14 Enforcement of labour standards in developing countries

Challenges and solutions

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The systems of work regulation which are in place today are over 100 years old. They were conceived in a period in which we had – or thought we had – a fairly clear idea of what economic development was all about and what the trajectory of development would look like over time.

Work regulations were designed to ensure that that trajectory was consistent with worker health and welfare. A recent series of spectacular industrial accidents in the developing world, most recently in Bangladesh in factories producing for major brand name retailers from advanced industrial countries, are eerily reminiscent of those which gave rise to modern-day regulation in the early twentieth century and make clear that there is still a need for the protections which work regulation originally arose to provide. But the economy and its trajectory have changed substantially since that time; the original regulatory structure focused on manufacturing but the modern economy is much more dependent on services; new technologies, new managerial techniques, new forms of business organisation and corporate governance, and evolving social mores have led many to argue that the existing regulations are anachronistic. These concerns are further complicated by the fact that over 40 per cent of workers globally are self-employed and only a fraction of these are themselves employers. Regulatory policy is thus faced with the problem of trying to identify what kinds of adjustments would facilitate growth and development and which adjustments are basically an attempt to evade the lessons of history.

The informal economy has come to play a central role in these debates, or rather multiple roles. Its ability to do so derives in no small measure from the ambiguity of the concept itself, the fact that there does not seem to be a single definition. In a certain sense, it is defined by the formal sector – it is composed of economic activities and employment arrangements which do not conform to the rules and regulations of the formal economy.¹ Part of the ambiguity derives from the fact that there are multiple regulations and an enterprise can conform to some and not others. The term informality, however, seems to imply more than a lack of conformity to formal regulations – it suggests a lack of structure, a kind of anarchy. This is very problematic. Lisa Peattie, an anthropologist, argued that there is no such thing as an unstructured market, and she was always able to find an underlying regulatory structure in even the most apparently isolated enclaves

of the economy. All of us who believe that human beings have a tendency to organise their lives in structured social relationships may not subscribe to the strong versions of Lisa's view but it is hard to believe that economic activity that generates as much as 61 per cent of global employment could operate in the unstructured way that the use of the term informality in some scholarship and policy analysis seems to imply.

If informality is not automatically branded as disorganised, then, the informal economy offers a set of models of how to organise (and structure) economic activity, a set of models which one could think of as alternative to those of the formal sector ... and one can ask what those models are, how they affect social welfare, and what their impact is on economic efficiency. In this sense, the informal economy becomes a laboratory for investigating the question of how else, besides the regulatory structure we have inherited from industrial history, we might organise work. But is it possible to take advantage of that laboratory in the existing regulatory structure?

While the debate that is emerging around this question often focuses on the substance of regulations, I would argue that the real need is to create an institutional framework in which the question can be debated and resolved. In this context, Andrew Schrank and I have examined the contrast between the US approach to work regulation and the approach which originates in France and has been adopted in Southern Europe and in Latin America (Piore and Schrank 2018). We argue that, whereas the critique of regulation has focused almost exclusively on the Anglo-Saxon or US system, the Franco-Latin model offers a flexible model of regulation which is actually better suited to the need to distinguish between the progressive changes in modern economies and a regression towards the abuses of an unregulated labour market.

The US has created a specialised system of work regulation. Regulations are administered and enforced by a series of different agencies, each focused on a narrow range of concerns (the Occupational Safety and Health Administration, the Wage and Hour Division of the Department of Labor, the Equal Employment Opportunity Commission, the Employee Retirement Income Security Act, the National Labor Relations Board, the Federal Mediation and Conciliation Service, the State Department, Immigration and Customs Enforcement, and so on). Work regulation tends to be conceived as a list of specific standards or requirements. Violations of the different items on the list are punished by a penalty, typically in the form of a fine, in extreme cases, by criminal sanctions. The penalties act as deterrents against further violations and discharge the obligation of the enterprise under the law.

In France, the whole of the labour code is administered by a single agency. The agents (or work inspectors) are expected to bring the enterprise into compliance. Wilful or deliberate violations are punished through fines and other sanctions, the inspectors are empowered (and expected) to bring the enterprise into compliance and to develop in consultation with the owners and managers a plan through which compliance is actually achieved. The provisions of the labour code are voluminous and extensive, too voluminous to be enforced liter-

ally; an inspector cannot possibly check every provision when he or she visits a shop and thus they acquire considerable discretion as to which part of the code to enforce and under what circumstances. This encourages them to look for the underlying causes of violations in the enterprise's approach to management and in its business strategy and to seek remedies which address these causes rather than the violations individually and narrowly conceived. The Franco-Latin system is thus an approach which pressurises government agencies and the enterprises being supervised to think through and address directly the central questions raised by the recent evolution of the economy, namely, to ask whether and under what circumstances informality is a response to modernity and when it is a regression to older forms of labour exploitation.

In my experience, in countries where work regulation is organised on the French model, there is a continual conversation about these questions among the work inspectors themselves. It is grounded in their own experience in the field where they have exposure to a very wide range of working conditions and managerial practices (probably more than any other actors in the society). Exactly how that experience is put to use is in part dependent on the way these agencies are managed and whether the ongoing conversation among the line agents ever influences official policy and practice. Organisations – of workers, of employers, and of other interested parties – can encourage these discussions and enter into them as they encounter work inspectors in the field when they are working with their members but also by introducing the themes and the voices of the inspectors in the political process and in technical policy discussion and debate.

A key question then becomes whether a special regulatory regime is required for the informal economy. The answer to this question depends on whether one thinks of the informal economy as composed of relatively homogeneous business and employment units or whether it is a catch-all category that is really defined by the formal sector. My own sense is that it is too heterogeneous for a dedicated enforcement agency to make sense. What much of the informal business units have in common is that they do not pay taxes and so in those cases where a dedicated institutional structure has been created (e.g., Argentina), it is motivated by a concern with raising revenue, which is hardly the major issue posed by informal employment from a social perspective. In the advanced developed world, to my knowledge, several countries, most notably France and Spain, have historically created specialised inspection corps for small firms with the notion in part that the management in these firms is less well educated, less schooled in modern business practice, and hence needs special guidance, and interviews with the inspectors in these specialised units suggest that this is indeed the case. But it is not the same thing as a regime of regulation directed at the informal economy. On the other hand, the discussion and debates which programmes aimed at informality are likely to provoke are precisely the kind of open, public discussion of the causes of poor working conditions and the best ways of addressing them. And it is the absence of this kind of discussion and debate which leaves the newly developing world ignorant of the history of employment conditions in those countries which

preceded them in the developmental paths and denies them the lessons of history which would otherwise be the advantage of late development.

Note

- 1 There are two official international statistical definitions: “informal sector” is an enterprise-based definition (i.e., enterprises which are not incorporated or registered with a national authority); and “informal employment” is a broader employment-based definition (i.e., employment without work-based social protection).

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