CBR Labour Regulation Index
for the UK, the US, Germany, France, and India

Simon Deakin, Priya P. Lele and Mathias M. Siems

Centre for Business Research, University of Cambridge

December 2007

(See Simon Deakin, Priya Lele and Mathias Siems, 'The evolution of labour law: calibrating and comparing regulatory regimes' CBR Working Paper No. 352 (2007), http://www.cbr.cam.ac.uk/pdf/WP352.pdf)

For comments and questions please contact

Simon Deakin
Centre for Business Research
University of Cambridge
Judge Business School Building
Cambridge CB2 1AG
email: s.deakin@cbr.cam.ac.uk

France

Variable	Template	Score	Explanation
A. Alternative employment contracts			
v1. The law, as opposed to the contracting parties, determines the legal status of the worker	Equals 0 if the parties are free to stipulate that the relationship is one of self-employment as opposed to employee status; 0.5 if the law allows the issue of status to be determined by the nature of the contract made by the parties (as in the case of the English common law 'mutuality of obligation' test); and 1 if the law mandates employee status on the parties if certain specified criteria are met (such as form of payment, duration of hiring, etc.). Scope for scores between 0 and 1 to reflect changes in the strength of the law.	1	'The existence of an employment relationship does not depend on the will of the parties however they have expressed it, nor on the label which they give their agreement, but on the factual matrix within which the relevant labour services are carried out': judgment of the Cour de cassation, 19.12.2000, restating earlier case law; see J. Pelissier, A. Supiot and A. Jeammaud, *Droit du travail* 23rd. ed. (Paris: Dalloz, 2006), p. 330.
v2. Part-time workers have the right to equal treatment with full-time workers	Equals 1 if the legal system recognises a right to equal treatment for part-time workers (as, for example, in the case of EC Directive 97/81/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for part-time workers (via, e.g., sex discrimination law or a more general right of workers not be treated arbitrarily in employment). Equals 0 if neither of the above. Scope for scores between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0.5 1982-: 1	A right to equal treatment for part-time workers was established in 1982 and is now set out in art. L. 212-4, Code du travail. The first law on part-time work dates from 1973 (law of 27.12.1973) and there have been further laws and regulations since (law of 28.2.1982, ordinance of 26.3.1982, ordinance of 11.8.1986, law of 31.12.1992, law of 20.12.1993, law of 13.6.1998 and law of 19.1.2000) making minor changes. Prior to the 1982 law, the general law relating to arbitrary treatment in employment was relevant to the case of part-time workers, hence the suggested coding.

Variable	Template	Score	Explanation
v3. The cost of dismissing part-time workers is equal in proportionate terms to the cost of dismissing full-time workers	Equals 1 if as a matter of law part-time workers enjoy proportionate rights to full-time workers in respect of dismissal protection (notice periods, severance pay and unjust dismissal protection). Equals 0 otherwise. Scope for further gradation 0 and 1 to reflect changes in the strength of the law.	1	Unjust dismissal legislation dates from 1973 (law of 13.1.1973); prior to that, the law governing abuse of right set limits on the power of the employer to terminate the employment contract. In neither case did the law distinguish between the levels of protection for full-time workers and part-time workers.
v4. Fixed-term contracts are allowed only for work of limited duration.	Equals 1 if the law imposes a substantive constraint on the conclusion of a fixed-term contract, by, for example, allowing temporary hirings only for jobs which are temporary by nature, training, seasonal work, replacement of workers on maternity or sick leave, or other specified reasons. Equals 0 otherwise. Scope for gradation between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0 1982-84: 1 1985: 0.75 1986-89: 0.5 1990-: 1	Fixed-term employment was first regulated in this sense by legislation in 1982 (ordinance of 5.2.1982), which set out a series of grounds on which a fixed-term contract could be concluded; in other cases, the contract was deemed to be permanent. Between 1985 and 86 the law was liberalised (decree of 3.4.1985 and law of 25.7.1985), and again from 1986 to 1990 (law of 11.8.1986), replacing the exhaustive list with a more general test based on the objective need of the employer for fixed-term work. From 1990 the list approach was adopted again (law of 12.7.1990). The law is now contained in Code du travail, art. L. 122-1-1.
v5. Fixed-term workers have the right to equal treatment with permanent workers	Equals 1 if the legal system recognises a right to equal treatment for fixed-term workers (as, for example, in the case of EC Directive 99/70/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for fixed-term workers (via, e.g., more general right of workers not be treated arbitrarily in employment) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0.5 1982-: 1	A right to equal treatment for fixed-term workers was established in 1982 (law of 5.2.1982; see now Code du travail, art. L. 122-3-3). Prior to the 1982 law, the general law relating to arbitrary treatment in employment was relevant to the case of fixed-term workers, hence the suggested coding.

Variable	Template	Score	Explanation
v6. Maximum duration of fixed-term contracts	Measures the maximum cumulative duration of fixed-term contracts permitted by law before the employment is deemed to be permanent. The score is normalised from 0 to 1, with higher values indicating a lower permitted duration. The score equals 1 if the maximum limit is 1 year or less and 0 if it is 10 years or more or if there is no legal limit.	1970-81: 0 1982-: 0.7	Under the 1982 law (law of 5.2.1982), the basic rule is that the maximum permitted duration of a fixed-term contract (or series of such contracts) is 18 months, but this is subject to a number of derogations and exceptions, some set out in legislation and some developed by case law. See Code du travail, art. L. 122-1-2. Before 1982 French Courts had started to put a restraint on the unjustified use of fixed term contracts. For example, a contract containing an indefinite number of renewals could under certain circumstances be classified as giving rise to an indeterminate contract (Civ., 15 oct. 1941, J.C.P., 1942, II, 2009: Soc., 19 janv. 1956, Gaz. Pal., 1956, 1, 165; case law tightened in early 1970s: see J. Rivero and J. Savatier, *Droit du Travai*l, PUF, 1975).
v7. Agency work is prohibited or strictly controlled	Equals 1 if the legal system prohibits the use of agency labour. Equals 0.5 if it places substantive constraints on its use (in the sense of allowing it only if certain conditions are satisfied, such as a demonstrable need on the part of the employer to meet fluctuations in labour demand). Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0.25 1982-84: 0.75 1985-89: 0.25 1990-: 0.75	In 1945 there was a general prohibition on the sale of labour services intermediaries acting for profit (ordinance of 24.5.1945). Notwithstanding the objections of some workers' organisations, temporary workers' agencies were never considered illegal in France. Before 1972, this type of agency work was widespread: data in 1973 showed that there were about half a million agencies. (Carmelynck & Lyon-Caen, *Droit du Travail,* Dalloz, 1973). The first regulation of agency work was introduced in 1972 (law of 2.1.1973), with only a few conditions being placed on its use; before that there was a collective agreement beween Manpower and one of the unions going back to 1969; this formed the basis for the law of 1972.. These conditions were made more restrictive in 1982 (law of 5.2.1982), only to be loosened again in 1985 (law of 25.7.1985, ordinance of 11.8.1986). They were then strengthened again in 1990 (inter-occupational agreement of 24.3.1990, law of 12.7.1990; further minor changes were made by the 'loi de modernisation sociale', 2000).

Variable	Template	Score	Explanation
v8. Agency workers have the right to equal treatment with permanent workers of the user undertaking	Equals 1 if the legal system recognises a right to equal treatment for agency workers, in relation to permanent workers of the user undertaking, in respect of terms and conditions of employment in general Equals 0.5 or another intermediate score if the legal system recognises a more limited right to equal treatment for agency workers (for example, in respect of anti-discrimination law) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0.25 1982-: 1	Since 1982 a right to equal treatment of agency workers with the workers of the user enterprise has been in force (law of 5.2.1982). The obligation is enforceable against the agency. Prior to that point, although there was (and still is) no contract between the worker and the user enterprise, certain obligations, arising from the general law, arose with regard to the treatment of the agency worker while he or she was at the disposal of the user enterprise (Code du travail, art. L. 122-4-6).
vA. Alternative employment contracts	***Measures the cost of using alternatives to the 'standard' employment contract, computed as an average of the variables 1-8.***		
B. Regulation of working time			
v9. Annual leave entitlements	Measures the normal length of annual paid leave guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with a leave entitlement of 30 days equivalent to a score of 1.	1970-81: 0.67 1982-: 0.83	Up to 1982, a 4 week period of annual leave was mandated by law, dating from earlier legislation (law of 16.5.1969). From 1982, this period was extended by statute to 5 weeks (law of 16.1.1982). The law is now contained in Code du travail, art. L. 223-1.
v10. Public holiday entitlements	Measures the normal number of paid public holidays guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with an entitlement of 18 days equivalent to a score of 1.	0.61	1 May is the only paid holiday mandated by law for hourly paid workers but legislation provides for another 10 days to be public holidays and collective bargaining in other cases has established a general right to be paid on those days. For monthly paid workers, no deduction from pay may be made in respect of public holidays (decision of 31.5.1946): Code du travail, art. L. 222-1.

Variable	Template	Score	Explanation
v11. Overtime premia	Measures the normal premium for overtime working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium.	0.25	Between 1970-1982 overtime premia were calculated (according to loi 25.2.1946) as +25% if the worker worked between 40 and 48 hours and +50% if he or she worked over 48 hours. In 1982 the premia changed, and were then calculated on the basis of an increase of 25% for the first 8 hours of overtime work, and an increase of 50% for the rest. The premium under the 'loi Fillon' (law of 17.1.2003) is one and a quarter time for the first 8 hours of overtime (after 35 hours) and time and a half for the remainder. Suggested coding: one and a quarter time (since overtime in excess of 8 hours a week is rare in practice): Code du travail, art. L. 221-5.
v12. Weekend working	Measures the normal premium for weekend working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium. Also score 1 if weekend working is strictly controlled or prohibited.	1	Legislation sets weekly rest periods (Code du travail Art. L. 221-2) as mandatory law. Exceptionally, in the case of certain derogations for the retail sector, a premium of time +30% is set: art. L. 221-19 (this is unusual for a case of derogation from a mandatory law: see Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), at p. 1083). Code as '1' on the basis that weekend working is strictly regulated
v13. Limits to overtime working	Measures the maximum weekly number of overtime hours permitted by law or by collective agreements which are generally applicable. The score equals 1 if there is a maximum duration to weekly working hours, inclusive of overtime, for normal employment; 0.5 if there is a limit but it may be averaged out over a reference period of longer than a week; and 0 if there is no limit on any kind.	1970-: 1	In 1971 (law of 24.12.71) the absolute maximum duration of weekly hours was set at 57, while the average maxuimum in a period of 12 week was set at 50. Then, in 1982 (ordinance of 16.1.82), again, the law changed and the absolute maximum was set at 48 hours (with a very limited derogation for so called 'exceptional circumstances' that fixed an absolute maximum at 60 hours). The average maximum went down to 46 hours in a 12 week period. Legislation implementing the EC Working Time Directive, dating from 1998, sets an upper limit of 48 hours in a given week, but also a limit of 44 hours over a 12-week reference period. Certain derogations are possible from both standards but hours must not exceed 60 per week under any circumstances (law of law of 13.6.1998; Code du travail, art. L. 212-7).

Variable	Template	Score	Explanation
v14. Duration of the normal working week	Measures the maximum duration of the normal working week exclusive of overtime. The score is normalised on a 0-1 scale with a limit of 35 hours or less scoring 1 and a limit of 50 hours or more, or no limit, scoring 0. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements).	1970-81: 0.67 1982-99: 0.75 2000-02: 1 2003-: 0.75	In 1970 this was 40 hours (law of 21.6.1936). It was cut to 39 hours in 1982 (ordinance of 16.1.1982) and 35 in 2000 ('loi Aubry I', law of 13.6.1998: 35 hour week effective from this point for firms with more than 20 employees, and from 2002 more generally). However from 2003 the *effective* week was 39 hours (i.e. the employer could increase working time to 39 hours without getting the permission of the labour inspectorate: decrees of 20.3.2003 and 21.12.2004, increasing annual overtime to 180 and then 220 hours).
v15. Maximum daily working time	Measures the maximum number of permitted working hours in a day, taking account of rules governing rest breaks and maximum daily working time limits. The score is normalised on a 0-1 scale with a limit of 8 hours or less scoring 1 and a limit of 18 hours or more scoring 0.	1970: 0.8	In 1936 the normal working day was set at 10 hours. The law was modified in 1946 (law of 26.2.1946), and the definition remained loose (calculated taking into consideration the needs of production, with variations subject to approval by the labour inspector) until 1982, when it was limited again to 10 hours (ordinance of 16.1.1982; Code du travail, art. L 212-1, al. 2). Separate legislation sets a limit to the length of the working day, i.e. the gap between starting times and finishing times, for apprentices and younger workers (art. L. 212-13). In 1998 legislation implementing the EC Working Time Directive set a minimum daily rest period of 11 hours and made provision for a 20 minute break every six hours (law of 13.6.1998; Code du travail, art. L. 220-1). A coding based on the normal working day is suggested here as overtime was strictly regulated throughout this period and the weekly limits generally in force would not have permitted regular working in excess of the 10-hour limit.
vB. Regulation of working time	***Measures the regulation of working time, computed as an average of variables 9-15.***		
C. Regulation of dismissal			
v16. Legally mandated notice period (all dismissals)	Measures the length of notice, in weeks, that has to be given to a worker with 3 years' employment. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	1970-: 0.67	The normal period of notice for a worker with 3 years' employment is 2 months (ordinance of 15.7.1967).

Variable	Template	Score	Explanation
v17. Legally mandated redundancy compensation	Measures the amount of redundancy compensation payable to a worker made redundant after 3 years of employment, measured in weeks of pay. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	1975-: 0.2	The law of 13.7.1967 introduced dismissal compensation for workers with more than 10 years of employment and whose dismissal did not rest on a 'very serious' reason. The law 13.7.1973 restated the rule without changing it, but its application decree (10.8.1973) doubled the compensation amount. It was calculated on the basis of one tenth of the normal monthly salary per year of employment (or 20 hours salary according to the way salary was generally paid, i.e. monthly or hourly). Under the law of 1975 on economic dismissals, compensation for redundancy is calculated on the basis of one fifth of the normal monthly salary per year of employment. Code du travail, art. R. 122-2 as amended by decree of 3.5.2002.
v18. Minimum qualifying period of service for normal case of unjust dismissal	Measures the period of service required before a worker qualifies for general protection against unjust dismissal. Normalise the score so that 3 years or more = 0, 0 months = 1	1970-: 1	Under the 1973 law on unfair dismissal (law of 13.7.1973), all employees are entitled to basic procedural protection in relation to dismissal, although certain remedies are reserved for those with over 2 years' service: now, Code du travail, art. L. 122-14-4. Prior to 1973, under the general law of abuse of right, no qualifying period applied.
v19. Law imposes procedural constraints on dismissal	Equals 1 if a dismissal is necessarily unjust if the employer fails to follow procedural requirements prior to dismissal Equals 0.67 if failure to follow procedural requirements will normally lead to a finding of unjust dismissal. Equals 0.33 if failure to follow procedural requirement is just one factor taken into account in unjust dismissal cases. Equals 0 if there are no procedural requirements for dismissal. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-72: 0 1973-: 0.67	Prior to 1973 the general law of abuse of right controlled dismisals on substantive grounds but did not set minimum procedural safeguards. From 1973, the law on unfair dismissal (law of 13.7.1973) sets strict procedural standards but these have been interpreted in a liberal direction by the courts and their breach does not necessarily lead to a finding of unfairness. Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), pp. 520-1.

Variable	Template	Score	Explanation
v20. Law imposes substantive constraints on dismissal	Equals 1 if dismissal is only permissible for serious misconduct or fault of the employee. Equals 0.67 if dismissal is lawful according to a wider range of legitimate reasons (misconduct, lack of capability, redundancy, etc.). Equals 0.33 if dismissal is permissible if it is 'just' or 'fair' as defined by case law. Equals 0 if employment is at will (i.e., no cause dismissal is normally permissible). Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-72: 0.33 1973-: 1	Prior to 1973, the law on abuse of right imposed a general standard of fairness in dismissal, although employees had the burden of proving unfairness. Under the 1973 law on termination of employment (law of 13.7.1973), 'real and serious cause' had to be established (now Code du travail, art. L. 122-14-4). The legislation does not define 'real and serious cause' and case law has also left the meaning of the term open-ended. See Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), pp. 528 *et seq*.
v21. Reinstatement normal remedy for unfair dismissal	Equals 1 if reinstatement is the normal remedy for unjust dismissal and is regularly enforced. Equals 0.67 if reinstatement and compensation are, de iure and de facto, alternative remedies. Equals 0.33 if compensation is the normal remedy. Equals 0 if no remedy is available as of right. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-72: 0.33 1973: 0.50.	Compensation was the remedy under the pre-1973 law of abuse of right. Under the 1973 law (law of 13.7.1973), reinstatement is one of the possible remedies, along with compensation, but reinstatements are rarely made, in part because the law expressly provides that the employer can refuse it (Code du travail, art. L. 122-14-4).

Variable	Template	Score	Explanation
v22. Notification of dismissal	Equals 1 if by law or binding collective agreement the employer has to obtain the permission of a state body or third body prior to an individual dismissal. Equals 0.67 if a state body or third party has to be notified prior to the dismissal. Equals 0.33 if the employer has to give the worker written reasons for the dismissal. Equals 0 if an oral statement of dismissal to the worker suffices. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-72: 0 1973-74: 0.33 1975-85: 1 1986-: 0.67	Under the 1973 law on unfair dismissal, written reasons had to be given to the dismissed employee. Under the 1975 law on economic dismissals (3.1.1975), the permission of the state authority was required. Following the 1986 reforms (laws of 3.7.1986 and 30.12.1986) , the state authorities had simply to be notified of economic dismissals.
v23. Redundancy selection	Equals 1 if by law or binding collective agreement the employer must follow priority rules based on seniority, marital status, number or dependants, etc., prior to dismissing for redundancy. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-74: 0 1975-: 1	Selection criteria were set out in the 1975 law on economic dismissals (law of 13.1.1975; now, Code du travail, art. L. 321-1-1).
v24. Priority in re-employment	Equals 1 if by law or binding collective agreement the employer must follow priority rules relating to the re-employment of former workers. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-74: 0 1975-: 1	Rules on priority in re-employment were set out in the 1975 law on economic dismissals (law of 13.1.1975; now, Code du travail, art. L. 321-14).
vC. Regulation of dismissal	***Measures the regulation of dismissal, calculated as the average of variables 16-24***		

Variable	Template	Score	Explanation
D. Employee representation			
v25. Right to unionisation	Measures the protection of the right to form trade unions in the country's constitution. (loosely interpreted in the case of system ssuch as the UK without a codified constitution). Equals 1 if a right to form trade unions is expressly granted by the constitution. Equals 0.67 if trade unions are described in the constitution as a matter of public policy or public interest. Equals 0.33 if trade unions are otherwise mentioned in the constitution or if there is a reference to freedom of association which encompasses trade unions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1	The right to unionisation is protected by the 1958 Constitution which refers expressly to the preamble of the 1946 Consitution, which states that any person can defend his rights and interests by taking part in the activities of a union and by joining a union of his choice; see also Code du travail, art. L. 412-2.
v26. Right to collective bargaining	Measures the protection of the right to collective bargaining or the right to enter into collective agreements in the country's constitution (loosely interpreted in the case of system such as the UK without a codified constitution). Equals 1 if a right to collective bargaining is expressly granted by the constitution. Equals 0.67 if collective bargaining is described as a matter of public policy or public interest (or mentioned within the chapter on rights). Equals 0..33 if collective bargaining is otherwise mentioned in the constitution. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The Constitution refers to the right of every person to take union action and to become a member of the union of his choice; laws also protect various aspects of trade union activity in the enterprise. However, this does not translate into a right to collective representation, and the Court de cassation has held that unions do not have a monopoly of representation in the workplace (decision of 1996; Pelissier, Jeammaud and Supiot, *Droit Social* (2006), at pp. 680-1).

Variable	Template	Score	Explanation
v27. Duty to bargain	Equals 1 if employers have the legal duty to bargain and/or to reach an agreement with unions, works council or other organizations of workers. Equals 0 if employers may lawfully refuse to bargain with workers. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0 1982-: 1	A duty to bargain at workplace level was enacted for the first time in the 1982 'lois Auroux'.
v28. Extension of collective agreements	Equals 1 if the law extends collective agreements to third parties at the national or sectoral level. Extensions may be automatic, subject to governmental approval, or subject to a conciliation or arbitration procedure. Equals 0 if collective agreements may not be extended to non-signatory workers or unions, or if collective agreements may be extended only at the plant level. Mandatory administrative extensions of collective agreements are coded as equivalent to mandatory extensions by law. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1	Extension of sector-level collective agreements by legislation is a practice of long standing in France, dating back to the law of 24.6.1936, which was strengthened by the laws of 11.2.1950 and 13.11.1982.
v29. Closed shops	Equals 1 if the law permits both pre-entry and post-entry closed shops. Equals 0.50 if pre-entry closed shops are prohibited or rendered ineffective but post-entry closed shops are permitted (subject in some cases to exceptions e.g. for pre-existing employees). Equals 0 if neither pre-entry or post-entry closed shops are permitted to operate. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The closed shop is contrary to the principle of freedom of association as defined by the Constitution of 1946, reflecting the tradition of political and religious union affiliations. Enforcement of the closed shop by the employer is ruled out by a law of 27.4.1956; prior to that the Cour de cassation had refused to recognise the validity of closed shop agreements (decisions going back to 1916: Pelissier, Jeammaud and Supiot, *Droit Social* (2006), at p. 648).

Variable	Template	Score	Explanation
v30. Codetermination: board membership	Equals 1 if the law gives unions and/or workers to right to nominate board-level directors in companies of a certain size. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0 1982-85: 0.25 1986: 0.50	Since the 'lois Auroux' in 1982, two members of the enterprise committee have had the right to attend board meetings in private-sector companies. However this law is ancillary to information and consultation legislation and does not confer borad membership rights as such (Code du travail, art. L. 432-6). A law of 21.10.1986, amending the company law of 24.7.1966, went further in providing for employee directors to be elected by the workforce in the case of public companies, with one third of the seats on the board (Code du travail, art. L. 225-79 *et seq*.). Employee directors have 'deliberative' rights but 'it is not possible to speak of "co-management"' (Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), p. 887). In addition, a 1994 law (law of 25.7.1994) provides for representatives of employee shareholders to have limited board-level participation rights (Pelissier et al., p. 888).
v31. Codetermination and information/consultation of workers	Equals 1 if the works councils or enterprise committees have legal powers of co-decision making. Equals 0.67 if works councils or enterprise committees must be provided by law under certain conditions but do not have the power of co-decision making. Equals 0.5 if works councils or enterprise committees may be required by law unless the employer can point to alternative or pre-existing alternative arrangements. Equals 0.33 if the law provides for information and consultation of workers or worker representatives on certain matters but where there is no obligation to maintain a works council or enterprise committee as a standing body. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0.67 1982-2001: 0.75 2002-: 0.9 2003-:0.75	French law has provided for workforce representatives ('délégués du personnel') since 1936 and for enterprise committees ('comités d'entrerprise') since 1966 (with some earlier provision in an ordinance of 1945). The law was strengthened in the 1982 'lois Auroux' and by the 2002 'loi de modernisation sociale' (law of 17.1.2002), but then weakened again by the law of 3.1.2003 (as confirmed by the 'loi Borloo' of 18.1.2005). It is generally thought that the rights of French enterprise committees fall short of the codetermination rights of German works councils, while tending towards joint decision-making in certain areas. See Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), at pp. 696-7.

Variable	Template	Score	Explanation
vD. Employee representation	***Measures the strength of employee representation, calculated as the average of variables 25-31.***		
E. Industrial action			
v32. Unofficial industrial action	Equals 1 if strikes are not unlawful merely by reason of being unofficial or 'wildcat' strikes. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	Unofficial strikes are unlawful in the public sector (law of 31.7.1963; Code du travail, art L 521-2 *et seq*.) but otherwise there is no requirement of union authorisation for industrial action (Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), p. 1245).
v33. Political industrial action	Equals 1 if strikes over political (i.e. non work-related) issues are permitted. Equals 0 otherwise. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	A political strike is an abuse of the right to strike: decisions of the Cour de cassation, 1956, 1961: Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), pp. 1263-4.
v34. Secondary industrial action	Equals 1 if there are no constraints on secondary or sympathy strike action. Equals 0.5 if secondary or sympathy action is permitted under certain conditions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.5	'Pure' solidarity strikes are not lawful; however, a strike in support of general claims in relation to the 'protection of jobs, purchasing power or defence of trade union rights' is not unlawful (decision of the Cour de cassation 1971).
v35. Lockouts	Equals 1 if lockouts are not permitted. Equals 0 if they are. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	The law does not recognise the right to lock out; a lockout is classified as breach of the contract of employment on the part of the employer (decisions of the Cour de cassation from the early 1950s onwards: Pelissier, Supiot and Jeammaud, *Droit du Travail* (2006), p. 1281).

Variable	Template	Score	Explanation
v36. Right to industrial action	Measures the protection of the right to industrial action (i.e. strike, go-slow or work-to-rule) in the country's constitution or equivalent Equals 1 if a right to industrial action is expressly granted by the constitution Equals 0.67 if strikes are described as a matter of public policy or public interest. Equals 0.33 if strikes are otherwise mentioned in the constitution. Equals zero otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	The right to strike is protected by the Constitution of 1946.
v37. Waiting period prior to industrial action	Equals 1 if by law there is no mandatory waiting period or notification requirement before strikes can occur. Equals 0 if there is such a requirement. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	There is no mandatory waiting period prior to strikes, nor any notice requirement, except in the public sector (decisions of the Court de cassation from the early 1950s onwards: Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), p. 1243).
v38. Peace obligation	Equals 1 if a strike is not unlawful merely because there is a collective agreement in force. Equals 0 if such a strike is unlawful. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	A strike is not unlawful merely on the grounds that a collective agreement is in force: decision of the Cour de cassation, 1959; Pelissier, Supiot and Jeammaud, *Droit du Travail* (2006), p. 1250).

Variable	Template	Score	Explanation
v39. Compulsory conciliation or arbitration	Equals 1 if laws do not mandate conciliation procedures or other alternative-dispute-resolution mechanisms (other than binding arbitration) before the strike. Equals 0 if such procedures are mandated. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-81: 0.75 1982: 1	Under legislation of 1955 (law of 11.2.1950), depending on the level of conflict, the relevant Minister, Prefect or other official had the power convene the parties for conciliation before a conciliation commission at the request of one of the parties. However, there was no obligation to reach an agreement or to try in good faith to reach one. The law of 5.5.1955 adopted the US model of mediation. The law of 13.11.1982 removed the compulsory element of conciliation. See now, Code du travail, arts. 522-1 – L. 526-1, and arts. R. 523-1 *et seq*; these provisions have fallen into disuse (Pelissier, Supiot and Jeammaud, *Droit du travail* (2006), at p. 1293).
v40. Replacement of striking workers	Equals 1 if the law prohibits employers to fire striking workers or to hire replacement labor to maintain the plant in operation during a non-violent and non-political strike. Equals 0 if they are not so prohibited. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970:- 1	The dismissal of an employee for taking part in industrial action is void, unless the employee is guilty of gross misconduct (law of 11.2.1950, now Code du travail, art. L 521-1). From 1986, the employer was formally barred from hiring a fixed-term worker to replace an employee taking part in industrial action (see now Code du travail, art. L. 122-3-11).
vE. Industrial action	***Measures the strength of protections for industrial action, measured as the average of variables 32-40.***		

Germany

Variable	Template	Score	Explanation
A. Alternative employment contracts			
v1. The law, as opposed to the contracting parties, determines the legal status of the worker	Equals 0 if the parties are free to stipulate that the relationship is one of self-employment as opposed to employee status; 0.5 if the law allows the issue of status to be determined by the nature of the contract made by the parties (as in the case of the English common law 'mutuality of obligation' test); and 1 if the law mandates employee status on the parties if certain specified criteria are met (such as form of payment, duration of hiring, etc.). Scope for scores between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.75	German labour law is mandatory. This also concerns the employee status. Only in borderline cases can account be taken of how the parties have labelled a particular contract (BAG of 8. 6. 1967, BAGE 19, 324, 330). The main criterion is the "dependency" of the employee (see § 84(1)(s.2) HGB). If weak dependency is provided in a contract (e.g., the "employer" has only limited powers to give instructions), this will usually lead to self-employment.
v2. Part-time workers have the right to equal treatment with full-time workers	Equals 1 if the legal system recognises a right to equal treatment for part-time workers (as, for example, in the case of EC Directive 97/81/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for part-time workers (via, e.g., sex discrimination law or a more general right of workers not be treated arbitrarily in employment). Equals 0 if neither of the above. Scope for scores between 0 and 1 to reflect changes in the strength of the law.	1970-84: 0.5 1985-: 1	• Before 1985 (only) general principle of equal treatment of employees (cf. Rudi Müller-Gloge in MünchKommBGB 4th edn, 2005, § 4 TzBfG para. 13) • § 2(1): BeschFG of 26 April 1985 (BGBl I 1985, 710) and today § 1, 4(1) TzBfG of 21 December 2000 (BGBl I 2000, 1966) (in force since 2001): prohibition of discrimination unless good reason
v3. The cost of dismissing part-time workers is equal in proportionate terms to the cost of dismissing full-time workers	Equals 1 if as a matter of law part-time workers enjoy proportionate rights to full-time workers in respect of dismissal protection (notice periods, severance pay and unjust dismissal protection). Equals 0 otherwise. Scope for further gradation 0 and 1 to reflect changes in the strength of the law.	1970-: 1	The rules on dismissal – § 622(1),(2) BGB (German Civil Code) and § 1a KSchG (since 2004, see below) – do not distinguish between full-time and part-time workers

Variable	Template	Score	Explanation
v4. Fixed-term contracts are allowed only for work of limited duration.	Equals 1 if the law imposes a substantive constraint on the conclusion of a fixed-term contract, by, for example, allowing temporary hirings only for jobs which are temporary by nature, training, seasonal work, replacement of workers on maternity or sick leave, or other specified reasons. Equals 0 otherwise. Scope for gradation between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	§ 620 BGB: in general fixed term contracts possible. But at least since BAG GS AP BGB § 620 Befristeter Arbeitsvertrag (1960): dismissal protection must not be evaded → if dismissal protection is applicable (e.g., employment for at least 6 months; no "small-companies-exception"), good reason is required → case law on details (statutory modifications of this case law only concern duration of fixed term contract – coded in variable 6)
v5. Fixed-term workers have the right to equal treatment with permanent workers	Equals 1 if the legal system recognises a right to equal treatment for fixed-term workers (as, for example, in the case of EC Directive 99/70/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for fixed-term workers (via, e.g., more general right of workers not be treated arbitrarily in employment) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-2000: 0.5 2001-: 1	• Before 2000 (only) general principle of equal treatment of employees (cf. Rudi Müller-Gloge in MünchKommBGB 4th edn, 2005, § 4 TzBfG para. 14) • § 1, 4(2) TzBfG of 21 December 2000 (BGBl I 2000, 1966) (in force since 2001): prohibition of discrimination unless good reason

Variable	Template	Score	Explanation
v6. Maximum duration of fixed-term contracts	Measures the maximum cumulative duration of fixed-term contracts permitted by law before the employment is deemed to be permanent. The score is normalised from 0 to 1, with higher values indicating a lower permitted duration. The score equals 1 if the maximum limit is 1 year or less and 0 if it is 10 years or more or if there is no legal limit.	1970-84: 1 1985-95: 0.75 1996-2003: 0.5 2004-: 0.25	• Before 1985: Starting point was § 620 BGB: in general fixed term contracts possible. But at least since BAG GS AP BGB § 620 Befristeter Arbeitsvertrag (1960): dismissal protection must not be evaded → if dismissal protection is applicable (e.g., employment for at least 6 months; no "small-companies-exception"), good reason is required → case law on details • BeschFG 1985: exceptions based on case law remain valid, but additional exceptions, in particular, short-term contracts for not more than 18 months do not require good reason • BeschFG 1996: period extended to 2 years • Since 2000: TzBfG consolidates law: § 14(1) TzBfG good reason required; various examples; § 14(2) TzBfG: no good reason required if not more than 2 years • 2004 amendment: for new companies § 14(2a) TzBfG extends period to not more than 4 years
v7. Agency work is prohibited or strictly controlled	Equals 1 if the legal system prohibits the use of agency labour. Equals 0.5 if it places substantive constraints on its use (in the sense of allowing it only if certain conditions are satisfied, such as a demonstrable need on the part of the employer to meet fluctuations in labour demand). Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0 1972-96: 0.5 1997-2002: 0.4 2003-: 0.2	• Arbeitnehmerüberlassungsgesetz (AÜG) of 1972: governmental approval necessary. Requirements of § 3 have the aim to ensure (1) that legal duties are not violated, and (2) that the agency relationship is not permanent (similar to the law on fixed term contracts). • Since Art. 63 of Arbeitsförderungsreformgesetz of 24. 3. 1997: new §§ 1a, b AÜG: exceptions for small companies and for construction companies. • "Hartz I" Gesetz of 23. 12. 2002 (in force since 2003): restrictions about non-permanent character are deleted → agency labour made easier

Variable	Template	Score	Explanation
v8. Agency workers have the right to equal treatment with permanent workers of the user undertaking	Equals 1 if the legal system recognises a right to equal treatment for agency workers, in relation to permanent workers of the user undertaking, in respect of terms and conditions of employment in general Equals 0.5 or another intermediate score if the legal system recognises a more limited right to equal treatment for agency workers (for example, in respect of anti-discrimination law) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-2002: 0.5 2003-: 1	• Before 2004 (only) general principle of equal treatment of employees (see above) • "Hartz I" Gesetz of 23. 12. 2002 (in force since 2003): § 3(1)(no.3) Arbeitnehmerüberlassungsgesetzes (AÜG) of 1972: equal treatment required (as *quid pro quo* for liberalization of requirements; see BT-Drucks. 15/25 of 5. 11. 2002, p. 39).
vA. Alternative employment contracts	***Measures the cost of using alternatives to the 'standard' employment contract, computed as an average of the variables 1-8.***		

Variable	Template	Score	Explanation
B. Regulation of working time			
v9. Annual leave entitlements	Measures the normal length of annual paid leave guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with a leave entitlement of 30 days equivalent to a score of 1.	1970-94: 0.5 1995-: 0.67	• Until 1995: § 3(1) BUrlG 1963: 18 working days (if 6 days week → if 5 days week: 15 days) → i.e. 3 weeks • From 1. 1. 1995: § 3 BUrlG: 24 working days (if 6 days week → if 5 days week: 20 days) → i.e. 4 weeks
v10. Public holiday entitlements	Measures the normal number of paid public holidays guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with an entitlement of 18 days equivalent to a score of 1.	1970-: 0.6	Feitagsentgeltungesetz of 2 August 1951 and now § 2 EFZG of 24 Mai 1994 (BGBl I 1994, 1014, 1065) → number of holidays depend on state law: in 3 states 12 days, in 4 states 11 days, in 4 states 10 days, and in 5 states 9 days → average 10.315 (probably there was a small change in 1990 because of the German unification)
v11. Overtime premia	Measures the normal premium for overtime working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium.	1970-: 0.25	Overtime can mean two different things: First: *Mehrarbeit* ("more work"), which is any work exceeding the maximum number of hours per week (i.e. more than 48 hours; see variable 14 below). • Until 1994: § 15 AZO 1938: 25 % if *Mehrarbeit*, which hardly happened in practice (see Wolfgang Zöllner and Karl-Georg Loritz, Arbeitsrecht, 4th edn., 1992, p. 169) • Not in ArbZG of 6 June 1994 (BGBl I 1994, 1170, 1171) Second: *Überstunden* ("über-hours"), which is any work exceeding the work-hours of a contract (today usually between 35 and 40 hours). There are no premiums in the law. A 25% premium is normal in collective agreements.

Variable	Template	Score	Explanation
v12. Weekend working	Measures the normal premium for weekend working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium. Also score 1 if weekend working is strictly controlled or prohibited.	1970-: 0.3	Not in AZO and ArbZG (see also BAG 11 January 2006, 5 AZ 97/05). Premiums set by collective agreement range from 25%-50%.
v13. Limits to overtime working	Measures the maximum weekly number of overtime hours permitted by law or by collective agreements which are generally applicable. The score equals 1 if there is a maximum duration to weekly working hours, inclusive of overtime, for normal employment; 0.5 if there is a limit but it may be averaged out over a reference period of longer than a week; and 0 if there is no limit on any kind.	1970-: 1	§ 3 AZO and (since 1994) § 3 ArbZG: 8 + 2 hours overtime per day
v14. Duration of the normal working week	Measures the maximum duration of the normal working week exclusive of overtime. The score is normalised on a 0-1 scale with a limit of 35 hours or less scoring 1 and a limit of 50 hours or more, or no limit, scoring 0. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements).	1970-90: 0.67 1991-2006: 0.8	§ 3 AZO and (since 1994) § 3 ArbZG: 8 hours * 6 days = 48. However, collective agreements have gradually reduced the number of working hours per week: • Since 1965/67 40 hours were common. • From 1975 till 2002 gradual decrease from 40.3 to 37.4 (see http://www2.igmetall.de/homepages/goeppingen-geislingen/bildung/seminarreihe2006-2007.html); the main changes took place in 1990-1 as a result of strike action over working time reductions. • 2003: 37.7 hours in average (see http://www.einblick.dgb.de/grafiken/2004/13/grafik02/)

Variable	Template	Score	Explanation
v15. Maximum daily working time.	Measures the maximum number of permitted working hours in a day, taking account of rules governing rest breaks and maximum daily working time limits. The score is normalised on a 0-1 scale with a limit of 8 hours or less scoring 1 and a limit of 18 hours or more scoring 0.	1970-: 0.6	§ 12(1) AZO and (since 1994) § 5 ArbZG: 11 rest hours per day
vB. Regulation of working time	***Measures the regulation of working time, computed as an average of variables 9-15.***		
C. Regulation of dismissal			
v16. Legally mandated notice period (all dismissals)	Measures the length of notice, in weeks, that has to be given to a worker with 3 years' employment. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	1970-92: 0.33 1993-: 0.4	• Until 1993: § 622 BGB and Gesetz über die Fristen für die Kündigung von Angestellten of 9. July 1926 (AngKSchG): distinction between white collar employees (6 weeks) and workers (2 weeks) → BVerfG 30. Mai 1990 (1 BvL 2/83): held that this was unconstitutional • KündFG of 7 October 1993 (BGBl. I 1668) in force since 15 October 1993: § 622(1)(no.1)BGB: 1 month = 4.3 weeks for all employees
v17. Legally mandated redundancy compensation	Measures the amount of redundancy compensation payable to a worker made redundant after 3 years of employment, measured in weeks of pay. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	1970-2003: 0 2004-: 0.55	• Not until 2004 • Since 1. January 2004: § 1a KSchG: 0.5 times the monthly salary per year → 3 * 0.5 = 1.5 → in weeks: 6.4
v18. Minimum qualifying period of service for normal case of unjust dismissal	Measures the period of service required before a worker qualifies for general protection against unjust dismissal. Normalise the score so that 3 years or more = 0, 0 months = 1	1970-: 0.83	§ 1 KSchG of 10 August 1951 (BGBl I 1951, 499): employment for at least 6 month Note: However, there were frequent changes of the "small-companies exception" of § 1 KSchG: until 1996 the exception was applicable if company had not more than 5 employees; BeschFG 1996 (BGBl. I 1476) extended it to 10 employees; AN-SicherungsG 1998 (BGBl. I S. 3843) reversed it back to 5 employees; Moderner-ArbeitsmarktG 2003 (BGBl. I S. 3002) (in force since 2004) extended it again to 10 employees (but modified it slightly).

Variable	Template	Score	Explanation
v19. Law imposes procedural constraints on dismissal	Equals 1 if a dismissal is necessarily unjust if the employer fails to follow procedural requirements prior to dismissal Equals 0.67 if failure to follow procedural requirements will normally lead to a finding of unjust dismissal. Equals 0.33 if failure to follow procedural requirement is just one factor taken into account in unjust dismissal cases. Equals 0 if there are no procedural requirements for dismissal. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-99:0 2000-: 0.25	Apart from the participation of work councils (coded in variable 23) there are very few formal requirements: Reasons have only be provided on request (cf. § 626(2)(s.3) BGB)). Only since 1. 5. 2000 is it necessary that a dismissal has to be in writing (if this is violated the dismissal is void, § 125 BGB).
v20. Law imposes substantive constraints on dismissal	Equals 1 if dismissal is only permissible for serious misconduct or fault of the employee. Equals 0.67 if dismissal is lawful according to a wider range of legitimate reasons (misconduct, lack of capability, redundancy, etc.). Equals 0.33 if dismissal is permissible if it is 'just' or 'fair' as defined by case law. Equals 0 if employment is at will (i.e., no cause dismissal is normally permissible). Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.67	§ 1 KSchG: there have been minor changes in detail and in case law over this period.

Variable	Template	Score	Explanation
v21. Reinstatement normal remedy for unfair dismissal	Equals 1 if reinstatement is the normal remedy for unjust dismissal and is regularly enforced. Equals 0.67 if reinstatement and compensation are, de iure and de facto, alternative remedies. Equals 0.33 if compensation is the normal remedy. Equals 0 if no remedy is available as of right. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.33	Reinstatement is the principal remedy. However, compensation is more common in practice.
v22. Notification of dismissal	Equals 1 if by law or binding collective agreement the employer has to obtain the permission of a state body or third body prior to an individual dismissal. Equals 0.67 if a state body or third party has to be notified prior to the dismissal. Equals 0.33 if the employer has to give the worker written reasons for the dismissal. Equals 0 if an oral statement of dismissal to the worker suffices. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0.5 1972-: 0.67	• Until 1972: §§ 65, 66(1) BetrVG: notification of workers council necessary but controversial of whether violation affects validity of dismissal (see Alfred Söllner, Arbeitsrecht, 3rd edn., 1972, p. 164) • § 102(1) BetrVG of 15 January 1972 (BGBl. I 1972, 13): clarified that violation affects validity
v23. Redundancy selection	Equals 1 if by law or binding collective agreement the employer must follow priority rules based on seniority, marital status, number or dependants, etc., prior to dismissing for redundancy. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-95: 1 1996-97: 0.8 1998-: 1	§ 1(3) KSchG: priority rule But changes in detail. In particular BeschFG 1996 (BGBl. I 1476) made it easier and AN-SicherungsG 1998 (BGBl. I S. 3843) reversed parts of it.

Variable	Template	Score	Explanation
v24. Priority in re-employment	Equals 1 if by law or binding collective agreement the employer must follow priority rules relating to the re-employment of former workers. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-96: 0 1997-: 0.25	• Until 1997: no • BAG of 4. December 1997, BAGE 87, 221 ff. = AP KSchG 1969 § 1 Wiedereinstellung Nr. 4: yes if change between dismissal and end of notice period, but not if later (BAG of 6 August 1997, BAGE 86, 194; BAG of 28 June 2000, AP Nr. 6 zu § 1 KSchG Wiedereinstellung; EzA Nr. 5 zu § 1 KSchG Wiedereinstellungsanspruch; NJW 2001, 1297)
vC. Regulation of dismissal	***Measures the regulation of dismissal, calculated as the average of variables 16-24***		
D. Employee representation			
v25. Right to unionisation	Measures the protection of the right to form trade unions in the country's constitution. (loosely interpreted in the case of system ssuch as the UK without a codified constitution). Equals 1 if a right to form trade unions is expressly granted by the constitution. Equals 0.67 if trade unions are described in the constitution as a matter of public policy or public interest. Equals 0.33 if trade unions are otherwise mentioned in the constitution or if there is a reference to freedom of association which encompasses trade unions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	Art. 9(3) GG (German Basic Law, i.e. Constitution): "The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession. Agreements that restrict or seek to impair this right shall be null and void; measures directed to this end shall be unlawful. Measures taken pursuant to Article 12a, to paragraphs (2) and (3) of Article 35, to paragraph (4) of Article 87a, or to Article 91 may not be directed against industrial disputes engaged in by associations within the meaning of the first sentence of this paragraph in order to safeguard and improve working and economic conditions.

Variable	Template	Score	Explanation
v26. Right to collective bargaining	Measures the protection of the right to collective bargaining or the right to enter into collective agreements in the country's constitution (loosely interpreted in the case of system such as the UK without a codified constitution). Equals 1 if a right to collective bargaining is expressly granted by the constitution. Equals 0.67 if collective bargaining is described as a matter of public policy or public interest (or mentioned within the chapter on rights). Equals 0..33 if collective bargaining is otherwise mentioned in the constitution. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.9	The wording of Art. 9(3) GG (see previous variable) just grants a right to form association. However, it has always been held that at least parts of the activity of labour unions are also protected. Until 1995 the case law often stated that a constitutional guarantee concerned only the "core area" (*Kernbereich*) of union activity. But BVerfG of 14 November 1995 (BVerfGE 93, 352) made clear that all activities are protected. In both cases the basic right to collective bargaining was included.
v27. Duty to bargain	Equals 1 if employers have the legal duty to bargain and/or to reach an agreement with unions, works councils or other organizations of workers. Equals 0 if employers may lawfully refuse to bargain with workers. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	There is no duty to bargain as such in German labour law.

Variable	Template	Score	Explanation
v28. Extension of collective agreements	Equals 1 if the law extends collective agreements to third parties at the national or sectoral level. Extensions may be automatic, subject to governmental approval, or subject to a conciliation or arbitration procedure. Equals 0 if collective agreements may not be extended to non-signatory workers or unions, or if collective agreements may be extended only at the plant level. Mandatory administrative extensions of collective agreements are coded as equivalent to mandatory extensions by law. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	§ 5 TVG of 9 April 1949 (WiGBl. 1949, 55, 68): extension subject to governmental approval (but very seldom in practice)
v29. Closed shops	Equals 1 if the law permits both pre-entry and post-entry closed shops. Equals 0.50 if pre-entry closed shops are prohibited or rendered ineffective but post-entry closed shops are permitted (subject in some cases to exceptions e.g. for pre-existing employees). Equals 0 if neither pre-entry or post-entry closed shops are permitted to operate. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	No because of “negative freedom to unionise” (*negative Koalitionsfreiheit*) (see e.g. Scholz in Maunz and Scholz, GG, 1999, Art. 9 para. 231)

Variable	Template	Score	Explanation
v30. Codetermination: board membership	Equals 1 if the law gives unions and/or workers to right to nominate board-level directors in companies of a certain size. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-75: 0.75 1976-: 1	• Before 1976: MontanMitbestG of 1951: 1/2 of the members of the supervisory board for coal and steel industry; BetrVG 1952: 1/3 for other companies (if more than 500 employees) • MitbestG of 1 July 1976: 1/2 (if more than 2000 employees); previous laws remained in force (but now 1/3 for medium companies in DrittelbG 2004)
v31. Codetermination and information/consultation of workers	Equals 1 if the works councils or enterprise committees have legal powers of co-decision making. Equals 0.67 if works councils or enterprise committees must be provided by law under certain conditions but do not have the power of co-decision making. Equals 0.5 if works councils or enterprise committees may be required by law unless the employer can point to alternative or pre-existing alternative arrangements. Equals 0.33 if the law provides for information and consultation of workers or worker representatives on certain matters but where there is no obligaton to maintain a works council or enterprise committee as a standing body. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0.8 1972-: 0.9	• § 56 BetrVG 1952 in some cases decision making power (but less than under the 1972 law; see Hanau and Kania in Erfurter Kommentar zum Arbeitsrecht, 2nd edn., § 87 BetrVG para. 2). • § 87 BetrVG 1972 extends powers (but still it is an exhaustive list; e.g., there is no competence in cases of dismissals).
vD. Employee representation	***Measures the strength of employee representation, calculated as the average of variables 25-31.***		

Variable	Template	Score	Explanation
E. Industrial action			
v32. Unofficial industrial action	Equals 1 if strikes are not unlawful merely by reason of being unofficial or 'wildcat' strikes. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	Unlawful (see Söllner, supra variable 22, 1972, S. 74 f.; Wolfgang Zöllner and Karl-Georg Loritz, supra variable 11, 1992, p. 421; Scholz, supra variable 29, 1999, Art. 9 para. 192)
v33. Political industrial action	Equals 1 if strikes over political (i.e. non work-related) issues are permitted. Equals 0 otherwise. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	Unlawful (see Nikisch, Arbeitsrecht, 2nd edn., Volume 2, 1959, p. 88; Zöllner and Loritz, supra variable 11, 1992, p. 427).
v34. Secondary industrial action	Equals 1 if there are no constraints on secondary or sympathy strike action. Equals 0.5 if secondary or sympathy action is permitted under certain conditions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-84: 0.5 1985-: 0.25	• Until 1985 this topic was controversial; see Nikisch, supra variable 33, p. 88; Hugo Seiter, Streikrecht und Aussperrungsrecht, 1975, pp. 502 et seq.; probably there was also some old case law of the *Reichsgericht* (Imperial Court) which had allowed it • BAG of 5. 3. 1985, AP Nr. 85 zu Art. 9 GG Arbeitskampf; BAG of 12. 1. 1988, AP Nr. 90 zu Art. 9 GG Arbeitskampf: usually sympathy strikes are unlawful
v35. Lockouts	Equals 1 if lockouts are not permitted. Equals 0 if they are. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.25	Allowed (see e.g. Zöllner and Loritz, supra variable 11, p. 398) but general principles of *ultima ratio* and proportionality of industrial actions (see also variable 37 below).

Variable	Template	Score	Explanation
v36. Right to industrial action	Measures the protection of the right to industrial action (i.e. strike, go-slow or work-to-rule) in the country's constitution or equivalent Equals 1 if a right to industrial action is expressly granted by the constitution Equals 0.67 if strikes are described as a matter of public policy or public interest. Equals 0.33 if strikes are otherwise mentioned in the constitution. Equals zero otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.9	Like variable 26 above: Not “expressly” in Art. 9(3) GG but based on its interpretation (see, e.g., Zöllner and Loritz, supra variable 11, p. 406)
v37. Waiting period prior to industrial action	Equals 1 if by law there is no mandatory waiting period or notification requirement before strikes can occur. Equals 0 if there is such a requirement. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-75: 0.5 1976-87: 0.75 1988-: 0.5	No compulsory waiting period. But, according to case law, a strike should only be used as an *ultima ratio*, and there is also a duty of proportionality (BAG GS of 1. 4. 1971, AP Nr. 43 zu Art. 9 GG Arbeitskampf). There was some discussion of whether “warning strikes” (*Warnstreiks*) are bound by thes criteria. Some court decisions (BAG of 17. 12. 1976 AP Nr. 51 zu Art. 9 GG Arbeitskampf and BAG AP Nr. 81 zu Art. 9 GG Arbeitskampf) left unions a lot of discretion, but BAG of 21 June 1988 (AP Nr. 108 zu Art. 9 Arbeitskampf) reversed this case law.
v38. Peace obligation	Equals 1 if a strike is not unlawful merely because there is a collective agreement in force. Equals 0 if such a strike is unlawful. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	Strike would be illegal because of peace obligation (*Friedenspflicht*); see e.g. Zölllner and Loritz, supra variable 11, pp. 351, 415.

Variable	Template	Score	Explanation
v39. Compulsory conciliation or arbitration	Equals 1 if laws do not mandate conciliation procedures or other alternative-dispute-resolution mechanisms (other than binding arbitration) before the strike. Equals 0 if such procedures are mandated. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.75	No compulsory conciliation But: *ultima ratio* (see variable 37 above)
v40. Replacement of striking workers	Equals 1 if the law prohibits employers to fire striking workers or to hire replacement labor to maintain the plant in operation during a non-violent and non-political strike. Equals 0 if they are not so prohibited. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	There are no specific provisions. Thus, "just" the general limits (in particular, good reason, see above) are applicable. However, a dismissal just because of the strike would be unlawful. Only if there are additional reasons, may the employer terminate the employment contract (BAG GS of 1. 4. 1971, AP Nr. 43 zu Art. 9 GG Arbeitskampf) (note: before 1971 the case law indicated that employer lockouts usually lead to termination of the employment contracts; see e.g. Zöllner and Loritz, supra variable 11, p. 431; Peter Hanau & Klaus Adomeit, Arbeitsrecht, 11th edn, 1994, p. 92).
vE. Industrial action	***Measures the strength of protections for industrial action, measured as the average of variables 32-40.***		

India

Variable	Template	Score	Explanation
A. Alternative employment contracts			
v1. The law, as opposed to the contracting parties, determines the legal status of the worker	Equals 0 if the parties are free to stipulate that the relationship is one of self-employment as opposed to employee status; 0.5 if the law allows the issue of status to be determined by the nature of the contract made by the parties (as in the case of the English common law 'mutuality of obligation' test); and 1 if the law mandates employee status on the parties if certain specified criteria are met (such as form of payment, duration of hiring, etc.). Scope for scores between 0 and 1 to reflect changes in the strength of the law.	1	The determination of employment status is a matter of law, not of contract.
v2. Part-time workers have the right to equal treatment with full-time workers	Equals 1 if the legal system recognises a right to equal treatment for part-time workers (as, for example, in the case of EC Directive 97/81/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for part-time workers (via, e.g., sex discrimination law or a more general right of workers not be treated arbitrarily in employment). Equals 0 if neither of the above. Scope for scores between 0 and 1 to reflect changes in the strength of the law.	0.5	Indian labour law does not formally recognise the principle of equal treatment between part-time and full-time workers, but legislation and case law on minimum wages and industrial disputes treats part-time workers (defined in various contexts as those working less than a full working day or paid by the piece) proportionatly or equally with full-time workers. Sources:

Variable	Template	Score	Explanation
			(cont.) o In a decision under the Working Journalists Act, the court had answered the question whether part-time workers are 'workmen' in the affirmative saying that on a fair construction of s. 2 (b) of that Act, it would be impossible to hold that a pert-time employee who satisfies the test prescribed by s. 2(b) can be excluded from its purview merely because his employment is part-time: Express Newspaper Ltd v. B Somayanjula [1964] 3 SCR 100 (Pai, Vol 1, p.648) o Minimum Wages Act, 1948: Under S.15 a worker who works for less than normal working day is entitled to receive wages in respect of work done by him on that day as if he has worked for a full normal working day: provided, however, that he shall not be entitled to receive wages for a full normal working day – (in) any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to procide him with work, and (ii) in such other cases an circumstances as may be prescribed. o Minimum Wages Act: S.17 provides that where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages not not less than the minimum time rate. [Likewise, Factories Act, S.59 (3), see below] o Thus the Minimum Wages Act does seem to provide a pro-rata benefit to part-time workers o Industrial Disputes Act, 1947 ('**IDA'**): Piece-rate worker: The mere fact that a worker was a piece-rate worker, would not necessarily take him out of the category of a worker: B Sharma v First Civil Judge [1961] 3 SCR 161. A person could be a workman even though he worked on piece-rate and was paid not per day, but only by the job or employed in his own labour and paid for it: Dharangandhra Chemical Works Ltd. v State of Saurashtra [1957] SCR 152

Variable	Template	Score	Explanation
			(cont.) o Factories Act, 1948: see S.59 (3): workers working on piece-rate basis to get overtime payment at equivalent rates. 'Where any workers in a factory are paid on a piece-rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job …' o Employee State Insurance Act , 1948 does seem to include part-time workers within the definition of 'employee' entitled to benefits under that Act
v3. The cost of dismissing part-time workers is equal in proportionate terms to the cost of dismissing full-time workers	Equals 1 if as a matter of law part-time workers enjoy proportionate rights to full-time workers in respect of dismissal protection (notice periods, severance pay and unjust dismissal protection). Equals 0 otherwise. Scope for further gradation 0 and 1 to reflect changes in the strength of the law.	0.5	As mentioned above, 'part-time worker' is not a term used in Indian labour law, however, following may be of some relevance: • Cases under the IDA: o Temporary or casual employee: termination of casual employee for any reason whatsoever is retrenchment: Delhi Cloth and Genreral Mills Ltd v SN Mukherjee [1978] 1 SCR 591 o Upon termination of services even of a temporary employee on the grounds of surplus labour to retrenchment, the employee is entitled to claim retrenchment compensation: Willcox Buckwell India Ltd v Jagannath AIR 1974 SC 1166, HS Shukla v AD Divikar [1957] SCR 121 followed. o Since petitioners are only daily-waged employees and have not a right to the posts, their disengagement is not arbitrary: Himanshu Kumar Vidyarthi v State of Bihar (1997) 4 SCC 391 (2J) Thus, it does not seem easier or less costly to terminate casual workers as such. On the other hand, it may be easier or less costly to terminate daily-waged employees or seasonal workers

Variable	Template	Score	Explanation
v4. Fixed-term contracts are allowed only for work of limited duration.	Equals 1 if the law imposes a substantive constraint on the conclusion of a fixed-term contract, by, for example, allowing temporary hirings only for jobs which are temporary by nature, training, seasonal work, replacement of workers on maternity or sick leave, or other specified reasons. Equals 0 otherwise. Scope for gradation between 0 and 1 to reflect changes in the strength of the law.	0.5	Indian labour law does not formally impose a substantive constraint on the conclusion of a fixed-term contract. However, following cases are relevant: Cases under the IDA: o If there are permanent posts available, a workman should not be kept on a temporary basis for long periods: India Woollen Textile Mills v Workmen CA No 869 of 1962 dtd 12 August 1963 (SC) o Temporary workman is one employed for temporary work, usually for a specified period [FR Jesuratnam v Union of India [1982] 1 SCR 40].
v5. Fixed-term workers have the right to equal treatment with permanent workers	Equals 1 if the legal system recognises a right to equal treatment for fixed-term workers (as, for example, in the case of EC Directive 99/70/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for fixed-term workers (via, e.g., more general right of workers not be treated arbitrarily in employment) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	0.5	Indian labour law does not formally recognise a right to equal treatment as such for fixed-term workers, by reference to permanent workers. However, there is case law: o Seasonal workers engaged only during crushing season in sugar factory ceased to work in the subsequent season due to closure. The cessassoin, deos not amount to retrenchment. However, the court directed the employer to maintain a register of workers engaged during previous season and engage the same workers in accordance with seniority and exigency of work. [Morindra Cooperative Sugar Mills Ltd v Ram Kishen (1995) 5 SCC 653(2J)]

Variable	Template	Score	Explanation
v6. Maximum duration of fixed-term contracts	Measures the maximum cumulative duration of fixed-term contracts permitted by law before the employment is deemed to be permanent. The score is normalised from 0 to 1, with higher values indicating a lower permitted duration. The score equals 1 if the maximum limit is 1 year or less and 0 if it is 10 years or more or if there is no legal limit.	1	There are no provisions dealing specifically with this point, but the following case law may be relevant. o No hard and fast rule can be laid down in the matter of the period of probation or confirmation, and these are matters of internal management: All India Reserve Bank Employees' Assn v Reserve Bank of India [1966] 1 SCR 25 o In Karnataka State Road Transport Corpn v M Boraiah [1984] 1 SCR 783 it was held that the termination of the services of a probationer who has completed 240 days would amount to retrenchment: [Pai, Vol 1, 612]. o Thus, it can be inferred from the above judgment that a probationer is ordinarily deemed to be a full-time employee if he/she completes 240 days in employment.
v7. Agency work is prohibited or strictly controlled	Equals 1 if the legal system prohibits the use of agency labour. Equals 0.5 if it places substantive constraints on its use (in the sense of allowing it only if certain conditions are satisfied, such as a demonstrable need on the part of the employer to meet fluctuations in labour demand). Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-73: 0 1974-: 0.5	The Contract Labour (Regulation and Abolition) Act, 1970 Act and the Contract Labour (Regulation and Abolition) Central Rules, 1971 came into force on 10.2.71. The Constitutional validity of the Act and the Central Rules was challenged before the Supreme Court in Gammon India Limited v. Union of India 1974-I-LLJ-480. The Supreme Court upheld the constitutional validity of the Act & Rules and held that there is no unreasonableness in the measure. The Act & Rules were enforced w.e.f. 21.03.1974. Together, they provide for regulation and afford minimum protection to contract labour in different establishments and prohibit use of contract labout in certain establishments - The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and can undertake or execute any work through contract labour only in accordance with the terms of the licence. The licence granted is subject to conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules. In the event of failure on the part of the contractor to provide the necessary facilities to the contract labour, the principal employer is liable under the Act to provide the same.

Variable	Template	Score	Explanation
v8. Agency workers have the right to equal treatment with permanent workers of the user undertaking	Equals 1 if the legal system recognises a right to equal treatment for agency workers, in relation to permanent workers of the user undertaking, in respect of terms and conditions of employment in general Equals 0.5 or another intermediate score if the legal system recognises a more limited right to equal treatment for agency workers (for example, in respect of anti-discrimination law) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-73: 0 1974-: 0.5	See above. Note there is an ongoing discussion to amending the Act to facilitate outsourcing or prohibit employment of contract labour in core activities and to mandate automatic absorption of existing contract labour.
vA. Alternative employment contracts	***Measures the cost of using alternatives to the 'standard' employment contract, computed as an average of the variables 1-8.***		
B. Regulation of working time			
v9. Annual leave entitlements	Measures the normal length of annual paid leave guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with a leave entitlement of 30 days equivalent to a score of 1.	0.5	• Factories Act, 1948, ss.79-80: every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed annual leave during the subsequent year with wages, calculated at the rate of – (i) for an adult, one day per 20 days of work. Results in a norm of 16 days paid leave per annum.
v10. Public holiday entitlements	Measures the normal number of paid public holidays guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with an entitlement of 18 days equivalent to a score of 1.	0.28	India has very few universal holidays, most are held on a regional basis. The only holidays that are celebrated universally are Republic Day, Independence Day and Mahatma Gandhi's Birthday (These are Government of India holidays and all government offices are closed). Further two holidays that are usually observed by all government office and private undertakings as well are 1) Ambedkar Jayanti - 14th April of every year - The birth anniversary of Dr. Baba Saheb Ambedkar, the founder of Indian constitution and 2) May day: 1st of May

Variable	Template	Score	Explanation
v11. Overtime premia	Measures the normal premium for overtime working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium.	1	Factories Act 1948, s. 59(1): double time.
v12. Weekend working	Measures the normal premium for weekend working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium. Also score 1 if weekend working is strictly controlled or prohibited.	0	There are no rules on weekend working premia.
v13. Limits to overtime working	Measures the maximum weekly number of overtime hours permitted by law or by collective agreements which are generally applicable. The score equals 1 if there is a maximum duration to weekly working hours, inclusive of overtime, for normal employment; 0.5 if there is a limit but it may be averaged out over a reference period of longer than a week; and 0 if there is no limit on any kind.	0	There are no upper limits to overtime working.

Variable	Template	Score	Explanation
v14. Duration of the normal working week	Measures the maximum duration of the normal working week exclusive of overtime. The score is normalised on a 0-1 scale with a limit of 35 hours or less scoring 1 and a limit of 50 hours or more, or no limit, scoring 0. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements).	0.13	Factories Act 1948, s. 51: 48 hours.
v15. Maximum daily working time.	Measures the maximum number of permitted working hours in a day, taking account of rules governing rest breaks and maximum daily working time limits. The score is normalised on a 0-1 scale with a limit of 8 hours or less scoring 1 and a limit of 18 hours or more scoring 0.	0.85	The Factories Act 1948 s. 54 sets a normal working week of 9 hours but up to 10.5 hours may be worked inclusive of breaks and that period may be extended to 12 hours by the Chief Inspector of Factories. There must be a half hour break for every five hours worked (see ss. 55, 56). Suggested coding is based on a daily maximum working period, inclusive of breaks, of 9.5 hours (i.e. 10.5 hours as the maximum period that may be worked without resort to authorisation by the inspector, minus one hour for breaks).
vB. Regulation of working time	***Measures the regulation of working time, computed as an average of variables 9-15.***		

Variable	Template	Score	Explanation
C. Regulation of dismissal			
v16. Legally mandated notice period (all dismissals)	Measures the length of notice, in weeks, that has to be given to a worker with 3 years' employment. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	1970-75: 0.33 1976-present: 1	Three months – See s.25N of IDA Notes: An amendment in 1976 w.e.f. 5-3-1976 introduced Chapter V-B containing special provisions relating to lay-off, retrenchment and closure in certain establishments including S.25N that requires government permission and notice period of three months in respect of retrenchment of an employee who has been in continuous service for one year in an establishment employing 300 or more employees (amendment in 1982 w.e.f 1984 reduced to 100 or more employees). All the relevant sections of Chapter V-B requiring official permission including for retrenchments under s.25N were contested in legal battles that draged for the next quarter-century. The Supreme Court eventually upheld validity of S.25N in 1992 - see Workmen v Meenakshi Mills (1992) 3 SCC 336. Suggested coding – Between 1970-75: 4.3 weeks or one month (see S.25F) From 1976: 12.9 weeks [although not confirmed by the SC until 1992)
v17. Legally mandated redundancy compensation	Measures the amount of redundancy compensation payable to a worker made redundant after 3 years of employment, measured in weeks of pay. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	0.5	○ If we are to understand 'redundancy dismissal' as equivalent to 'retrenchment' under the Indian labour law: then: upon retrenchment, the workman is entitled to appropriate compensation at the rate of fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months (see s.25F).
v18. Minimum qualifying period of service for normal case of unjust dismissal	Measures the period of service required before a worker qualifies for general protection against unjust dismissal. Normalise the score so that 3 years or more = 0, 0 months = 1	0.67	A workman who has been in continuous service for not less than one year can be retrenched only following a prescribed procedure (see s.25-B – it means a person who has actually worked under the employer for 240 days in the preceding 12 months) (S.25N) or if removal is as a punishment then only following proper and just disciplinary procedures.

Variable	Template	Score	Explanation
v19. Law imposes procedural constraints on dismissal	Equals 1 if a dismissal is necessarily unjust if the employer fails to follow procedural requirements prior to dismissal Equals 0.67 if failure to follow procedural requirements will normally lead to a finding of unjust dismissal. Equals 0.33 if failure to follow procedural requirement is just one factor taken into account in unjust dismissal cases. Equals 0 if there are no procedural requirements for dismissal. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1	Yes – notice period or payment in lieu of notice (see S.25N, S.25F and notes above) in case of retrenchment (S.2 (00)) If the termination of service is grounded upon conduct attracting stigma to the workman, disciplinary proceedings are necessary as a condition precedent to infliction of termination as a measure of punishment : MN Barot v State Transport Corpm [1966] 3 SCR 40; Chandulal v Pan American World Airways Inc AIR 1985 SC 1128; see also Brooke Bond India (P) Ltd v C Choudhary [1969] 1 SCR 919 (Pai, Vol 2, p.126) Rule 17 (ii) of the Industrial Employment (Standing Orders) Central Rules, 1946 in Schedule IA, gives the detailed procedure to be followed in disciplinary proceedings. These include for instance, information to be given to the concerned workman in writing of the alleged misconduct, giving him the opportunity to explain the allegations made against him, institution of a departmental enquiry before dealing with the charges, suspension of the concerned workman in the interim, if necessary, records of such inquiry to be kept in writing, copy of inquiry proceedings to be given to the workman concerned on conclusion and on request by the workman, etc.
v20. Law imposes substantive constraints on dismissal	Equals 1 if dismissal is only permissible for serious misconduct or fault of the employee. Equals 0.67 if dismissal is lawful according to a wider range of legitimate reasons (misconduct, lack of capability, redundancy, etc.). Equals 0.33 if dismissal is permissible if it is 'just' or 'fair' as defined by case law. Equals 0 if employment is at will (i.e., no cause dismissal is normally permissible). Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970: 0 1971-: 0.33	○ Dismissal for default: - S.11-A: introduced by amendment in 1971 w.e.f. 15-12-71: powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen: right to intervene in cases where (1) there is want of good faith, (2) where it is a case of victimisation or unfair labour practice, or upon a violation of principles of natural justice or (3) where the management has been guilty of basic errors of fact or (4) where on the materials the finding is completely baseless or perverse: Indian Iron and Steel Co Ltd v Workmen [1958] SCR 667 - S.11A confers powers on the labour court to evaluate the severity of misconduct and to assess whether the punishment imposed by the employer is commensurate with the gravity of the misconduct: Hindustan Machine Tools Ltd v M Usman AIR 1984 SC 321

Variable	Template	Score	Explanation
			(cont.) - With the insertion of s.11A, it is now crystal clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts an circumstances of the case: Ramakant Misra v State f UP AIR 1982 SC 1552 • Cases: Termination simpliciter or without cause: o In several decisions of the Supreme Court, the court upheld a right to terminate employment by one month's notice or pay in lieu, provided it was exercised bona fide. It also held that the tribunal had the right to examine the question of bona fides when a case was brought before it, which was upheld in Johnson Pump case as late as in 1975 :[1975] 3 SCR 489 and reiterated in the Gujarat Steel Tubes case in 1980 [1980] 2 SCR 146. o The court even went to the extent of upholding the employer's right of choice of action either to resort to termination of services simpliciter or take disciplinary action where the alternative powers were permissible under the standing orders or the contract of service. o Termination simpliciter amounts to retrenchment: Krishna Iyer J. in the case of State Bank of India v. N Sundaramoney [1976] 3 SCR 160, held that the meaning of the term 'retrenchment' includes termination simplicitor with the result that in cases where the termination of service was not preceded by payment of compensation as required by S25F of the Industrial Disputes Act, 1947, such termination became void ab initio, as such payment was a condition precedent under that section. The result was that the concerned workman had to be reinstated with back wages. (see Pai, Vol 2, p.130) o From 1985, in a series of decisions, in respect of employment under the 'state' (ref: Art 12 of the Constitution of India), the Supreme Court, in effect held that, the power of simple termination is virtually void as violating arts 14 and 16 of the Constitution and as being opposed to s.23 of the Contract Act, 1872 as being opposed to public policy: Central Inland Water Transport Corpn Ltd v BN Ganguly AIR 1986 SC 1571 (see Pai, Vol 2, p.128)

Variable	Template	Score	Explanation
v21. Reinstatement normal remedy for unfair dismissal	Equals 1 if reinstatement is the normal remedy for unjust dismissal and is regularly enforced. Equals 0.67 if reinstatement and compensation are, de iure and de facto, alternative remedies. Equals 0.33 if compensation is the normal remedy. Equals 0 if no remedy is available as of right. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970: 0.33 1971- 0.67	- S.11A confers powers on the labour court to evaluate the severity of misconduct and to assess whether the punishment imposed by the employer is commensurate with the gravity of the misconduct: Hindustan Machine Tools Ltd v M Usman AIR 1984 SC 321 - With the insertion of s.11A, it is now crystal clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts an circumstances of the case: Ramakant Misra v State f UP AIR 1982 SC 1552
v22. Notification of dismissal	Equals 1 if by law or binding collective agreement the employer has to obtain the permission of a state body or third body prior to an individual dismissal. Equals 0.67 if a state body or third party has to be notified prior to the dismissal. Equals 0.33 if the employer has to give the worker written reasons for the dismissal. Equals 0 if an oral statement of dismissal to the worker suffices. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-75: 0.67 1976-: 1	Between 1970 and 1976, under IDA s. 25F, there was a requirement to notify appropriate authorities, give one month's notice in wiritng or payment in lieu and pay compensation. An amendment in to the IDA in 1976 w.e.f. 5-3-1976 introduced Chapter V-B containing special provisions relating to lay-off, retrenchment and closure in certain establishments including S.25N that requires government permission and notice period of three months in respect of retrenchment of an employee who has been in continuous service for one year in an establishment employing 300 or more employees (amendment in 1982 w.e.f 1984 reduced to 100 or more employees). All the relevant sections of Chapter V-B requiring official permission including for retrenchments under s.25N were contested in legal battles that draged for the next quarter-century. The Supreme Court eventually upheld validity of S.25N in 1992 - see Workmen v Meenakshi Mills (1992) 3 SCC 336.

Variable	Template	Score	Explanation
v23. Redundancy selection	Equals 1 if by law or binding collective agreement the employer must follow priority rules based on seniority, marital status, number or dependants, etc., prior to dismissing for redundancy. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1	• IDA, S. 25G: procedure for retrenchment: requires that employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recoded the employer re-trenches any other workman. • The employer has normally to follow the industrial rule of retrenchment 'last come first go'. For valid reasons, to be recoded, he may depart from this rule, in which case, the burden is upon management to substantiate by reliable evidence. If the departure from the rule does not appear to the industrial tribunal as valid or satisfactory, then the action of the employer can be treated by the tribunal as malafide or as amounting to unfair labour practice.: Swadesamitran Ltd v Workmen [1960] 3 SCR 144
v24. Priority in re-employment	Equals 1 if by law or binding collective agreement the employer must follow priority rules relating to the re-employment of former workers. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1	• IDA, Chapter V-A: for establishments with 50 or more workmen: S. 25H, re-employment of retrenched workmen: where any workmen are retrenched, and the employer proposes to take into his employ any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. • The principal underlying the section is of general application: Sec 25H is capable of application to all retrenched workmen, not merely those covered by 25F. [G.B. Pai, Vol1, p.945] • See the Industrial Diputes (Central) Rules, 1957, particularly rule 78 for details
vC. Regulation of dismissal	***Measures the regulation of dismissal, calculated as the average of variables 16-24***		

Variable	Template	Score	Explanation
D. Employee representation			
v25. Right to unionisation	Measures the protection of the right to form trade unions in the country's constitution. (loosely interpreted in the case of system ssuch as the UK without a codified constitution). Equals 1 if a right to form trade unions is expressly granted by the constitution. Equals 0.67 if trade unions are described in the constitution as a matter of public policy or public interest. Equals 0.33 if trade unions are otherwise mentioned in the constitution or if there is a reference to freedom of association which encompasses trade unions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0.33	The constitution of India guarantees as a basic human right, the right to assemble and form associations or unions Art 19 (1) (c). Although this article is often cited in decisions of the High courts and the Supreme Court while dealing with the question of right to form unions or right to strike etc. – the article per se or indeed any other part of the constitution does not mention “trade unions” as such.
v26. Right to collective bargaining	Measures the protection of the right to collective bargaining or the right to enter into collective agreements in the country's constitution (loosely interpreted in the case of system such as the UK without a codified constitution). Equals 1 if a right to collective bargaining is expressly granted by the constitution. Equals 0.67 if collective bargaining is described as a matter of public policy or public interest (or mentioned within the chapter on rights). Equals 0..33 if collective bargaining is otherwise mentioned in the constitution. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The Supreme Court has held that the right guaranteed under art 19 (1) (c) of the constitution does not carry with it a concomitant right for effective collective bargaining or to strike. The right to strike or the right to declare a lockout may, therefore, be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in cl (4) of art 19, but by totally different considerations: All India Bank Employees’ Assn v National Industrial Tribunal [1962] 3 SCR 269, R Thappar v Madras [1950] SCR 594 [Pai, Vol 1, p.429-30]

Variable	Template	Score	Explanation
v27. Duty to bargain	Equals 1 if employers have the legal duty to bargain and/or to reach an agreement with unions, works council or other organizations of workers. Equals 0 if employers may lawfully refuse to bargain with workers. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-83: 0 1984: 0.5	• There are no uniform legal provisions in India to grant recognition to trade unions. In particular, the IDA does not provide for statutory recognition of trade unions. • These matters are dealt with by some of the state enactments: e.g. Bombay Industrial Relations Act and the Maharashtra (Recognition of Trade Unions and Prevention of Unfair Labour Practices) Act, 1971 for the state of Maharashtra. These enactments deal with matters such as recognition of trade unions, their right to represent and bind workmen and so on. • Law in the state of Maharashtra: The law prescribes for recognition of a union which has the largest membership of not less than 30% of the workers in that industry. The 1971 Act also made it an unfair labour practice on the part of the employer to refuse to negotiate with a representative union. • From 1984: Unfair labour practices: o S. 2(ra) of the Industrial Disputes Act: read with the fifth schedule to that Act, inserted by an amendment in 1982 (w.e.f. 21-8-1984): declares certain activities as unfair labour practices. One of the activities on the part of the employer which amounts to unfair labour practice as per the schedule is 'to refuse to bargain collectively, in good faith with the recognised trade union' [see the fifth schedule, part I, (15)]. o S.25U, also introduced by an amendment in 1982 (w.e.f. 21-8-1984) provides for penalty for committing unfair labour practices: any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to 6 months and/or with fine upto one thousand rupees. o One can imply from the above some sort of obligation on the employer to 'bargain collectively, in good faith with the recognised trade union'. *NB: In practice these matters are rarely ever adjudicated and if so the enforcement is always a problem.*

Variable	Template	Score	Explanation
v28. Extension of collective agreements	Equals 1 if the law extends collective agreements to third parties at the national or sectoral level. Extensions may be automatic, subject to governmental approval, or subject to a conciliation or arbitration procedure. Equals 0 if collective agreements may not be extended to non-signatory workers or unions, or if collective agreements may be extended only at the plant level. Mandatory administrative extensions of collective agreements are coded as equivalent to mandatory extensions by law. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0.75	IDA: Settlements and industrial relations: o The settlements under IDA, are of two types as explained in s.18 of the Act. o They are either settlements entered in the course of conciliation proceedings (or by an award of a labour court, tribunal or National Tribunal) or agreements entered into outside the process of conciliation. o The former are binding on all the workmen employed in the industry at the time as well as those who become employed during the currency of the settlement. Whist the latter is only binding on the parties to the settlement. o The settlements entered into in the course of formal conciliation proceedings (or by an award of a labour court, tribunal or National Tribunal) are of the nature of judicial or quasi-judicial pronouncements or at least settelements which have the blessings of the judicial or quasi-judicial authorities and are therefore binding on all. Apurely contractual arrangement between parties of the nature of collective agreement does not bind third parties
v29. Closed shops	Equals 1 if the law permits both pre-entry and post-entry closed shops. Equals 0.50 if pre-entry closed shops are prohibited or rendered ineffective but post-entry closed shops are permitted (subject in some cases to exceptions e.g. for pre-existing employees). Equals 0 if neither pre-entry or post-entry closed shops are permitted to operate. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	• S.19 of the Indian Trade Unions Act, 1926, provides for enforceability of agreements between members of a trade union. There is no provision for enforceability of an agreement like a 'closed shop' agreement between an employer and the trade union of employees. • In the wisdom of parliament, no necessity has yet been felt for importing the English or American variety of 'closed shop' agreements of debatable value in the trade union law of this country: Tulsidas Paul v Second Labour Court (1964) 1 LLJ 516 [Pai, Vol 1, p.429]

Variable	Template	Score	Explanation
v30. Codetermination: board membership	Equals 1 if the law gives unions and/or workers to right to nominate board-level directors in companies of a certain size. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	There is no right to worker representation on boards.
v31. Codetermination and information/consultation of workers	Equals 1 if the works councils or enterprise committees have legal powers of co-decision making. Equals 0.67 if works councils or enterprise committees must be provided by law under certain conditions but do not have the power of co-decision making. Equals 0.5 if works councils or enterprise committees may be required by law unless the employer can point to alternative or pre-existing alternative arrangements. Equals 0.33 if the law provides for information and consultation of workers or worker representatives on certain matters but where there is no obligaton to maintain a works council or enterprise committee as a standing body. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0.33	• S.3 of the IDA, provides that the appropriate government may by general or special order require the employer to constitute a Works Committee consisting of representatives of employers and workmen in the case of any industrial establishment in which one hundred or more workmen are employed. The workmen's representatives are to be chosed in consultation with the union. • But: The unions, the employer or the government, were not at any time serious about observation of these provisions. The court and tribunal also gave scant attention to these provisions and did not sufficiently realise the importance of these committeees, and the unions looked upon them as possible usupers of the negotiation process and saw seeds of rival authority. [G.B. Pai, Vol 1, pg.665]
vD. Employee representation	***Measures the strength of employee representation, calculated as the average of variables 25-31.***		

Variable	Template	Score	Explanation
E. Industrial action			
v32. Unofficial industrial action	Equals 1 if strikes are not unlawful merely by reason of being unofficial or 'wildcat' strikes. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0.5	• Strikes are not banned (even in the case of public utility services, they are only subjected to certain limitations). There is no doubt that the Act recognises strikes as a legitimate weapon in the matter of industrial relations. The reasons for which a strike may be illegal under the Act, is when is contravenes the provisions either of s.22, or s.23 or s.24 of the Act or of any other law or terms of employment, depending on facts of each case. • S.24 : illegal strikes and lockouts: a strike is illegal if, (i) it is commenced or continued in contravention of ss.22 or 23 (see notes below) or (ii) is continued in contravention of an order made under s.10 (3) (i.e. when the appropriate government by order prohibits the continuance of any strike in connection with a dispute referred by it to the board, labour court or tribunal or national tribunal) or 10-A (4-A) (i.e. where by voluntary reference a dispute is referred to arbitration and the appropriate government by order prohibits the continuance of any strike in connection with the dispute referred to arbitration)
v33. Political industrial action	Equals 1 if strikes over political (i.e. non work-related) issues are permitted. Equals 0 otherwise. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-97: 0.5 1998-: 0	• From 1998: Calling of 'Bandh'(i.e. general strike or call for closing down all commercial activities in a state/region by political parties) held illegal and unconstitutional: • In Bharat Kumar v. State of Kerala (1997 (2) KLT 287) a Full Bench of the Kerala High Court held that calling of a bandh and holding of it is unconstitutional and illegal. • This judgment of the full bench was affirmed by the Supreme Court in Communist Party of India (M) v. Bharat Kumar and others (AIR 1998 SC 184).

Variable	Template	Score	Explanation
			(cont.) • Paragraph 17 of the judgment of the full Bench of Kerala High Court in Bharath Kumars case (supra) was quoted with approval by the Constitution Bench of the Supreme Court in Ex-Capt. Harish Uppal v. Union of India and another (2003 AIR SCW 43). In that Constitution bench decision, the Supreme Court observed as follows: "For just or unjust cause, strike cannot be justified in the present day situation…Making use of some of the observations in the judgment that voluntary hartals and strikes are different from bandh, political parties and certain organizations started to call bandhs in the guise of hartals or general strikes...Nomenclature is not at all important...Therefore, bundh cannot be forced on the people after renaming it as hartal or general strike."
v34. Secondary industrial action	Equals 1 if there are no constraints on secondary or sympathy strike action. Equals 0.5 if secondary or sympathy action is permitted under certain conditions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1	There are no constraints on secondary action as such.

Variable	Template	Score	Explanation
v35. Lockouts	Equals 1 if lockouts are not permitted. Equals 0 if they are. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0.5	Generally, lockouts are prohibited only under certain circumstances mentioned in section 23 IDA, below, and in certain industries declated as public utility services lockouts are permitted subject to compliance with certain preconditions including notice to appropriate authorities. • S.23 of the IDA provides that no employer shall declare lock-out – (a) during the pendency of any conciliation proceedings before Board and seven days after the conclusion of such proceedings; (b) during the pendency of any proceedings before labour court, tribunal, national tribunal and two months after the conclusion of such proceedings; (c) during the pendency of any arbitration proceedings and two months after the conclusion of such proceedings; (d) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award • Further, S.22 of the IDA prohibits a lock-out in a public utility service without giving the prescribed notice of the lock-out (six weeks) and within fourteen days of giving such notice or before the expiry of the date of lock-out specified in such notice. • Thus, certain industries are declared as‘public utility service’ under the Act and notice is an essential precondition to lock-outs in these industries.

Variable	Template	Score	Explanation
v36. Right to industrial action	Measures the protection of the right to industrial action (i.e. strike, go-slow or work-to-rule) in the country's constitution or equivalent Equals 1 if a right to industrial action is expressly granted by the constitution Equals 0.67 if strikes are described as a matter of public policy or public interest. Equals 0.33 if strikes are otherwise mentioned in the constitution. Equals zero otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The constitution does not guarantee the right to strike.
v37. Waiting period prior to industrial action	Equals 1 if by law there is no mandatory waiting period or notification requirement before strikes can occur. Equals 0 if there is such a requirement. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	0.67	• In the case of employment in public utility services, S.22 of the IDA requires the workmen to give a due notice in writing before commencing a strike in the prescribed form to the prescribed authorities (6 weeks notice and also prescribes time limits for the actual strike from the notice given). • Thus, certain industries are declared as'public utility service' under the Act and notice is an essential precondition with respect to strikes in these industries. • Further – it is expected that aggrieved workmen make a reference to the government under S.10 to try and resolve an industrial dispute before going on strike. But -- there may be cases where the demand is of such an urgent and serious nature, that it would not be reasonable to expect labour to wait till after seeking the government to make a reference. In such cases, strikes even before such a request has been made, may well be justified: Chandramalai Estate v Workmen [1960] 3 SCR 451

Variable	Template	Score	Explanation
v38. Peace obligation	Equals 1 if a strike is not unlawful merely because there is a collective agreement in force. Equals 0 if such a strike is unlawful. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	0.5	• S.23 applies to strikes as well as lock outs, and provides that – no workmen who is employed in any industrial establishment shall go on strike in breach of contract – (e) during the pendency of any conciliation proceedings before Board and seven days after the conclusion of such proceedings; (f) during the pendency of any proceedings before labour court, tribunal, national tribunal and two months after the conclusion of such proceedings; (g) during the pendency of any arbitration proceedings and two months after the conclusion of such proceedings; (h) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award Thus section 23 IDA refers to pendency of proceedings before or decisions of judicial or quasi-judicial nature and not mere collective agreements. • While there is justification for preventing a strike when a dispute between an employer and the general body of workmen is pending adjudication or resolution, it would be too much to hold that the legislature intended that a lid should be put on strikes just because the case of a single workmen was pending …At the same time, even though the dispute between employer and the employees might relate to a single workman, the provisions of s.23(b) would apply if the single workman's case has been espoused by a labour union which need not comprise of all the employees of the concerned employer.…But if strikes are to be prohibited merely because the case of an individual workman was pending, whose case had not been espoused by the general body of workmen, there can never be any strike even for justifiable grounds: Chemicals and Fibres of India Ltd v DG of Bihar [1975]; Ballarpur Collieries Co v Industrial Tribunal [1972] 3 SCR 805

Variable	Template	Score	Explanation
v39. Compulsory conciliation or arbitration	Equals 1 if laws do not mandate conciliation procedures or other alternative-dispute-resolution mechanisms (other than binding arbitration) before the strike. Equals 0 if such procedures are mandated. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0.67	S.10, IDA: reference of disputes to board for promoting settlements or to courts for enquiry or to labour courts for adjudication or to tribunals for adjudication at the discretion of and by the appropriate government.
v40. Replacement of striking workers	Equals 1 if the law prohibits employers to fire striking workers or to hire replacement labor to maintain the plant in operation during a non-violent and non-political strike. Equals 0 if they are not so prohibited. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-84: 0 1985: 1	• From 1984: Unfair labour practices: • S. 2(ra) of the Industrial Disputes Act: read with the fifth schedule to that Act, introduced by an amendment in 1982 (w.e.f. 21-8-1984): declares certain activities as unfair labour practices. One of the activities on the part of the employer which amounts to unfair labour practice as per the schedule is 'discharging or dismissing a workman for taking part in a strike (not being a strike which is deemed to be an illegal strike under the Act)' [see the fifth schedule, part I, (4) (b)]. Likewise, to recruit workmen during a strike, which is not an illegal strike also tantamounts to unfair trade practice [see the fifth schedule, part I, (12)]. • S.25U, also introduced by an amendment in 1982 (w.e.f. 21-8-1984) provides for penalty for committing unfair labour practices: any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to 6 months and/or with fine upto one thousand rupees. NB: In practice these matters are rarely ever adjudicated and if so enforcement is always a problem.
vE. Industrial action	***Measures the strength of protections for industrial action, measured as the average of variables 32-40.***		

UK

Variable	Template	Score	Explanation
A. Alternative employment contracts			
v1. The law, as opposed to the contracting parties, determines the legal status of the worker	Equals 0 if the parties are free to stipulate that the relationship is one of self-employment as opposed to employee status; 0.5 if the law allows the issue of status to be determined by the nature of the contract made by the parties (as in the case of the English common law 'mutuality of obligation' test); and 1 if the law mandates employee status on the parties if certain specified criteria are met (such as form of payment, duration of hiring, etc.). Scope for scores between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.5	The English courts do not allow the parties to choose the form of the employment relationship at will, but nor does employee status inevitably follow from the presence of indicia based on control, integration, etc. In practice the terms of the contract will determine to a large degree the classification of the employment relationship. This has been particularly the case since the early 1980s but at no point in the period in question has the English approach to classification been comparable in terms of its strictness to that in France or Germany. Source: case law as described in Deakin and Morris, *Labour Law* (5th. ed. 2005), ch. 3.
v2. Part-time workers have the right to equal treatment with full-time workers	Equals 1 if the legal system recognises a right to equal treatment for part-time workers (as, for example, in the case of EC Directive 97/81/EC. Equals 0.5 if the legal system recognises a more limited right to equal treatment for part-time workers (via, e.g., sex discrimination law or a more general right of workers not be treated arbitrarily in employment). Equals 0 if neither of the above. Scope for scores between 0 and 1 to reflect changes in the strength of the law.	1970-85: 0 1986-99: 0.5 2000-: 1	There was no requirement of equal treatment of part-time workers in respect of either statutory or non-statutory benefits until the implementation of the Part-Time Work Directive in 2000 (SI 2000/1551). That measure is complex but it is broadly protective of the rights of part-time workers. Sex discrimination law has recognised the rights of part-time workers (the large majority of whom are women) since decisions of the ECJ in the 1980s (in particular *Bilka-Kauhfaus* v. *Weber von Hartz*, 1986).
v3. The cost of dismissing part-time workers is equal in proportionate terms to the cost of dismissing full-time workers	Equals 1 if as a matter of law part-time workers enjoy proportionate rights to full-time workers in respect of dismissal protection (notice periods, severance pay and unjust dismissal protection). Equals 0 otherwise. Scope for further gradation 0 and 1 to reflect changes in the strength of the law.	1970-76: 0 1977-94: 0.25 1995-: 1	From the enactment of the first employment protection laws in the 1960s, there were hours thresholds which excluded part-time workers. These were set at 21 hours from 1963 to 1977 (various legislation including Contracts of Employment Acts 1963 and 1973) and at 16 hours from 1977 (Employment Protection Act 1975) to 1995 when the thresholds were abolished (SI 1995/331).

Variable	Template	Score	Explanation
v4. Fixed-term contracts are allowed only for work of limited duration.	Equals 1 if the law imposes a substantive constraint on the conclusion of a fixed-term contract, by, for example, allowing temporary hirings only for jobs which are temporary by nature, training, seasonal work, replacement of workers on maternity or sick leave, or other specified reasons. Equals 0 otherwise. Scope for gradation between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0 1972-79: 0.2 1980-2001: 0.1 2002-05: 0.5 2006-: 1	UK labour law traditionally imposed no requirement for a justifying factor for the adoption of a fixed-term employment contract. From 1972, with the enactment of unfair dismissal legislation (Industrial Relations Act 1971), non-renewal of a fixed-term contract was deemed to be a dismissal. This imposed what was in effect a restriction on the use of fixed-term contracts without justification of the kind which might be used to explain non-renewal. Since, however, this statutory protection could be waived for contracts over 2 years (reduced to one year in 1980: Employment Act 1980) the protection was very weak. Account must also be taken of the relatively wide leeway given to employers in relation to issues of the 'fairness' of dismissal throughout this period. Legislation implementing the Fixed-Term Employment Directive, 99/70/EC (SI 2002/2034) removed the 'waiver' rules for fixed-term contracts, with effect from 2002. In addition, a fixed-term contract was deemed to be 'permanent' after four years of employment if no objective justification was offered for limiting the term. This provision effectively came into force only in 2006.
v5. Fixed-term workers have the right to equal treatment with permanent workers	Equals 1 if the legal system recognises a right to equal treatment for fixed-term workers (as, for example, in the case of EC Directive 99/70/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for fixed-term workers (via, e.g., more general right of workers not be treated arbitrarily in employment) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-2001: 0 2002-: 1	A right to equal treatment for fixed-term contract employees was introduced in 2002 as part of the process of implementing Directive 99/70/EC.

Variable	Template	Score	Explanation
v6. Maximum duration of fixed-term contracts	Measures the maximum cumulative duration of fixed-term contracts permitted by law before the employment is deemed to be permanent. The score is normalised from 0 to 1, with higher values indicating a lower permitted duration. The score equals 1 if the maximum limit is 1 year or less and 0 if it is 10 years or more or if there is no legal limit.	1970-2005: 0	Under SI 2002/2034, from 2006 there was, in effect, a four-year time limit on the renewal of fixed-term contracts, as beyond that point the contract was deemed to be 'permanent'. Prior to that point, there was no formal limit on the number of renewals of fixed-term contracts or on their cumulative duration. The four-year period can be extended by collective or workforce agreement but there is very limited evidence of this having been done.
v7. Agency work is prohibited or strictly controlled	Equals 1 if the legal system prohibits the use of agency labour. Equals 0.5 if it places substantive constraints on its use (in the sense of allowing it only if certain conditions are satisified, such as a demonstrable need on the part of the employer to meet fluctuations in labour demand). Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	There are no substantive restraints on the use of agency labour in the UK (other than in the case of replacement of striking workers) and no justification needs to be given for the use of agency workers.
v8. Agency workers have the right to equal treatment with permanent workers of the user undertaking	Equals 1 if the legal system recognises a right to equal treatment for agency workers, in relation to permanent workers of the user undertaking, in respect of terms and conditions of employment in general Equals 0.5 or another intermediate score if the legal system recognises a more limited right to equal treatment for agency workers (for example, in respect of anti-discrimination law) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	1970-74: 0 1975-92: 0.2 1993-: 0.4	From 1975, a limited right to equal treatment with workers of the user in respect of anti-discrimination law was enacted (this was extended to racial discrimination 1976 and other aspects of unlawful discrimination in 2003). From 1993 a right to equal treatment in respect of health and safety came into effect, under legislation implementing Directive 91/383/EC (SI 1992/2051). In other respects, there is no right of equal treatment with permanent workers of the user, or with those of the agency. Agency workers do not normally have a contract of employment with the user and their contract with the agency is normally one of self-employment, placing them outside any protection which might have been offered by the Fixed-Term Employment Regulations 2002 (which only apply to employees).

Variable	Template	Score	Explanation
vA. Alternative employment contracts	***Measures the cost of using alternatives to the 'standard' employment contract, computed as an average of the variables 1-8.***		
B. Regulation of working time			
v9. Annual leave entitlements	Measures the normal length of annual paid leave guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with a leave entitlement of 30 days equivalent to a score of 1.	1970-79: 0.5 1980-97: 0 1998: 0.5 1999 onwards: 0.67	There was no legislation in the UK on paid leave or paid holidays until legislation brought the EC Working Time Directive (93/104/EC) into effect in 1998 (SI 1998/1833). However, prior to 1980, national collective agreements provided an effective floor of rights in manufacturing and elsewhere, since they could be extended to cover non-federated employers using fair labour standards laws of various kinds. Since national collective agreements covered both leave and holiday rights, these entitlements can be seen as having a near-mandatory force. See Deakin and Morris, *Labour Law*, 5th. ed., 2005, paras. 4.71 et seq. From the early 1970s a norm of 3 weeks of paid leave (15 working days) and 8 paid holidays was widely observed. In the early 1980s a 4 week period of paid leave (20 working days) became the norm. However, from 1980 onwards, fair labour standards laws were weakened, with the result that minimum entitlements to leave and holiday rights no longer had the near-mandatory force they had once had. Schedule 11 of the Employment Protection Act 1975 was repealed with effect from 1980 (this was the most important change) and the Fair Wages Resolution 1946 (affecting public sector contracts) with effect from 1983. The Working Time Regulations 1998 provided initially for a 3 week period of statutory paid leave, rising to 4 weeks from 1999. Note however that this period of mandatory 'leave' includes 'holidays', so there is some difficulty in distinguishing between 'leave with pay' and 'paid holidays' from this point onwards.
v10. Public holiday entitlements	Measures the normal number of paid public holidays guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with an entitlement of 18 days equivalent to a score of 1.	1970-79: 0.444 1980-: 0	8 days of paid holidays were the norm which was widely observed and in effect mandatory under the terms of collective agreements up to 1980 (see previous row). From 1982 to 1998 there was no provision for mandatory paid holidays. From 1998 provision was made for annual leave but no separate provision was made for paid holidays in law or (effectively) collective bargaining.

Variable	Template	Score	Explanation
v11. Overtime premia	Measures the normal premium for overtime working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium.	1970-79: 0.5 1980-: 0	The UK has no law mandating the payment of overtime premia. Prior to 1980, a near-mandatory legal force applied to the rules of national collective agreements which set down premia, normally time and a half, to be paid for overtime hours. (Source: Deakin and Morris, *Labour Law*, ch. 4.)
v12. Weekend working	Measures the normal premium for weekend working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium. Also score 1 if weekend working is strictly controlled or prohibited.	1970-79: 0.5 1980-: 0	Some collective agreements, effectively mandatory before 1982, provided for time and a half or (less usually) double time for weekend work, but this was not a universal rule. (Source: Deakin and Morris, *Labour Law*, ch. 4.)
v13. Limits to overtime working	Measures the maximum weekly number of overtime hours permitted by law or by collective agreements which are generally applicable. The score equals 1 if there is a maximum duration to weekly working hours, inclusive of overtime, for normal employment; 0.5 if there is a limit but it may be averaged out over a reference period of longer than a week; and 0 if there is no limit on any kind.	1970-: 0	The Factories Act 1960, consolidating and re-enacting earlier laws, imposed overtime limits for the employment of women and young persons in manufacturing. The limits were (in essence) 6 hours a week, 100 hours a year. The limits were repealed for women in 1986 (Sex Discrimination Act 1986) and for young persons in 1989 (Employment Act 1989). At no point did statutory limits apply to male, adult workers. The Working Time Regulations 1998 set a maximum working week of 48 hours which is subject to a number of derogations, including the possibility of an individual waiver, which is widely used. Thus it is on balance accurate to say that there were no substantive limits on overtime working in the UK throughout this period.

Variable	Template	Score	Explanation
v14. Duration of the normal working week	Measures the maximum duration of the normal working week exclusive of overtime. The score is normalised on a 0-1 scale with a limit of 35 hours or less scoring 1 and a limit of 50 hours or more, or no limit, scoring 0. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements).	1970-78: 0.67 1979: 0.73 1980-: 0	There is no law setting a 'normal' working week in the UK. Between 1960 (Factories Act 1960) a normal week of 48 hours was set for women and young persons in manufacturing but this did not apply to male, adult workers. The normal working week set by national collective agreement was 40 hours from 1965 and 39 from 1979 (Deakin and Morris, *Labour Law*, 5th ed., 2005, at para. 4.72). This ceased to have effect with the abolition of laws extending collective agreements to non-federated employers with effect from 1980. The Working Time Regulations 1998 do not set a normal working week; they impose an upper limit of 48 hours inclusive of overtime, which is subject to various derogations. Thus is doubtful that the concept of a normal working week has had any legal force in the UK since 1982.
v15. Maximum daily working time.	Measures the maximum number of permitted working hours in a day, taking account of rules governing rest breaks and maximum daily working time limits. The score is normalised on a 0-1 scale with a limit of 8 hours or less scoring 1 and a limit of 18 hours or more scoring 0.	1970-97: 0 1998-: 0.6	The Working Time Regulations 1998 set a norm of 11 hours consecutive rest in every 24 hours, and rest breaks of at least 20 minutes every 6 hours. These are subject to various derogations.
vB. Regulation of working time	***Measures the regulation of working time, computed as an average of variables 9-15.***		
C. Regulation of dismissal			
v16. Legally mandated notice period (all dismissals)	Measures the length of notice, in weeks, that has to be given to a worker with 3 years' employment. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	1970-76: 0.19 1977-: 0.25	A 2-week norm was in effect between 1970 and 1975 (Contracts of Employment Act 1963); from 1975 (Employment Protection Act 1975) the period was 3 weeks.
v17. Legally mandated redundancy compensation	Measures the amount of redundancy compensation payable to a worker made redundant after 3 years of employment, measured in weeks of pay. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	1970-: 0.25	The normal rule throughout this period (Redundancy Payments Act 1965 and successor statutes) is that redundancy payments were calculated on the basis of 1 week's employment for each year worked between the ages of 22 and 41 (1.5 week for years over age of 41, and 0.5 weeks for years worked between 18 and 22). This is subject to a statutory ceiling.

Variable	Template	Score	Explanation
v18. Minimum qualifying period of service for normal case of unjust dismissal	Measures the period of service required before a worker qualifies for general protection against unjust dismissal. Normalise the score so that 3 years or more = 0, 0 months = 1	1970-71: 0 1972-73: 0.33 1974: 0.67 1975-78: 0.83 1979-84: 0.67 1985-98: 0.33 1999-: 0.67	The qualifying period for general unfair dismissal protection was two years between 1972 and 1974 (Industrial Relations Act 1971); one year from 1974 to 1975 (Trade Union and Labour Relations Act 1974); six months between 1975 and 1979 (Employment Protection Act 1975); one year between 1979 and 1985 ('July orders', 1979); two years between 1985 and 1999 (SI 1985); and one year again from 1999 (Employment Relations Act 1999).
v19. Law imposes procedural constraints on dismissal	Equals 1 if a dismissal is necessarily unjust if the employer fails to follow procedural requirements prior to dismissal Equals 0.67 if failure to follow procedural requirements will normally lead to a finding of unjust dismissal. Equals 0.33 if failure to follow procedural requirement is just one factor taken into account in unjust dismissal cases. Equals 0 if there are no procedural requirements for dismissal. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0 1972-86: 0.33 1987-2004: 0.67 2004-: 0.33	The general rule of UK unfair dismissal law is that a dismissal is likely to be unfair if the employer fails to adhere to procedural standards but is not inevitably so. Up to 1987 the employer could avoid a finding of unfair dismissal by showing that the lack of due process would have made no difference to the outcome because the dismissal was substantively fair. In 1987 that rule was reversed by decision of the House of Lords (*Polkey* v. *A.E. Dayton Services Ltd.*). With effect from 2004 the *Polkey* decision was reversed by statute (Employment Act 2002) but only if the employer could show that it had complied with a minimal obligation to hold a hearing prior to dismissal. This latter requirement is substantially below the threshold of procedural fairness which generally applies to unfair dismissal law.

Variable	Template	Score	Explanation
v20. Law imposes substantive constraints on dismissal	Equals 1 if dismissal is only permissible for serious misconduct or fault of the employee. Equals 0.67 if dismissal is lawful according to a wider range of legitimate reasons (misconduct, lack of capability, redundancy, etc.). Equals 0.33 if dismissal is permissible if it is 'just' or 'fair' as defined by case law. Equals 0 if employment is at will (i.e., no cause dismissal is normally permissible). Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0 1972-: 0.5	UK unfair dismissal law (now contained in Employment Rights Act 1996) sets out a range of 'potentially fair' reasons for dismissal which include lack of capability, misconduct, lack of qualifications, redundancy, statutory bar, and a residual category (some other substantial reason of a kind to justify the dismissal). The existence of the residual category is important in diluting the protection of employees, suggesting a coding between the middle two categories set out in the template.
v21. Reinstatement normal remedy for unfair dismissal	Equals 1 if reinstatement is the normal remedy for unjust dismissal and is regularly enforced. Equals 0.67 if reinstatement and compensation are, de iure and de facto, alternative remedies. Equals 0.33 if compensation is the normal remedy. Equals 0 if no remedy is available as of right. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0 1972-: 0.33	Reinstatement is stated to be the 'principal' remedy for unfair dismissal (Employment Rights Act 1996) but this rule is qualified by many significant restrictions on the powers of tribunals to award reinstatement. In practice reinstatement is very rarely awarded. There are also only very limited powers to order the interim reinstatement of an applicant pending the full hearing of the claim.

Variable	Template	Score	Explanation
v22. Notification of dismissal	Equals 1 if by law or binding collective agreement the employer has to obtain the permission of a state body or third body prior to an individual dismissal. Equals 0.67 if a state body or third party has to be notified prior to the dismissal. Equals 0.33 if the employer has to give the worker written reasons for the dismissal. Equals 0 if an oral statement of dismissal to the worker suffices. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0 1972-: 0.33	The normal rule since the inception of the unfair dismissal jurisdiction in 1971 (see now Employment Rights Act 1996) is that the employee must be given written reasons in writing.
v23. Redundancy selection	Equals 1 if by law or binding collective agreement the employer must follow priority rules based on seniority, marital status, number or dependants, etc., prior to dismissing for redundancy. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-73: 0 1974-: 1	Dismissal in breach of a 'customary' selection procedure such as 'last in, first out' was automatically unfair between 1975 (Trade Union and Labour Relations Act 1974) and 1989 (Employment Act 1989). After 1989, the employer continued to be under a duty, under general unfair dismissal law, to have regard to priority rules governing selection for redundancy.
v24. Priority in re-employment	Equals 1 if by law or binding collective agreement the employer must follow priority rules relating to the re-employment of former workers. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	There is no rule of priority re-employment in UK labour law.

Variable	Template	Score	Explanation
vC. Regulation of dismissal	***Measures the regulation of disimssal, calculated as the average of variables 16-24***		
D. Employee representation			
v25. Right to unionisation	Measures the protection of the right to form trade unions in the country's constitution. (loosely interpreted in the case of system ssuch as the UK without a codified constitution). Equals 1 if a right to form trade unions is expressly granted by the constitution. Equals 0.67 if trade unions are described in the constitution as a matter of public policy or public interest. Equals 0.33 if trade unions are otherwise mentioned in the constitution or there is a reference to freedom of association which encompasses trade unions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0.67	The United Kingdom does not have a codified constitution. It has however clearly been public policy since the late nineteenth century to allow the formation of trade unions, and, for most of the twentieth century, to encourage their formation. The UK ratified the ILO's core conventions on freedom of association in the post-war years and was also a signatory to the European Convention on Human Rights which refers to the right of freedom of association in this context. Between 1979 and 1997 public policy no longer encouraged trade unionism as before, but at no point was a ban on the formation on unions put in place (although there are long-standing bans on the formation of independent trade unions by the police and military personnel, the scope of which was a controversial issue for a while in the early 1980s (the *GCHQ* case)).

Variable	Template	Score	Explanation
v26. Right to collective bargaining	Measures the protection of the right to collective bargaining or the right to enter into collective agreements in the country's constitution (loosely interpreted in the case of system such as the UK without a codified constitution). Equals 1 if a right to collective bargaining is expressly granted by the constitution. Equals 0.67 if collective bargaining is described as a matter of public policy or public interest (or mentioned within the chapter on rights). Equals 0..33 if collective bargaining is otherwise mentioned in the constitution. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970: 0	There is no right to collective bargaining as such in UK law (nor under the European Convention on Human Rights: *Wilson and Palmer* (2002)).
v27. Duty to bargain	Equals 1 if employers have the legal duty to bargain and/or to reach an agreement with unions, works councils or other organizations of workers. Equals 0 if employers may lawfully refuse to bargain with workers. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 0 1972-79: 1 1980-2000: 0 2001-: 1	There has been an legal duty to recognise trade unions for the purposes of collective bargaining, subject to various preconditions, in two periods: 1971-1980 (Industrial Relations Act 1971 and Employment Protection Act 1975), and from 2001 (Employment Relations Act 1999).

Variable	Template	Score	Explanation
v28. Extension of collective agreements	Equals 1 if the law extends collective agreements to third parties at the national or sectoral level. Extensions may be automatic, subject to governmental approval, or subject to a conciliation or arbitration procedure. Equals 0 if collective agreements may not be extended to non-signatory workers or unions, or if collective agreements may be extended only at the plant level. Mandatory administrative extensions of collective agreements are coded as equivalent to mandatory extensions by law. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-79: 1 1980-: 0	Fair wages legislation of various kinds provided for extension up to the early 1980s (Employment Protection Act 1975, Sch. 11, and its predecessors). These laws were repealed in the early 1980s and they had mostly ceased to have any effect from 1982.
v29. Closed shops	Equals 1 if the law permits both pre-entry and post-entry closed shops. Equals 0.50 if pre-entry closed shops are prohibited or rendered ineffective but post-entry closed shops are permitted (subject in some cases to exceptions e.g. for pre-existing employees). Equals 0 if neither pre-entry or post-entry closed shops are permitted to operate. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 1 1972-73: 0 1974-79: 1 1980-87: 0.5 1988-: 0	Unfair dismissal legislation made it unlawful to enforce a closed shop agreement under certain circumstances between 1972 and 1974 (Industrial Relations Act 1971). This position was reversed between 1974 and 1980 (Trade Union and Labour Relations Act 1974 and related statutes). From 1980 onwards restrictions on the post-entry closed shop were put in place and were complete by 1988 (Employment Acts 1980, 1982 and 1988). The pre-entry closed shop was rendered unenforceable by legislation from 1988 (Employment Act 1988)|.

Variable	Template	Score	Explanation
v30. Codetermination: board membership	Equals 1 if the law gives unions and/or workers to right to nominate board-level directors in companies of a certain size. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	There is no legal requirement for worker directors in the UK.
v31. Codetermination and information/consultation of workers	Equals 1 if the works councils or enterprise committees have legal powers of co-decision making. Equals 0.67 if works councils or enterprise committees must be provided by law under certain conditions but do not have the power of co-decision making. Equals 0.5 if works councils or enterprise committees may be required by law unless the employer can point to alternative or pre-existing alternative arrangements. Equals 0.33 if the law provides for information and consultation of workers or worker representatives on certain matters but where there is no obligaton to maintain a works council or enterprise committee as a standing body. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-75: 0 1976-99: 0.33 2000-: 0.5	There is no legal requirement for works councils or similar standing bodies in the UK. From 1976 information and consultation requirements were introduced for collective redundancies (Employment Protection Act 1975) and from 1981 for business transfers. Information and consultation obligations were extended from 1999 for transnational companies required to have European Works Councils (SI 1999/3233, implementing Directive 94/45/EC) and from 2004 for other companies above a certain size threshold (SI 2004/3426, implementing Directive 2002/14/EC). However, in both cases, particularly the latter, considerable flexibility was accorded to employers in meeting these obligations, and the bodies concerned do not have co-decision making powers.
vD. Employee representation	***Measures the strength of employee representation, calculated as the average of variables 25-31.***		

Variable	Template	Score	Explanation
E. Industrial action			
v32. Unofficial industrial action	Equals 1 if strikes are not unlawful merely by reason of being unofficial or 'wildcat' strikes. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-84: 1 1985-: 0	From 1985, the absence of an appropriate union ballot has led to a loss of such legal protections as exist for unions and workers taking part in industrial action (Trade Union Act 1984).
v33. Political industrial action	Equals 1 if strikes over political (i.e. non work-related) issues are permitted. Equals 0 otherwise. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	Political strikes have never been protected in UK law.
v34. Secondary industrial action	Equals 1 if there are no constraints on secondary or sympathy strike action. Equals 0.5 if secondary or sympathy action is permitted under certain conditions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-79: 1 1980-: 0	Secondary action strikes were permitted until the Employment Act 1980, and from then on unprotected in most relevant circumstances.
v35. Lockouts	Equals 1 if lockouts are not permitted. Equals 0 if they are. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	There is no rule prohibiting lockouts as such in UK labour law.

Variable	Template	Score	Explanation
v36. Right to industrial action	Measures the protection of the right to industrial action (i.e. strike, go-slow or work-to-rule) in the country's constitution or equivalent Equals 1 if a right to industrial action is expressly granted by the constitution Equals 0.67 if strikes are described as a matter of public policy or public interest. Equals 0.33 if strikes are otherwise mentioned in the constitution. Equals zero otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 0	The right to take part in industrial action is not explicitly protected in any constitutional text relevant to the UK.
v37. Waiting period prior to industrial action	Equals 1 if by law there is no mandatory waiting period or notification requirement before strikes can occur. Equals 0 if there is such a requirement. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-92: 1 1993-: 0	Strike notice has been required in UK law since 1993 (Trade Union Reform and Employment Rights Act 1993).
v38. Peace obligation	Equals 1 if a strike is not unlawful merely because there is a collective agreement in force. Equals 0 if such a strike is unlawful. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	1970-71: 1 1972-73: 0 1974-: 1	Such strikes were unlawful between 1972 and 1974, thanks to the Industrial Relations Act 1971; otherwise, the existence of a collective agreement has been largely irrelevant to the lawfulness of industrial action.

Variable	Template	Score	Explanation
v39. Compulsory conciliation or arbitration	Equals 1 if laws do not mandate conciliation procedures or other alternative-dispute-resolution mechanisms (other than binding arbitration) before the strike. Equals 0 if such procedures are mandated. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-: 1	There is no requirement for conciliation or alternative disputes resolution before industrial action can be taken or in the course of such action.
v40. Replacement of striking workers	Equals 1 if the law prohibits employers to fire striking workers or to hire replacement labor to maintain the plant in operation during a non-violent and non-political strike. Equals 0 if they are not so prohibited. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-99: 0 2000-: 1	Dismissal for taking part in protected industrial action has been automatically unfair since 2000 (Employment Relations Act 1999). The definition of 'protected industrial action' is not coterminous with a 'non-violent and non-political strike' but will cover many such strikes.
vE. Industrial action	***Measures the strength of protections for industrial action, measured as the average of variables 32-40.***		

USA

Variable	Template	Score	Explanation
A. Alternative employment contracts			
v1. The law, as opposed to the contracting parties, determines the legal status of the worker	Equals 0 if the parties are free to stipulate that the relationship is one of self-employment as opposed to employee status; 0.5 if the law allows the issue of status to be determined by the nature of the contract made by the parties (as in the case of the English common law 'mutuality of obligation' test); and 1 if the law mandates employee status on the parties if certain specified criteria are met (such as form of payment, duration of hiring, etc.). Scope for scores between 0 and 1 to reflect changes in the strength of the law.	0.5	The US follows the practice of the English common law in defining the employment contract.
v2. Part-time workers have the right to equal treatment with full-time workers	Equals 1 if the legal system recognises a right to equal treatment for part-time workers (as, for example, in the case of EC Directive 97/81/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for part-time workers (via, e.g., sex discrimination law or a more general right of workers not be treated arbitrarily in employment). Equals 0 if neither of the above. Scope for scores between 0 and 1 to reflect changes in the strength of the law.	0.5	There is no law requiring equal treatment of part-time workers and no general law relating to equal or proportionate treatment of employees. US sex discrimination law has not recognised the principle of equal treatment of part-time workers on the grounds of sex in the same way that EU law has. On the other hand, part-time workers are treated in a proportionate way to full-time workers under the terms of minimum wage legislation and the federal Fair Labor Standards Act.
v3. The cost of dismissing part-time workers is equal in proportionate terms to the cost of dismissing full-time workers	Equals 1 if as a matter of law part-time workers enjoy proportionate rights to full-time workers in respect of dismissal protection (notice periods, severance pay and unjust dismissal protection). Equals 0 otherwise. Scope for further gradation 0 and 1 to reflect changes in the strength of the law.	1	The employment at will rule applies generally to all dismissals and no distinction is drawn for this purpose between part-time and full-time workers.

Variable	Template	Score	Explanation
v4. Fixed-term contracts are allowed only for work of limited duration.	Equals 1 if the law imposes a substantive constraint on the conclusion of a fixed-term contract, by, for example, allowing temporary hirings only for jobs which are temporary by nature, training, seasonal work, replacement of workers on maternity or sick leave, or other specified reasons. Equals 0 otherwise. Scope for gradation between 0 and 1 to reflect changes in the strength of the law.	0	There are no impediments on the use of fixed-term contracts.
v5. Fixed-term workers have the right to equal treatment with permanent workers	Equals 1 if the legal system recognises a right to equal treatment for fixed-term workers (as, for example, in the case of EC Directive 99/70/EC). Equals 0.5 if the legal system recognises a more limited right to equal treatment for fixed-term workers (via, e.g., more general right of workers not be treated arbitrarily in employment) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	0	There is no right to equal treatment on the part of fixed-term workers.
v6. Maximum duration of fixed-term contracts	Measures the maximum cumulative duration of fixed-term contracts permitted by law before the employment is deemed to be permanent. The score is normalised from 0 to 1, with higher values indicating a lower permitted duration. The score equals 1 if the maximum limit is 1 year or less and 0 if it is 10 years or more or if there is no legal limit.	0	There is no limit on the number of renewals of fixed-term contracts.

Variable	Template	Score	Explanation
v7. Agency work is prohibited or strictly controlled	Equals 1 if the legal system prohibits the use of agency labour. Equals 0.5 if it places substantive constraints on its use (in the sense of allowing it only if certain conditions are satisfied, such as a demonstrable need on the part of the employer to meet fluctuations in labour demand). Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	0	There are no controls over the use of agency labour.
v8. Agency workers have the right to equal treatment with permanent workers of the user undertaking	Equals 1 if the legal system recognises a right to equal treatment for agency workers, in relation to permanent workers of the user undertaking, in respect of terms and conditions of employment in general Equals 0.5 or another intermediate score if the legal system recognises a more limited right to equal treatment for agency workers (for example, in respect of anti-discrimination law) Equals 0 if neither of the above. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	0	There is no requirement of equal treatment of agency workers.
vA. Alternative employment contracts	***Measures the cost of using alternatives to the 'standard' employment contract, computed as an average of the variables 1-8.***		

Variable	Template	Score	Explanation
B. Regulation of working time			
v9. Annual leave entitlements	Measures the normal length of annual paid leave guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with a leave entitlement of 30 days equivalent to a score of 1.	0	There is no legal right to annual leave.
v10. Public holiday entitlements	Measures the normal number of paid public holidays guaranteed by law or collective agreement. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score is normalised on a 0-1 scale, with an entitlement of 18 days equivalent to a score of 1.	0	There is no legal right to paid public holidays.
v11. Overtime premia	Measures the normal premium for overtime working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium.	0.5	The Fair Labor Standards Act sets a normal premium of time and half for overtime working.

Variable	Template	Score	Explanation
v12. Weekend working	Measures the normal premium for weekend working set by law or by collective agreements which are generally applicable. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements). The score equals 1 if the normal premium is double time, 0.5 if it is time and half, and 0 is there is no premium. Also score 1 if weekend working is strictly controlled or prohibited.	0	There are no legal rules on weekend working.
v13. Limits to overtime working	Measures the maximum weekly number of overtime hours permitted by law or by collective agreements which are generally applicable. The score equals 1 if there is a maximum duration to weekly working hours, inclusive of overtime, for normal employment; 0.5 if there is a limit but it may be averaged out over a reference period of longer than a week; and 0 if there is no limit on any kind.	0	There are no statutory limits on overtime working.
v14. Duration of the normal working week	Measures the maximum duration of the normal working week exclusive of overtime. The score is normalised on a 0-1 scale with a limit of 35 hours or less scoring 1 and a limit of 50 hours or more, or no limit, scoring 0. The same score is given for laws and for collective agreements which are de facto binding on most of the workforce (as in the case of systems which have extension legislation for collective agreements).	0.67	The normal working week is 40 hours, under the Fair Labor Standards Act.
v15. Maximum daily working time.	Measures the maximum number of permitted working hours in a day, taking account of rules governing rest breaks and maximum daily working time limits. The score is normalised on a 0-1 scale with a limit of 8 hours or less scoring 1 and a limit of 18 hours or more scoring 0.	0	Legislation does not set a maximum number of working hours per day.

Variable	Template	Score	Explanation
vB. Regulation of working time	***Measures the regulation of working time, computed as an average of variables 9-15.***		
C. Regulation of dismissal			
v16. Legally mandated notice period (all dismissals)	Measures the length of notice, in weeks, that has to be given to a worker with 3 years' employment. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	1970-88: 0 1989 –: 0.833	Employers with in excess of 100 employees (who worked more than 6 months in the previous year and for more than 20 hours per week) must give 60 calendar days advance written notice of the plant closing and mass layoffs affecting more than 50 employees at a single site of employment - Worker Adjustment and Retraining Notification Act 1988 (WARN)
v17. Legally mandated redundancy compensation	Measures the amount of redundancy compensation payable to a worker made redundant after 3 years of employment, measured in weeks of pay. Normalise the score so that 0 weeks = 0 and 12 weeks = 1.	0	There is no redundancy compensation legislation in the USA.
v18. Minimum qualifying period of service for normal case of unjust dismissal	Measures the period of service required before a worker qualifies for general protection against unjust dismissal. Normalise the score so that 3 years or more = 0, 0 months = 1	0	There is no unjust dismissal legislation in the USA.
v19. Law imposes procedural constraints on dismissal	Equals 1 if a dismissal is necessarily unjust if the employer fails to follow procedural requirements prior to dismissal Equals 0.67 if failure to follow procedural requirements will normally lead to a finding of unjust dismissal. Equals 0.33 if failure to follow procedural requirement is just one factor taken into account in unjust dismissal cases. Equals 0 if there are no procedural requirements for dismissal. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	0	There is no unjust dismissal legislation in the USA. Individual states differ in the extent to which they recognise exceptions to the employment at will rule. In general, however, the law doesnot impose procedural fairness standards on employers, and rarely gives contractual force to employer handbooks or other documentation setting out disciplinary and dismissal procedures.

Variable	Template	Score	Explanation
v20. Law imposes substantive constraints on dismissal	Equals 1 if dismissal is only permissible for serious misconduct or fault of the employee. Equals 0.67 if dismissal is lawful according to a wider range of legitimate reasons (misconduct, lack of capability, redundancy, etc.). Equals 0.33 if dismissal is permissible if it is 'just' or 'fair' as defined by case law. Equals 0 if employment is at will (i.e., no cause dismissal is normally permissible). Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	0	Only a few states have deviated from the employment at will rule, and such deviations are relatively minor by comparative standards.
v21. Reinstatement normal remedy for unfair dismissal	Equals 1 if reinstatement is the normal remedy for unjust dismissal and is regularly enforced. Equals 0.67 if reinstatement and compensation are, de iure and de facto, alternative remedies. Equals 0.33 if compensation is the normal remedy. Equals 0 if no remedy is available as of right. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	There is no unjust dismissal legislation in the USA.

Variable	Template	Score	Explanation
v22. Notification of dismissal	Equals 1 if by law or binding collective agreement the employer has to obtain the permission of a state body or third body prior to an individual dismissal. Equals 0.67 if a state body or third party has to be notified prior to the dismissal. Equals 0.33 if the employer has to give the worker written reasons for the dismissal. Equals 0 if an oral statement of dismissal to the worker suffices. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	1970-88: 0 1989-: 0.67	Written notice must be given to the chief elected officer of the exclusive representative or bargaining agency of affected employees or to unrepresented individual workers under the provisions of WARN 1988.
v23. Redundancy selection	Equals 1 if by law or binding collective agreement the employer must follow priority rules based on seniority, marital status, number or dependants, etc., prior to dismissing for redundancy. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	Seniority rules apply only through collective bargaining in the unionised sector, which now accounts for 7% of the private sector workforce.
v24. Priority in re-employment	Equals 1 if by law or binding collective agreement the employer must follow priority rules relating to the re-employment of former workers. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	Seniority rules apply only through collective bargaining in the unionised sector, which now accounts for 7% of the private sector workforce.
vC. Regulation of dismissal	***Measures the regulation of dismissal, calculated as the average of variables 16-24***		

Variable	Template	Score	Explanation
D. Employee representation			
v25. Right to unionisation	Measures the protection of the right to form trade unions in the country's constitution. (loosely interpreted in the case of system ssuch as the UK without a codified constitution). Equals 1 if a right to form trade unions is expressly granted by the constitution. Equals 0.67 if trade unions are described in the constitution as a matter of public policy or public interest. Equals 0.33 if trade unions are otherwise mentioned in the constitution or if there is a reference to freedom of association which encompasses trade unions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The US constitution does not recognise the right to form trade unions.
v26. Right to collective bargaining	Measures the protection of the right to collective bargaining or the right to enter into collective agreements in the country's constitution (loosely interpreted in the case of system such as the UK without a codified constitution). Equals 1 if a right to collective bargaining is expressly granted by the constitution. Equals 0.67 if collective bargaining is described as a matter of public policy or public interest (or mentioned within the chapter on rights). Equals 0..33 if collective bargaining is otherwise mentioned in the constitution. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The US constitution does not recognise the right to collective bargaining.

Variable	Template	Score	Explanation
v27. Duty to bargain	Equals 1 if employers have the legal duty to bargain and/or to reach an agreement with unions, works council or other organizations of workers. Equals 0 if employers may lawfully refuse to bargain with workers. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0.25	Employers have a duty to enter into collective bargaining with a certified bargaining agent under the National Labor Relations Act. However, only around 7% of the private sector workforce are currently affected by this obligation. The law relating to the duty to bargain is generally recognised to be rigid and difficult to enforce from the unions' perspective.
v28. Extension of collective agreements	Equals 1 if the law extends collective agreements to third parties at the national or sectoral level. Extensions may be automatic, subject to governmental approval, or subject to a conciliation or arbitration procedure. Equals 0 if collective agreements may not be extended to non-signatory workers or unions, or if collective agreements may be extended only at the plant level. Mandatory administrative extensions of collective agreements are coded as equivalent to mandatory extensions by law. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	Pattern bargaining exists in some sectors but has no legal underpinning.
v29. Closed shops	Equals 1 if the law permits both pre-entry and post-entry closed shops. Equals 0.50 if pre-entry closed shops are prohibited or rendered ineffective but post-entry closed shops are permitted (subject in some cases to exceptions e.g. for pre-existing employees). Equals 0 if neither pre-entry or post-entry closed shops are permitted to operate. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	As a result of the Taft-Hartley amendments to the NLRA in 1947, 'right to work' states can opt out of the laws relating to the closed shop. Agency shops, a version of the post-entry closed shop, can be maintained under certain circumstances where there is a certified bargaining agent under the NLRA but this affects a very small proportion of the workforce.

Variable	Template	Score	Explanation
v30. Codetermination: board membership	Equals 1 if the law gives unions and/or workers to right to nominate board-level directors in companies of a certain size. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The law does not provide for employee directors.
v31. Codetermination and information/consultation of workers	Equals 1 if the works councils or enterprise committees have legal powers of co-decision making. Equals 0.67 if works councils or enterprise committees must be provided by law under certain conditions but do not have the power of co-decision making. Equals 0.5 if works councils or enterprise committees may be required by law unless the employer can point to alternative or pre-existing alternative arrangements. Equals 0.33 if the law provides for information and consultation of workers or worker representatives on certain matters but where there is no obligaton to maintain a works council or enterprise committee as a standing body. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The law does not provide for either codetermination or inforrmation and consultation of employee representatives.
vD. Employee representation	***Measures the strength of employee representation, calculated as the average of variables 25-31.***		

Variable	Template	Score	Explanation
E. Industrial action			
v32. Unofficial industrial action	Equals 1 if strikes are not unlawful merely by reason of being unofficial or 'wildcat' strikes. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	Unofficial strikes are generally considered unprotected (Confectionery & Tobacco Drivers Local 805 v. NLRB, 312 F2d 108, 52 LRRM 2163 (CA 2, 1963)) although there is a view that the legality of a stirke depends not solely upon majority approval but also whether the object of the strike is to protect the union's demands and policies NLRB v. R.C. Can Co., 328 F2d 974, 55 LRRM 2642 (CA 5, 1964)).
v33. Political industrial action	Equals 1 if strikes over political (i.e. non work-related) issues are permitted. Equals 0 otherwise. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	0	Political strikes are generally considered unprotected; e.g. although not wholly on point the decision in International Longshoremen's Ass'n, AFL-CIO v. Allied Intern., Inc.,, 452 US 212, 110 LRRM 2001 (1982) indicates that such strikes are illegal if the foreseeable consequences of the union's conduct is to embroil neutrals in the dispute and commerce is affected under the Act.
v34. Secondary industrial action	Equals 1 if there are no constraints on secondary or sympathy strike action. Equals 0.5 if secondary or sympathy action is permitted under certain conditions. Equals 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	Secondary strikes were outlawed by the 1947 Taft-Hartley amendments to the NLRA which resulted in the addition of section 8(b)(4)(A); this prohibition was further strengthened by the 1959 amendments.
v35. Lockouts	Equals 1 if lockouts are not permitted. Equals 0 if they are. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The Supreme Court in American Shipbuilding Company v. NLRB (1965) held that in certain circumstances lockouts by employers are lawful under the NLRA.

Variable	Template	Score	Explanation
v36. Right to industrial action	Measures the protection of the right to industrial action (i.e. strike, go-slow or work-to-rule) in the country's constitution or equivalent Equals 1 if a right to industrial action is expressly granted by the constitution Equals 0.67 if strikes are described as a matter of public policy or public interest. Equals 0.33 if strikes are otherwise mentioned in the constitution. Equals zero otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	The US constitution does not recognise the right to strike.
v37. Waiting period prior to industrial action	Equals 1 if by law there is no mandatory waiting period or notification requirement before strikes can occur. Equals 0 if there is such a requirement. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	0	The NLRA (Section 8(d)) makes provsion for a 'cooling off' period to be applied under certain circumstances.
v38. Peace obligation	Equals 1 if a strike is not unlawful merely because there is a collective agreement in force. Equals 0 if such a strike is unlawful. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	0.5	If either party seeks to modify or terminate an existing collective bargaining agreement it must give 60 days notice to the other Party and continue to work during this period without resort to strike or lockout

Variable	Template	Score	Explanation
v39. Compulsory conciliation or arbitration	Equals 1 if laws do not mandate conciliation procedures or other alternative-dispute-resolution mechanisms (other than binding arbitration) before the strike. Equals 0 if such procedures are mandated. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0.5	During the modification or termination of a collective bargaining agreement the parties must notify the Federal Mediation and Conciliation Services and the appropriate state mediation agency within 30 days after giving notice of the existence of a dispute (NLRA Section 8(d)).
v40. Replacement of striking workers	Equals 1 if the law prohibits employers to fire striking workers or to hire replacement labor to maintain the plant in operation during a non-violent and non-political strike. Equals 0 if they are not so prohibited. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	0	Although the right to strike is protected under s. 13 of the NLRA, which speaks of the right to strike not being impaired by anything in the NLRA, since the 1938 decision in NLRB v. Mackay Radio & Telegraph Company the Supreme Court has allowed employers to permanently replace striking employees with strike-breakers (although this is restricted to employees who strike for economic reasons and not for reasons of unfair labor practices where the job of that employee is being performed by a new permanent member of staff).
vE. Industrial action	***Measures the strength of protections for industrial action, measured as the average of variables 32-40.***		