are subsequently solidified in the structures of these practices. Silbey (2005, 330-2), with a view to their contribution to structured inequality and ‘hegemony’, sketches this perspective as follows:

“transactions become habituated as practices, and transactional advantage becomes stabilized as privilege (...). Over time, transactions are repeated and may become patterned. Patterns may become principled and eventually naturalized (...), hegemony is produced and reproduced in everyday transactions, in which what is experienced as given is often unnoticed, uncontested, and seemingly not open to negotiation. Importantly, the cultural symbols and structures of action become over time so routinized that the distribution of influence and advantage, as well as of burdens and costs, in these transactions are relatively invisible. (...) The law is a durable and powerful human invention because a good part of legality is just this invisible constraint, suffusing and saturating our everyday life. (...) Rather than contested and choreographed in sometimes spectacular but always statistically rare trials, law is powerful, and it rules everyday life because its constructions are uncontroversial and have become normalized and habitual. Law’s mediations have been sedimented throughout the routines of daily living”

In this account of a dynamic conception of a process of “sedimentation” into structure, which at the same time only exists (or changes) thanks to its continuous reproduction (or innovation therein), law is mainly treated as a reflection of power relations, and the process mainly depicted as one of habituation and routinization. I would rather highlight another dynamic element in the process: the fact that before the elements of a relation can be routinized, they have both to be made part of a coherent narrative about this relation and, normally also, to be legitimated. If ‘law’s constructions are uncontroversial’, it is not because they have become invisibly sunken into the concrete of daily routines, but rather they have been put away in a closed tool box, where some of them might be forgotten, but from which they can, in case they would be needed again, be taken back.

When we are considering the normative structuring of labour relations, we will have to open the tool box and pay attention to the hidden pieces of legitimacy of these relations. Whatever type of relations of interdependency we think of, they are always characterized both by an actual division of, and relation between activities and by a normative attribution of duties, responsibilities and legitimate claims to resources and produce. Whether we think of the concepts of leasehold, franchise or employment, the practical and the normative dimension of these relations are always there. Both dimensions are always intertwined and usually strained between them: rather than ‘essentially contested concepts’ they are ‘concepts of essentially contested relationships’. I would argue that we need at least this double dimension to be able to categorize forms of labour relations.

Sociological and historical literature not seldom tends to prefer a one-dimensional view. Like music-listeners who tend to avoid pieces with discordant notes unless they are ‘solved’ within a composition, analysts of social life seem to feel unhappy with a discordance between actual dependency relations and the normative frameworks that are being used to structure, and account for, these relations. Sometimes the ‘solution’ that they reach consists of

disqualifying one dimension, for instance by stating that the actual behaviour of guild members did diverge to such an extent from the guild rules that the rules may be treated as mere ideology.¹⁷ On the contrary, however, even in case of widespread contravention the normative framework may be of decisive importance for daily activities, and concrete actions of guild members may be incomprehensible without taking this framework into consideration.¹⁸

Let one contemporary example suffice to illustrate this point: the fact that in Amsterdam 200 000 bikes a year are stolen, has not significantly affected the widely shared notion that bikes are the property of their owners. The behaviour of bikers would be incomprehensible if one would not be aware of this notion of private property, but it would be also if one would not account for the way these bikers anticipate the possibility that others will not respect it (f.i. both by locking their bikes with eight kilos of iron and by anticipating or evaluating their own lack of anticipation: ‘if you are so foolish, as I have been, to forget to lock your bike, you have first of all yourself to blame for loosing it’).

It rather seems that an adherence to general, abstract principles, that are used to understand and legitimate social relations into which one is involved, commonly coexists with specific experiences that potentially contradict the validity of these principles without, however, affecting them. In their research of ‘legal consciousness’, by interviewing a large number of US citizens Ewick and Silbey (1998) found that “first-hand evidence and experience (...) that might potentially contradict the general truth and values of rationality, accessibility, and objectivity are excluded as idiosyncratic, anecdotal and largely irrelevant. (...) Legality is different and distinct from daily life, yet commonly present (...) within ordinary life and commonplace transactions.”¹⁹ It is precisely this internal complexity of legality, its relative immunity to discordant information *and* its common presence in practical action, that makes it a strong interpretive schema.

We may recall here Weber’s concept of legitimacy, which has been built upon a distinction between a representation of a legitimate order on the one hand, and very different ways in which social action could orient itself to this representation, on the other hand (Knegt 2008). In his analysis too the normative, discursive structure that is seen, unnoticed yet always present in daily (inter)actions, is to a large extent unaffected by the ways (whether supportive, uninterested, cynical or contravening) in which action is being oriented to it. Weber started from a firm belief in the legal categories of his time, but recent studies rather assume (as the citations above may have illustrated) that normative categories “emerge” from social practices, and may subsequently be “principled”. This view of the origin of social (as opposed to legal) norms is consistent with that developed in ‘qualitative’ sociology, in particular in symbolic interactionism. Although as a practice, it can be recognized in several social situations²⁰, it is not always clear how exactly this process of categorization, and of the acceptance of the categories, is supposed to take place. Is it to be considered a matter of spontaneous invention? Of a fruitful new combination of already present parts? Or of copying categories that elsewhere, or in other areas of application have already proven to be fruitful?

Common distinctions between different normative frameworks (traditional, conventional, affectional, legal, etc.) imply that their relative contribution can be different over time. Traditional, or conventional norms appear to have had for a long time more impact on social relations than legal rules. These different frameworks can to a large extent be considered as functional equivalents. The legal framework tends to distinguish itself, however, by a more

¹⁷ F.i. Rosser (1997). Prak (1996) locates the rules in a ‘rhetoric of the guilds’ that he presents as a discourse of inclusion and exclusion; in his account, however, the latter is overexposed in comparison to the former.

¹⁸ Cf. a.o. Sonenscher (1989).

¹⁹ Silbey 2005, 349-50.

²⁰ In research projects in the eighties, I looked into the internal process of developing ‘social norms’ in the administration of several Dutch government schemes (Knegt 1986, 19XX)

methodical and systematic development and use of legal categories. The systematic training of lawyers, that started in 12th century Bologna, the spread of publications of legal sources and of commentaries over Europe in the following centuries and the mobilization of these lawyers by the Church, by princes, by cities and by tradesmen, have contributed to an unprecedented spread of legal models over Europe in the High Middle Ages. If one regards the pattern of adoption of city costumes in the Low Countries and in Germany, or the spread of guild charters over the whole of Western Europe, it seems to compare to the spread of software that we, in our time, have been witnessing during the last twenty years. In a cultural wave of rationalization, during what has been called the early Renaissance of Europe, legal models have been adopted and welcomed as a kind of ‘social software’ that could help giving form and structure to the new optimism of the age. Since then, the process of social differentiation has been greatly furthered by the availability of legal concepts on which accounts of new relations of interdependency could be built.

2.2 *Practical norms of interdependency*

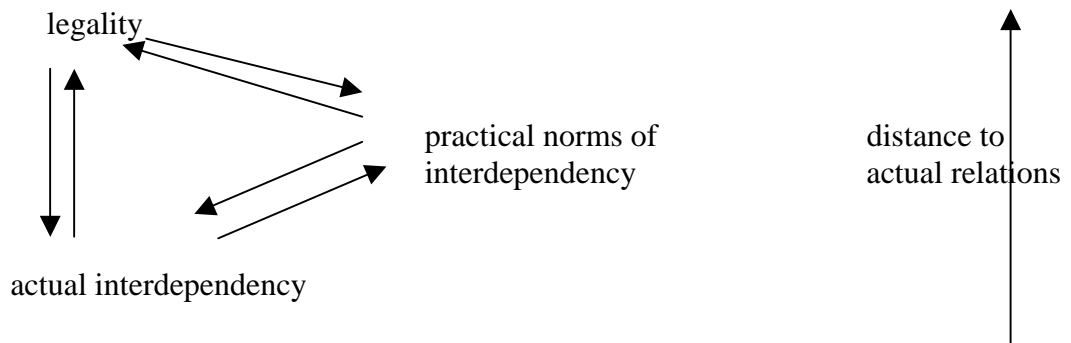
It would not be adequate, however, to leave it at these two dimensions of actual interdependencies and legality. As our bikers example, above, may have suggested, the distance between the factual level of interrelated and interdependent actions (thefts) and the idealized level of normative conceptions of social relations (property) leaves room for an intermediate level of what I would call practical norms of interdependency.

We have noted above that ‘contract’ is probably a very confusing notion if we would retrospectively project our concept of it on earlier relations, even if the same term was then being used to indicate aspects of them. Our current concept, of reciprocal rights and duties agreed to between ‘parties’, may have played a minor role in comparison to a contemporary notion that a commitment should be kept because it had been formally entered into, and that breaking it would entail loss of grace or of public honour. At the same time, however, we encounter lots of instances where the one-sidedness of formally hierarchical relations has had to face actual interdependencies in such a way and to such an extent that norms for their reciprocal behaviour have been developing. A well-known example is the development of hereditary rights in relations that in first instance were bound to a fixed number of years or to the life of the lease- or officeholder. Another example would be the position of serfs in 13th century England, who according to Dyer (2005, 34) had a considerable room to move and have often been better off than their formally free neighbours. Still another example could regard the norms as to the duties of employers in case of sickness of their employees. The norms which develop at this level, are to be distinguished from the level of ‘legality’ in that they are relatively more open to change in reaction to changes in actual dependency relations and less closed to discordant information.²¹

We thus end up with a three-level model as schematically reproduced below:

²¹ Manning (1982, 125) introduced a comparable three-level model of ‘occupational culture’, distinguishing ‘principles’, ‘everyday negotiated bases for work’ and ‘actual work practices’; he considers the second, however, mainly als a ‘translation’ of the first.

Scheme 1: *A three-level model of the normative structuring of working relations:*



To conclude this part of the paper, I argue that working relations can only be adequately understood and categorized by taking account of both the actual interdependencies of tasks and performances and of the normative structuring of the relation of the persons who are involved. The legal dimension of these relations cannot be reduced to something ‘external’ to them; legal concepts are part of “a distinctive manner of imagining the real” (Geertz 1983, 173) that, in part by confronting actual relations of interdependency without submitting to them, structures the practical action of those involved in these relations.

Within this normative structuring one should at least distinguish between a level of ‘legality’, at which normative concepts regarding the institutional embedding of working relationships are made relatively immune to discordant information so as to make a structured social life possible, and a level of ‘practical norms of interdependency’ at which the interaction and tension between legality and actual interdependency leads to norms that are, in first instance, tied to, and only have meaning in the practical context of the working relationship, but may subsequently “be principled” and reach a wider significance.

3 *Normatively structured interdependency with respect to ‘work’*

3.1 *Early forms*

These three levels are to be recognized clearly if we shortly survey some of the early forms of regulated interdependency. *Serfdom*, although formally based on inequality of positions, implied some level of reciprocity that sometimes also expressed itself in regulation. Although the relation between lord and serf was considered to be permanent, both could under certain conditions legitimately bring it to an end. The lord could do so if the serf had killed someone, although he could not thereby withdraw from his liability towards ‘third parties’ for the behaviour of his serf. The serf, on the other hand, could buy himself loose. A synodal decree of 506 already tried to regulate this relation, apparently for reasons of public order, by ordering that no serf be released without a restricted amount of economic means.²²

²² Schmieder 1939, 39.

From the earlier Middle Ages we know several forms of interdependency between owners of land and/or resources and workers that do not consist of remuneration in money and bear a 'feudal' signature. One is that of those who are since the 8th century mentioned as *barscalci* or *mansi*, seasonal agricultural labourers who are bound to work two or three periods of two weeks for mainly clerical landowners, in return for the right to cultivate a piece of land.²³ A peculiar one is the *genitium*, an early form of textile manufactory, in which women, probably daughters of bonded agricultural labourers, worked part of the week for the monastery or worldly lord on whose domain they lived, and part of the week for themselves.²⁴ A form better known is that of the *beneficium*, the fief considered to be a remuneration for fulfilling administrative offices.

In the administration of domains lords were actually dependant upon some of their tenants that could be convinced to hold offices on behalf of the lord, for surveillance or collecting rents. Lords profited from their local knowledge and their persuasive power in relations with neighbours, but had to accept their part-time, sometimes amateurish way of performance (Dyer 2005, 94). Another category is that of the *praebendarii* or *provendarii*, lay artisans living at a clerical domain and receiving a *praebenda* (natural rewards: food, shelter and cloth) during the time of their service.

Already at an early phase we find the short-term engagement of labour, partly as a source of additional income, for poor peasants, or for not necessarily poor ones who had shifted to the less time-consuming dairy farming. Chr. Dyer infers *a contrario* the early (11th century) existence of work for wages in England from the fact that the 'Domesday Book' mentions slaves who are ploughing, but not other workers that we know were there. After the end of slavery in the 12th century economic growth in the 12th and 13th century would have led to a large expansion of wage labour. "Work for wages was a well-established and integral part of the medieval economy, both as it was lived and as it was depicted." (Dyer 2005, 211-3)

The medieval city provided for a large number of offices, mostly to be held for a year, and partly remunerated by payments partly made directly by the city council, partly to be collected from citizens in exchange for services rendered. In German cities the term of the appointment was in some cases considerable longer, for instance ten years. The holder of the office was then bound to terms of notice which could extend to one year or even more.²⁵ States also hired soldiers for their armies and sailors for their fleets.

Within the guilds, masters were allowed to engage journeymen and apprentices, though often only to a fixed maximum number. Formal ways of commitment are mentioned (presentation in gathering of the guild, registration in guild book), but contracts are scarce.²⁶ In particular apprenticeship was in some cases a matter for contracts between a master and the parents of the apprentice. German contracts on apprenticeship are reported to date from as early as the last quarter of the 13th century.²⁷ As work was usually carried out in a household, and the social distance between masters and workers was small (if compared to that in later centuries), there generally was no need for regulation beyond what already was structured conventionally.²⁸

²³ Schmieder 1939, 47.

²⁴ Schmieder 1939, 33 mentions a *genitium* still operated by 40 women in the Elzas in 1288.

²⁵ Schmieder 1939, 90 refers to city doctors who had to notice three to six years beforehand, only in the 15th century shortened to half a year.

²⁶ Schmieder 1939, 134.

²⁷ Schmieder 1939, 113, referring to Rüdiger (1875).

²⁸ According to Dyer (2005, 230) the largest company known from the MA in England, that of the London pewterer Thomas Downton, had hired 18 servants and apprentices.

3.2 Normatively structured types of 'working for wages': history

If we try to systematize the different forms of working relations, to be found in historical literature, that have as a common, formal feature that 'wages', whether in kind or in money, are being paid for the work that is done, the following types may be included. I here exclude those forms in which the remuneration exists in the right to cultivate a piece of land and those in which farmers are rewarded for transfer of the harvest, whether in kind or in money.

3.2.1 Servants

Servants enter a 'household' (that may include a workshop or extend to a domain) for a predefined period of time to work in a setting that is (patriarchally) structured by the authority of the lord.²⁹ They are rewarded in kind (food, shelter, cloth) and/or (partly) in money. They may perform activities of all kinds: agricultural work, household work, crafts work.

The normative structure is based on conventional rules that define and regulate the authority of the lord, who is typically the one to decide about the meaning of these rules in case of conflict. The servant knows that his position is that of a temporary member of the household, subordinated to the lord for the time of his commitment.

The social distance between lord and servant may be small, however, and less restricted to functionality than we might expect.³⁰ This can be explained by the quasi-familial position that servants acquire by entering the household, and by the embedding of the service of many of them in a life-course perspective: it is considered as a usual, transitory stage between childhood and adulthood, an apprenticeship period not seldom passed through, at an earlier stage of his life, by the current lord himself (Kusssmaul 1981; Steinfeld 1991, 27). External regulation of the relation itself (apart from that of entering or ending it) is often restricted to the duties of the lord in case of a servant's sickness and/or to limitations of the lord's power to inflict physical sanctions.

3.2.2 Day labourers

This is a difficult category, for it covers relations that may turn out to be rather divergent. Getting a reward, in kind or in money, for services rendered may, for instance, be an occasional supplement to another type of relation. Medieval knights, for instance, extending the military service to their lord beyond the conventional forty days a year, could receive a daily payment. Peasants could extend their income by spending days left over to performing work for others. Others spent part of the year cultivating their land and another part working for wages elsewhere. Still others, one might say the real 'proletarians', were entirely dependant upon wages; they could be permanently living at a domain or be hired from time to time for a short period.

Usually there is not much external regulation of the relation itself (apart from that of entering or ending it), but there are significant exceptions. In particular in the early *mining industries* in Germany and the Alpine region already in the 13th and 14th century relations developed between the *Gewerken* (nobles and citizens well provided with capital) and miners that remind strongly of those during 19th century industrialization. Mostly migrated from Eastern European regions, entirely dependant upon wages, at a large social and physical distance from their 'employers', working in an accident-prone type of industry, the miners

²⁹ Already in the glosses of the *Sachsenspiegel* a clear distinction is made between 'servant who are proper' ("knechte welche eigen sind") and 'servants who may be free men, but serve us' ("diener, welche dann moegen freie leute sein, ob sie vns gleich dienen") (cited by Klatt 1990, 36).

³⁰ Many lords, for instance, remember their servants in their wills (Dyer 2005, 219).

succeeded, in compelling the *Gewerken* to make arrangements for health care and income replacement in case of sickness and disability (even as early as in the 10th century) and in furthering legal regulation of timely payments in money and of working hours.³¹ Compared to what was common in those times, a remarkable step was made away from a traditional conception of service and the patrimonial rights and duties attached to it (f.i. the requirement of approval of the lord for marriage) and towards a contractual and business-like conception of the working relation.

3.2.3 *Journeyman in the craft guilds*

There is a huge and increasing literature on craft guilds, so I restrict myself to some notes. Journeymen (Dutch ‘gezel’, German ‘Geselle’) were paid wages, by the day or the week; they were (Germany)³² or were not (The Netherlands) members of the guild. Anyhow, their time perspective is usually quite different from that of the *operarius*. The institutional framework of the craft guild, into which one enters as an apprentice, gets incorporated as in a kind of brotherhood with a certain status in the public space of the medieval city, sometimes strengthened by the requirement of swearing the oath and participating in processions, and with the hope of once becoming a master himself, offers a normatively strong model, even if actual practices could, in particular in their later developments, not live up to it.

The context is, however, rather diverse. In German accounts the stress had been laid on the *Geselle* being part of his master’s household, and on the master’s surveillance of his daily behaviour. In other situations, however, journeymen are not part of his household, even are married and live independently. As from the 14th century wage struggles between journeymen and masters are reported which seem to have been rather successful in early days, but tend to harden over time.

3.2.4 *Apprentices in the craft guilds*

Predefined positions, to be taken by sons of craftsmen or others, learning and working, usually only for wages in the last year(s) of apprenticeship. The master promises the parents of the apprentice to teach and protect him, the parents usually pay the master for doing so. In contracts between masters and parents of apprentices the time of in-house service of the young boy was specified (in England at least 7 years, not ending before he had reached the age of 24) as well as the yearly sum of money the parents had to pay to the master for their son’s living and teaching. In some cases apprentices received a wage in the last year of their term. Fines were recorded for the case of early retreat from service by the boy, not for default of the master.³³ The latter may, however, have been subject to conventional rules; apprentices were considered to be part of the master’s household and to be subjected to his patriarchal power. The statutes of guilds at least presented these relations as of a mutual character and did formulate the duties of masters towards apprentices.³⁴

³¹ F.i. health care arrangements and income replacement in Rammelsberg in the 10th century and regulation of wage payments and of working hours in the *Iglauer Bergrecht* (1300); the *Kuttenberger Bergordnung* (1300) ordered a maximum working time of 12 hours, to be interrupted by at least 6 hours of rest (Klatt 1990, 49-50).

³² Klatt 1990, 43; Schmieder 1939, 134: the *Geselle* had to promise to be faithful to the master and to swear an oath on the constitutional rules of the guild at the city hall.

³³ In a contract of 1603: five years, in contracts 1630 and 1642: three years (Poelwijk 2003,106).

³⁴ A formulation of the Scottish Stirling Burgh Records of 1521, f.i.: “to lieir him the said craft efter hus pouar, and to do him in meit, drynk and beddin, as a master aucht to do hus prentes” (geciteerd door Elmar W. Eggerer, ‘Sworn Brethern and Sistern’: *Gilden und Zünfte der Britischen Inseln von der normannischen Eroberung bis zum Jahr 1603*. München: Rammlmeier, 1993, p. 69).

3.2.5 *Labourers in 'new manufactures' (non-guild)*

As from the 16th century some 'new' manufactures developed that were not covered by guild structures. It was not just because they were new (some of them did successfully strive for recognition by the city as a guild) but because they were based on merchant capital, required no training of workers or were located outside of the city walls – or a combination of these factors. Examples are the pottery, glass, paper and textile-bleaching industries.

The new socio-economic structure of these industries also created new categories of wage labour. The example of the bleaching industry may here suffice to illustrate the introduction of three categories of wage workers in this type of industry:

- (a) the *wage boss* (Dutch 'loonbaas'): the manager of the plant, who acts on behalf of the absent master-owner, against a fixed wage, sometimes supplemented by a share in the gains, and free 'board, lodging and fire' in his house at the plant;
- (b) the *bleaching servants* (Dutch 'bleekboden'), mainly seasonal workers coming from the hinterland and hired for an entire season (March – October), lodged at the plant;
- (c) the *seasonal servants* (Dutch 'seizoensboden'), workers only hired for a short (summer) part of the bleaching season.³⁵

The social and physical distance between owners and workers has become here much larger than that in the guilds, even in those guilds that had become relatively closed in that the chance of journeymen to become a master had become futile.

In other 'new' industries like the Amsterdam sugar factories, there was no corporate organization. Contracts with foremen contained provisions about the duration of the contract (two years, to be continued by another two years), about the salaries per year (including in one case a 10 percent bonus for good performance), about the duty to serve one's time and the possibility and conditions of unilateral domination (usually of the master, sometimes of both).³⁶ The tasks to be performed were not specified in the contract and have probably been of common knowledge.

3.2.6 *Home workers ('putting-out system', 'Verlagssystem')*

A comparable distance between owners and workers applies to the situation of home (textile) workers in a 'putting-out system' (or 'Verlagssystem'), who are being provided with raw materials by a principal-merchant capitalist and paid by the piece or amount of produce. This is reported to have been a very widespread way of complementing incomes of peasants, who thus combined working on their own account with working for wages.

Not always is a sharp distinction between 'putting-out' and working within a guild structure to be made. According to Lis & Soly (1994,372) the majority of the weavers in 14^e century Cologne and Florence was, directly or indirectly, working as subcontractors for rich merchant-weavers who controlled all stages of the production process.

3.2.7 *Workers in public service*

In particular the rise of medieval cities substantially increased the number of workers in public offices or in the public service; their number tends to be underestimated (Lucassen 2001, 162). Some of them were directly paid by the city, others had to charge citizens for the services they rendered. They included, among others, inspectors and supervisors charged with the surveillance of all kinds of economic activities in the city.

³⁵ Regtdoorzee Greup-Roldanus (1936), i.p. p. 130f. In the first half of the 17th century a median plant hired 40 maids and 10 servants

³⁶ Poelwijk (2003, 102-6).

3.3 Normatively structured types of ‘working for wages’: labour law

Another source that we may look at for classifications of working relations is legal doctrine and labour law theory. As from the 13th century legal doctrine has treated problems of labour relations in treatises on the combined moral and legal duties of lords and workers. The early Italian lawyers Azo († 1230) and Bartolus (1314-1357) distinguished between:

- (a) *operae obsequiales* (patrimonial duty to faithful service, no wage);
- (b) *operae artificiales* (personal work of craftsmen, for wage);
- (c) *operae fabriles* (non-personal, non-qualified work, for wage) ;
- (d) *operae officiales* (personal service to lord, for remuneration).³⁷

In other sources we find the terms *operarius* (for someone who performs occasional physical labour) and *mercenarius* (a day labourer who lives at the domain), both rewarded in natural or money wages. The notion of *hiring* for the engagement of workers is used early, both in Dutch (‘huren’, ‘zich verhuren’) and in German (‘Miete’, ‘Mietmann’). Typically the commitment to an engagement is formally accomplished by handing over a symbolic coin (*arrha*, *Miettaler*, *Godspenning*, *wijncoopspenning*) or handsel to the worker who accepts it, and knows that by the act of accepting it, he will be bound. Next to this standard model of temporal commitment developed, in the continental mining industry, a written ‘accord wage agreement’ (*Akkordlohnvertrag*), in which specific conditions were laid down, in the presence of the public supervising officer (*Bergmeister*).³⁸

In England the notion of (master and) *servant* has been the dominant legal model, comprising a large and internally differentiated part of the working population. Generally, four categories of those who ‘work for wages’ are mentioned: servants, apprentices, labourers and artificers (Steinfeld 1991, Hay 2000). Jörn Janssen, in his paper for this conference, treats this matter extensively (p. 21f) , so I will refrain here from going into it.

In the Netherlands working relations have generally not received a warm attention from 17th and 18th centuries legal doctrine. Writers seem to be not familiar with the by-laws and usually only reproduce a treatment of some theoretical questions (Bosch 1932, 256-7). Some authors treat service as a patrimonial matter under the heading of family law (Huber 1768), others reproduce the tenets of the *locatio conductio* of Roman law. Among them Hugo de Groot, who in his famous *Inleidinge tot de Hollandse Rechts-Geleerdheid* (‘Introduction to Dutch jurisprudence’) defines *hiring* ‘as an agreement through which someone commits his own service, or that of another man or animal, or the use of any other matter to follow another person, and the other person commits himself to pay a wage’.³⁹ He hardly pays attention to labour services, however, except for the clause that a master who dismisses a servant without good reason, has to pay the full wage (*Inleidinge* III, 19 (13)). Generally, legal doctrine seems to have operated at a large distance from actual working relations: they had to get a systematic place within the doctrine, but the latter has been, before the second half of the 19th century, hardly of any practical relevance.

More recently, ambiguities in the legal qualification of current working relations, and the strategic uses that being made of them by those who try to draw away from legal regulation, have raised a lasting discussion as to the ‘personal scope of labour law’. Employment lawyers have been trying to devise criteria in order to be able to distinguish more clearly between different types. Davies and Freedland (2000, 272-3) distinguish between:

³⁷ Meyer-Maly (1975, 59).

³⁸ Ogris (1967, 288-90).

³⁹ “Huir is een overkoming waer door iemand hem verbind sijn eighen dienst, ofte den dienst eens ander mensches ofte beestes, ofte ’t ghebruick van eenighe andere zaeck, een ander te laten volghen, ende den andere hem wederom verbind tot loon-betalinghe.”; De Groot 1965 [1639], III, 19 (1).

- (a) employees
- (b) employee-like workers, who are not in a position of legal subordination, “usually because of the casual nature of their work relationship with the other party”, but perform their work personally and are highly dependent economically upon one, or few employer(s).
- (c) personal workers, contracting to perform personal service, but running an identifiable business of their own (often called ‘self-employed’ workers);
- (d) non-personal workers, who do not contract to render a personal service but simply to produce a result, whether by themselves or by making use of others.

Their typology of current workers thus basically rests on three criteria:⁴⁰

	subordination to principal:	economic dependency:	personal performance:
‘employee’	yes	yes	yes
‘employee-like’ worker	no	yes	yes
‘personal worker’	no	no	yes
‘non-personal worker’	no	no	no

It is questionable whether this scheme exhausts all possibilities. For example, according to Biernacki (1995) the ‘no – yes – no’-variant would, rather than the ‘employee’ model, be characteristic of British textile workers, for instance because they were allowed to hire others to do their job. In a later adaptation, intended to take some distance from legal qualifications and to take account of empirical work relations too, Freedland (2007, 6) distinguishes between the ‘personal work relations’ of ‘standard employees’, ‘public officials’, ‘liberal professionals’, ‘entrepreneurial workers’, ‘marginal (casual, temporary) workers’ and ‘labour market entrants’ (trainees, apprentices).

Although these typologies have been developed with modern workers in mind, we may try to use some of the criteria to develop an own formal classification of working relations. I would propose a typology that includes five dimensions that are characterized by the following elements:

(1) the *temporal boundaries* of the working relation

The point at issue is: how have the temporal boundaries of the working relation been defined.

Main values are:

- A. The mutual commitment is for an *undefined* period of time (though there is agreement about, or an institutionalized procedure by which one-sided termination (‘notice’) is, under certain conditions, possible);
- B. The mutual commitment is for a *predefined* period of time, at the end of which parties are not legally bound to prolong (but there usually is agreement about the conditions of, or an institutionalized procedure for prolongation);
- C. The commitment lasts until a defined piece of work has been finished; the end terms of the work to be done define the moment at which the relation ends by completion.

⁴⁰ For reason of exposition I temporarily disregard Davies & Friedland’s (2000, 273) note that the economic independency of the ‘personal worker’ is actually far from certain.

(2) the *content* of the work to be done

The point at issue is: how has the content of the work to be done been defined?

Main values are:

- A. Unlimited, or only conventionally limited, personal service
- B. Functionally limited personal service
- C. Well-defined productive activities

(3) the *management* of the work to be done

The point at issue is: how does the principal manage to get from the worker what he wants?

Main values are:

- A. Direct *control* of the way the worker is utilizing his capacities, by ordering and supervision, or by mechanical means;
- B. The tasks to be performed in a certain *function* are defined conventionally, or by explicit agreement; fulfilment of the function is (periodically) evaluated retrospectively;
- C. It is agreed that the *result* of the work will have to meet predefined requirements, which, after completion, are retrospectively used as a standard of evaluation.

(4) *payment* of the worker

The point at issue is: how is the worker recompensed for his work?

Main values are:

- A. The worker is part of the household of the principal and as such is provided with board and lodging and receives no wage;
- B. The worker participates (wholly or partly) in the household of the principal (or in a public governing institution) and as such is provided with board and lodging, and receives an additional recompense (a piece of land to cultivate, a wage or a salary);
- C. The produce is sold at the market by the principal, who in his turn pays the worker in kind or in money;
- D. The produce is directly sold by the worker.

(5) the *legality* of the normative order

The point at issue is: what kind of stable representations of order, relatively immunized against everyday experience, structure the attribution of responsibility and liability, and the distribution of (legitimate claims to) the produce over those participating in the working process?

Main values are:

- A. patrimonial order (domain, lordly household) based on hierarchical representations;
- B. associational, based on representations of a commonwealth of productive units with functionally defined working positions (usually: operating at a *produce* market);
- C. contractual, based on representations of personal property of labour power, to be traded at some form of a *labour* market.

These (5) dimensions and (3 x 3 x 3 x 4 x 3) values, if they would have been completely independent of one another, would have generated 324 different types. As they are not, in fact the range of possibilities is much more restricted (for instance: 1C and 2A logically exclude one another).

In the next table the use of these four dimensions is illustrated by coupling them to types of workers:

<i>temporal</i>	<i>content</i>	<i>manage- ment</i>	<i>payment</i>	<i>legality</i>	<i>type of worker:</i>
A	A	A	A	A	serf
A	A	A	B	A	day labourer at a domain
B	A	A	A	B	apprentice
B	A	A	B	A	servant
A	B	A	C	C	employee
A / B	B	B	B	C	public official
B	B	A	B	B / C	internal day labourer or temp worker, soldier
B	B	A	C	B / C	day labourer, temporary worker
C	C	C	C	C	home worker (piece work)
C	C	C	D	B	artificer, craftsman
C	C	C	D	C	shopkeeper
C	B	C	D	C	service professional

A number of other combinations would be possible. In making the above classification I have tried to take up Ockham's razor and be as restrictive as possible as to the dimensions to be included. Thus I have considered, but rejected, taking up the following additional dimensions: (6) economic dependency (high / low): seems to me largely to be implied in the fourth dimension (payment);

(7) responsibility for the provision of means of production (raw materials, instruments) (rests with principal / shared/ with worker): seems strongly coupled to the third dimension (management) and not to be of central importance for distinguishing types.

It may be useful to find out to what extent this classification may be utilized in the analysis of different working relations. It is quite possible that more, or other values, or more dimensions will have to be introduced to make it an adequate tool of analysis.

4 *Topics of regulation*

The five dimensions, used in the classification above, indicate topics of the labour relations that were analysed, but not necessarily also of *regulation* of those relations. Often traditional or conventional rules seem to suffice for a long time, and legal regulation seems in particular to come up in case of (temporary) conflict over the interpretation or enforcement of some of these conventional rules.⁴¹ I will try to make an inventory of the topics that have been subject to regulation before the 18th century.

The most striking result of such an inventory is that regulation is first of all labour *market* regulation, in that it overwhelmingly covers the *entrance* and the *exit* of labour relations, and only to a modest extent the conditions of the relation itself. Of the five dimensions mentioned above, the first ('temporal boundaries') is thus the one that we most prominently encounter in the regulation of England, Germany and the Low Countries, as reported in the main sources upon which this inventory has been based.⁴² Most of the rules are part of city charters; however, the Frisian Estates already 1671 issue an ordinance

⁴¹ On the question of what leads to regulation, see also Jörn Janssen's ESSHC paper, p. 10.

⁴² Mainly, for England: Hay (2000), Steinfeld (1991); for Germany: Klatt (1990), Schmieder (1939); for the Low Countries: Bosch (1931-32), Kuijpers (ESSHC paper).

regarding ‘all servants and labourers both in the countryside and in the cities’ (Bosch 1932, 58).

4.1 *Entrance*

As to relations of service, whether in the agricultural setting of the countryside or in city households, a significant distinction has to be made between two moments of engagement: that of the formal commitment of a servant to come, and that of his or her actual start of doing service. Usually these two moments are distanced from each other in time, and sometimes to such an extent that we should not be surprised to find servants who, after having committed themselves, for whatever reason change their mind and do not show up at the date due. This problem lies at the basis of several types of rules:

4.1.1 *Defining what constitutes commitment*

In the regulations in the Low Countries several terms are used for the commitment: ‘hire oneself with someone’, ‘promise oneself away’, ‘commit oneself to someone’s service’.⁴³ In the Northern parts as well as in Flanders and Brabant, acceptance of a ‘Godspenning’ (a *handsel*, also called ‘*wijncoopspenning*’) seems to have been common as a symbolic act of legal relevance. Against this use, Dutch towns in the 17th and 18th centuries rule explicitly that such an act is no requirement for a valid commitment (Bosch 1932, 23-5). In some provinces (Utrecht, Overijssel), however, it has been maintained or reintroduced as a requirement, probably to provide for the clarity of commitments (Bosch 1932, 263).

4.1.2 *Non-fulfilment of a commitment*

In the Netherlands, non-fulfilment by a servant of a commitment to serve may be sanctioned in four ways. First of all with a fine (the full or half wage that had been agreed to), to be paid by the servant to the prospective master. Secondly, between 1608 and 1823 prospective masters have been given the power to report unwilling servants to the authorities, upon which servants could be locked in a house of correction; but it is doubtful whether this has been more than an idle threat: there have been found no instances of application of this sanction (Bosch 1932, 29,264).

Thirdly, in a number of city charters it is ordered that unwilling servants could be forcefully led to their prospective masters; at a later stage has been, significantly, added to these texts: ‘if the master appreciates this’. Finally, an unwilling servant may loose, often for half a year, the legal possibility of entering another service in the same town.

If a servant consecutively commits herself to two services, she has to pay damages to the second prospective master. Sometimes the rules provide for some time of consideration: if a servant returns the *Godspenning* within eight days, he will not be bound by his promise to serve. If it is the master who does not fulfill his commitment, he has to pay damages to the prospective servant (the full or half wage agreed to). If the servant does not show up at the agreed moment, the master is no longer bound to his commitment and is allowed to hire another servant.

4.2 *Exit*

4.2.1 *Leaving before completion*

Leaving service before one’s term has been completed, meets tough sanctions in England: since the Statute of Labourers (1348) penal sanctions (imprisonment) are threatened. A

⁴³ “sich by ymande in huyre begeven”, “sich verseechen”, ‘zich verbinden aan iemands dienst’ (Bosch 1932,56).

warrant may be brought out against any servant who has illegitimately stayed away from his work. The same holds for artificers before they have completed the work agreed to (Steinfeld 1991, 22). Generally, English regulation seems to have been, more than elsewhere, directed against the supposed disruptive consequences of a possibly too large mobility of workers.

In the Netherlands, workers were not allowed to leave their work without a valid reason; if a worker ‘walks away from his hire before his time’, the master may hire another one and charge the costs to the absent worker (Bosch 1932, 218, 244). Valid reasons for absence are marriage, getting charged with a duty of custody, sickness of the worker, refusal of food and drink or cruel behaviour by the master.⁴⁴ Marriage seems to have given opportunities for misuse and disappears in the second half of the 18th century from the rules as a valid excuse for absence.

In a number of cases a servant is allowed to leave if she has a reason for displeasure; the master is then allowed to withhold one and a half month of wages, unless the servant credibly argues that she has been mistreated. Apart from the sanctions, already mentioned in the former paragraph, a worker who illegitimately stays away from work may be ordered to leave the city within three days and not to return within the term of hire, or within one year and one day, on penalty of being locked up a month at bread and water and being banned (Bosch 1932, 233-4,238,255).

4.2.2 *Breaking before completion*

If it is the master who sends the servant or worker away before the term has been completed, the consequences depend upon whether he has a legitimate reason to do so. This requirement of a “reasonable cause” can be traced back to early 15th century Prussian legislation (Klatt 1990, 37-8). If he has a legitimate reason, the master does not have to pay out wages; if he does not have, he has to pay a quarter, or half, or even the full wage.⁴⁵ Legitimate reasons mentioned are: mischief, wantonness, disobedience, fornication, theft or drunkenness. It is deemed that a requirement to state the reasons of dismissal immediately would not befit the position of the master, so if ordered to, the servant should immediately leave without protest, and make objections, if she wishes to, only afterwards. The wage to be paid out in this case is restricted to what the servant has earned up to that moment; former regulations that urged the master to pay more than that are reported to have led to misuse, in that servants then provoked their dismissal by consciously misbehaving. In the last quarter of the 17th century in a number of Dutch cities masters were accorded the right to dismiss without having to state reasons, paying only what has been earned up to then; only at the end of the 18th century duties to pay an additional amount are reintroduced (Bosch 1932, 230,235).

In regulations of 1732 we for the first time encounter a probation, introduced for the reason that servants hired themselves out as excellent cooks, but turned out not to have any command of cookery. Within two weeks the service could be ended one-sidedly without payment of wage, except for the handsel that had be given in advance (Bosch 1932, 66). If an early end of service were due to the death of a master, the servant was to receive the full wage plus an additional eighth, quarter of half yearly wage (Bosch 1932, 245-8).

In Baden (Germany), a pregnant servant can only be dismissed if the authorities have given their approval (Klatt 1990, 73).

4.3 *Switching services: regulating the allocation of workers to jobs*

⁴⁴ These conditions are already present in 14th century German legislation (Klatt 1990, 37).

⁴⁵ On this issue Bosch (1932, 224-256) cites charters of twenty cities, most of them dating from the 17th century. Cf. Klatt 1990, 39,94.

A substantial number of rules regard the process, which usually took place once or twice a year, by which services ended and started again, old commitments ended or had to be renewed and new commitments were being made, sometimes referred to as the ‘annual hiring fair’. In the Low Countries, in the course of the 17th century the *dates* of switching services are being fixed and tend to be harmonized across regions, in that for instance the cities of Utrecht and Amersfoort find themselves around 1675 obliged to adapt their switching days to those common in the cities of Holland.⁴⁶ At the countryside of the province of Utrecht the master had to make clear, within eight days as from January 1st or from the second Monday in July, that he intended to renew the commitment; if not, both parties were free to separate and to commit themselves to others.⁴⁷

Probably *terms of notice* were at first based on convention; as from the end of the 15th century we encounter them in German legislation (Klatt 1990, 39). In the Netherlands, as from the 16th century they are being introduced and in the 17th century it is widely accepted that a proper notice is a precondition for one-sided termination. These terms, usually between 6 and 13 weeks, are then always valid requirements for servants, but not always for masters. In England, the “one quarter’s warning” (Steinfeld 1991, 32) testify to a comparable term.⁴⁸ Two trends can be noticed: towards the end of the 18th century the terms tend to get longer, and to be imposed upon workers much more than on masters (see Table A in the Appendix). Without notice being given, service is usually continued once more at the same conditions. In several by-laws the master has been ordered to actually give the servant the opportunity to leave, at the latest at the third day after completion of the service (under threat of recognizance).

In a number of cases, employers are obliged to check, before they hire a servant, whether he or she has correctly completed the term of the former commitment. In case of negligence, they can be fined. Some regulations have tried to introduce a system of characters, and of fines to be imposed on masters who would accept servants lacking them, or who fail to ask their former master about previous behaviour, but it is doubtful to what extent this has actually functioned.⁴⁹

Early in the 17th century we encounter a growing number of rules regarding the activities of intermediaries (Dutch: ‘besteedsters’), apparently because some of them urge or tempt servants to break their current commitments and enter into service elsewhere. They have to register at the town hall, are subjected to the same duty to check for non-completed commitments of the servants they intend to place, and are ordered not to tempt servants - deluding them with higher wages, fair premiums or ‘coffee, tea or other drinks’ – to break their current commitments (Bosch 1932, 39).

4.4 *Conditions of service*

In the Low Countries there are hardly any specific regulations as to the respective duties of servants and masters. They seem to have been, to a sufficient extent, covered by conventional norms. Servants have ‘to fulfill faithfully their service, to the satisfaction of their masters’ and thus to ‘refrain from rebellious, wanton or unfaithful behaviour’, as the court of The Hague once declared in a formulation that has afterwards been repeatedly copied (Bosch 1932, 79).

⁴⁶ May 1st instead of Eastern, and All Saints instead of Victoris (Oct. 10th) (Bosch 1932, 248-252). Schmieder (1939, 133) mentions Eastern (in particular: Eastern Monday after dinner) and Michaelmas (‘Michaelis’, September 29th) as common dates.

⁴⁷ The Monday following Epiphany is also known as ‘Handsel Monday’ (Dutch: “coppermaandag”, ‘copper’ is cognate to ‘coupling’), the day at which yearly commitments are renewed against payment of a handsel (Bosch 1932, 242).

⁴⁸ Other terms have been: 8 or 14 days (Bosch 1932; Schmieder 1939, 149).

⁴⁹ Schmieder 1939, 132; Bosch 1932.

The activities of crafts workers too were primarily covered by conventional rules; guild rules, however, did set standards for the quality of produce.

4.4.1 *Wages*

Neither are there many regulations on wage payments, nor are court cases to be found (Bosch 1932, 67-8). In Germany, often the amount of wage had not been fixed in advance, but had to be determined at the end of service, considering the usual local wage rates and the productivity of the servant (Klatt 1990, 40). Labourers rather were paid by week. In Germany timely payment of wages was a subject of regulation: if, for instance in the mining industry, a master did not pay in time, the court could directly pay out to the worker and charge the master for the amount plus an extra 25 percent (Klatt 1990, 42). In the mining industry too we find early notions of what would constitute a sufficient wage and even of a minimum wage.⁵⁰

Wages may be fixed by government (Steinfeld 1991, 22). Dutch cities in some cases fixed wages for urban labourers. Timely payment of wages was an issue of regulation too, probably because of public order.⁵¹

4.4.2 *Failing to deliver*

What happens if one of the parties is not able to ‘deliver’? In the mining industry, if a master, for whatever reason, does not provide for the preconditions of the work to be done, he is still liable to pay out the full wage. If a worker gets ill, the master has to continue wage payment, unless the worker himself has consciously, or by a ‘debauched manner of life’ caused the illness (Klatt 1990, 68).

In legal doctrine, several positions could be, and have been, argued for the duties of the master in case of illness of the worker. If the concept of *locatio* is rigorously applied, the party who hires out something that turns out to be deficient, is considered to be bearing the risk of the deficiency. On the other hand, the one who hires something, is responsible for its maintenance while it is in his possession. A common rule is that the master should take care of a sick servant for two weeks, sometimes even paying for medical costs, but is allowed, if the servant is still sick, to dismiss after two weeks.

4.5 *Allocating jobs to workers*

In some trades, in particular those of transport in the cities, the allocation of tasks to workers has been an issue for regulation, in which the stakes of the city authorities concern both economic efficiency and public order. In some cases guilds designed their own systems, approved by the city government and regulated to make it also imperative for outsiders.⁵²

4.6 *Compulsory labour clause*

In England, workers lacking a commitment have been obliged to accept any job offer made to them, on penalty of being locked up in the house of correction. In the Netherlands, except for some ordinances in Flanders, this has not been deemed an acceptable way of urging people to get to work.⁵³

4.7 *Procedural rules in case of conflicts*

⁵⁰ Resp. in the *Salzburger Bergordnung* (1532) and in the *Rammelsberger Bergordnung* (1476); Klatt 1990, 64.

⁵¹ Cf. Kuijpers’ paper.

⁵² F.i. the system of the Amsterdam peat carriers guild, set out by Bos 1998, p. 112-127, and the examples mentioned by Kuijpers in her paper for the ESSHC conference.

⁵³ Cf. the paper of Kuijpers for these sessions.

Masters usually are protected from legal actions of servants, in some cases it is ordered that all conflicts between masters and servants be settled without court, by the mayor of the city (Bosch 1932, 72). In case of an action by a master for reason of misbehaviour of the servant, the court has to take the word of the master for it, in spite of whatever the servant declares (Bosch 1932, 75,78,250).

The mining industry has been exceptional at this point too: already in the 14th century, miners (*seniores*) were involved in both regulation and in dispute settlements (Klatt 1990, 75-6). In the Dutch cities, it was in some cases forbidden to workers to refuse a job; either because of the allocation system (see 4.5 above) that intended to provide for an equal distribution of less profitable jobs, or because of the strikes (Dutch 'uutganc' or 'uitgang') that, as from the 14th century, have been organized to enforce higher wages or better work conditions.

5 *Conclusion and discussion*

In this paper, I have brought up some of the problems of adequately analyzing the way early forms of working for wages have been conceived and normatively structured by contemporaries. The notion of 'pre-industrial labour contract' may be misleading if we retrospectively project a current concept of 'contract' or 'employment' on 'pre-industrial' relations. On the one hand, it is clear that these relations were - even if they were formally represented as hierarchically structured relations of unequal power- (conventionally) ruled by notions of reciprocity. On the other hand, the act of commitment and the duties that it entailed, were not a 'contractual' matter between two parties but rather a public matter of honour and devotion.

I have argued, secondly, that the normative dimension of labour relations cannot be reduced to a marginal condition of actual relations and have stressed the importance of legal notions in the structuring of these relations. Actual behaviour in working relations cannot be adequately understood without taking account of the ways these relations are normatively (including legally) structured by 'distinctive ways of imagining the real' (Geertz).

In the typology of working relations that I have proposed, normative representations figure as a fifth dimension. But the other dimensions are pervaded with normative concepts as well. In particular the first three of them deal with limits: as to the time frame (1), content (2) and management (3) of the work to be done. An interesting effect of the increasing use of legal regulation, and of 'contractualization', is that dividing lines as to what is, and what is not a duty are being drawn more clearly. Contracts are usually looked at for what they contain, and much less for what they exclude, what is being thrown away at the other side of the dividing line. A 'negative' approach may clarify differences between conventional and legal ways of regulating working relations.⁵⁴

Finally, at the end of the paper I have tried to structure the contents of regulation into a typology of issues. I am aware that it is far from exhaustive, and in particular passes by a lot of what is known about guild regulations. It further stresses common elements over divergent forms in different economic sectors or countries. But I hope it may be the onset to a further, better structured comparative analysis of forms of pre-industrial wage labour.

⁵⁴ This approach has been applied on recent developments in the Netherlands in Knegt (2008a).

Table A: *Development of terms of notice in by-laws of Dutch cities or regions*
(source: composed from information in Bosch 1931/2)

Terms of notice city / region:	as from:	till:	in weeks, for:	
			employer:	worker:
Utrecht	1550		6	6
Schoonhoven	1557		6	6
Ouwen-Grobbendonk	1587		6	6
Vlissingen	16th cent.			13
Oudewater	1605		8	8
Vianen	1613		6	6
Beemster	1624			13
Overijssel (landrecht)	1630		6	6
Amsterdam	1642	1682		10
Deventer	1642			10
Dordrecht	1643	1774		10
Middelburg	1646		10	10
Zierikzee	before 1664	1664	10	10
Nijmegen	1649			10
Tiel	1659			
Zierikzee	1664	1727		10
Montfoort	1665		6	6
Utrecht	1671		6	6
Friesland	1671		6	6
Delft	1673	1682	8,6	8,6
Alkmaar	1675	1805	13	13
Ijsselstein	1675		6	6
Den Bosch	1675	1764	6	6
Breda	1677		13	13
Amersfoort	1678		6	6
Den Haag	1679			13
Culemborg	1680			10
Utrecht countryside	1681	1780	6	6
Goes	1681	1768	13	13
Amsterdam	1682			13
Delft	1682			8,6
Hoorn	1683			13
Vrije van Sluis	1684			13
Zutphen	1685			13
Enkhuizen	1692			13
Maastricht	1698		6	6
Doesburg	1700		10	10
Groningen	1702		13	13
Leiden	1703			13
Drenthe	1707		13	13
Arkel en Gorichem	1713			13
Rotterdam	1719			13

Zaltbommel	1721	13	13
Bommeler-/Tielerwaard	1721	13	13
Hulst	1722	13	13
Zierikzee	1727	*	10
Vlissingen	1738		13
Kampen	1751	6	
Deventer	1759		13
Watergraafsmeer	1760		10
Overijssel countryside	1761		13
Den Bosch	1764	17	17
Goes	1768	17	17
Dordrecht	1774		16
Vier Boven Ambten	1780	13	13
Utrecht countryside	1780	17	17
Rijnland	1785		13
Merwede	1786		16
Zwolle	1794		13
Eindhoven	1805	before December 1st	
Alkmaar	1805		13

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