

Choices and Constraints in the Pre-Industrial Countryside

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This chapter addresses a central tension between two sides of rural history – one stressing peasant choices, the other the constraints on those choices. For the one side, key concepts are ‘individualism’, ‘autonomy’, ‘rationality’, ‘voluntarism’, and ‘agency’. For the other, they are ‘class struggle’, ‘exploitation’, ‘extra-economic coercion’, ‘social structure’, and ‘institutions’. This chapter argues that both strands of analysis can deepen our understanding of the pre-industrial countryside – not just in England but in many other societies. But pursuing the one and ignoring the other can lead us astray. Only by attentiveness both to people’s choices and to the constraints on those choices can we arrive at a just understanding of the particular rural society we are studying and of rural development more widely.

Choices

Let us begin by considering whether rural people in pre-industrial societies really did have choices, in the sense of deciding, as individuals, between two or more possibilities. It is surprising how often one still encounters views to the contrary, sometimes explicit, sometimes implicit and hardly recognised by the scholars who enunciate them. These views take four main forms.

First is the view put forward by Alexander Chayanov and his modern followers, that peasants were governed by a mentality that did not view certain aspects of life as choice variables. So in the Chayanovian view,

peasants do not make individual choices about labour, capital, farm size, technology, market participation, or consumption style. Instead, their cultural norms cause them to engage in self-exploitation (i.e., to go on putting labour into the farm past the point at which an individual agent making rational choices would stop), avoid debt and credit (i.e., to accept the ups and downs of consumption and production and not try to smooth them by borrowing or lending), retain the family farm at all costs (i.e., not buy or sell land to adjust to changes in prices or technology), avoid markets (i.e., not choose between self-consumption or market sales), and consume only traditional goods (i.e., not choose new consumer objects even when they are available).

According to this view, a deeply rooted peasant mentality so strongly guided rural people's behaviour that they could not – or at least did not – make individual choices about labour, capital, land, technology, markets or consumption. These assumptions are still often applied to rural societies, both historical and modern.¹ Werner Rösener, for instance, portrays medieval German peasants as avoiding markets, ignoring profits, pursuing limited aims, valuing land for its own sake (even when unprofitable), working for below-market wages, preferring leisure to income, seeking culturally defined consumption targets, and undertaking activities that were 'economically speaking, unprofitable'.² Peter Kriedte, Hans Medick and Jürgen Schlumbohm describe early modern European peasants and rural artisans as not making individual choices about costs, profits, or accumulation, but rather being guided by a Chayanovian mentality of 'limited goals'.³ Many historians of Russia ascribe the country's centuries

1 See, for instance, E. R. Wolf, *Peasants* (Englewood Cliffs, NJ, 1966), pp. 12–17 and 37–50; T. Shanin, 'Introduction: peasantry as a concept', in *Peasants and peasant societies*, ed. T. Shanin (London, 1971), pp. 11–19; D. Thorner, 'Peasant economy as a category in history', in *Peasants and peasant societies*, ed. Shanin, pp. 202–18; F. Ellis, *Peasant economics: farm households and agrarian development* (Cambridge, 1988), pp. 5–6; P. C. Huang, *The peasant economy and social change in north China* (Stanford, CA, 1985), pp. 3–6. For a historiographical overview, see C. Dipper, 'Bauern als Gegenstand der Sozialgeschichte', in *Sozialgeschichte in Deutschland. Entwicklungen und Perspektiven im internationalen Zusammenhang*, vol. 4: *Soziale Gruppen in der Geschichte*, ed. W. Schieder and V. Sellin (Göttingen, 1987), pp. 9–33.

2 W. Rösener, *Peasants in the middle ages* (Urbana and Chicago, 1992), pp. 122–5 and 142.

3 P. Kriedte, H. Medick and J. Schlumbohm, *Industrialization before industrialization: rural industry in the genesis of capitalism* (Cambridge, 1981), pp. 41, 43–6, 52–3, 99–100, 106–8 and 114–15.

of economic stagnation, its divergence from western Europe, and the difficulties of its twentieth-century history, to a distinctive peasant culture.⁴ According to all these scholars, rural people did not make individual choices but followed the dictates of peasant mentalities.

The second variant of this view recognises the existence of choice-making behaviour by rural individuals in *some* pre-modern societies but regards these as exceptional enclaves within the prevailing regime of peasant culture. That is, rural people were willing and able to make individual choices in some parts of Europe but not in others. Alan Macfarlane, for instance, argues that medieval and early modern England had a uniquely 'individualistic' culture that led its rural people to regard as choice variables many things – land transactions, labour market participation, credit, market participation, marriage – which peasants on the European continent regarded as beyond the realm of choice.⁵ David Landes extends this view to the eighteenth century, arguing that England had a culture which regarded most aspects of life as subject to individual, rational decision-making; this, he argues, led to England's economic primacy compared with other parts of Europe where such individual choice was culturally unacceptable.⁶ Tine De Moor and Jan Luiten van Zanden pursue the same argument, but include the Low Countries, arguing that together with England it formed a distinctive North Sea region, characterised by a culture in which individuals made their own choices about marriage, women's work, inheritance, and marital property rights; in other parts of Europe, and places such as China, they contend, individual choice in such matters was culturally inadmissible.⁷ Many scholars who observe peasants making individual choices ascribe it to cultural influences

4 O. Figes, *Peasant Russia, civil war: the Volga countryside in revolution (1917–1921)* (Oxford, 1989), pp. 8–13; B. Mironov, 'The Russian peasant commune: after the reforms of the 1860s', in *The world of the Russian peasant: post-Emancipation culture and society*, ed. B. Eklof and S. Frank (Boston and London, 1990), pp. 7–44; B. Mironov, 'When and why was the Russian peasantry emancipated?', in *Serfdom and slavery: studies in legal bondage*, ed. M. L. Bush (Harlow, 1996), pp. 323–47 (p. 333); J. Pallot, *Land reform in Russia, 1906–1917: peasant responses to Stolypin's project of rural transformation* (Oxford, 1999), pp. 15–17 and 242–9; O. Figes, *Natasha's dance: a cultural history of Russia* (London, 2002), p. 258.

5 A. Macfarlane, *The origins of English individualism. The family, property and social transition* (Oxford, 1978).

6 D. S. Landes, *The wealth and poverty of nations: why some are so rich and some so poor* (London, 1999), *passim*.

7 T. De Moor and J. L. van Zanden, 'Girl power: the European marriage pattern and

from England or western Europe. In 1809, when the Wupper Valley in the Ruhr became one of the first German regions to set up cotton factories, a traveller described it as ‘an England in miniature’.⁸ More recently, Renate Blickle has argued that early modern Bavarian peasants shifted from a subsistence-oriented ‘principle of needs’ to individual, profit-maximizing choices only because of English ‘liberal ideas, especially liberal conceptions of property’.⁹ Winfried Schulze suggests that the individual choice-making economic behaviour observed among early modern peasants in Germany *east* of the Elbe resulted from the ‘individualistic legal system’ in their western German culture of origin, and could not have been found among Polish or Hungarian peasants at the same period.¹⁰ All these scholars see peasant choice-making before c.1750 as restricted to certain cultures, particularly those of western Europe.

A third version of this idea ascribes the putative absence of peasant choice to serfdom, under which landlords are supposed to have suppressed all individual agency among serfs.¹¹ When Lieslott Enders pointed out widespread evidence of individual choices made by serfs in the Uckermark of Brandenburg, for instance, other scholars dismissed it on the grounds that the Uckermark had an atypical and fragmented form of serfdom compared with ‘true’ serf societies such as Schleswig-Holstein where ‘probably this individualised form of behaviour did not exist’.¹² Others

labour markets in the North Sea region in the late medieval and early modern period’, *Economic History Review* 63 (2010), 1–33 (pp. 6–9 and 11–12).

8 Quoted according to J. Engelbrecht, *Das Herzogtum Bern im Zeitalter der Französischen Revolution. Modernisierungsprozesse zwischen bayerischem und französischem Modell* (Paderborn, 1996), p. 10.

9 R. Blickle, ‘From subsistence to property: traces of a fundamental change in early modern Bavaria’, *Central European History* 25 (1992), 377–85; R. Blickle, ‘Hausnotdurft. Ein Fundamentalrecht in der altständischen Ordnung Bayerns’, in *Grund- und Freiheitsrechte von der ständischen zur spätbürgerlichen Gesellschaft*, ed. G. Birtsch (Göttingen, 1987), pp. 42–62.

10 As quoted in H. Kaak, ‘Diskussionsbericht’, in *Gutsherrschaft als soziales Modell. Vergleichende Betrachtungen zur Funktionsweise frühneuzeitlicher Agrargesellschaften*, ed. J. Peters (Munich, 1995), 439–502 (pp. 458–9).

11 This view of serfdom is described and criticised for medieval England in J. Hatcher, ‘English serfdom and villeinage: towards a reassessment’, *Past and Present* 90 (1981), 3–39 (pp. 3–8); for early modern Bohemia in S. Ogilvie, ‘Communities and the “second serfdom” in early modern Bohemia’, *Past and Present* 187 (2005), 69–119 (pp. 72–3); and for both Bohemia and Russia in T. K. Dennison and S. Ogilvie, ‘Serfdom and social capital in Bohemia and Russia’, *Economic History Review* 60 (2007), 513–44.

12 As quoted in Kaak, ‘Diskussionsbericht’, p. 457.

argued that Uckermark peasants manifested individual economic choices only because of their proximity to Berlin, and that German serfs uninfluenced by such large urban centres pursued the limited aims of the traditional 'family economy', avoided markets, and did not make individual choices oriented around costs and profits before 1750 at the earliest.¹³ True serfdom, it is assumed, stifled all peasant choice.

The fourth variant of this approach contends that peasants were too poor to make choices: they merely responded to necessity. If we observe peasants borrowing money, for instance, it is because they were forced to do so by the threat of starvation, not because they wanted to smooth their production and consumption choices over time.¹⁴ If we see peasants participating in market transactions, it was because they were being forced to pay feudal dues in cash, not because they were choosing between market and non-market options.¹⁵ If we detect peasants working more hours, it is because they were compelled to do so by rising food prices and falling real wages, not because they were making individual choices about allocating time between labour and other activities.¹⁶ If we observe peasants introducing innovations to increase the productivity of their farms, it was because they were being forced to pay higher taxes, not because they were making choices among alternative techniques.¹⁷

These four images of the choiceless peasant are widely held. But they sit uneasily with findings from microstudies. In medieval and early modern England, it has been recognised for decades that peasants engaged in individual choices in many major aspects of life.¹⁸ By now, the debate is

13 Kaak, 'Diskussionsbericht', pp. 442–3.

14 For a survey of these ideas about early modern rural credit, see S. Ogilvie, M. K pker and J. Maegraith, 'Household debt in early modern Germany: evidence from personal inventories', *Journal of Economic History* 72 (2012), 134–67, esp. pp. 134–5.

15 Wolf, *Peasants*, pp. 12–17, 37–50; Shanin, 'Introduction'; Thorner, 'Peasant economy', pp. 62–7; Ellis, *Peasant economics*, pp. 5–6; Huang, *Peasant economy*, pp. 3–6.

16 J. L. van Zanden, 'Wages and the standard of living in Europe, 1500–1800', *European Review of Economic History* 3 (1999), 175–97 (p. 192).

17 J. Bieleman, 'Rural change in the Dutch province of Drenthe in the seventeenth and eighteenth centuries', *Agricultural History Review* 33 (1985), 105–17 (pp. 114–15).

18 R. H. Hilton, *Bond men made free: medieval peasant movements and the English Rising of 1381* (London, 1973), p. 41; R. M. Smith, 'English peasant life-cycles and socio-economic networks: a quantitative geographical case study' (unpublished Ph.D. thesis, University of Cambridge, 1974); B. M. S. Campbell, 'Population pressure, inheritance and the land market in a fourteenth-century peasant community', in *Land, kinship and life-cycle*, ed. R. M. Smith (Cambridge, 1984), pp. 87–134 (p. 91); Macfarlane, *Origins*; J. Whittle, 'Individualism and the family–land bond: a reassessment of land transfer

not so much about *whether* peasants took individual choices, but about the restrictions on these choices in different periods (e.g., before and after the decline of serfdom) and different regions (e.g. East Anglia compared to the midlands).¹⁹ Historians of the Low Countries, too, have pointed out that a great deal of individual peasant choice-making can be observed in the late medieval and early modern Dutch countryside.²⁰ In Holland, small farmers as far back as the thirteenth century can be observed making individual choices about using land, transferring its ownership, and flexibly participating in market transactions.²¹ Even in less advanced Dutch regions, such as the eastern province of Drenthe, recent studies have found that as early as the fifteenth century, peasants were making individual choices in response to prices and market opportunities.²²

It might be argued that societies outside the North Sea region had a more typical 'peasant' culture which did not accommodate such individual choices on everyday economic matters.²³ But microstudies of many other parts of Europe have also observed peasants making similarly individual choices. In Italy as early as the eighth century, ordinary rural people were buying and selling land individually, a development that accelerated in the

patterns among the English peasantry', *Past and Present* 160 (1998), 25–63 (pp. 27–8); C. Dyer, 'The ineffectiveness of lordship in England, 1200–1400', in *Rodney Hilton's middle ages: an exploration of historical themes*, ed. C. Dyer, P. Coss and C. Wickham (Oxford, 2007), pp. 69–86 (pp. 70, 75 and 85); B. M. S. Campbell, 'The agrarian problem in the early fourteenth century', *Past and Present* 188 (2005), 3–70 (p. 8).

19 Whittle, 'Individualism', pp. 49ff.

20 J. de Vries, *The Dutch rural economy in the golden age, 1500–1700* (New Haven, CT, 1974); J. de Vries, 'Peasant demand patterns and economic development: Friesland 1550–1750', in *European peasants and their markets*, ed. W. N. Parker and E. L. Jones (Princeton, NJ, 1975), pp. 205–38; B. J. P. van Bavel, 'The organization and rise of land and lease markets in northwestern Europe and Italy, c.1000–1800', *Continuity and Change* 23 (2008), 13–53 (p. 37–8); B. J. P. van Bavel and J. L. van Zanden, 'The jump-start of the Holland economy during the late-medieval crisis, c.1350–c.1500', *Economic History Review* 57 (2004), 503–32 (p. 509).

21 Van Bavel, 'Organization', 20–1.

22 J. Bieleman, *Boeren op het Drentse zand 1600–1910: een nieuwe visie op de 'oude' landbouw* (Utrecht, 1987); J. Bieleman, 'Boeren en Rekenmeesters', *Tijdschrift voor geschiedenis* (1988), 201–21; J. Bieleman, 'De verscheidenheid van de landbouw op de Nederlandse zandgronden tijdens "de lange zestiende eeuw"', *Beijdragen en Mededelingen betreffende de geschiedenis der Nederlanden* 105 (1990), 537–52.

23 As argued for England, for instance, in Macfarlane, *Origins*; A. Macfarlane, 'The myth of the peasantry: family and economy in a northern parish', in *Land, kinship and life-cycle*, ed. Smith, pp. 333–49; A. Macfarlane, *The culture of capitalism* (Oxford, 1987), esp. pp. 191–222; and for the North Sea area in De Moor and van Zanden, 'Girl power'.

eleventh century and has led historians to characterise farming in these regions as ‘highly individualistic’.²⁴ In the German region of Paderborn, fourteenth-century peasants made individual choices in agricultural matters, leasing land and buildings for short periods to adapt to fluctuations in agricultural markets and labour supply, and buying and selling landholdings with no sign of attachment to the family farm.²⁵ In Upper Austria, too, poor peasants manifested individual economic calculation and maximizing behaviour throughout the early modern period.²⁶ In early modern southern France, rural proto-industrial producers have been observed making individualistic, entrepreneurial, and profit-maximizing choices.²⁷ In the south-west German village of Neckarhausen, David Sabeian describes rural people making individual decisions in ways far removed from the Chayanovian concept of the peasant ‘family economy’.²⁸ My own studies of the Württemberg Black Forest found widespread evidence of individual choices in demographic matters as well as markets in land, labour, credit, and output.²⁹ In northern Switzerland, Schnyder-Burghartz describes early modern peasants making individual choices in land and credit markets.³⁰

This still leaves open the possibility that peasants made individual

24 For a number of examples, see L. Feller, ‘Quelques problèmes liés à l’étude du marché de la terre durant le Moyen Âge’, in *Il mercato della terra: secc. XIII–XVIII: atti della trentacinquesima settimana di studi, 5–9 maggio 2003*, ed. S. Cavaciocchi (Florence, 2004), pp. 21–47; C. Wickham, *Land and power: studies in Italian and European social history, 400–1200* (London, 1994); C. Wickham, *The mountains and the city: the Tuscan Apennines in the early middle ages* (Oxford, 1988), pp. 242–5; van Bavel, ‘Organization’, pp. 26–7 (quotation).

25 B. H. Lienen, ‘Aspekte des Wandels bäuerlicher Betriebe zwischen dem 14. und dem 17. Jahrhundert an Beispielen aus Tudorf (Kreis Paderborn)’, *Westfälische Forschungen* 41 (1991), 288–315.

26 H. Rebel, *Peasant classes: the bureaucratization of property and family relations under early Habsburg absolutism, 1511–1636* (Princeton, 1983), pp. 118–19.

27 J. K. J. Thomson, ‘Variations in industrial structure in pre-industrial Languedoc’, in *Manufacture in town and country before the factory*, ed. M. Berg, P. Hudson and M. Sonenscher (Cambridge, 1983), pp. 61–91 (pp. 66–7).

28 D. W. Sabeian, *Property, production and family in Neckarhausen, 1700–1870* (Cambridge, 1990), pp. 94–7.

29 S. Ogilvie, *State corporatism and proto-industry: the Württemberg Black Forest, 1580–1797* (Cambridge, 1997), esp. pp. 7–11, 181–6, 225–30, 301–7 and 455–63.

30 A. Schnyder-Burghartz, *Alltag und Lebensformen auf der Basler Landschaft um 1700: vorindustrielle, ländliche Kultur und Gesellschaft aus mikrohistorischer Perspektive. Bretzwil und das obere Waldenburger Amt von 1690 bis 1750* (Liestal, 1992), pp. 203–9.

choices in commercialised European regions but not in zones subject to strong manorialism. This would rule out peasant choice both during medieval serfdom in western Europe and during the early modern 'second serfdom' further east. Doubt is cast on this view, however, by empirical observations of individual decision-making by enserfed peasants in medieval England,³¹ thirteenth-century Silesia,³² fourteenth- and fifteenth-century Bohemia and Moravia,³³ seventeenth-century northern Bohemia,³⁴ eighteenth-century Brandenburg,³⁵ and nineteenth-century Russia.³⁶

Perhaps, though, individual choices were possible for elites but not for lower strata who were too poor to do anything other than what they were forced to do? Deeper research on marginal groups in the pre-modern countryside have dispelled this assumption as well. The individuals choosing to buy and sell land in ninth-century Italy included peasants and even slaves.³⁷ In medieval England, not just men but also women made individual choices about marriage, work, and property.³⁸ In rural Upper Austria, the

31 Whittle, 'Individualism', pp. 47–9.

32 J. J. Menzel, *Die schlesischen Lokationsurkunden des 13. Jahrhunderts. Studien zum Urkundenwesen, zur Siedlungs-, Rechts- und Wirtschaftsgeschichte einer ostdeutschen Landschaft im Mittelalter* (Würzburg, 1977), p. 458; quoted in M. Cerman, 'Social structure and land markets in late medieval central and east-central Europe', *Continuity and Change* 23 (2008), 55–100 (p. 62).

33 F. Graus, *Dějiny venkovského lidu v Čechách v době předhusitské, vol. 2: Dějiny venkovského lidu od poloviny 13. stol. do roku 1419* (Prague, 1957), p. 230; as quoted in Cerman, 'Social structure', p. 62.

34 S. Ogilvie, 'The economic world of the Bohemian serf: economic concepts, preferences and constraints on the estate of Friedland, 1583–1692', *Economic History Review* 54 (2001), 430–53.

35 L. Enders, *Die Uckermark: Geschichte einer kurmärkischen Landschaft vom 12. bis zum 18. Jahrhundert* (Berlin, 1992), p. 148; L. Enders, 'Das bäuerliche Besitzrecht in der Mark Brandenburg, untersucht am Beispiel der Prignitz vom 13. bis 18. Jahrhundert', in *Gutsherrschaftsgesellschaften im europäischen Vergleich*, ed. J. Peters (Berlin, 1997), pp. 399–427 (p. 404); L. Enders, *Die Prignitz: Geschichte einer kurmärkischen Landschaft vom 12. bis zum 18. Jahrhundert* (Berlin, 2000), pp. 191–2; H. Harnisch, 'Bäuerliche Ökonomie und Mentalität unter den Bedingungen der ostelbischen Gutsherrschaft in den letzten Jahrzehnten vor Beginn der Agrarreformen', *Jahrbuch für Wirtschaftsgeschichte* 1989 (1989), 87–108, esp. pp. 88–9, 92, 99 and 106–8; J. Peters, 'Eigensinn und Widerstand im Alltag. Abwehrverhalten ostelbischer Bauern unter Refeudalisierungsdruck', *Jahrbuch für Wirtschaftsgeschichte* 1991 (1991), 85–103 (pp. 90, 92–3, 95–6 and 100–2).

36 T. Dennison, *The institutional framework of Russian serfdom* (Cambridge, 2011).

37 Feller, 'Quelques problèmes'; van Bavel, 'Organization', p. 26.

38 P. J. P. Goldberg, *Women, work, and life-cycle in a medieval economy: women in York and Yorkshire, c.1300–1520* (Oxford, 1992).

poorest groups showed careful individual economic calculation, while it was the better off who supported the ‘notions and practices of moral economy’.³⁹ In early modern Brandenburg, all strata manifested individual choice in economic and social matters.⁴⁰ Court records and land transfer registers in early modern Bohemia show the poorest serfs – women, labourers, the landless, those at the edge of starvation – making individual choices about time allocation, property, and consumption.⁴¹

These empirical findings suggest that individual choice was ubiquitous among rural people in pre-industrial Europe. Choice was not restricted to non-peasants, western Europeans, freemen, or the well off, but extended deep into peasant society, to southern and eastern Europeans, to enserfed rural people, and to women, the poor, and the marginal. In every pre-modern society that has been studied, it is quite clear that people in the countryside made choices.

But can we leave it at this? Is it enough to have discovered peasant agency, and can we now just focus on how peasants decided to exercise it? The recognition that peasants made choices about many aspects of life has led some studies to veer to the opposite extreme and assume that the constraints on peasant choices did not actually matter – that rural people just got around any obstacles.

Both theory and empirical findings cast doubt on this optimistic assumption. Just as it would be laughable to claim that ‘peasant agency’ was strong enough to remain unaffected by the natural environment, so too we should question the idea that it was unconstrained by the human environment – by the institutional rules and customs governing behaviour in rural societies.⁴² As we shall see, rural societies were full of social

39 Rebel, *Peasant classes*, pp. 118–19.

40 L. Enders, ‘Individuum und Gesellschaft. Bäuerliche Aktionsräume in der frühneuzeitlichen Mark Brandenburg’, in *Gutsherrschaft als soziales Modell*, ed. Peters, pp. 155–78, esp. pp. 159–62, 170 and 176.

41 Ogilvie, ‘Economic world’, here esp. pp. 437–9 and 444–6; J. Grulich, ‘Besitztransfer und regionale Mobilität der untertänigen Bevölkerung (Südböhmen, vom 16. bis 18. Jahrhundert)’, in *Untertanen, Herrschaft und Staat in Böhmen und im ‘Alten Reich’. Sozialgeschichtliche Studien zur Frühen Neuzeit*, ed. M. Cerman and R. Luft (Munich, 2005), pp. 127–51; D. Štefanová, *Erbschaftspraxis und Handlungsspielräume der Untertanen in einer gutsherrschaftlichen Gesellschaft. Die Herrschaft Frýdlant in Nordböhmen, 1558–1750* (Munich, 1999); H. Zeitlhofer, *Besitzwechsel und sozialer Wandel. Lebensläufe und sozioökonomische Entwicklungen in südlichen Böhmerwald, 1640–1840* (Vienna, 2014).

42 The well-known characterisation of institutions as ‘the rules of the game in a society or, more formally ... the humanly devised constraints that shape human interaction’ was

and institutional constraints on peasant choice. So pervasive were these constraints, in fact, that this chapter has the space to focus on just three of them: manorial systems, peasant communities, and legal regimes.

Manorial constraints

Let us start with manorial institutions. The traditional view of the manorial system – whether medieval serfdom in western Europe or the early modern ‘second serfdom’ in eastern Europe – was that it imposed such severe restrictions that rural people were unable to make their own choices. According to this ‘manorial dominance’ view, under serfdom landlords used their institutional powers to prevent migration, dictate marriage, control landholding, and restrict most other choices a peasant might make. But recent decades have given rise to a revisionist view, according to which manorial institutions did not constrain peasant choices because people simply got around the constraints. Landlords did not have the quality or quantity of local-level personnel necessary to monitor individual behaviour or impose effective sanctions, it is claimed, so rural people easily circumvented manorial controls – they migrated, married, structured their households, hired and offered labour, borrowed and loaned money, bequeathed their farms, and bought and sold land, regardless of any manorial restrictions that might formally prevail.⁴³ The

first made by D. C. North, *Institutions, institutional change and economic performance* (Cambridge, 1990), p. 3. For a discussion of alternative approaches to the rise and survival of economic institutions in European history, see S. Ogilvie, “‘Whatever is, is right’? Economic institutions in pre-industrial Europe”, *Economic History Review* 60 (2007), 649–84.

43 For representative arguments to this effect, see E. Melton, ‘Gutsherrschaft in East Elbian Germany and Livonia, 1500–1800: a critique of the model’, *Central European History* 21 (1988), 315–49, here esp. pp. 315–16, 320–2, 333 and 340–1; J. Bushnell, ‘Did serf owners control serf marriage? Orlov serfs and their neighbors, 1773–1861’, *Slavic Review* 52 (1993), 419–45; J. Kochanowicz, ‘The peasant family as an economic unit in the Polish feudal economy of the eighteenth century’, in *Family forms in historic Europe*, ed. R. Wall, J. Robin and P. Laslett (Cambridge, 1983), pp. 153–66, esp. pp. 163–4; D. Štefanová, ‘Herrschaft und Untertanen. Ein Beitrag zur Existenz der rechtlichen Dorfaufonomie in der Herrschaft Frýdlant in Nordböhmen (1650–1700)’, in *Gutsherrschaftsgesellschaften*, ed. Peters, pp. 199–210 (pp. 205–9); A. Plakans and C. Wetherell, ‘The kinship domain in an east European peasant community: Pinkenhof, 1833–1850’, *American Historical Review* 93 (1988), 359–86; L. Enders, ‘Die Landgemeinde in Brandenburg. Grundzüge ihrer Funktion und Wirkungsweise vom 13. bis zum 18. Jahrhundert’, *Blätter für deutsche Landesgeschichte* 129 (1993), 195–256 (p. 197); R. C. Hoffmann, *Land, liberties, and*

finding that under strong manorialism peasants were able to make *some* individual choices in which the manor did not intervene has thus led many scholars to conclude that there were *no* peasant decisions in which the manor was able or willing to intervene, and thus that manorial restrictions did not really matter. Peasant agency meant that serfdom was perfectly compatible with economic growth and rural development.⁴⁴

But does this logically follow? The fact that people can be observed making choices does *not* in fact imply that the restrictions on those choices have no effect. People make choices subject to the constraints they face: their own budgets, the prices of goods, the available technology, the natural environment, and the rules and customs of their society – which, in many medieval and early modern societies, included the manorial system. If people make a choice that violates socially defined rules, they face the risk of being penalised, i.e. of incurring costs. This risk does not have to be 100 per cent in order to have a non-zero expected value. Thus, for instance, if in seventeenth-century Bohemia selling one's landholding without obtaining manorial consent carried a ten-*Schock* fine, even if there was only a 50 per cent chance of being caught, the expected cost of illegally selling that landholding was five *Schock* – which in some cases would exceed the expected benefit of violating manorial restrictions. On the margin, some farmers would refrain from illegally selling their holdings, even while others would go ahead. The same theoretical reasoning applied to migrating without manorial permission, refusing to marry when ordered by the manorial officials, setting up as a proto-industrial linen-weaver without paying manorial loom-dues, or buying beer from a private brewer rather than from the manorial brewery. All carried penalties of fines, imprisonment, or burdens on one's family; and for all, as manorial court records from at least some regions and time periods show, there was some risk of detection. As a result, the expected

lordship in a late medieval countryside: agrarian structures and change in the Duchy of Wroclaw (Philadelphia, 1989), pp. 358–62; W. W. Hagen, *Ordinary Prussians. Brandenburg Junkers and villagers 1500–1840* (Cambridge, 2002); M. Cerman, *Villagers and lords in eastern Europe, 1300–1800* (Basingstoke and New York, 2012).

44 As argued, for instance, by Hagen, *Ordinary Prussians*, pp. 597–601; Cerman, *Villagers*, pp. 6–9, 95–123; M. Cerman, 'Seigniorial systems in east-central and eastern Europe, 1300–1800: regional realities', in *Schiavitu e servaggio nell'economia europea. Secc. XI–XVIII/Slavery and serfdom in the European economy from the 11th to the 18th Centuries. XLV settimana di studi della Fondazione istituto internazionale di storia economica F. Datini, Prato 14–18 April 2013*, ed. S. Cavaciocchi (Florence, 2014), pp. 187–214.

cost of taking that action was non-zero, and there would therefore be some marginal migraters, marriers, linen-weavers, and beer-drinkers who would refrain from making that choice (which they would otherwise have made), even while others would go ahead. Only if the penalty or the detection risk for violating manorial restrictions were zero would no-one's choices be affected. The fact that some people can be observed making choices does not logically imply, therefore, that the institutional rules governing those choices had no effect.

Empirical studies, too, reveal few manorial systems in which landlords imposed absolutely no constraints on peasant choices. This is not to deny that peasants engaged in many individual actions without manorial interference. In most European rural societies, many marriages, land transfers, and even acts of migration occurred with little sign of manorial intervention. But just because we do not observe landlords intervening in *all* marriages or land transfers does not mean they lacked the power or interest to intervene in *any*. Quite the contrary. Even where manorial intervention took place, there are two reasons we should not expect to observe it being exercised very frequently. First, regulation was costly in terms of time and personnel, and landlords were only interested in forms of intervention that yielded benefits for themselves; this reduced the frequency of intervention. Second, awareness of manorial disapproval and the desire to avoid attracting it deterred many peasants from even trying to take certain actions. The very existence of manorial power to intervene in peasants' economic and demographic decisions meant that it did not actually have to be exercised very frequently.⁴⁵

If manorial institutions truly exercised no significant effect on peasant choices, one would expect there to have been important arenas of decision-making that were off-limits to manorial intervention. Migration, marriage, and landholding are three of the most important choices rural people could make and are frequently adduced as spheres of peasant autonomy. But each of them illustrates the importance of manorial constraints on peasant choice.

The ability to migrate is often portrayed as a touchstone of peasant freedom.⁴⁶ Most studies show that under strong manorialism, peasants did indeed desire to migrate in order to work, trade, marry, get access to

45 For further reflections, see S. Ogilvie, 'Serfdom and the institutional system in early modern Germany', in *Schiavitu e servaggio*, ed. Cavaciocchi, pp. 33–58 (pp. 34–47).

46 Hatcher, 'English serfdom', pp. 29–30.

land, learn a craft, visit kin, practise their religion, and for many other reasons. But although enserfed peasants were not always prevented from migrating by their landlords, they did have to take manorial constraints into account. In many serf societies, permanent emigration required an emancipation certificate from one's landlord showing 'that one was released in goodwill'.⁴⁷ Lacking this, not only was the serf legally obliged to stay on the estate of his landlord, but if he migrated illicitly other landlords were legally obliged to send him back.⁴⁸ Illegal emigration was sufficiently costly that serfs were willing to pay substantial fees for migration permits.⁴⁹ Even temporary migration, for instance by a labourer who could not get employment on his native estate or a journeyman who wanted to travel for work, required manorial permission, payment of fees, providing pledges, or finding a replacement tenant or demesne worker.⁵⁰ Those who migrated without permission were often penalised – by fining, whipping, gaoling, forced service, or retribution against family members.⁵¹ Even *threatening* to emigrate could attract penalties such as being pilloried or bonded with pledges.⁵² Manorial courts also penalised other serfs who issued illegal emigrants with inheritance shares, made them gifts, provided them with information, or gave them shelter.⁵³ Landlords cooperated with

47 Státní Oblastní Archiv Litoměřice, Pobočka Děčín, Fond Rodinný archiv Clam-Gallasů, Historická sbírka, Kart. č. 315, Schriftstück 11, Jahrdings Artickeln 1636, fol. 4v, #27: 'dz er guttlich erlaßen worden'.

48 On eleventh- and twelfth-century England, see Hatcher, 'English serfdom', p. 30; on sixteenth- and seventeenth-century Bohemia, see Ogilvie, 'Communities and the "second serfdom"', p. 94.

49 Ogilvie, 'Communities and the "second serfdom"', p. 94.

50 On medieval England, see Whittle, 'Individualism', p. 46; C. Dyer, *Lords and peasants in a changing society: the estates of the Bishopric of Worcester, 680–1540* (Cambridge, 1980), pp. 105–6; Hatcher, 'English serfdom', pp. 10–14. On early modern Bohemia, see Ogilvie, 'Communities and the "second serfdom"', p. 94. On early modern Germany, see Ogilvie, 'Serfdom', p. 39; Cerman, *Villagers*, pp. 22–7. On early modern Denmark and Schleswig-Holstein, see C. P. Rasmussen, 'Forms of serfdom and bondage in the Danish Monarchy', in *Schiavitu e servaggio*, ed. Cavaciocchi, pp. 281–90 (pp. 285–8).

51 On early modern Bohemia, see Ogilvie, 'Communities and the "second serfdom"', p. 95. On early modern Germany, see J. Peters, 'Die Herrschaft Plattenburg-Wilsnack im Dreißigjährigen Krieg – eine märkische Gemeinschaft des Durchkommens', in *Brandenburgische Landesgeschichte und Archiwissenschaft: Festschrift für Lieselott Enders zum 70. Geburtstag*, ed. F. Beck and K. Neitmann (Weimar, 1997), pp. 157–70 (p. 160). On early modern Denmark and Schleswig-Holstein, see Rasmussen, 'Forms', pp. 286–8.

52 Ogilvie, 'Communities and the "second serfdom"', p. 95.

53 Ogilvie, 'Communities and the "second serfdom"', pp. 95–6.

one another and the princely state in penalizing illegally migrating serfs.⁵⁴ On larger estates under the same landlord, movement *within* the estate from one village to another was in principle unconstrained, but in practice the manorial authorities could also forbid this when it threatened manorial interests, for instance by leaving a farm vacant in a thinly settled village, thereby threatening communal capacities to deliver manorial dues.⁵⁵

Conversely, migration decisions were sometimes *compelled* by the manorial authorities. In early modern Bohemia, for instance, landlords can be observed ejecting an offending farmer from his or her holding or from the entire estate, banishing an illegitimately pregnant woman, or moving a man to a completely different estate so that he could not continue consummating a marriage he had entered into, counter to manorial prohibition.⁵⁶ In eighteenth-century Poland, landlords sometimes forcibly moved a family to another farm to serve manorial interests.⁵⁷

This does not mean that all enserfed peasants who wanted to migrate (or *not* to migrate) were deprived by their landlords of any choice in the matter. But it did mean that before making migration choices, peasants had to take into account whether they would be allowed to move, how much they would have to pay for permission, what the penalty would be if they migrated without a permit, and what was the risk of being caught migrating illegally. As Jane Whittle points out, not every medieval English villein who migrated paid the manorial fine for a permit, 'but this does not

54 On medieval England, see Hatcher, 'English serfdom', pp. 30–1; on early modern Bohemia, see Ogilvie, 'Communities and the "second serfdom"', p. 96; on early modern Poland, see P. Guzowski, 'The role of enforced labour in the economic development of church and royal estates in 15th and 16th-century Poland', in *Schiavitu e servaggio*, ed. Cavaciocchi, pp. 215–34 (p. 217); on early modern Denmark and Schleswig-Holstein, see Rasmussen, 'Forms', pp. 286–8.

55 Ogilvie, 'Communities and the "second serfdom"', p. 96.

56 Ogilvie, 'Communities and the "second serfdom"', p. 96.

57 A. Plakans, 'Peasant families east and west: a comment on Lutz K. Berkner's "Rural family organization in Europe: a problem in comparative history"', *Peasant Studies Newsletter* 2 (1973), 11–16; A. Plakans, 'Peasant farmsteads and households in the Baltic Littoral, 1797', *Comparative Studies in Society and History* 17 (1975), 2–35; A. Plakans, 'Seigneurial authority and peasant family life: the Baltic area in the eighteenth century', *Journal of Interdisciplinary History* 5 (1975), 629–54; W. Kula, 'La seigneurie et la famille paysanne dans la Pologne du XVIIIe siècle', *Annales. Histoire, Sciences Sociales* 27 (1972), 949–58; P. Czap, 'Marriage and the peasant joint family in Russia', in *The family in imperial Russia: new lines of historical research*, ed. D. L. Ransel (Urbana, IL, 1978), pp. 103–23; G. L. Freeze, 'The disintegration of traditional communities: the parish in eighteenth-century Russia', *Journal of Modern History* 48 (1976), 32–60 (p. 46).

undermine the point that they were liable to be charged because of their father's tenure and status'.⁵⁸ As soon as the decision to migrate was made more costly, even in monetary terms, this constrained every serf's choice set and deterred the marginal migrater.

The same applies to marriage choices. Many studies of societies under strong manorialism find that landlords did not interfere in many peasant marriages, and that marriage choices were influenced by many other factors, including individual preferences, family strategies, economic trends, and community pressures. But the fact that other factors influenced marriage choices and that the landlord did not frequently intervene does not mean that serfs' marriage choices were completely unconstrained by the manor. In many societies under strong manorialism, anyone wishing to marry outside the estate was expected to apply for permission, and was punished if he or she failed to do so.⁵⁹ In early modern Bohemia, for instance, marriage controls could be quite far-reaching.⁶⁰ Even when bride and groom were from the same village, they were expected to obtain landlord permission and pay a fee before getting betrothed. Subjection of either party to a different landlord was a major concern, since it created incentives to abscond and uncertainty about the servile status of offspring. A male serf's marriage to an outside woman was often only permitted on condition that the couple settle on the local estate. Even a female serf's marriage to an outside male usually required a substantial fee, promise of future reciprocity from the other landlord, or relinquishment of property, debts, and inheritance entitlements. Orphanhood of one or both partners was also a manorial concern since landlords were entitled to several years of forced service from orphaned youths before marriage, plus special marriage fines.⁶¹ A widow's remarriage was conditional on her finding a 'capable holder' for her existing farm – or proving that her prospective husband satisfied that test. Whether the couple would be able to earn a livelihood could be another reason for landlords to refuse permission, to ensure that landholdings were occupied by those who would reliably

58 Whittle, 'Individualism', p. 46.

59 On early modern Bohemia, see Ogilvie, 'Communities and the "second serfdom"'; Dennison and Ogilvie, 'Serfdom and social capital'. On early modern Denmark and Schleswig-Holstein, see Rasmussen, 'Forms', p. 287.

60 On what follows, see Ogilvie, 'Communities and the "second serfdom"', pp. 98–101.

61 Several years of forced service on the demesne were required even of non-orphaned adolescent serfs in many early modern German societies under demesne lordship; see Ogilvie, 'Serfdom', pp. 36, 57.

render manorial burdens. Denial of manorial permits led to betrothals being dissolved, illegitimate pregnancies not being legitimised, and serfs eloping. Those who married without manorial consent were fined, gaoled, or even forcibly separated. It is hard to believe that even infrequent cases of this sort did not deter peasants from attempting to undertake marriages likely to attract manorial opposition.

Conversely, landlords also ordered serfs – particularly widows, but also orphaned daughters of deceased tenants – to marry, in order to ensure that each holding was occupied by a married couple that could reliably provide rents, taxes and labour dues.⁶² There are examples of English manors in the thirteenth and fourteenth centuries in which the landlord put pressure on his tenants to marry and fined those who refused.⁶³ Even those who view medieval English serfdom as having been milder than traditionally portrayed describe marriage constraints on female villein heirs and widows as being imposed quite frequently.⁶⁴ At least in some parts of medieval England, ‘it is clear that lords and members of certain village communities preferred to oust widows or force them into remarriage’.⁶⁵ In early modern Bohemia, likewise, landlords regarded female household heads as poor risks and put pressure on them to remarry or vacate their farms, often collaborating with village communities or male relatives in order to exert this pressure. In consequence, Bohemian female headship was low by western European standards and declined significantly between the sixteenth and the eighteenth century, as the ‘second serfdom’ intensified.⁶⁶

Manorial systems in which landlords merely charged fees for marriage permits probably constrained peasant choices less than those in which landlords prohibited certain marriages and enforced others.⁶⁷ But even when landlords only occasionally forced serf women to marry against their will, or only demanded a licence fee, this increased the costs to the individual of making his or her own marriage choices. The marriage

62 On the existence of such rights in pre-Black Death England, see Hatcher, ‘English serfdom’, p. 13. On early modern Bohemia, see Ogilvie, ‘Communities and the “second serfdom”’, pp. 101–2.

63 P. R. Schofield, *Peasant and community in medieval England 1200–1500* (Basingstoke and London, 2003), p. 108.

64 Hatcher, ‘English serfdom’, p. 13. See also Schofield, *Peasant and community*, pp. 108–9.

65 Schofield, *Peasant and community*, p. 109.

66 S. Ogilvie and J. Edwards, ‘Women and the “second serfdom”: evidence from early modern Bohemia’, *Journal of Economic History* 60 (2000), 961–94.

67 As argued in Hatcher, ‘English serfdom’, p. 10.

finer demanded by some medieval English landlords are acknowledged as constraining peasant choices: 'these sums were a burden, and peasants had to adjust their budgets to afford them, and in bad years they would cause real hardship'.⁶⁸ Likewise, manorial regimes in which landlords were unsystematic in requiring marriage permits were less restrictive than those in which all marriages were subject to manorial consent. But as Jane Whittle points out, even though not every medieval English villein's daughter who married paid the merchet, this does not take away from the fact that they were liable to do so, and thus that the constraint mattered.⁶⁹ Similarly, although John Hatcher warns us not to overestimate the burdens of serfdom in England before 1350 by focusing solely on the letter of the law, he is concerned not to deny 'that the weight of monetary exactions could in itself constitute a grave restriction of freedom'.⁷⁰

Similar findings emerge for manorial regulation of land transactions. Most studies show serfs choosing to buy, sell, and bequeath real property – so much so that it is sometimes claimed that although landlords enjoyed the legal right of consent they seldom enforced it.⁷¹ A major empirical bulwark of this view is the fact that manorial registers rarely record cases in which a farm transfer was prohibited by the landlord. However, one would not expect to observe frequent evidence of manorial intervention in such documentary sources, since recording a transfer in the register was unlikely to take place before manorial approval had been granted. Problematic transfers were blocked at an earlier stage or even deterred altogether by the awareness, on the part of individuals, communal officials, and manorial administrators, that certain types of transfer were inadmissible.⁷²

This is borne out by findings from a number of serf societies showing that where a particular land transaction threatened the landlord's interests, the manorial administration was both able and willing to intervene. Under strong manorialism, a peasant had to obtain permission from the landlord before selling (or even bequeathing) his land, and this restriction can be observed being implemented in societies as diverse as pre-1350

68 Dyer, 'Ineffectiveness', p. 74 (quotation); see also Schofield, *Peasant and community*, p. 110.

69 Whittle, 'Individualism', p. 46.

70 Hatcher, 'English serfdom', p. 14.

71 See, for instance, Melton, 'Gutsherrschaft', pp. 340–1; Cerman, *Villagers*; Štefanová, 'Herrschaft', pp. 205–8.

72 Ogilvie, 'Communities and the "second serfdom"', pp. 103–4.

England, late medieval Flanders, early modern Bohemia, and early modern Brandenburg.⁷³ In early modern Bohemia and Germany under the ‘second serfdom’, manorial consent could be refused if the buyer was subject to a different landlord or was not regarded as a ‘capable holder’ who would reliably render manorial dues.⁷⁴ In parts of late medieval England and Flanders, in sixteenth-century Austria, and in seventeenth- and eighteenth-century Bohemia, landlords placed obstacles in the way of any sale that threatened the impartibility of standard holdings, which they regarded as a guarantee that labour services and other manorial dues would continue to be rendered reliably.⁷⁵ Even where manorial authorities usually granted permission for land transfers, they collected fees from both seller and buyer.⁷⁶ According to Christopher Dyer, in medieval England such entry fines were low compared with the purchase prices for the land, but still constituted ‘the largest sums that were paid into most manorial courts’, would have sent many incoming tenants to moneylenders to obtain funds, and ‘must sometimes have discouraged them from buying a piece of land’.⁷⁷

Manorial restrictions such as these affected not just peasants’ choices about how to allocate land, as a key economic input, but also credit access, inheritance strategies, social stratification, wage labour, servanthood, family-land bonds, and even – according to some accounts – kinship and household structure.⁷⁸ Even manorial rules that were violated affected

73 On pre-Black Death England, see Hatcher, ‘English serfdom’, p. 9. On fourteenth-century England, see Campbell, ‘Population pressure’, pp. 107–8; Whittle, ‘Individualism’, p. 48. On medieval Flanders, see van Bavel, ‘Organization’, pp. 17–18. On early modern Bohemia, see Ogilvie, ‘Communities and the “second serfdom”’, pp. 105–6. On early modern Brandenburg, see H. Harnisch, ‘Klassenkämpfe der Bauern in der Mark Brandenburg zwischen frühbürgerlicher Revolution und Dreißigjährigem Krieg’, *Jahrbuch für Regionalgeschichte* 5 (1975), 142–72 (pp. 146–7); Harnisch, ‘Bäuerliche Ökonomie’, pp. 95 and 97–9.

74 On early modern Bohemia, see Ogilvie, ‘Communities and the “second serfdom”’, pp. 105–6. On early modern Germany, see Ogilvie, ‘Serfdom’, p. 42; Harnisch, ‘Bäuerliche Ökonomie’, pp. 95 and 97–9. On eastern-central Europe as a whole, see Cerman, ‘Social structure’, pp. 61 and 66.

75 On this behaviour by some late-medieval English landlords who continued to rely on labour services from their tenants, see Schofield, *Peasant and community*, pp. 65–9. On late medieval Flanders, see van Bavel, ‘Organization’, p. 18. On early modern Bohemia, see Ogilvie, ‘Communities and the “second serfdom”’, pp. 105–6. On early modern Austria, see Cerman, ‘Social structure’, p. 66.

76 Van Bavel, ‘Organization’, pp. 17–18 and 22–3.

77 Dyer, ‘Ineffectiveness’, pp. 80–1.

78 On medieval England, see Whittle, ‘Individualism’, pp. 51–3; Z. Razi, *Life, marriage and death in a medieval parish: economy, society and demography in Halesowen*

peasant choices by shifting land transfers into the informal sector where risks were high, contract enforcement poor, and exploitation rife.⁷⁹ As Bruce Campbell emphasises for medieval England, the manorial system created rigidities and rent-seeking throughout the whole rural sector, circumscribed peasant choices in factor and product markets, and exercised harmful knock-on consequences for growth and development in the wider economy.⁸⁰

Perhaps the most vivid illustration of the impact of manorial restrictions on peasants' choices is that people voted with their feet. In 1142, for instance, the earl of Lincoln offered thirty-eight *rustici* the choice between taking servile land and leaving his domain: thirty-one of them chose to depart, landless but lordless.⁸¹ Five centuries later, in mid-seventeenth-century Bohemia, the lord of Friedland suffered a continual haemorrhage of serfs who chose to leave behind property and family to set up as labourers over the border in Saxony rather than retain their landholdings which, although inheritable, subjected their holders to hereditary servility and an array of manorial burdens and restrictions.⁸² The Worcestershire tenant who drowned himself in the Severn in 1293 rather than be forced by the earl of Gloucester's bailiffs to accept servile land evidently ascribed a very high expected cost to the constraints of serfdom.⁸³ Likewise, the landless north-Bohemian serf, Christof Herbig, who in 1651 resisted manorial pressure to take on a farm and instead chose to live as 'only a lodger, and earn a living from all sorts of dealing, even though he could take on a servile holding' bears witness to the fact that, at least for some

1270–1400 (Cambridge, 1980), pp. 94–8; Campbell, 'Agrarian problem', p. 49; Z. Razi, 'The myth of the immutable English family', *Past and Present* 140 (1993), 3–44 (pp. 16–18); J. A. Raftis, *Peasant economic development within the English manorial system* (Stroud, 1996), pp. 28–33. On early modern Bohemia, see A. Klein, 'The institutions of the "second serfdom" and economic efficiency: review of the existing evidence for Bohemia', in *Schiavitu e servaggio*, ed. Cavaciocchi, pp. 59–82. On early modern Germany, see Ogilvie, 'Serfdom', pp. 42–3, 57; Harnisch, 'Bäuerliche Ökonomie', p. 107.

79 On how manorial regulation of land markets created illicit subletting in medieval England, see Campbell, 'Agrarian problem', pp. 48–9 with n. 134. On the costs, risks, and development problems created by forcing rural people to operate in the informal sector, see Ogilvie, 'Whatever is, is right', pp. 671–4 and 681.

80 Campbell, 'Agrarian problem', pp. 8 and 50.

81 Hatcher, 'English serfdom', p. 31.

82 Ogilvie, 'Communities and the "second serfdom"'.

83 For this case, see R. H. Hilton, 'Peasant movements in England before 1381', *Economic History Review* 2 (1949), 117–36 (p. 135).

members of early modern Bohemian society, the constraints of hereditary servility mattered.⁸⁴ These two individuals may have been unusual, given that many other men in thirteenth-century England and seventeenth-century Bohemia did accept serf holdings and the numerous constraints that went with them, and most of these men did not choose suicide or life as a houseless lodger instead. However, this merely meant that for many members of these rural societies accepting servile land was the best of the available alternatives, not that the constraints of serfdom did not matter.⁸⁵

Even in societies that were not subject to serfdom, manorial restrictions were capable of constraining peasant choices. In early modern Hohenlohe and Hessen-Kassel, for instance, there were lively markets in pure peasant land but very inactive markets in land subject to manorial law where landlord consent was needed for all transfers and farms could not be divided.⁸⁶ Even when manorial regulations were not fully complied with, they exerted an observable effect on peasant choices by compelling people who wanted to do things the manor prohibited to operate illegally in the informal sector. In the German county of Ravensberg, according to Stefan Brakensiek, manorial restrictions on peasant borrowing and land transactions stifled credit and land markets and ‘promoted the adoption of illegal forms of arrangements among neighbours with respect to land use as well as unsecured and usurious methods of borrowing’.⁸⁷

Individual choices by peasants thus do not imply, either in theory or in practice, that manorial constraints on those choices were irrelevant.⁸⁸

84 For further detail on this case, see S. Ogilvie and M. Cerman, ‘The Bohemian census of 1651 and the position of inmates’, *Histoire Sociale/Social History* 28 (1995), 333–46 (pp. 344–5).

85 See Hatcher, ‘English serfdom’, p. 26.

86 On Hohenlohe, see E. Schremmer, *Die Bauernbefreiung in Hohenlohe* (Stuttgart, 1963), pp. 14–25; T. Robisheaux, *Rural society and the search for order in early modern Germany* (Cambridge, 1989), pp. 79–83. On Hessen-Kassel, see E. Sakai, *Der kurhessische Bauer im 19. Jahrhundert und die Grundlastenablösung* (Melsungen, 1967); F. Lütge, *Geschichte der deutschen Agrarverfassung vom frühen Mittelalter bis zum 19. Jahrhundert* (Stuttgart, 1967), pp. 198–9; T. Fox, ‘Land tenure, feudalism, and the state in eighteenth-century Hesse’, in *Themes in rural history of the western world*, ed. R. Herr (Ames, IA, 1993), pp. 99–139 (pp. 100–14).

87 S. Brakensiek, ‘Farms and land – a commodity? Land markets, family strategies and manorial control in Germany’, in *Landholding and land transfer in the North Sea area (late middle ages–19th century)*, ed. B. J. P. van Bavel and P. Hoppenbrouwers (Turnhout, 2004), pp. 218–34 (p. 228).

88 As emphasised for medieval England in Dyer, ‘Ineffectiveness’, pp. 85–6, and C. Briggs, ‘English serfdom, c.1200–c.1350: towards an institutionalist analysis’, in *Schiavitu e*

To differing degrees in different societies, peasants could make individual choices in which the manorial authorities did not intervene; but this does not mean that the manor *could* not intervene in those choices if it perceived its interests to be threatened. Peasants could also sometimes circumvent manorial regulations; but this does not mean that the existence of those regulations did not constrain peasants' choices. Unless the penalty for violation or the probability of detection was nil, there was a non-zero expected cost associated with making that choice, deterring the marginal person from doing so. Even when a peasant did successfully make a choice that was prohibited by the manorial authorities, the actions he or she took to avoid detection and punishment themselves consumed resources, imposed costs, and circumscribed the individual's other choices. Most manorial systems, moreover, imposed some constraints – especially those concerning payment of manorial burdens – that peasants could circumvent only with very considerable costs. To understand the impact of manorial institutions on rural societies, we have to recognise both that serfs made choices and that manorial restrictions constrained those choices – albeit in different ways in different times and places.

Community constraints

A second component of the institutional constraints on peasant choice was the village community. Here, too, the discovery of peasant agency has sometimes been taken to imply that such agency was totally unconstrained – even by community institutions. One widely held version of this view is that the rural community was merely a geographical entity and not an institution with rules or customs that affected individual choices, as suggested by Alan Macfarlane in his portrayal of medieval and early modern 'English individualism'.⁸⁹ A second widespread variant is to regard the rural community not so much as a *constraint* on peasant choice as an *expression* of it. A whole 'communal autonomy' school of thought has grown up around the assumption that the village community was an institution primarily directed at enabling peasants to implement their *own*

servaggio, ed. Cavaciocchi, pp. 13–32; for early modern Bohemia in Klein, 'Institutions'; for early modern Russia in Dennison, *Institutional framework*; and for early modern Germany in Ogilvie, 'Serfdom'.

89 Macfarlane, *Origins*.

choices against outside threats from landlords, princes, priests, or the natural environment.⁹⁰ While differing from the 'English individualism' school in other ways, the 'communal autonomy' school shares the view that community institutions did not constrain peasant choice.

But what do the facts show? Village communities varied widely. At one end of the spectrum, village communities in medieval and early modern England typically did not strictly regulate factor markets, output markets, settlement decisions, or demographic choices and thus left many peasant choices relatively unconstrained.⁹¹ Membership in medieval England communities was 'fluid and insecure';⁹² property tenure and access to common resources came from individual land ownership, not community membership.⁹³ In much of the western and central Netherlands, too, villages privatised and parcelled out common lands in the thirteenth and fourteenth centuries, removing a major source of communal regulation of individual choice.⁹⁴ Almost no early modern Dutch villages defined membership via communal 'citizenship' rights, and the few who tried had their claims rejected by the state.⁹⁵ In Tuscany and the Po Valley, the period after the Black Death saw the dissolution of many communal lands and rights, taking with them the associated restrictions on individual decision-making

90 G. C. Homans, *English villagers of the thirteenth century* (New York, 1941); J. A. Raftis, *Tenure and mobility. Studies in the social history of the medieval English village* (Toronto, 1964); P. Blickle, 'Kommunalismus, Parlamentarismus, Republikanismus', *Historische Zeitschrift* 242 (1986), 529–56; P. Blickle, 'Kommunalismus: Begriffsbildung in heuristischer Absicht', in *Landgemeinde und Stadtgemeinde in Mitteleuropa. Ein struktureller Vergleich*, ed. P. Blickle (Munich, 1991), pp. 5–38; P. Blickle, 'Einführung. Mit den Gemeinden Staat machen', in *Gemeinde und Staat im Alten Europa*, ed. P. Blickle (Munich, 1998), pp. 1–20; P. Blickle, *Von der Leibeigenschaft zu den Menschenrechten. Eine Geschichte der Freiheit in Deutschland* (Munich, 2003); Hatcher, 'English serfdom', pp. 23 and 33–4; Dyer, 'Ineffectiveness', pp. 79 and 85–6; R. M. Netting, *Balancing on an Alp: ecological change and continuity in a Swiss mountain community* (Cambridge, 1981); J. L. van Zanden, 'Chaloner Memorial Lecture: the paradox of the Marks. The exploitation of commons in the eastern Netherlands, 1250–1850', *Agricultural History Review* 47 (1999), 125–44 (pp. 129–30).

91 Schofield, *Peasant and community*, p. 5; R. M. Smith, 'The English peasantry 1250–1650', in *The peasantries of Europe from the fourteenth to the eighteenth centuries*, ed. T. Scott (London and New York, 1998), pp. 339–71 (p. 340).

92 Schofield, *Peasant and community*, p. 3.

93 Smith, 'English peasantry', p. 340.

94 Van Zanden, 'Chaloner Memorial Lecture', p. 128; van Bavel, 'Organization', p. 20.

95 J. L. van Zanden and M. Prak, 'Towards an economic interpretation of citizenship: the Dutch Republic between medieval communes and modern nation-states', *European Review of Economic History* 10 (2006), 111–145 (p. 122).

with regard to land use.⁹⁶ Not just in England, therefore, were there peasant villages that hardly constrained individual choices.

However, this minimalist type of peasant community was not universal. Even in England and the Low Countries, community institutions did constrain individual choices in some times and places. In the period before the Black Death, some English female villeins were pressed to marry because village communities 'were anxious to ensure that family holdings were efficiently run and able to meet their obligations'.⁹⁷ In fifteenth-century Dutch Drenthe, most villages were entitled to prohibit private land sales to non-locals and some compelled residents to sell food preferentially to locals over outsiders.⁹⁸ In early modern Drenthe, open-field villages prohibited enclosing arable land, mandated common grazing on stubble, and prevented farmers from controlling weeds by ploughing and harrowing immediately after harvest, resulting in low rye yield ratios of 1:3.⁹⁹ Only in the later eighteenth century were communal constraints on individual agricultural choices weakened, enabling yield ratios to rise to 1:5 or 1:6.¹⁰⁰ The Belgian provinces of Luxembourg and Namur retained communal property rights well into the eighteenth century, contributing to their low cereal productivity relative to East and West Flanders.¹⁰¹

Elsewhere, communities constrained peasant choices even more. In many early modern German societies, for instance, almost all the rights of adult life depended on formal community 'citizenship'. Villages strictly controlled admission of new citizens and 'sojourners', and imposed barriers to entry including admission fees, documentary requirements, freedom from serfdom, confessional affiliation, legitimate birth, number of offspring, wealth, property ownership, occupation, and reputation. These communal constraints were enforced: in 1740, one Württemberg

96 P. J. Jones, 'From manor to mezzadria: a Tuscan case-study in the medieval origins of modern agrarian society', in *Florentine Studies*, ed. N. Rubinstein (London, 1968), pp. 193–241 (pp. 206–14); S. R. Epstein, 'The peasantries of Italy, 1350–1750', in *The peasantries of Europe*, ed. Scott, pp. 75–110 (pp. 88–9); van Bavel, 'Organization', p. 27.

97 Hatcher, 'English serfdom', p. 13 (quotation); Schofield, *Peasant and community*, p. 109.

98 Van Zanden, 'Chaloner Memorial Lecture', pp. 131–2; van Bavel, 'Organization', p. 17.

99 Bieleman, 'Rural change', p. 111; van Zanden, 'Chaloner Memorial Lecture', p. 126.

100 Bieleman, 'Rural change', pp. 111 and 114; B. H. Slicher van Bath, *Een Samenleving onder spanning. Geschiedenis van het platteland in Overijssel* (Assen, 1957), p. 580; van Zanden, 'Chaloner Memorial Lecture', p. 136.

101 G. Dejongh, 'New estimates of land productivity in Belgium, 1750–1850', *Agricultural History Review* 47 (1999), 7–28 (p. 18).

community refused a widow even temporary ‘sojourner’ rights because ‘the village is over-filled’;¹⁰² in 1765, another refused citizenship to a woman who wanted to marry one of its members ‘because the community is already filled up with too many people, and poor ones’;¹⁰³ and in 1785, a third refused admission to a man desiring to marry the daughter of a local citizen ‘because he has the worst possible reputation and has revealed himself to be a poor householder’.¹⁰⁴ In Württemberg and many other central European societies, rural communities also constrained the choices of their existing members, including marriage, household structure, work, leisure, inheritance, land sales, borrowing, and consumption. Of course, even the strongest communities did not perfectly enforce their rules. But microstudies find that many central European villages carefully monitored and successfully controlled many of their members’ choices. Yet the same microstudies richly document the existence of individual choice in these communities.¹⁰⁵ Peasant choice and communal constraints existed side by side, and rural societies cannot be understood by focusing on the one while ignoring the other.

Nor do the facts support the view that ‘communal autonomy’ invariably enhanced the realm of choice for rural individuals. It could certainly be argued that managing challenging ecosystems and organizing political resistance were ways in which community institutions facilitated peasant choices. Yet it must also be recognised that the choices which communities facilitated differed fundamentally from those discussed at the beginning

102 Hauptstaatsarchiv Stuttgart, A573 Bü 7133, petition of 7 May 1740, fol. 1r.

103 Hauptstaatsarchiv Stuttgart, A573 Bü 43, 13 Sep. 1765, fol. 60r.

104 Hauptstaatsarchiv Stuttgart, A573 Bü 6948, petition of 17 May 1785.

105 For examples, see A. Holzem, ‘Religiöse Prägungen des Konsumverhaltens in frühneuzeitlichen Dorfgesellschaften: das Beispiel des Fürstbistums Münster’, in *Der lange Weg in den Überfluss. Anfänge und Entwicklung der Konsumgesellschaft seit der Vormoderne*, ed. M. Prinz (Paderborn, 2003), pp. 79–103; R. Prass, *Reformprogramm und bäuerliche Interessen. Die Auflösung der traditionellen Gemeindeökonomie im südlichen Niedersachsen, 1750–1883* (Göttingen, 1997); C. Ulbrich, *Shulamit und Margarete: Macht, Geschlecht und Religion in einer ländlichen Gesellschaft des 18. Jahrhunderts* (Vienna, Cologne and Weimar, 1999); O. Volckart, ‘Die Dorfgemeinde als Kartell: Kooperationsprobleme und ihre Lösungen im Mittelalter und in der Frühen Neuzeit’, *Jahrbuch für Wirtschaftsgeschichte* 2004 (2004), 189–202; Ogilvie, *State corporatism*, chap. 3; Sabean, *Property*; Robisheaux, *Rural society*; P. Bierbrauer, ‘Die ländliche Gemeinde im oberdeutsch-schweizerischen Raum’, in *Landgemeinde und Stadtgemeinde in Mitteleuropa*, ed. Blicke, pp. 169–90; and many of the essays in A. Holenstein and S. Ullmann (eds), *Nachbarn, Gemeindegossen und die anderen. Minderheiten und Sondergruppen im Südwesten des Reiches während der Frühen Neuzeit* (Epfendorf, 2004).

of this chapter. For one thing, these were the choices not of individuals but of groups – either the whole village or, more often, the village oligarchy. Furthermore, even where community institutions did facilitate the choices of the whole village to manage resources or organise resistance, they usually had to constrain the choices of individuals.

To manage common resources, communities typically imposed ceilings on grazing, limited wood-collection, forbade commercial as opposed to domestic use of resources, and refused resource access – or even settlement rights – to particular individuals and groups.¹⁰⁶ Nor did communities always do this in an egalitarian spirit, in which they distributed common costs and common benefits equally to all inhabitants. More usually, communities regulated common resources in the interests of a powerful oligarchy at the expense of less powerful inhabitants such as cottagers, female household-heads, or new settlers.¹⁰⁷ So we cannot view communities as merely enabling peasants to express their choices: typically, they expressed some peasants' choices more than others.¹⁰⁸

Likewise, even though villages did organise resistance against landlords, the state, or the church, this does not justify a rosy view that this expressed the choices of all villagers. Greater powers for communities did not necessarily mean greater choices for all their members. Peasant communes were not egalitarian and harmonious spheres within which each villager had an equal chance of securing a fair hearing from well-meaning neighbours. Rather, villages were highly stratified and riven by conflict.¹⁰⁹ Community officials were recruited disproportionately from the top stratum of well-off farmers.¹¹⁰ This oligarchy ran the commune in its own interests,

106 On these constraints in the eastern provinces of the Netherlands in the medieval and early modern period, see van Zanden, 'Chaloner Memorial Lecture', pp. 130–1 and 134–5.

107 On the differing access rights of full peasants and cottagers in the eastern provinces of the Netherlands in the medieval and early modern periods, see van Zanden, 'Chaloner Memorial Lecture', pp. 130–1 and 135; Bieleman, *Boeren*.

108 This point is made for medieval English communities by R. M. Smith, 'Families and their land in an area of partible inheritance: Redgrave, Suffolk 1260–1320', in *Land, kinship and life-cycle*, ed. Smith, pp. 135–95 (p. 174).

109 On stratification inside village communities in medieval England, see Campbell, 'Agrarian problem', pp. 54–6 and 62. On the eastern Dutch provinces of Drenthe, Overijssel, and Gelderland in the medieval and early modern periods, see van Zanden, 'Chaloner Memorial Lecture', p. 129. On early modern Bohemia, see Ogilvie, 'Communities and the "second serfdom"', p. 113. On eighteenth- and nineteenth-century Russia, see Dennison and Ogilvie, 'Serfdom and social capital', pp. 526–7.

110 On medieval England, see Smith, 'Families', pp. 159 and 173–5; Campbell, 'Agrarian

and its members and their relatives undoubtedly often benefited from powerful community institutions. But many communities implemented the choices of their most powerful members by limiting those of the least powerful – big farmers over labourers, men over women, middle-aged over young, married over unmarried, insiders over migrants.¹¹¹ For weaker villagers, manorial and princely courts, however biased their judgements, could provide a welcome alternative to village courts whose judgements favoured the village oligarchy and their cronies.¹¹² As such findings illustrate, the autonomy of strong rural communities must be analysed critically. It did not always – or even typically – express the choices of women, youths, landless labourers, land-poor strata, or non-members of the village oligarchy. It cannot be automatically equated with the choices or well-being of all members of the village, let alone all members of rural society more widely.

Empirical microstudies of a range of European societies, therefore, suggest that community institutions can be regarded neither as uniformly facilitating peasant choices nor as being irrelevant to them. Although peasants made many individual choices in which their communities did not intervene, this did not mean that peasant communities *could* not intervene, especially when the interests of powerful community members were at stake. To differing degrees in different societies, rural people circumvented community controls, but in doing so they faced costs and risks that deterred the marginal individual from violating those restrictions, and they consumed resources in evasive action. Even where communities enabled rural people to express or defend their choices against external challenges, they often did so only for a subset of village members. Communal institutions meant different things to different villagers, and control over village offices and a voice in communal decision-making was

problem', p. 46. On early modern Bohemia, see Ogilvie, 'Communities and the "second serfdom"', pp. 97 and 113. On eighteenth- and nineteenth-century Russia, see Dennison and Ogilvie, 'Serfdom and social capital', pp. 527–8.

111 Ogilvie, 'Communities and the "second serfdom"', p. 113; Dennison and Ogilvie, 'Serfdom and social capital'. On the implications of social stratification for East-Elbian communes, see Melton, 'Gutsherrschaft', pp. 345–7; K. Blaschke, 'Dorfgemeinde und Stadtgemeinde in Sachsen zwischen 1300 und 1800', in *Landgemeinde und Stadtgemeinde in Mitteleuropa*, ed. Blickle, pp. 119–44 (pp. 134–6 and 141); and T. Rudert, 'Gutsherrschaft und ländliche Gemeinde. Beobachtungen zum Zusammenhang von gemeindlicher Autonomie und Agrarverfassung in der Oberlausitz im 18. Jahrhundert', in *Gutsherrschaft als soziales Modell*, ed. Peters, pp. 197–218 (pp. 197, 200–3 and 212).

112 Smith, 'Families', pp. 175–7.

not enjoyed by all. We must therefore recognise both that peasants made choices, and that these choices could be blocked, rendered more risky, or channelled in alternative directions by the institutional practices of the communities in which they lived. Neither dismissing the community as irrelevant nor viewing it uncritically as a vehicle of peasant choice does justice to its complex influences. Only by analysing its empirical operation in the local context can we understand precisely how the peasant community affected peasant choice.

Legal constraints

The discovery of peasant agency has also sometimes been taken to imply that legal systems did not constrain peasant choices. This view takes two main forms. In its first form, the claim is that legal institutions were irrelevant to peasant action in *all* pre-modern societies, without distinction. Thus, Gregory Clark argues that the effectiveness with which property rights and contract enforcement were guaranteed did not change in England between 1300 and 1800, even while agricultural growth and factory industrialisation occurred; in his view, this demonstrates that legal institutions were irrelevant to medieval and early modern economic growth.¹¹³ In a different manifestation of this view, Jürgen Schlumbohm argues that rural societies were unaffected by legal institutions because the pre-modern legal system consisted primarily of ‘laws that were not enforced’. Instead, Schlumbohm argues, we should adopt Michel Foucault’s view that medieval and early modern legal systems served a purely symbolic purpose – the assertion of sovereignty by a ‘theatre state’.¹¹⁴

The second form this argument takes is different: it holds that legal institutions were irrelevant to peasant choices in *some* European societies, but significantly constrained them in others. Alan Macfarlane, for instance, regards the English legal system as a non-obstructive and facilitative instrument for rural individuals to implement their decisions, in contrast to the more restrictive legal systems prevalent in continental European

113 G. Clark, *A farewell to alms: a brief economic history of the world* (Princeton, NJ, 2007), pp. 147, 173 and 212–23.

114 J. Schlumbohm, ‘Gesetze, die nicht durchgesetzt werden – ein Strukturmerkmal des frühneuzeitlichen Staates?’, *Geschichte und Gesellschaft* 23 (1997), 647–63 (pp. 649–50 and 660–1); referring to M. Foucault, *Surveiller et punir: naissance de la prison* (Paris, 1975).

societies, where legal restrictions did constrain peasant choices.¹¹⁵ Bas van Bavel makes similar claims for the medieval Low Countries, where he sees the legal system providing greater protection for peasant choices even than in England.¹¹⁶ Similar ideas have been taken up by economists who explain differential economic development over the past eight centuries in terms of ‘legal origins’, according to which the ‘common law’ of the English-speaking world facilitated individual choices, whereas the ‘civil law’ tradition of continental Europe and its colonies significantly constrained them.¹¹⁷

The empirical findings, however, support a more differentiated view concerning both sets of claims – that legal systems did not constrain peasant choice anywhere, and that they constrained it only in certain societies. Even in England, the legal system was not fully facilitative of peasant choices. In some regions of medieval England, the public legal system did provide reasonably good property rights and contract enforcement to rural people, who were not restricted to their own landlords’ manorial courts but could use courts operated by other lords, the church, and the crown.¹¹⁸ These findings cast doubt on van Bavel’s claim that legal protection of peasant property rights was weaker in England than the Low Countries because of ‘the stronger power of lords and the weaker position of public authorities’.¹¹⁹ However, counter to Clark’s portrayal, the medieval English legal system did constrain the economic choices of rural people. To give just one example among many, customary law on some English manors permitted joint tenure and out-of-court land transfers from the fourteenth century onwards; on other manors these practices, which facilitated individual peasant choices, became legally permissible only in the fifteenth or sixteenth centuries.¹²⁰ Further changes,

115 Macfarlane, *Origins*; A. Macfarlane, ‘The origins of English individualism: some surprises’, *Theory and Society* 6 (1978), 255–77 (pp. 257–8, 261–2, 265 and 273); Macfarlane, ‘Myth’; Macfarlane, *Culture*, esp. pp. 191–222.

116 Van Bavel, ‘Organization’, esp. p. 20.

117 E. L. Glaeser and A. Shleifer, ‘Legal origins’, *Quarterly Journal of Economics* 117 (2002), 1193–1230; R. La Porta, F. Lopez de Silanes and A. Shleifer, ‘The economic consequences of legal origins’, *Journal of Economic Literature* 46 (2008), 285–332, esp. pp. 305–6 and 312.

118 As emphasised for instance in Campbell, ‘Agrarian problem’, pp. 6–7; C. Briggs, ‘Manor court procedures, debt litigation levels, and rural credit provision in England, c.1290–c.1380’, *Law and History Review* 24 (2006), 519–58; Dyer, ‘Ineffectiveness’, pp. 75 and 78.

119 Van Bavel, ‘Organization’, p. 20.

120 Whittle, ‘Individualism’, p. 34; L. Bonfield and L. R. Poos, ‘The development of the

for instance to legal forms of leasing, only occurred during the sixteenth or seventeenth century.¹²¹

For the Low Countries, too, the legal system was not altogether facilitative of peasant choices. For one thing, there was considerable regional variation, with much weaker legal protection for peasant property rights in inland provinces such as Drenthe than in western provinces such as Holland.¹²² Furthermore, between the fifteenth and seventeenth centuries, the Dutch state introduced compulsory registration of land transactions in public law-courts, prohibiting use of private charters as in England or notarial recording as in France.¹²³ Public legal registration contributed to market transparency, according to van Bavel; but it also limited peasants' choices by exposing rural people more fully to state regulations and fiscal exactions. The Dutch legal system thus facilitated some peasant choices and constrained others, in different times and places.

Outside England and the Low Countries, differential availability of 'facilitative' components of the legal system – those that enabled individuals to guarantee their property rights and enforce their contracts – certainly affected peasant choices. Where the countryside was subject to a city-state, as in many parts of northern Italy, such legal facilitation was rationed by urban courts. In the countryside around fourteenth-century Florence and Siena, for instance, peasant choices were increasingly constrained by urban courts which extended their jurisdiction over the countryside, decided legal cases in favour of urban elites, and reduced security of peasant property rights.¹²⁴ Where the countryside was subject to a territorial state, the princely legal system constrained peasants' choices. The principality of Hohenlohe, for instance, became a rare island of impartible property rights in otherwise predominantly partible south-west Germany in the 1560s because its rulers incorporated impartibility into the national

deathbed transfer in medieval English manor courts', *Cambridge Law Journal* 47 (1988), 403–27.

121 M. Overton, *Agricultural revolution in England: the transformation of the agrarian economy 1500–1850* (Cambridge, 1996); R. C. Allen, 'Tracking the agricultural revolution in England', *Economic History Review* 52 (1999), 209–35; van Bavel, 'Organization', pp. 31–3; P. J. Bowden, 'Agricultural prices, farm profits, and rents', in *The agrarian history of England and Wales, IV: 1500–1640*, ed. J. Thirsk (Cambridge, 1967), pp. 593–695 (pp. 685–6).

122 Van Bavel, 'Organization', p. 23.

123 Van Bavel, 'Organization', pp. 23–4.

124 D. J. Osheim, 'Countrymen and the law in late-medieval Tuscany', *Speculum* 64 (1989), 317–37.

law-code for fiscal reasons, thereby restricting peasants' choices to divide farms among heirs, sell individual fields to manage economic shocks, or alienate them to finance micro-investments.¹²⁵ Similar examples of how even the 'facilitative' aspects of legal systems circumscribed peasants' choices can be replicated for most European rural societies.

What about Schlumbohm's idea that the *prescriptive* components of pre-modern European legal systems did not constrain peasant choice because they consisted of laws that were not enforced? Schlumbohm's evidentiary support for this argument is that states often promulgated the same law repeatedly and that people sometimes violated such laws. Early modern European states certainly could not always enforce all laws perfectly. But did this mean states never enforced *any* laws even partially?

In theory, does the fact that we observe pre-modern people violating laws mean that the legal system did not constrain their choices? Not in the least. So long as the probability of being detected breaking a law was non-zero, this imposed a non-zero expected cost on someone who was trying to decide whether to make that choice. A good way of thinking about this is to take one of the 'prescriptive' laws on which Schlumbohm focuses – a sumptuary ordinance, for instance. Sumptuary ordinances forbade ordinary people from wearing costly clothing, holding lavish weddings, or consuming other luxuries prohibited to their station in life, and laid down penalties for violations. Unless the probability of being detected was nil, an individual thinking about choosing to buy a silk neckerchief, for instance, faced a non-zero expected cost of making that choice, over and above the cost of the neckerchief itself. This did not necessarily always prevent him – or her, usually – from making that consumption choice, but by increasing the cost of the choice, it deterred the marginal consumer. Also, the actions she took to avoid detection and punishment themselves consumed resources and exercised an additional effect on the set of choices open to her.

Empirically, too, it is overoptimistic to assume that prescriptive laws never limited peasant choices. Schlumbohm dismisses the idea that sumptuary regulations, for instance, were ever enforced. It is certainly true that there were European societies that either ceased to enforce sumptuary regulations early on (like England after 1604) or never promulgated any (like the Dutch Republic after its formation in the 1560s).¹²⁶

125 Brakensiek, 'Farms', pp. 224–5.

126 W. Hooper, 'The Tudor sumptuary laws', *English Historical Review* 30 (1915),

But in Germany, Austria, Switzerland, Scandinavia, Spain, Italy, and even France, sumptuary regulations survived long past 1600, were supported by many non-state institutions, and were enforced in practice, albeit selectively according to the interests of the social groups that endorsed them.¹²⁷ Indeed, it was precisely their frequent support by local elites that ensured that sumptuary regulations were sometimes enforced: the better sort wanted to demarcate their social status *vis-à-vis* the lower strata, men wanted to control women's behaviour, employers wanted to discipline servants and labourers, local guild masters wanted to protect their own markets against competition from exotic imports, and governments wanted to make ordinary people spend less on themselves so they could pay more in taxes.¹²⁸

Microstudies show sumptuary laws sometimes being enforced quite systematically. For one rural Württemberg locality of only about 300 households, for instance, an early-eighteenth-century register lists 110 individuals (91 per cent of them female) fined during a period of twelve months for wearing 218 forbidden garments, most of them small items of silk or calico. Fines varied from the equivalent of a day's earnings for an adult male weaver to two weeks' wages for a local maidservant. A fine of this magnitude for wearing a forbidden garment did not make it *impossible* to make that choice, but it made it more costly and cannot fail to have deterred the marginal consumer, especially among women and the less well off. The enforcement of sumptuary controls in this community also

433–49 (pp. 448–9); A. Hunt, *Governance of the consuming passions: a history of sumptuary law* (Basingstoke, 1996), pp. 34, 40; R. Ross, 'Sumptuary laws in Europe, the Netherlands and the Dutch Colonies', in *Contingent lives: social identity and material culture in the VOC World*, ed. N. Worden (Cape Town, 2006), pp. 382–91 (pp. 385–6).

127 C. M. Belfanti and F. Giusberti, 'Clothing and social inequality in early modern Europe: introductory remarks', *Continuity and Change* 15 (2000), 359–65 (pp. 359–61); N. Bulst, 'Kleidung als sozialer Konfliktstoff. Probleme kleidungsgesetzlicher Normierung im sozialen Gefüge', *Saeculum* 44 (1993), 32–46, esp. pp. 32–8; C. Fairchild, 'Fashion and freedom in the French Revolution', *Continuity and Change* 15 (2000), 419–33, esp. pp. 420–1; H. Freudenberger, 'Fashion, sumptuary laws, and business', *Business History Review* 37 (1963), 37–48 (pp. 37, 40, 43, 46 and 48); Hunt, *Governance*, pp. 17–41; J. B. Moyer, 'Sumptuary law in ancien régime France, 1229–1806' (unpublished Ph.D. thesis, Syracuse University, 1996), esp. pp. 231–6 and 244–336; D. Roche, *A history of everyday things: the birth of consumption in France, 1600–1800* (Cambridge, 2000), pp. 203–4 and 279.

128 For a detailed discussion, see Hunt, *Governance*, pp. 17–41; S. Ogilvie, 'Consumption, social capital, and the "industrious revolution" in early modern Germany', *Journal of Economic History* 70 (2010), 287–325 (pp. 304–6).

evoked enormous resentment and enduring conflicts – in one case, a nine-year-long feud between two rural families – providing additional evidence that even those who could afford to violate them perceived such laws as a real constraint.¹²⁹ Inventory studies of rural Württemberg find that clothing regulations were largely complied with until the abandonment of sumptuary legislation in the final decades of the eighteenth century; in turn, this may have contributed to the late onset of the Consumer Revolution in the rural societies of central Europe.¹³⁰

Another aspect of the early modern legal system that Schlumbohm dismisses consisted of laws regulating geographical mobility. Certainly not all the brutal vagrancy laws of pre-modern rural societies were always enforced, but the fact that they *could* be enforced and the severity of the penalties that were sometimes imposed set a high expected cost on violations, which inevitably entered into the calculations of rural people in making their choices.¹³¹ The seventeen female gypsies hanged after a summary trial in eighteenth-century Franconia for no crime other than their itinerant way of life would have been surprised to learn, had they been able to read Schlumbohm or Foucault, that the migration ordinances of the early modern Franconian legal system were ‘laws that were not enforced’ and merely served symbolic purposes in the assertion of sovereignty by a ‘theatre state’.¹³²

A final aspect of the legal system that constrained peasant choices consisted of marriage laws. As Josef Ehmer has shown, throughout the early modern period many parts of Germany, Austria and Switzerland imposed stringent legal restrictions on permission to marry, culminating in the notorious nineteenth-century regime of ‘politische Ehekonsens’ (political consent to marriage).¹³³ Microstudies in a variety of central European

129 So widespread is the evidence that consumption laws were sometimes enforced in practice that even Schlumbohm is compelled to acknowledge (in a footnote) that ‘admittedly there absolutely is evidence of cases in which violations of clothes ordinances were punished’; see Schlumbohm, ‘Gesetze’, p. 653 n. 23.

130 H. Medick, *Weben und Überleben in Laichingen 1650–1900. Untersuchungen zur Sozial-, Kultur- und Wirtschaftsgeschichte aus der Perspektive einer lokalen Gesellschaft im frühneuzeitlichen Württemberg* (Göttingen, 1996), pp. 384–7, 398–406, 414 and 427; Holzem, ‘Religiöse Prägungen’.

131 E. Schubert, *Arme Leute, Bettler und Gauner im Franken des 18. Jahrhunderts* (Neustadt a.d. Aisch, 1983), pp. 249–50, 295 and 323.

132 Schlumbohm, ‘Gesetze’, pp. 660–1.

133 J. Ehmer, *Heiratsverhalten, Sozialstruktur und ökonomischer Wandel. England und Mitteleuropa in der Formationsperiode des Kapitalismus* (Göttingen, 1991).

territories show these laws being enforced – not perfectly, but enough to affect the choices not just of the 6 per cent of individuals observed being denied permits in one well-known study, but of a wider penumbra of people who knew they would be refused a permit and hence did not even apply.¹³⁴ Jerg Rauschenberger from an isolated hamlet in the Württemberg Black Forest, who was refused permission to marry a young woman from the nearest village in 1743 on the grounds that ‘the latest instructions from the district authorities relating to the many princely decrees and to the princely marriage ordinance totally prohibit recognition of such marriages any longer, and on both sides [groom and bride] there is nothing but pure poverty present’, is unlikely to have agreed that early modern German marriage legislation consisted of ‘laws that were not enforced’.¹³⁵

A major reason central European marriage laws were enforced, as Ehmer shows, is that they served the interests of local elites concerned to prevent the proliferation of poor householders, keep welfare payments low, and maintain a cheap workforce of unmarried servants and labourers.¹³⁶ Between c.1700 and c.1870, marriage ages and celibacy rates increased across large swathes of German-speaking central Europe, rising more in those territories where the marriage laws were stricter.¹³⁷ These restrictions on access to marriage by ‘economically and morally weak persons’ not only limited the choices of ordinary people such as Jerg Rauschenberger, but had wider socio-economic consequences: epidemic male emigration, plummeting sex ratios, rocketing illegitimacy, and sky-high infant mortality.¹³⁸ The central European marriage regulations

134 On this, see, e.g., K.-J. Matz, *Pauperismus und Bevölkerung. Die gesetzlichen Ehebeschränkungen in den süddeutschen Staaten während des 19. Jahrhunderts* (Stuttgart, 1980), p. 233; E. Mantl, *Heirat als Privileg. Obrigkeitliche Heiratsbeschränkungen in Tirol und Vorarlberg 1820 bis 1920* (Vienna and Munich, 1997); E. Mantl, ‘Legal restrictions on marriage: marriage and inequality in the Austrian Tyrol during the nineteenth century’, *The History of the Family* 4 (1999), 185–207; S. Ogilvie, *A bitter living: women, markets, and social capital in early modern Germany* (Oxford, 2003), pp. 51–3, 74, 135, 177, 252, 311, 313 and 332–9; S. Ogilvie, ‘Population growth and state policy in central Europe before industrialization’, Centre for History and Economics Working Paper (1995), <http://www.econ.cam.ac.uk/people/faculty/sco2/pdfs/Population-and-State-in-Central-Europe-1995.pdf>.

135 Landeskirchliches Archiv Stuttgart, Pfarrarchiv Ebhausen, Kirchenkonventsprotokolle, Vol. IV, fol. 10v, 26.4.1743.

136 Ehmer, *Heiratsverhalten*.

137 Ogilvie, ‘Population Growth’; Ehmer, *Heiratsverhalten*.

138 For consideration of the demographic implications of the marriage controls, see J. E. Knodel, ‘Law, marriage and illegitimacy in nineteenth-century Germany’, *Population*

illustrate vividly how even laws that are not perfectly enforced can affect individual choices and have far-reaching consequences for entire societies.

Empirical studies thus show clearly that legal systems facilitated some peasant choices and constrained others. Even legal institutions such as those of England or the Low Countries, which are described as most facilitative, affected the choices peasants could make. In other European societies, the legal system reached prescriptively into deeper aspects of individual choice, regulating consumption, migration, marriage, and other spheres of action. Although laws were never enforced perfectly, they did not need to be. Legal prescriptions equipped conflicting parties – fellow peasants, communal oligarchies, landlords, princes – with legitimacy in seeking to constrain others' choices. Even when peasants circumvented the law, the law nonetheless affected their behaviour through the actions they took to avoid detection and the risks they faced in acting illicitly. Even partial enforcement of laws on marriage, migration, property or consumption could have long-term effects on peasant choices and, through them, on wider demographic and economic developments.

Conclusion

Where does this leave us in thinking about choices and constraints in rural societies? In recent decades, as we have seen, one important strand of research has revealed the broad scope for individual choice exercised by pre-modern rural people while another has illuminated the strength, variety and complexity of the structural constraints on those choices. Yet these two strands of scholarship have often been pursued in apparent mutual obliviousness. If we bring these two strands together, what are the implications for how we think about rural societies more widely?

First, combining these perspectives casts doubt on the usefulness of 'peasant culture' or 'the choiceless peasant' as an explanation for rural economic stagnation. Many social scientists ascribe development failures in rural economies, both in modern poor societies and in pre-industrial Europe, to distinctive concepts and preferences among peasants, which prevent them from making individual choices in any meaningful sense

Studies 20 (1967), 279–94; T. W. Guinnane and S. Ogilvie, 'A two-tiered demographic system: "insiders" and "outsiders" in three Swabian communities, 1558–1914', *The History of the Family* 19 (2014), 77–119.

of the term. Among economists, the assumption that peasants did not make choices – that they would not respond positively to development assistance or negatively to deprivation – underpinned the disastrous post-1945 policies of ‘squeezing agriculture’ to support industry.¹³⁹ Among historians, the idea that peasants did not make individual choices underlay accounts of how agricultural change, proto-industrialisation, and ‘forced commercialisation’ were imposed on inert rural populations over the past 800 years.¹⁴⁰ Among historians of eastern Europe, the notion that peasant culture defined many demographic and economic activities as lying outside the realm of choice has been used to explain centuries of economic stagnation, divergence between eastern and western Europe, and the difficulties of twentieth-century history.¹⁴¹ The idea that peasants do not make individual choices implies that it is the peasant mentality, not the organisation of peasant society, which generates exploitation, poverty and stagnation. This leads to the conclusion that peasant societies cannot change from within, but only through coercion or eradication of peasant culture by modernizing landlords, capitalists, or bureaucrats. A complete understanding of why rural economies are poor and undeveloped must await a more thorough analysis of their functioning, but the evidence on the broad scope of individual peasant choice suggests strongly that the obstacles to economic success in rural societies are external and institutional, not inward and cultural.

The second set of implications relates precisely to these external obstacles. The evidence discussed in this chapter casts doubt on the view that ‘peasant agency’ is so powerful that institutional constraints do not matter. The powers of landlords over peasants under the manorial system varied across Europe, but empirical studies leave little doubt that they constrained peasant choice. In some manifestations, such as medieval England, manorial systems were fairly loosely organised, leaving interstices within which peasants could make their own choices; but even here people incurred costs in circumventing manorial regulations. In other societies, landlords’ powers were much greater and the penalties

139 I. M. D. Little, *Economic development: theory, policy, and international relations* (New York, 1982), pp. 149–60.

140 Kriedte, Medick and Schlumbohm, *Industrialization*, pp. 41–53 and 99–115; H. Wunder, ‘Agriculture and agrarian society’, in *Germany: a new social and economic history, vol. 2: 1630–1800*, ed. S. Ogilvie (London, 1996), pp. 63–99 (pp. 63–6 and 87–91).

141 Mironov, ‘Russian peasant commune’; Mironov, ‘When and why’, p. 333; Figes, *Peasant Russia*, pp. 8–12; Pallot, *Land reform*, pp. 15–17 and 242–9.

for violating manorial constraints more severe. Even where landlords exercised their rights of intervention rarely, their entitlement to do so still affected people's decisions. Violations of manorial regulations simply created black-market 'informal sectors' in which the fact that transactions were illegitimate rendered them risky, costly, open to exploitation, and incapable of contributing to long-term development. The evidence suggests that manorial constraints affected peasant choice, but in ways that can only be teased out by local-level investigation into the everyday lives of rural women and men.

Communities constituted a second constraint on peasant choice. They sometimes enabled peasants to engage in collective action, magnifying the effectiveness of peasant choice, but in many cases, community institutions enhanced the power of choice only for a privileged oligarchy, while limiting choice for less powerful villagers. The strong communities of central Europe regulated nearly every realm of human action – which did not prevent individual rural people from making choices within that the framework of communal constraints. In nearly every rural society, part of the social structure within which individuals made choices consisted of the communities in which they lived. Without taking community constraints into account, we cannot understand peasant behaviour or rural development more widely.

Finally, legal institutions influenced peasant choices. In many rural societies, the legal system guaranteed property rights and enforced contracts in ways that facilitated individual peasant choices. This was the case not just in England and the Netherlands, but in most parts of medieval and early modern Europe. This does not mean, however, that there was no scope for change between 1300 and 1800 in the facilitative services offered by the English (or any other) legal system. Rather, variations over time, among regions, and across societies mean that contract enforcement and property rights differed in interesting ways which need to be taken into account in explaining divergent paths of rural development.¹⁴²

Moreover, in many early modern European societies, legal systems not only facilitated peasants' own choices but sought to alter those choices prescriptively. Although some have argued that these prescriptive laws were of a primarily symbolic and theatrical nature and cannot be

142 For further exploration of this argument, see S. Ogilvie and A. W. Carus, 'Institutions and economic growth in historical perspective', in *Handbook of economic growth*, ed. S. Durlauf and P. Aghion, 2 vols (Amsterdam, 2014), vol. 2A, pp. 405–513, esp. pp. 453–7 and 460–2.

regarded as a constraint on peasant choices, local studies suggest that this view is Panglossian. Where prescriptive laws promised benefits to local elites or powerful interest groups, they could be enforced to a surprising degree, sufficiently to impose significant constraints on the choices of rural individuals. Even laws that were not thoroughly enforced – those governing migration, consumption, or marriage – imposed an expected cost on certain actions, altering the calculus of peasant choice in ways that can be observed on the level both of the individual person and of entire rural societies. Imperfectly enforced laws shaped human action, if only in the forms of behaviour people undertook to evade the law. Individual choice alone was not sufficient: decisions made by individuals always took place in the context of legal frameworks.

Why does this matter? The functioning of rural economies is now widely recognised as central to long-term improvements in economic growth and human well-being. Policies based on the idea that rural people are unable or unwilling to make choices will fail. But policies based on the idea that peasant agency is sufficient and that rural people will just get around any constraining institutions will also fail. We need to recognise both that rural people make choices and that their choices are constrained in particular ways by specific institutions. Only then will we understand why different rural economies follow different paths of development. The past generation of path-breaking historical scholarship on choices and constraints in rural economies has shown us the way to a better understanding of these issues, both for the past eight centuries and for the challenges of the future.