

Executive Summary

Creative Labour Regulation

Indeterminacy and protection in an uncertain world

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Labour regulation in crisis

Labour regulation is in crisis. Traditional regulatory frameworks can no longer ensure decent conditions of work on a global scale. The tragedy at Rana Plaza and recent outbreak of protests from the fast food industry in the United States to the garment sector in Cambodia show how both state regulation and corporate social responsibility (CSR) are failing vulnerable workers. This new volume responds to the urgent need for new ideas on how to regulate contemporary labour markets. The book brings together leading experts from a range of disciplines to investigate the promises and failings of labour regulation, and highlights a number of important innovations in the design and implementation of regulatory frameworks. The case studies are drawn from both advanced industrialized economies (Europe, United States) and the developing world (Argentina, Cambodia, South Africa and Viet Nam). The findings enrich and challenge the global debates on the revival of labour regulation.

Why are labour regulations unpredictable?

Standard economic analysis assumes that the effects of labour laws can be predicted, but in reality the outcomes are often uncertain. Some legal frameworks are highly effective while others have little impact on working life. This volume explores the factors that drive and underpin this “regulatory indeterminacy” and concludes that uncertain outcomes can be attributed to three factors (Chapter 1, Sangheon Lee and Deirdre McCann):

1. the accelerating fragmentation of employing enterprises;
2. complex interactions that take place between labour market institutions; and
3. varying effectiveness of labour law enforcement.

The book suggests that a creative response to each of these uncertainties will improve labour regulation outcomes.

1. Fragmentation: Protection in complex employment models

In the last few decades, the large firms that once characterized employment in advanced industrialized countries have rapidly fragmented. Practices such as subcontracting, franchising and third-party management have generated growing numbers of individuals who work at a distance from the firms that benefit from their labour. These working relationships now parallel those long found in lower-income countries, where workers tend to be employed by small firms, supplied by labour providers or work within other multilateral relationships.

These complex employment models are a central challenge to legal regulation of labour markets. Workers in fragmented relationships are often excluded from the coverage of labour laws or are unlikely to benefit from legal entitlements.

The volume argues for an accurate appreciation of the nature and repercussions of fragmentation. Further, it contends that this analysis must combine the insights of cutting-edge research on both business strategy and labour law. To that end, Chapter 2 (by David Weil) explores the business strategies that underpin the outsourcing of employment. The limitations of legal frameworks in protecting workers in complex multilateral working relations are addressed in Chapter 3 (Mark Freedland).

Current legal frameworks tend to assume that employment relationships are between two parties (a worker and a single employer). The complexity of contemporary employment relationships must be recognized in social and development policy. A new image of employment is essential and it must embrace both the range of actors involved and the incentives and business strategies that underpin their relationships. More expansive regulatory models are needed to embrace working relations in which employer functions are shared. And enforcement mechanisms should be designed to target lead firms, to ensure that standards are respected across production chains.

2. Institutional dynamism: A gateway to protection

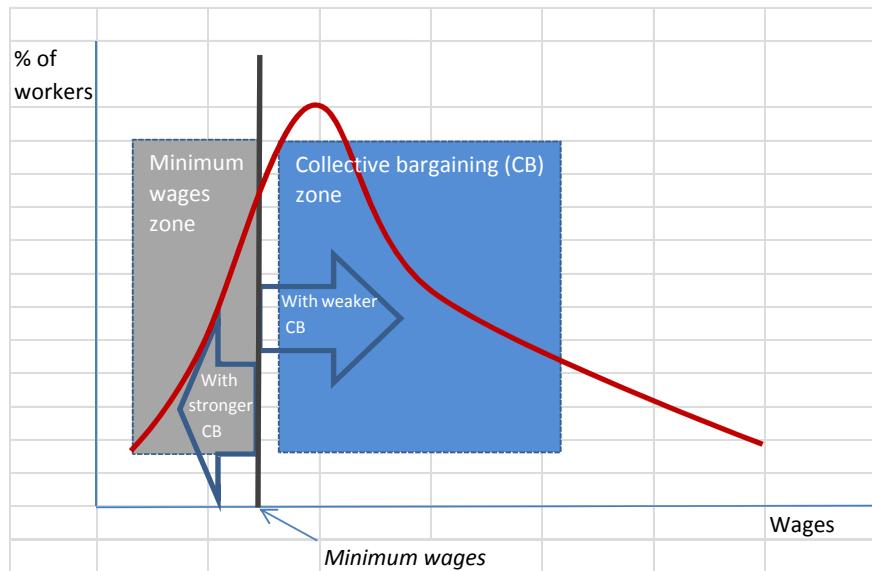
Debates on economic policy tend to assume that labour regulations are static entities, when in fact labour law systems are better understood by looking at their dynamic effects. This “institutional dynamism” can be:

- external – labour laws exercise an influence beyond their formal or expected coverage, including in the informal economy;
- internal – different elements of labour law systems interact in complex ways.

Creative Labour Regulation argues that these dynamic effects can be a gateway to improved protective outcomes by looking at the role of minimum wage as a form of labour regulation. In low-income countries, minimum wage laws increasingly feature in poverty alleviation policies. In the industrialized world, there is growing evidence that minimum wages advance pay equity through their impact on low-wage employment, gender pay inequality and wage compression. The book investigates the global revival of the minimum wage to produce crucial findings for global labour regulation policy. The contributors find that minimum wages have little effect on employment or informality, despite the fact that most economic policy guidance predicts damaging impacts from such legislation. This observation is true even for lower-income countries. For example, Chapter 4 (Fernando Groisman) shows that successive Argentinian governments have sustained commitment to the minimum wage, as part of a broader recourse to this policy tool across Latin America and the Caribbean. This policy is found to have had a substantial impact on wage levels and to have reduced poverty and inequality, but it has not damaged employment or forced workers into informal employment.

Internal institutional dynamism is illustrated in the interaction between statutory minimum wages and collective bargaining (see figure 1). Chapter 5 (Jill Rubery, Damian Grimshaw and Gerhard Bosch) showcases cross-national comparative research on Europe that finds collective bargaining to strengthen the effects of minimum wage legislation. Strong industrial relations systems are associated with more compressed wage distributions and put trade unions in a stronger position to campaign for higher minimum wages.

Figure 1 The dynamic relationship between minimum wages and collective bargaining



External dynamism is illustrated by the “ripple effects” that minimum wage laws have beyond their direct impacts: increases in the minimum wage have been found to influence wages both above the minimum wage level and in the informal economy. In industrialized economies, these effects can be exploited by collective bargaining actors. Unions can heighten ripple effects in low-wage sectors by bargaining to peg sectoral minimum wages, or the entire wage grid, to minimum wage increases. In low-income countries, minimum wage laws have been shown to have a substantial impact on the wages of informal workers. Despite this, minimum wages are often overlooked in formalization and poverty alleviation strategies in low-income countries.

3. Enforcement indeterminacy: Assessing hybrid models

Enforcement is crucial to effective labour regulation. However, both public enforcement of labour standards and conventional CSR strategies are frequently ineffective. Chapter 6 (Steven Willborn) exposes the limitations of conventional thinking on enforcement. The book then investigates mechanisms that have been designed to allay these problems by combining the efforts of state and private parties (e.g. buyers, non-governmental organizations, trade unions). These hybrid public/private mechanisms are increasingly accepted as the most reliable route to improving working life in low-income countries. The volume investigates their advantages and limitations through a series of case studies:

- A public/private alliance in the garment industry in Buenos Aires (Chapter 8, Matthew Amengual).
- Partnerships in South Africa between non-profit organizations and collectives of vulnerable women workers (Chapter 9, Ada Ordor).
- The ILO/International Finance Corporation Better Work programme. The programme's experience in Cambodia has confirmed the advantages of hybrid regulation over purely private initiatives in rigour, legitimacy, coordination and capacity-building (Chapter 10, Chikako Oka). The latest phase of the programme, in Viet Nam, is also found to be successful in improving compliance with labour standards and worker well-being (Chapter 7, Drusilla Brown, Rajeev Dehejia and Raymond Robertson).

This book finds that even when operating under profound financial constraints, labour inspectorates can be effective in encouraging compliance with labour laws. In the short term, enforcement capacity can be improved through innovative alliances between government institutions and civil society organizations. Hybrid strategies hold particular promise for informal and vulnerable workers. The State must remain the dominant agent of enforcement in the long term to achieve sustainable regulation strategies. To this end, government officials should be ensured adequate incentives, coupled with anti-corruption strategies.

Faith in labour regulation has been undermined by recent tragedies, generating widespread anxiety about the fate of workers across the globe. *Creative Labour Regulation* suggests new ways of thinking about the complex problems of contemporary labour regulation and the reforms that are vital to ensuring decent lives for workers and their families. Innovation is possible. Yet the renewal of labour regulation will not take place without novel and creative responses by policy-makers. The book suggests some vital reforms. Centrally, it calls on policy actors to recognize the complexity of contemporary employment relationships, to seek to benefit from the potential interactions between different forms of regulation and to rethink the strategies and priorities of law enforcement, including the potential for innovative alliances between the range of public and private actors that are involved in upholding decent labour standards.

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