

Enforcement of Labor Standards/Rights in Developing Countries: Challenges and Solutions

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The systems of work regulation which is 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 series of spectacular industrial accidents in the developing world, eerily reminiscent of those which gave rise to modern day regulation in the early twentieth century, most recently in Bangladesh in factories producing for major brand name retailers from advanced industrial countries, 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 organization and corporate governance, and evolving social mores have led many to argue that existing regulations are anachronistic. The regulatory policy is thus faced with the problem of trying to identify what kinds of adjustments would facilitate growth and development and which are basically an effort to evade the lessons of history.

The informal sector has come 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 doesn't seem to be a single definition. In a certain sense, it is defined by the formal sector—it is composed of economic activity which does not conform to the rules and regulations of the formal economy. 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. My colleague Lisa Peattie, who is an anthropologist, argues 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 those of us who believe that human beings have a tendency to organize their lives in structured social relationships may not subscribe to the strong versions of Lisa's view but it is hard to believe that as much of 60% of economic activity could operate in the unstructured way that the term informality seems to imply.

On this view, then, the informal economy offers a set of models of how to organize (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 sector becomes a laboratory for investigating the question of how else, besides the regulatory structure we have inherited from industrial history, we might organize 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 in a manuscript, now in press, the contrast between the U.S. approach to work regulation and the approach which originates in France and has been adopted in Southern Europe and in Latin America. We argue that whereas the critique of regulation has focused almost exclusively on the U.S. 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 toward the abuses of an unregulated labor market.

The U.S. has created a specialized system of work regulation. Regulations are administered and enforced by a series of different agencies each focused on a narrow range of concerns (OSHA, the Wages and Hours Division of the Department of Labor, EEOC, ERISA, the NLRB, the Federal Mediation service, the State Department, ICE.....). 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 labor code is administered by a single agency. The agents (or work inspectors) are expected to bring the enterprise into compliance. Willful 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 labor code are voluminous and extensive, too voluminous to be enforced literally; 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 pressures government agencies and the enterprises being supervised to think through and address directly the central questions raised by the recent evolution of the economy: To ask whether and under what circumstances informality is a response to modernity and when it is a regression toward older forms of labor exploitation.

In my experience, in countries where work regulation is organized 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. Organizations— 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.