

## A Strategic Approach to Regulating Unacceptable Forms of Work

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*Upgrading low-waged and insecure work is central to contemporary labour and development initiatives, from the UN Sustainable Development Goals to the United Kingdom ‘Taylor Review’. The International Labour Organization’s notion of unacceptable forms of work (UFW) is a crucial contribution. Yet the regulatory frameworks that can effectively address UFW are unclear. This article builds on a novel framework – the Multidimensional Model of UFW. Drawing on theoretical literatures at the frontline of regulation scholarship, it proposes a strategic approach to UFW regulation that supports development, acknowledges the constrained resources of low-income countries, and targets expansive and sustainable effects. Two key concepts are identified: points of leverage and institutional dynamism. Globally-prominent regulatory frameworks are assessed as a starting point for mapping the strategic approach: the Mathadi Act of Maharashtra, India; Uruguayan domestic work legislation; minimum wages in the global North and South; and United Kingdom regulation of ‘zero-hours contracts’.*

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We are grateful for comments on earlier drafts by Laura Addati, Anita Amorim, Beate Andrees, Simonetta Cavazza, Richard Cholewinski, Colin Fenwick, Horacio Guido, Susan Hayter, Christian Hess, Richard Howard, Coen Kompier, Christiane Kuptsch, Thetis Mangahas, Shengli Niu, Martin Oelz, Mustafa Hakki Ozel, Natalia Popova, Manuela Tomei, and the ESRC Strategic Network on Unacceptable Forms of Work.

What makes forms of work socially unacceptable? What modes of regulation can eliminate unacceptable forms of work (UFW)? The United Nations International Labour Organization (ILO) has made these questions a central strand of its global policy agenda on its 2019 centenary.<sup>1</sup> Similar enquiries motivate a range of pivotal national and supranational regulatory initiatives, from the Taylor Review of contemporary working relations<sup>2</sup> and appointment of a Director of Labour Market Enforcement<sup>3</sup> in the United Kingdom, to the EU Agency for Fundamental Rights (FRA) initiative on severe labour exploitation in the EU,<sup>4</sup> to the inclusion of the ‘decent work indicator’ among the UN’s Sustainable Development Goals.<sup>5</sup>

Most policy makers and commentators would endorse the ILO’s broad definition of UFW as work performed in ‘conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of extreme poverty.’<sup>6</sup> Yet most would also agree that there is a need for ‘a more refined understanding about the dimensions and descriptors of [UFW] ... to guide practical action.’<sup>7</sup>

This article responds to the challenge of constructing an analytically rigorous, theoretically-informed and policy-oriented conception of UFW. It is animated by a research project on Legal Regulation of UFW<sup>8</sup> that proposes a new framework for conceptualizing and addressing unacceptable

1 ILO, *Towards the ILO Centenary: Realities, Renewal and Tripartite Commitment* (2013a). See, also, ILO, *The Director-General’s Programme and Budget Proposals for 2014–15* (2013b) Governing Body (GB), 317th Session, Geneva, 6–28 March 2013, GB.317/PFA/1, at <[https://www.ilo.org/gb/GBSessions/GB317/pfa/WCMS\\_203480/lang-en/index.htm](https://www.ilo.org/gb/GBSessions/GB317/pfa/WCMS_203480/lang-en/index.htm)>; ILO, *The Director-General’s Programme and Budget Proposals for 2018–19* (2017) GB, 329th Session, Geneva, 9–24 March 2017, GB.329/PFA/1, at <[https://www.ilo.org/gb/GBSessions/GB329/pfa/WCMS\\_542955/lang-en/index.htm](https://www.ilo.org/gb/GBSessions/GB329/pfa/WCMS_542955/lang-en/index.htm)>.

2 Department for Business, Energy and Industrial Strategy (BEIS), *Good Work: The Taylor Review of Modern Working Practices* (2017).

3 See ‘Sir David Metcalf Named as the First Director of Labour Market Enforcement,’ at <<https://www.gov.uk/government/news/sir-david-metcalf-named-as-the-first-director-of-labour-market-enforcement>>.

4 European Union Agency for Fundamental Rights, *Severe Labour Exploitation: Workers Moving Within or Into the European Union* (2015).

5 SDG8, at <<http://www.un.org/sustainabledevelopment/sustainable-development-goals/>>.

6 ILO, op. cit. (2013b), n. 1, para. 49.

7 ILO, *Unacceptable Forms of Work (UFW): Results of a Delphi Survey* (2015) 1.

8 See J. Fudge and D. McCann, *Unacceptable Forms of Work: A Global and Comparative Study* (2015), at <<http://www.ilo.org/public/libdoc/ilo/2015/487991.pdf>>; D. McCann and J. Fudge, ‘Unacceptable Forms of Work: A Multidimensional Model’ (2017) 156 *International Labour Rev.* 147; Decent Work Regulation Project, at <<https://www.dur.ac.uk/law/policyengagement/ufw/>>. A Network phase of the UFW project was funded by an ESRC Global Challenges Research Fund Strategic Network grant (ES/P0074651; 2017); see, further, D. McCann (ed.), *Unacceptable Forms of Work: Global Dialogue/Local Innovation* (2018).

work: the Multidimensional Model of UFW.<sup>9</sup> This model makes three vital and novel contributions to the literatures on low-quality work and on labour market regulation. First, unlike prevailing conceptions of ‘bad jobs,’ vulnerability, or precarious work – which are moulded primarily to the features and needs of the economies of the global North – the Multidimensional Model is designed to be applicable to countries across the world, at widely-varying levels of development. Second, the model is designed not merely to be descriptive, but to be used as a rigorous diagnostic tool: to identify and prioritize the forms of unacceptable work most prominent in each local context. Finally, the Multidimensional Model has a novel and crucial regulatory dimension.

The regulatory component of the Multidimensional Model is the subject of this article. This element is unique in the available typologies of low-quality work, not least in that it ensures that the model can be operationalized. It draws upon innovative theories at the frontline of the interdisciplinary literature on labour regulation to propose a new strategic approach to UFW regulation. The goal of the strategic approach is to support the design and implementation of regulatory interventions that are tailored to development objectives, suited to lower-income countries, and have the broadest and most sustainable effects. The model therefore integrates local actors, is directed at transforming the conditions that produce UFW, and is attentive to the limited resources available for labour regulation in low-income countries. To these ends, the model has a particular focus on the sites and modes of legal intervention and emphasizes the design of legal frameworks, strategies, and tools.

The article both builds upon and contributes to pivotal conceptual and theoretical debates on the regulation of labour and, more broadly, effective regulatory models and techniques.<sup>10</sup> It engages with a critical set of theories of regulation: on the indeterminacy of regulatory outcomes, the role and status of law in development, the legal treatment of precarious and non-standard work, and the merits of a strategic stance (which aims to maximize the use of finite resources towards effective regulatory outcomes). The

9 See, also, McCann and Fudge, id.

10 As illustrations of an extensive literature, G. Davidov and B. Langille (eds.), *Boundaries and Frontiers of Labour Law* (2006); C. Arup et al., *Labour Law and Labour Market Regulation* (2010); T. Tekle (ed.), *Labour Law and Worker Protection in Developing Countries* (2010); M. Freedland and N. Kountouris, *The Legal Construction of Personal Work Relations* (2011); S. Lee and D. McCann (eds.), *Regulating for Decent Work: New Directions in Labour Market Regulation* (2011); J. Fudge et al., *Challenging the Legal Boundaries of Work Regulation* (2012); C. Costello and M. Freedland (eds.), *Migrants at Work: Immigration and Vulnerability in Labour Law* (2014); D. McCann et al. (eds.), *Creative Labour Regulation: Indeterminacy and Protection in an Uncertain World* (2014); S. Marshall and C. Fenwick (eds.), *Labour Regulation and Development: Socio-Legal Perspectives* (2016).

strategic approach to UFW regulation traced in this article brings to bear these diverse approaches upon the particular challenges of tackling unstable and low-waged work. It seeks to meld pertinent elements of these contributions to devise an approach that is tailored to the upgrading of UFW.

In doing so, the model adopts a socio-legal method, influenced by the American legal realists, which begins with social relations and social activity before proceeding to legal categories.<sup>11</sup> The starting point is the social activities that are bound up in work relations rather than the existing legal categories ('employee,' 'worker,' 'independent contractor', and so on) The article therefore adopts a broad conception of labour market regulation that operates beyond the conventional boundaries of labour law, and even of legal regulation.<sup>12</sup> It also embraces the concept of 'regulatory space', which denotes that:

[R]egulatory power is not held solely by governments but is dispersed throughout a number of bodies or groups such as firms . . . non-governmental and supra-governmental agencies, standard-setting organisations, credit-rating agencies, business and professional associations, trade unions, religious organisations, courts, tribunals, peer groups and others.<sup>13</sup>

Drawing on these insights, the article contends that successful regulatory strategies must both engage with, and be internalized by, the social actors whose behaviour is the subject of regulation. The strategic approach to UFW contributes to the existing scholarship on experimentation in regulatory design a particular emphasis on the need for a 'ground-up' approach, which begins with the realities of economic relations in the global North and South and, from there, proceeds to design regulatory solutions. In this regard, the Multidimensional Model ascribes a uniquely central role to local actors. Local policy makers, stakeholders, researchers, and workers are empowered to identify, prioritize, and address UFW in ways that are sensitive to local political, economic, and social contexts. The model thereby offers a synthesis of theoretical rigour and practical utility that is applicable to specific regulatory interventions.

Part I of the article outlines the substantive and predictive aspects of the Multidimensional Model, illustrating how it can be used to identify UFW across a wide range of working arrangements and social and economic contexts. Part II turns to the broader debates on labour-market regulation, culling insights for the design and implementation of frameworks on UFW regulation. Part III outlines crucial components of a strategic approach to

11 See, for example, H. Dagan, 'Doctrinal Categories, Legal Realism, and the Rule of Law' (2015) 163 *University of Pennsylvania Law Rev.* 1889.

12 R. Mitchell, *Redefining Labour Law: New Perspectives on Teaching and Research* (2005); Arup et al., op. cit., n. 10; Fudge et al., op. cit., n 10.

13 A. Freiberg, *The Tools of Regulation* (2010) 18–19. The term was first used in C. Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design' (2001) *Public Law* 329.

eliminating UFW. This approach is then further developed, in Part IV, by identifying key illustrations of existing legal frameworks on unacceptable work – the Mathadi Act in Maharashtra, India; Uruguayan domestic work legislation; minimum-wage legislation in both the global North and South; and the United Kingdom ban on ‘exclusivity clauses’ in zero-hours contracts. These models are investigated as a starting point for mapping the range of regulatory interventions that might embody a strategic approach to UFW regulation. The article concludes by drawing on these illustrations to elaborate upon how the principles that underpin the strategic approach to UFW regulation might be manifested in concrete regulatory frameworks.

## I. THE MULTIDIMENSIONAL MODEL OF UFW

The Multidimensional Model of UFW has been developed by identifying the key academic and policy discourses that categorize central dimensions of working life as either desirable or unacceptable. The aim was to investigate the conceptions of unacceptability that are embedded in these literatures and to draw on their insights to develop a rigorous and policy-oriented conception of UFW. Each of the discourses – decent work,<sup>14</sup> good jobs,<sup>15</sup> precarious work,<sup>16</sup> vulnerability,<sup>17</sup> informal work,<sup>18</sup> and forced labour<sup>19</sup> – was

- 14 ILO, *Decent Work* (1999); see, further, G. MacNaughton and D.F. Frey, ‘Decent Work, Human Rights and the Development Goals’ (2010) 7 *Hastings Race and Poverty Law J.* 303.
- 15 For example, A. Kalleberg, *Good Jobs, Bad Jobs: The Rise of Polarized and Precarious Employment Systems in the United States, 1970s to 2000s* (2011); P. Findlay et al., ‘The Challenge of Job Quality’ (2013) 66 *Human Relations* 441.
- 16 For example, L.F. Vosko, *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (2000); L.F. Vosko, *Managing the Margins: Gender, Citizenship and the International Regulation of Precarious Employment* (2010); J. Fudge and R. Owens (eds.), *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (2006); A. Kalleberg, ‘Job Quality and Precarious Work: Clarifications, Controversies and Challenges’ (2012) 39 *Work and Occupations* 427; G. Standing, *The Precariat: The New Dangerous Class* (2011).
- 17 R. Saunders, *Defining Vulnerability in the Labour Market* (2003); K. Rittich, *Vulnerability at Work: Legal and Policy Issues in the New Economy* (2004); J. Fudge, ‘Beyond Vulnerable Workers? Towards a New Standard Employment Relationship’ (2005) 12 *Cndn. Labour and Employment Law J.* 145.
- 18 M.A. Chen, *The Informal Economy: Definitions, Theories and Policies* (2012); F. Carré and J. Heintz, ‘Toward a Common Framework for Informal Employment Across Developed and Developing Countries’ (2013) WEIGO Working Paper (Statistics) No. 26.
- 19 For example, B. Anderson and B. Rogaly, *Forced Labour and Migration to the UK* (2004); ILO, *Eradication of Forced Labour* (2007); ILO, *The Cost of Coercion* (2009); K. Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (2010); J. Allain et al., *Forced Labour’s Business Models and Supply Chains* (2013).

determined to be insufficient on its own, yet crucial to developing a robust concept of UFW.

The Multidimensional Model diverges from these earlier approaches by shifting from relatively narrow foci, centred on a limited range of characteristics, towards a more expansive scope, including by configuring unacceptability as a continuum. It, further, captures both the supply, demand, and institutional features of labour markets that tend to be associated with UFW, and the sites and features of effective intervention. The model configures UFW to capture (i) the substantive dimensions that render work unacceptable; (ii) the magnitude of the risks to which a worker is exposed; and (iii) the sites and modes of effective intervention. Elements (i) and (ii), summarized in this part, are explored in more detail in an earlier contribution.<sup>20</sup> This article focuses on element (iii).

In each of its elements, the Multidimensional Model recognizes that the nature and magnitude of UFW differ from country to country depending upon factors such as levels of economic development, political and governance structures, the health of civil society, and the strength and complexion of labour market institutions and the social partners. In light of this complexity, local knowledge becomes critical to mapping the severity, extent, and locations of UFW. The model activates this knowledge by relying on local policy makers and researchers to map the incidence and magnitude of UFW and to determine priorities for intervention. The actors involved in this process are expected to include government ministries and agencies, social partner organizations, and civil society groups that speak for key constituencies. The Multidimensional Model is therefore a diagnostic tool to be used by local actors to identify and to target UFW across a range of economies and at different levels of development.

### *1. Substantive dimensions and indicators of UFW*

The Multidimensional Model recognizes twelve substantive dimensions of unacceptability (Table 1). It is more expansive than earlier discourses of unacceptable work, which tend to centre primarily at the level of the job.<sup>21</sup> The model captures the range of dimensions of working life, including the intersection of waged labour and community life, social protection, collective mechanisms, job content, and the legal architecture through which workers identify and enforce their entitlements.

The Multidimensional Model is designed to be sufficiently flexible to take account of the contingent nature of unacceptability while recognizing a core of basic and universal human rights. Each of the twelve substantive dimensions is

<sup>20</sup> McCann and Fudge, *op. cit.*, n. 8.

<sup>21</sup> For critiques of this literature, see R. Muñoz de Bustillo et al., 'E Pluribus Unum? A Critical Review of Job Quality Indicators' (2009) *Regulating for Decent Work Conference*, Geneva, Switzerland; Findlay et al., *op. cit.*, n. 15.

**Table 1. The substantive dimensions of UFW**

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**Dimension 1. Forced labour**

\* Worker subject to forced labour (including slavery, debt bondage, trafficking in persons, forced prostitution, forced overtime)

**Dimension 2. Health and safety**

\* Risk to health and wellbeing (physical and mental)

**Dimension 3. Income**

\* Inadequate payment (too low to satisfy basic needs);

\* Insecure payments (for example, wage arrears, irregular payments, unjustified deductions, performance of unpaid work, illegitimate/excessive recruitment fees)

**Dimension 4. Security**

\* Day-labour (casual contracts, zero-hours contracts);

Insecure employment (no certainty of continuing employment, termination is possible without a valid reason or without procedural or other protections);  
No prospects for promotion;

No opportunities for skill development or training

**Dimension 5. Working time**

\* Excessive weekly hours;

\* Weekly rest of less than 24 hours;

\* Insufficient daily rest/family/community time;

\* Forced overtime;

\* Insufficient hours (too few to satisfy basic needs);

\* Unprotected night work (no health assessments, no capacity to transfer in essential circumstances, no additional compensation);

\* Paid annual vacation of less than 3 working weeks;

Unpredictable schedules;

Lack of influence over working hours (including the flexibility to deal with family and community obligations);

Insufficient rest breaks during the working day

**Dimension 6. Representation and voice mechanisms**

\* The right to freedom of association, the right to organize, and the right to collective bargaining are not respected;

Lack of consultation, denial of participation, or failure to provide voice mechanisms

**Dimension 7. Child labour**

\* Child labour

*(continues)*

**Table 1 (continued)**

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**Dimension 8. Social protection** (health care, pension coverage, paid sick leave, unemployment insurance)

\*Social protection inadequate to satisfy basic needs

**Dimension 9. Equality, human rights and dignity** (irrespective of gender, ethnicity, race, nationality, caste, family status, age, disability, religion, sexual orientation, indigenous identity, HIV-status, trade union affiliation and activities, political opinion, contractual status/working arrangements)

\* Discrimination in working life (including access to education and vocational training);

\* Unequal pay for work of equal value;

\* Abuse, violence, and harassment;

\* Lack of respect for human rights, including the lack of respect for privacy (for example, restrictions on transfer of earnings, privacy violated in employer-provided housing, confiscation of possessions);

Lack of respect for national, ethnic, and social identities and cultures

**Dimension 10. Legal protection**

\* Exclusion from legal protections;

\* Inadequate implementation/enforcement of legal protections (ineffective inspection systems, unspecified allocation of responsibilities in multilateral relationships);

\* Inadequate regulation of the recruitment or placement of workers by employment agencies, labour providers, and so on;

Lack of information on legal rights;

No express contract

**Dimension 11. Family and community life**

\* No entitlement to paid maternity leave of at least 14 weeks;

\* No maternity protection;

No parental leave;

Work inhibits family or community life (for example, engagements terminated because a worker has family responsibilities, no flexibility to deal with family or community obligations)

**Dimension 12. Work organization**

Lack of control over the work process (task, decision, timing, method);

Excessive workload;

Intense physical and mental demands

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Source: McCann and Fudge 2017



categorized into a set of indicators that are designed to assist researchers and policy makers to construct models of UFW suited to regional, national, sectoral, or occupational contexts (Table 1). A number of the indicators mark certain forms of work as entirely unacceptable and are, therefore, essential features of all models of UFW (for example, forced labour, discrimination, child labour). These fundamental indicators, starred in Table 1 (\*), indicate where the most urgent policy interventions are needed. Supplementary indicators are also identified, which are assumed to be context-specific and to be linked to levels of development. The Multidimensional Model is therefore a contextual model, in that it can be adjusted to a range of settings. It is also dynamic. The fundamental and supplementary indicators indicate a path for national policy actors incrementally to adjust their economic and labour policies towards the phased elimination of UFW.<sup>22</sup>

## 2. *The magnitude and complexion of UFW: a predictive methodology*

The magnitude of UFW, encompassing both their severity and their extent in the labour market, is contingent upon a complex range of socio-economic, governance, and labour-market features. It is therefore critical that local policy actors and researchers play a central role in mapping UFW and in selecting intervention strategies.<sup>23</sup> As part of this process, the Multidimensional Model has been designed for use in discerning patterns and practices that are common to UFW: the groups of workers involved and the locations in which these forms of work are found. This approach recognizes that members of groups that are differentiated along status markers – sex, caste or migration status, for example – are more likely to be found in UFW, and that certain labour-market locations – such as the agriculture or hospitality sectors, or informal work – are more likely to harbour UFW.

To this end, the model integrates a predictive methodology, which identifies sets of demographic and ascriptive characteristics ('social location') and labour-market locations ('social context') that are at risk of generating UFW.<sup>24</sup> These dimensions are presented in Table 2. Social location identifies the characteristics of workers who may disproportionately be found in UFW: sex, ethnicity, age, family status, immigration status, linguistic group, skill and ability levels, and so on.<sup>25</sup> Social context captures processes and

22 The Multidimensional Model is also designed readily to be mapped to common features of regulatory schemata including ILO international labour standards; see Fudge and McCann, *op. cit.*, n. 8, pp. 48–51.

23 McCann and Fudge, *op. cit.*, n. 8.

24 See, in particular Vosko, *op. cit.* (2010), n. 16.

25 See, for example, L. Lamphere et al., *Sunbelt Working Mothers: Reconciling Family and Factory* (1993); ESOPE, *Prekarious Employment in Europe: A Comparative Study of Labour Market Related Risk in Flexible Economies* (2005); D. Arnold and J.R. Bongiovi, 'Prekarious, Informalizing, and Flexible Work: Transforming Concepts and Understandings' (2013) *57 Am. Behavioral Scientist* 289.

**Table 2. Dimensions of social location and social context**

<b>Social location:</b>	<b>Social context:</b>
The interaction of social relations (for example, gender, ethnicity, social class) and legal and political categories (for example, citizenship) that shape the likelihood of workers' involvement in UFW	The labour market and social welfare institutions and features of the political economy that determine (i) whether work is unacceptable and (ii) the forms of unacceptable work
Gender	Sector
Ethnicity	Occupation
National origin	Industry
Citizenship and immigration status	Labour market
Social class	Product market
Age	Firm size
Sexual orientation	Contractual form (for example, temporary, part-time)
Family status	Labour market institutions (for example, regulatory regime, union density)
Care obligations	Social welfare institutions (for example, social spending)
Ability	Geographical region
Religion	Levels of atypical employment
Caste	Levels of informality
Linguistic group	

Source: McCann and Fudge 2017

institutions that shape how different groups of workers are positioned in local labour markets, such as regional and local product markets, sectors, and governance regimes.

As with the substantive dimensions outlined above, the categories listed in Table 2 are intended to be indicative and are expected to vary according to local circumstances. These typologies can therefore be used by policy actors and researchers to identify significant patterns and practices.

## II. TOWARDS EFFECTIVE REGULATION

The most prominent labour-market policy discourses from the late 1980s to the early 2000s posited an inescapable trade-off between protecting workers and pricing them out of the labour market.<sup>26</sup> Recognition has since grown,

<sup>26</sup> See, in particular, the literature associated with the World Bank's *Doing Business* project, for example, World Bank, *Doing Business 2004* (2005); K.E. Davis and M.B. Kruse, 'Taking the Measure of Law: The Case of the *Doing Business* Project' (2007) 32 *Law & Social Inquiry* 1095; J. Berg and S. Cazes, 'Policymaking Gone

however, of labour regulation's potential role in development: providing insurance against labour market risks, for example, smoothing market access, overcoming information asymmetries and collective action problems, and so on.<sup>27</sup> This evolving awareness is propelling a growing literature on the design of effective labour regulation, which can be mined to devise and assess regulatory strategies for UFW. Four literatures are of particular value in this regard.

An innovative empirical research, first, has illustrated that the impacts of labour regulations are difficult to predict a priori. This finding is captured in Deakin and Sakar's notion of 'regulatory indeterminacy.'<sup>28</sup> Lee and McCann have extended this notion to capture uncertainty in the protective capacities of labour law<sup>29</sup>: 'the varying capacity of labour law frameworks to generate protective outcomes.'<sup>30</sup> They identify three crucial variables that generate protective indeterminacy: (i) the accelerating fragmentation of labour markets into diverse forms of employment; (ii) complex interactions between labour market institutions; and (iii) impediments to the effective implementation of labour norms. Lee and McCann argue, usefully for UFW regulation, that these three factors should shape the design of research and policy agendas on effective legal regulation.

In part fuelled by these insights into the varying outcomes of labour law reform projects, a second literature is investigating the demands of integrating effective labour law regimes into development strategies. Deakin and Marshall's recent reflection on labour market regulation in the least-developed countries, for example, has generated valuable prescriptions for 'development-friendly' labour law reform.<sup>31</sup> These authors elaborate a set of criteria for developing and reforming labour law regimes, suggesting that regulatory frameworks should be compatible with economic incentives; complement contiguous and overlapping regulatory domains (corporate governance frameworks; finance, competition, and tax law, and so on); be

- Awry: The Labor Market Regulations of the Doing Business Indicators' (2008) 29 *Comparative Labor Law and Policy J.* 349; S. Lee and D. McCann, 'Measuring Labour Market Institutions: Conceptual and Methodological Questions on "Working Hours Rigidity"' in *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World*, eds. J. Berg and D. Kucera (2008).
- 27 S. Deakin, 'The Evidence-Based Case for Labour Regulation' in Lee and McCann (eds.), op. cit., n. 10, p. 31.
- 28 S. Deakin and P. Sarkar, 'Assessing the Long-Run Economic Impact of Labour Law Systems: A Theoretical Reappraisal and Analysis of New Time Series Data' (2008) *Industrial Relations J.* 453.
- 29 S. Lee and D. McCann, 'Regulatory Indeterminacy and Protection in Contemporary Labour Markets: Innovation in Research and Policy' in McCann et al. (eds.), op. cit., n. 10, p. 3.
- 30 id., p. 26.
- 31 S. Deakin and S. Marshall, 'Checklist for Developing and Reforming Development Friendly Labour Market Regulation' in Marshall and Fenwick (eds.), op. cit., n. 10, pp. 318–20.

‘context dependent,’ including by being compatible with levels of industrialization and the mix of formal and informal work; support inclusive governance (encourage participative decision making and broader social and civil dialogue in the formulation of rules); and be sensitive to institutional capacities. The authors also stress that regulatory frameworks can support the core functions of labour market regulation, of economic coordination, risk distribution, demand management, democratization, and empowerment.

A third strand of analysis speculates on the novel regulatory frameworks that can effectively regulate precarious and non-standard forms of work. In this tradition, McCann and Murray’s analysis of regulatory mechanisms to facilitate the formalization of informal work<sup>32</sup> has built on a ‘reconstructive labour law’ approach, under which the central objective of regulatory interventions is ‘to build coherent and protected working relationships from intermittent episodes of economic exchange.’<sup>33</sup> Their ‘framed flexibility’ model combines supports for standardized working-time norms with a degree of flexibility in favour of both employers and workers. This model is grounded in a number of principles that are relevant across the spectrum of UFW and can be drawn on to shape the regulatory dimension of the Multidimensional Model. The principle of unity of labour law systems – that labour law frameworks should be conceptualized as an integrated whole – prevents regulatory strategies on precarious work from undermining the existing corpus of labour law (for example, by reducing the protection available under generally-applicable frameworks).<sup>34</sup> Careful calibration of regulatory techniques is also crucial, in particular to ensure the optimum balance of legislated and collectively-bargained norms.<sup>35</sup> The principle of innovative regulation recognizes that novel fields and sites of regulation render the design of apt legal frameworks complex and uncertain, suggesting that a degree of experimentation is required.<sup>36</sup> Regulatory settlements should therefore be dynamic, in the sense of integrating processes of empirical testing and incremental reform.<sup>37</sup>

Particularly crucial, finally, is Weil’s elaboration of a strategic approach to labour inspection. This aims to maximize the effective use of resources

32 D. McCann and J. Murray, ‘Prompting Formalisation Through Labour Market Regulation: A “Framed Flexibility” Model for Domestic Work’ (2014) 43 *Industrial Law J.* 319.

33 D. McCann, ‘Equality Through Precarious Work Regulation: Lessons from the Domestic Work Debates in Defence of the Standard Employment Relationship’ (2014) 10 *International J. of Law in Context* 507, at 508.

34 McCann and Murray, *op. cit.*, n. 32, pp. 329–30.

35 *id.*, pp. 333–4.

36 *id.*, p. 335.

37 *id.* See, also, D.F. Frey, ‘A Diagnostic Methodology for Regulating Decent Work’ in Lee and McCann (eds.), *op. cit.*, n. 10, p. 339; C. Fenwick et al., *Labour and Labour-Related Laws in Micro and Small Enterprises: Innovative Regulatory Approaches* (2007).

towards the greatest impact.<sup>38</sup> Weil identifies four criteria for strategic enforcement. *Prioritization* requires labour inspectorates to rank workplaces according to the probable severity of their legal contraventions and to target the worst.<sup>39</sup> *Deterrence* seeks to prevent compliance techniques from draining state resources.<sup>40</sup> Instead, these techniques should cultivate a deterrent effect that convinces firms to comply voluntarily, and should influence the behaviour even of those employers unlikely to be inspected. *Sustainability* supports practices that can reduce the incidence and magnitude of legal infractions in the longer term, prompting enduring compliance.<sup>41</sup> The potential for *systems-wide effects*, finally, aims for outcomes that are systemic, rather than exclusively local, in that they have geographic, industrial, and/or product-market outcomes.<sup>42</sup>

### III. STRATEGIC REGULATION OF UFW

The frameworks for labour law reform identified in Part II can be drawn on to develop the regulatory dimension of the Multidimensional Model. Maintaining a focus on UFW, the ultimate objective is to propose lessons for regulatory initiatives that are designed with an awareness of protective indeterminacy, compatible with development, advance reconstructive labour regulation, and embed a strategic approach. The range of these responses is as yet unmapped. Some key components can be identified, however, prior to deriving lessons from existing legal projects in Part IV.

The Multidimensional Model, fundamentally, is grounded in the concept of regulatory indeterminacy, discussed in Part II, in that it starts from a recognition that the influence of legal measures should not be assumed. Regulatory models and strategies cannot be expected to be equally effective in every setting. The quest, then, is to identify the most effectual forms of regulation for UFW in each locality. This endeavour must take into account the key variables of protective indeterminacy identified by Lee and McCann,<sup>43</sup> by considering the extent to which UFW is associated with the regulation of historically-atypical employment forms, investigating the optimum interaction between regulatory institutions, and identifying and testing strategies to eliminate constraints on the implementation of legal standards.

The first task is to determine the forms of UFW that will be targeted. Since manifestations of UFW – and the means available to tackle them –

38 D. Weil, 'A Strategic Approach to Labour Inspection' (2008) 147 *International Labour Rev.* 349.

39 *id.*, p. 354.

40 *id.*, pp. 354–5.

41 *id.*, p. 355.

42 *id.*, pp. 355–6.

43 Lee and McCann, *op. cit.*, n. 29.

vary with socio-economic context, the model assigns the allocation of priorities to local policy actors. This method is in line with Marshall and Deakin's call for inclusive governance, by expanding upon the constituencies conventionally involved in decision making on regulatory design to elicit an authentic and wide-ranging social dialogue. It also reflects Weil's sustainability principle, taken in this context to require the activation of labour market actors to build their capacities in the longer term and to incentivize key players such as lead firms.

Another of Weil's strategic principles – prioritization – is adapted to suggest that policy makers should target the most egregious manifestations of UFW. This principle is already latent in the Multidimensional Model. As outlined in Part I, the substantive dimensions and indicators of unacceptability, in combination with the predictive methodology, can be used by local actors to determine which working relations should be categorized as UFW, their magnitude and concentration. The UFW indicators, further, are designed to support a dynamic strategy that involves a sequencing of interventions. Where forced labour is present, for example, it is an urgent site of intervention. Equally, regulation should immediately target the worst forms of child labour.

Yet, an effective regulatory strategy cannot be centred on responding to egregious incidences of UFW on an ad hoc basis. As Weil has observed, '[e]mployer practices in the workplace are an outgrowth of broader organisational policies and practices, often driven (implicitly or explicitly) by competitive strategies or forces.'<sup>44</sup> Strategic regulation of UFW aims to transform the conditions that produce UFW, while also determining where to target initiatives to ensure the maximum impact of the available resources. These objectives are relevant not only to determining where to intervene, but also to the modes of intervention. In this regard, the Multidimensional Model places particular emphasis on the design of legal frameworks, strategies, and tools. The range of feasible mechanisms for the strategic regulation of UFW requires empirical investigation.<sup>45</sup> At this stage, however, two key concepts can be proposed. Both are targeted at achieving systemic effects, the first on sites of intervention, the second on regulatory design.

### 1. *Points of leverage*

To identify effective targets of intervention, the Multidimensional Model employs the notion of 'points of leverage'. Associated with systems theory and originally identified by Meadows,<sup>46</sup> points of leverage are the sites in

44 Weil, *op. cit.*, n. 38.

45 Research agendas on the empirical investigation of UFW regulation have been designed by the Global Challenges Research Fund/Economic and Social Research Council Strategic Network on Legal Regulation of Unacceptable Forms of Work (2017) (ES/P0074651).

46 D. Meadows, *Leverage Points: Places to Intervene in a System* (1999).

complex systems at which ‘small, well-focused actions can sometimes produce significant, enduring improvements.’<sup>47</sup> Labour regulation scholarship has been enriched by systems theory, crucially by being pushed to acknowledge limits on the potential of legal regulation to reform labour markets.<sup>48</sup> The account of legal systems as autonomous social systems, partially detached from the economic and political spheres (‘operational closure’), has prompted scholars to recognize that labour regulation is in part determined by ‘the internal discourses and processes of law’.<sup>49</sup> In consequence, law’s potency cannot be assumed. These insights have prompted labour regulation literatures to attend to the interdependency of legal regulation and self-regulation of other systems.<sup>50</sup> In this dimension, systems theory has elicited a degree of apprehension for the normative goals of labour regulation due to a tendency to downplay the role of the state, in particular with respect to regulation in low-income countries.<sup>51</sup>

Yet the resonance of the notion of points of leverage – in particular, to reflect upon apt entry points for effective regulation – has been neglected. Meadow’s elaboration of leverage points has been influential in the field of sustainable development.<sup>52</sup> In the study of labour markets, however, the concept is as yet nascent. Niforou has investigated leverage points in global

- 47 P.M. Senge, *The Fifth Discipline: The Art and Practice of the Learning Organization* (2006) 64, cited in N.C. Nguyen and O.J.H. Bosch, ‘A Systems Thinking Approach to Identify Leverage Points for Sustainability: A Case Study in the Cat Ba Biosphere Reserve, Vietnam’ (2013) 30 *Systems Research and Behavioral Science* 104, at 110.
- 48 R. Rogowski and T. Wilthagen (eds.), *Reflexive Labour Law. Studies in Industrial Relations and Employment Regulation* (1994); S. Deakin and F. Wilkinson, *The Law of the Labour Market: Industrialization, Employment and Legal Evolution* (2005); R. Rogowski, *Reflexive Labour Law in the World Society* (2013); S. Deakin, ‘Addressing Labour Market Segmentation: The Role of Labour Law’ (2013) ILO Governance and Tripartism Department, Working Paper No. 52, 5.
- 49 Deakin, id.
- 50 R. Rogowski, ‘Industrial Relations, Labour Conflict Resolution and Reflexive Labour Law’ in Rogowski and Wilthagen (eds.), op. cit., n. 48; Deakin, id.; Rogowski, op. cit., n. 48.
- 51 K. Kolben, ‘Transnational Labor Regulation and the Limits of Governance’ (2011) 12 *Theoretical Inquiries in Law* 403, at 433, calling for labour governance literatures to focus on the development of state capacity.
- 52 Leverage points have been used to design sustainable development strategies for the Biosphere, see Nguyen and Bosch, op. cit., n. 47; M. Keegan and N. Nguyen, ‘Systems Thinking, Rural Development and Food Security: Key Leverage Points for Australia’s Regional Development and Population Policy’ (2001) 1 *Migration Australia* 1; and for agribusiness in Africa, see K.E. Banson et al., ‘A Systems Thinking Approach to Address the Complexity of Agribusiness for Sustainable Development in Africa’ (2015) 32 *Systems Research and Behavioural Science* 672. In legal scholarship, an early contribution by Levi called for the identification of ‘pressures points’ at which to deploy legal doctrine towards solving the housing problems of the poor: J.H. Levi, ‘Focal Leverage Points in Problems Relating to Real Property’ (1966) 66 *Columbia Law Rev.* 276.

value-chains that can be capitalized on by labour actors to improve working conditions, for example, lead firm Corporate Social Responsibility codes, long-term relationships with suppliers, local union or NGO presence.<sup>53</sup> And Doellgast et al., reflecting on the challenges of organizing call-centre workers, have elaborated on the range of leverage points for collective action that are offered by European states' diverse labour market institutions and that vary with differences in the role of the state or formal bargaining rights.<sup>54</sup> Points of leverage have not, however, been examined as they are present across broader regulatory frameworks or with a focus on regulating precarious work across an economy.

The Multidimensional Model configures leverage points as crucial to the strategic regulation of UFW. The contention is that they are particularly critical in contexts in which the resources available to curb labour market disadvantage are profoundly constrained. It is expected that points of leverage will be found at different levels: national, regional, industrial, sectoral, and so on. They can be expected to include, for example, the presence of lead firms that have sunk costs in a specific market, or of workers' organizations that have the potential to assist to bring order to chaotic labour markets.<sup>55</sup> Yet, it is not possible to predict apt points of leverage a priori. For this reason, under the Multidimensional Model they are again to be identified by local actors, who are familiar with local regulatory and institutional frameworks. Examples of leverage points that have been identified and capitalized upon are highlighted in the discussion of illustrative regulatory frameworks in Part IV below, in relation to the regulation of Mathadi workers, domestic work in Uruguay and, with less success, the regulation of 'zero-hours contracts' in the United Kingdom.

## 2. *Institutional dynamism*

The second key concept in the regulation of UFW is 'institutional dynamism.' This notion has been proposed by Lee and McCann to account for the capacity of legal frameworks to operate beyond their formal parameters.<sup>56</sup> Institutional dynamism, first, captures the influence of labour law norms beyond their formal reach ('external dynamism').<sup>57</sup> In this form, it embraces processes through which labour norms have effects in informal settings (shaping norms of social behaviour, influencing working relations through

53 C. Niforou, 'Labour Leverage in Global Value Chains: The Role of Interdependencies and Multi-level Dynamics' (2015) 130 *J. of Business Ethics* 301.

54 V. Doellgast et al., 'Introduction: Institutional Change and Labour Market Segmentation in European Call Centres' (2009) 15 *European J. of Industrial Relations* 349.

55 See, further, C.J. Cranford et al., *Self-Employed Workers Organize: Law, Policy and Unions* (2005); Weil, op. cit., n. 38.

56 Lee and McCann, op. cit., n. 29, p. 3.

57 id., p. 13.



awareness of statutory standards, and so on). Institutional dynamism also captures the capacity of regulatory regimes to host interactions between a range of institutions ('internal dynamism').<sup>58</sup>

The notion of institutional dynamism, then, is attentive to the convergence of labour and development objectives that is captured in Marshall and Deakin's 'development-friendly' labour law model,<sup>59</sup> and in particular to the interaction of informal and formal forms of labour. It also embodies the insights of McCann and Murray's reconstructive labour law model<sup>60</sup> by attending to the interaction of regulatory mechanisms. These dynamics can be absorbed and elaborated to advance UFW regulation. In this context, policy actors are expected to remain alert to the dynamic capacities of labour regulation in order to trigger and to magnify systemic effects. Institutional dynamism has particular resonance for the strategic regulation of UFW, especially in low-income settings, in that it extends the effects of legislated standards without costly investments in labour inspection and enforcement. This benefit is illustrated by the discussion of institutional dynamism in minimum-wage laws in Part IV.

#### IV. STRATEGIC REGULATION IN ACTION: TARGETING UNACCEPTABLE FORMS OF WORK

Increasingly, regulatory initiatives are being devised that specifically target UFW. This Part selects key illustrations that are prominent in the global literature on effective labour regulation. It returns to these initiatives, drawing on the priorities and insights of the strategic regulation approach to reassess their contributions and effectiveness. The aim is to illustrate the value of the strategic approach in assessing UFW regulation and to derive insights into the range of interventions that this approach might support. Four regulatory initiatives are evaluated. Three – regulatory frameworks on Mathadi work in Maharashtra, India, domestic work in Uruguay, and minimum wages in the global North and South – are conceptualized as contrasting interventions that have successfully targeted and transformed UFW by embodying elements of the strategic approach. The final illustration – recent legislation on 'zero-hours contracts' in the United Kingdom – is included to illustrate the failure of a regulatory measure to address the range of dimensions that make a form of work unacceptable or to ensure effective enforcement and to propose other options that are likely to be more fruitful.

58 *id.*

59 Deakin and Marshall, *op. cit.*, n. 31.

60 *id.*

## 1. *Mathadi workers: tripartite regulation of informal work*

The Mathadi Act, 1969<sup>61</sup> targets Mathadi workers: head-load carriers who work for transport companies and retail merchants in ports, docks, market yards, and wholesale markets in the state of Maharashtra in India.<sup>62</sup> This work is physically demanding and takes place in challenging outdoor conditions. Prior to the Act, Mathadi work was profoundly insecure: a form of casual day labour, it was irregular and without fixed wages, overtime payments, or holiday or leave entitlements. Mathadi work exemplified an unacceptable form of informal employment: workers fell outside the scope of social protection and had very limited access to medical care.

The Mathadi Act regulates the engagement and conditions of Mathadi workers as well as providing social protection and access to medical services. To do so, it established a tripartite Mathadi Board for each district in the state, which is composed of representatives of workers, labour-users, and the government. The Boards directly intervene in the labour market by acting as the exclusive labour intermediary for the hiring of Mathadi workers. To reduce unemployment, the Boards limit the number of workers they register. They also set the wage rate and social security/benefit levy that the labour-user must pay. The Act requires workers and users to register with a Board, which receives the workers' wages and disperses them according to hours worked. The Boards also administer pension funds and workers' compensation as well as providing medical care and educational assistance to workers and their families.

The Mathadi Act does not directly address the insecurity of what still remains a form of casual work. Yet it sets wages at a level that provide a living wage, and the workers and their families have access to social protection and health care.<sup>63</sup> The Act has therefore been successful in formalizing Mathadi work, increasing wages, lifting workers and their families out of poverty, and providing insurance against a range of risks.<sup>64</sup>

The Mathadi Act can also be configured as a pioneering illustration of the strategic regulation of UFW. It illustrates key features of the strategic regulation approach. Centrally, it has prioritized an UFW for intervention. This regulatory model, further, demonstrates the necessary awareness of regulatory techniques. The tripartite configuration of the Mathadi Boards has stimulated institutional dynamism in its internal form, by mobilizing labour-market actors as partners in regulation, promoting social dialogue, and

61 Maharashtra Mathadi Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969.

62 This discussion draws on R. Agarwala, *Informal Labour, Formal Politics and Dignified Discontent in India* (2013) and S. Marshall, 'How Does Institutional Change Occur? Two Strategies for Reforming the Scope of Labour Law' (2014) 43 *Industrial Law J.* 286.

63 Agarwala, id., p. 53.

64 Marshall, op. cit., n. 62, p. 310.

developing the capacity of workers to organize. The point of leverage was the intersecting interests of unions and employers. Despite the inability of Mathadi workers' unions to institutionalize collective bargaining, they were sufficiently strong politically and economically to secure the new form of regulation. The legislation therefore leveraged the ability of unions to organize Mathadi workers, and effective worker representation has since been critical to the Act's success. Crucial also was the desire of labour-users to reform a chaotic labour market, to formalize Mathadi work, and to eradicate its most unacceptable features.

The regime is development-friendly, in that it is sensitive to institutional capacities. Without relying on costly labour inspection strategies, it has had a deterrent effect, successfully dissuading labour-users from reverting to unacceptable practices. The regime has also been sustainable. Over the last decade, union disunity and decline have weakened the effectiveness of some Boards and, as a result, a small proportion of Mathadi work now operates informally.<sup>65</sup> Yet, overall, the regulatory regime has been a success. Indeed, it has had system-wide effects, in that the Mathadi Act model has been adapted for other groups of informal workers, including transport workers in Kerala and bidi workers in Gujarat and Maharashtra.<sup>66</sup>

The Mathadi Act, then, provides a model of tripartite regulation of informal employment in sectors in which capital is not mobile, but rather rooted: the work takes place in a fixed location, and the relationship between the workers and labour-users is direct.<sup>67</sup> The framework indicates that, if designed properly, regulation that targets low-paid, unsafe, and insecure informal employment can contribute to the elimination of UFW by improving wages, increasing security, and providing access to social protection and to medical assistance. This form of regulation also has broader collective effects, promoting social dialogue, mobilizing labour-market actors as partners in regulation, and developing the capacity of workers to organize.

## 2. *Domestic workers in Uruguay: extending traditional techniques*

An alternative to the Mathadi Act's model of UFW regulation – a devoted regulatory scheme – is to expand the coverage of generally-applicable legislated standards to previously excluded groups. The regulation of domestic work in Uruguay is a leading example.<sup>68</sup> Domestic work is a significant

65 Agarwala, *op. cit.*, n. 62, p. 160.

66 Marshall, *op. cit.*, n. 62, p. 311.

67 *id.*, p. 312.

68 This discussion draws on D. Budlender, 'Informal Workers and Collective Bargaining: Five Case Studies' (2013) WIEGO Organizing Brief No. 9, at <<http://wiego.org/sites/wiego.org/files/publications/files/Budlender-Informal-Workers-Collective-Bargaining-WIEGO-OB9.pdf>>; M.R. Goldsmith, *Collective Bargaining and Domestic Workers in Uruguay* (2013), at <<http://www.wiego.org/sites/default/>

source of employment in Uruguay, particularly for women.<sup>69</sup> Domestic workers have long been entitled to a range of social security benefits – disability, old age and survivor pensions (since 1942), maternity benefits and family allowance (since 1980), medical coverage and sick pay (since 1984) – and also to a minimum wage (since 1990). In 2006, however, legislation was enacted to extend to domestic workers the labour and social security rights already available to other workers.<sup>70</sup> This law mandated rights that include a minimum working age of 18 years and rights to an eight-hour day and 44-hour week, daily rest periods and rest breaks, and a 36-hour weekly rest, while a 2007 Decree added overtime pay, paid sick leave, and a right to food and lodging for live-in workers.<sup>71</sup>

These reforms also introduced a structure for tripartite negotiation. In 2008, a negotiating forum specifically for the domestic service sector was established as part of the Wages Council of Uruguay. The Domestic Work Sector of the Council is composed of representatives from the Ministry of Labour and Social Security, the *Sindicato Único de Trabajadoras Domésticas* (SUTD) – the only union that represents domestic workers – and the association for the employers of domestic workers, the *Liga de Amas de Casa* (LACCU). The Domestic Work Sector negotiates collective agreements and has secured wage increases, work clothes and equipment, a seniority bonus, additional compensation for night work, and a paid holiday that is designated as Domestic Workers' Day. The parties have also agreed to comply with international labour standards on freedom of association and collective bargaining.<sup>72</sup>

Like the Mathadi Act, the Uruguayan domestic work regime can be assessed through the lens of strategic regulation of UFW. In this regard, it meets the prioritization criterion by centring on a marginalized form of work that was previously excluded from legal protection. The points of leverage for this intervention were both national and sectoral: extensive legislated labour rights and the presence of both a domestic workers' union – a single, strong membership-based organization – and an employers' organization. Also in line with the strategic approach, the regulatory framework attends to the strengths of different regulatory modes. Centrally, the framework for

files/resources/files/Goldsmith-Collective-Bargaining-Uruguay-ISBN.pdf>; ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* (2013).

69 Between 2006 and 2010, the number of persons employed in domestic work in Uruguay increased from 105,572 to 120,164. Almost 99 per cent of all domestic workers are women and they disproportionately identify as black or of African ancestry: Goldsmith, id., pp. 3, 5.

70 Law 18.065.

71 In addition to defining the terms of Law 18.065, Decree 224/007 explicitly excluded rural domestic service personnel (domestic workers who are employed by the owners of farms and ranches).

72 Goldsmith, op. cit., n. 68, p. 11.

tripartite negotiation has been the key to securing significant wage increases. The tripartite Wage Council leveraged the social partners in the sector and the existing labour law framework. It was able to formalize and strengthen the representative bodies, and tripartite negotiations enabled the government and social partners to tailor standard labour law entitlements to domestic workers through collective agreements.

The framework also embodies McCann and Murray's principle of innovative regulation, by incorporating novel and experimental approaches to implementation.<sup>73</sup> The *Banco de Previsión Social* (BPS, Social Security Institute) mounted a publicity campaign to raise awareness about domestic workers' legal rights, and to boost social security registration, in which inventive techniques were used. These included information pamphlets designed as doorknob tags for employers' homes, which announced that '[t]he domestic worker in this house is enrolled in the BPS'. Television adverts promoted domestic workers' rights and socio-dramas were aired on the public transport system. Inspection strategies were also innovative. Labour inspectors visited private homes to determine whether domestic workers were registered for social security. They requested documents but did not enter the households. Rather than inspection in its traditional form – centred primarily on sanctioning employers – the inspectors used their visits as an opportunity to educate employers about their obligations and about workers' rights, and to encourage them to comply with the law.

The Uruguayan domestic work regime, finally, meets the sustainability criterion. Since 2006, the number of domestic workers contributing to the BPS has increased by 45.6 per cent.<sup>74</sup> Further expansion, though, and elevation towards systems-wide effects,<sup>75</sup> seem more problematic. The intervention appears to have reached a plateau in formalizing domestic work: the level of social security coverage remains around 40 per cent and there are signs that employers are adopting strategies to avoid compliance.<sup>76</sup>

### *3. Institutional dynamism: minimum wage regulation in developing and advanced economies*

Institutional dynamism, outlined in Part III, captures the emphasis of the Multidimensional Model on the design of legal regimes and strategies. This priority is substantiated by the research that points to elements of regulatory design and the strategies of labour market actors that have the potential to improve UFW. Institutional dynamism is particularly visible in research findings on the operation of minimum wage regulation in both developing

73 *id.*

74 *id.*

75 On domestic work regulation as a gateway to formalization, see McCann and Murray, *op. cit.*, n. 32.

76 Goldsmith, *op. cit.*, n. 68, p. 20.

countries and advanced industrialized economies.<sup>77</sup> In this regulatory arena, it is present in both its external and internal forms. External dynamism – the influence of labour laws beyond their formal scope – is highlighted in research that is tracking the influence of minimum wages in informal settings.<sup>78</sup> This evolving literature confirms that minimum wages can exercise an influence – ‘lighthouse effects’ – on wages in informal employment. Groisman, for example, has investigated the sustained commitment of successive Argentinian governments to a national minimum wage, finding that the national Employment Contract Law (*Ley de Contrato de Trabajo*)<sup>79</sup> has had a substantial impact on the wages of informal workers.<sup>80</sup>

The minimum wage also provides a potent illustration of the internal dimension of institutional dynamism: the capacity of regulatory regimes to host interactions between a range of institutions. The literature underscores the protective outcomes that can be generated for workers. In Europe, Grimshaw et al. have identified ‘ripple effects,’ through which minimum wage increases influence wages above the minimum.<sup>81</sup> These effects can be leveraged to raise wages in low-pay sectors through the interaction of legislative and collective bargaining regimes. Strong collective bargaining regimes were found to bolster the effects of minimum-wage legislation, improving pay equity through the impact on low-waged employment, gender pay inequality, and wage compression in the lower half of the wage structure.<sup>82</sup> The authors concluded that strong – dual or inclusive<sup>83</sup> – industrial relations systems support the higher-value minimum wages that enhance pay equity.

Ripple effects of minimum wages have also been found in low-income settings. These effects can be substantial if the minimum wage – and especially the magnitude of an increase – is used by workers’ organizations as a basis for wage negotiation. This strategy has been successfully developed by trade unions in a number of Asian countries, including the Philippines, China, and Viet Nam.<sup>84</sup> In these contexts, workers who already earn more

77 Lee and McCann, op. cit., n. 29.

78 See, for example, S. Lemos, ‘Minimum Wage Effects in a Developing Country’ (2009) 16 *Labour Economics* 224; T. Boeri et al., ‘The Lighthouse Effect and Beyond’ (2011) 57 *Rev. of Income and Wealth* S54; T. Dinkelman and V. Ranchod, ‘Evidence on the Impact of Minimum Wage Laws in an Informal Sector: Domestic Workers in South Africa’ (2012) 99 *J. of Development Economics* 27; F. Groisman, ‘Employment, Inequality and Minimum Wages in Argentina’ in McCann et al., op. cit., n. 10.

79 Law No. 20.744.

80 Groisman, op. cit., n. 78.

81 D. Grimshaw et al., ‘The Pay Equity Effects of Minimum Wages: A Comparative Industrial Relations Approach’ in McCann et al. (eds.), op. cit., n. 10, p. 126.

82 See, also, J. Rubery and D. Grimshaw, ‘Gender and the Minimum Wage’ in Lee and McCann (eds.), op. cit., n. 10, p. 226.

83 D. Gallie (ed.), *Employment Regimes and the Quality of Work* (2007).

84 S. Lee and S. Gerecke, ‘Regulatory Indeterminacy and Institutional Design in Minimum Wages: Decentralization, Coordination, and Politics in Asian Minimum

than the new minimum wage rate have used it as a benchmark for their wage demands.

This evolving body of research, then, points to a significant role for institutional dynamism in efforts to buttress wage laws, and potentially other labour standards, to the benefit of workers in UFW.<sup>85</sup> It suggests integrating institutional dynamism into the planning and design of regulatory frameworks. It also showcases to labour-market actors strategies that can strengthen and extend regulatory frameworks.<sup>86</sup> The minimum wage, first, can be integrated into formalization and poverty alleviation strategies in low-income countries. Rather than assuming an ignorance or irrelevance of formal norms in informal settings, policy-makers would recognize the potential of formal rules to have dynamic effects. The modes through which these effects operate, however, is not entirely clear; further research is needed. Elements of the research, for example, point to the minimum wage operating as a reference wage in the informal sector, and serving as a basis for wage determination.<sup>87</sup> Another strand of the literature is revealing relatively widespread awareness of legislative standards in informal settings.<sup>88</sup>

It may also be that fashioning devoted legislation for sections of the economy that are characterized as informal could be more potent than conventionally assumed. Dinkelman and Ranchod have investigated the introduction of a minimum wage into the South African domestic work sector in 2002.<sup>89</sup> They note that the conventional mechanisms of state enforcement were largely irrelevant in this setting. Yet the legislation successfully achieved large increases in domestic workers' wages: as much as 13–15 per cent for workers in provinces in which the pre-law median wage was below the minimum. It therefore embodies the strategic approach to UFW regulation: an economical intervention with strong deterrent effects. As Dinkelman and Ranchod conclude, 'labour market regulation in an informal sector of considerable importance can have a real and immediate impact, even with very limited monitoring and enforcement.'<sup>90</sup>

Turning to internal dynamism, interrelationships among labour market institutions can be integrated into both regulatory design and actor strategies. There is a case for strengthening and extending collective bargaining institutions, in particular in low-income settings. New strategies can also be

Wages' (2013), paper presented at the 3rd Regulating for Decent Work Conference, Geneva.

85 Lee and McCann, *op. cit.*, n. 29.

86 *id.*

87 Groisman, *op. cit.*, n. 78.

88 S. Lee and D. McCann, 'The Impact of Labour Regulations: Measuring the Effectiveness of Labour Norms in a Developing Country' in Lee and McCann (eds.), *op. cit.*, n. 10, p. 291.

89 Dinkelman and Ranchod, *op. cit.*, n. 78.

90 *id.*, p. 41.

adopted by collective bargaining actors, for example, to heighten pay equity outcomes. Grimshaw et al.'s findings challenge bargaining actors to fashion explicit pay equity strategies,<sup>91</sup> the most convincing results being likely where bargaining outcomes peg a sectoral minimum wage or the entire wage grid to increases in the minimum wage.

#### 4. *The resurgence of day labour in industrialized countries: 'zero-hours contracts' in the United Kingdom*

In industrialized countries, an evolving casualization of working arrangements has surfaced in the debates on labour market regulation. The concern is that certain forms of work are beyond the reach of labour law.<sup>92</sup> A key illustration is the United Kingdom debate on the regulation of zero-hours contracts (ZHCs): working arrangements – also characterized as 'casual,' 'on-call,' or 'on-demand' – in which individuals are requested to work as and when required without guaranteed hours or income. There is widespread concern that zero-hours work is increasing. The Office for National Statistics (ONS) estimates that there are 1.7 million 'no guaranteed hours contracts' (NGHCs)<sup>93</sup> in the United Kingdom economy – about 6 per cent of all employment contracts.<sup>94</sup> NGHCs are also concentrated among groups that encounter broader labour market disadvantage, including women and young workers.<sup>95</sup> The available evidence on the conditions of zero-hours work suggests a profoundly disadvantageous working experience for many. The data highlights working-time insecurity: insufficient hours and substantial variations (short notice of schedules, for example, or unexpected changes).<sup>96</sup> There is also some evidence that wages in ZHCs are a matter of concern.<sup>97</sup>

These disadvantages are shaped and intensified by the United Kingdom labour law framework, which has enduring problems in conceptualizing

91 See, also, R. Freeman, 'The Minimum Wage as a Redistributive Tool' (1996) 106 *Economic J.* 639.

92 On the informalization of formal jobs more broadly, see D. McCann, 'Informalisation in International Labour Regulation Policy: Profiles of an Unravelling' in *Re-Imagining Labour Law For Development: Informal Work in the Global North and South*, ed. D. Ashiagbor (2019).

93 This definition is used in the Office for National Statistics (ONS) business survey: ONS, *Contracts that do not Guarantee a Minimum Number of Hours* (2016) 2.

94 *id.*, p. 4.

95 United Kingdom Labour Force Survey (LFS) data: ONS, *People in Employment on a Zero-Hours Contract* (2017) 6–7.

96 ONS, *id.*, pp. 8–10, Fig. 8; TUC, *Casualisation and Low Pay* (2014) 27; Chartered Institute of Personnel and Development, *Zero Hours Contracts: Myth and Reality* (2013). See, also, A. Wood, 'Flexible scheduling, degradation of job quality and barriers to collective voice' (2016) 69 *Human Relations* 1989.

97 TUC, *id.*, pp. 18–23, 25.



casual work.<sup>98</sup> Central is the complexity of determining the legal identity of casual work and the related constraints on the coverage of the law. Key employment protections are attached to qualifying periods, most significantly rights to protection from unfair dismissal and redundancy payments (two-year qualifying periods)<sup>99</sup> and to parental leave (26 weeks).<sup>100</sup> Workers must have a contract of employment across a qualifying period, with interruptions of a week or more breaking continuity.<sup>101</sup> In identifying the contract of employment, the courts require ‘mutuality of obligation’: a continuing obligation on the hirer to offer work and on the worker to accept it.<sup>102</sup> Yet the courts generally hold that an employment contract exists only during periods in which individuals are engaged in a stint of work.<sup>103</sup> There is no mutuality of obligation – and therefore no contract of employment – between engagements. This continuity requirement excludes zero-hours workers from employment rights that are attached to qualifying periods, even where they have worked for the same hirer for a number of years.

Recently, however, the United Kingdom government has embraced a new regulatory approach to ZHCs, namely, specific regulation. This strategy has centred on the use of exclusivity clauses: contractual clauses that purport to prohibit zero-hours workers from working for another hirer.<sup>104</sup> In 2015, the United Kingdom government banned these clauses.<sup>105</sup> This ban meets the Multidimensional Model’s prioritization criterion by targeting UFW. Casual work can also be conceptualized as a point of leverage for broader reform: at

98 G. Pitt, ‘Law, Fact and Casual Workers’ (1985) 101 *Law Q. Rev.* 217; S. Fredman, ‘Labour Law in Flux: The Changing Composition of the Workforce’ (1997) 26 *Industrial Law J.* 337; B. Burchell et al., *The Employment Status of Individuals in Non-Standard Employment* (1999); H. Collins, ‘Employment Rights of Casual Workers’ (2000) 29 *Industrial Law J.* 73; S. Fredman, ‘Women at Work: The Broken Promise of Flexicurity’ (2004) 33 *Industrial Law J.* 299; A. Davies, ‘Casual Workers and Continuity of Employment’ (2006) 35 *Industrial Law J.* 196; S. Fredman, ‘Precarious Norms for Precarious Workers’ in *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, eds. J. Fudge and R. Owens (2006) 176; D. McCann, *Regulating Flexible Work* (2008) 37–8, 111–12, 140–1; M. Freedland, ‘The Regulation of Casual Work and the Problematical Idea of the “Zero Hours Contract”’ (2014), at <<http://ohrh.law.ox.ac.uk/the-regulation-of-casual-work-and-the-problematical-idea-of-the-zero-hours-contract/>>.

99 Employment Rights Act 1996, ss. 108(1), 155.

100 Shared Parental Leave Regulations 2014, Regulation 35.

101 For example, Employment Rights Act 1996, ss. 108(1), 210(4) (protection from unfair dismissal).

102 See, for example, N. Countouris, ‘Uses and Misuses of “Mutuality of Obligations” and the Autonomy of Labour Law’ in *The Autonomy of Labour Law*, eds. A. Bogg et al. (2015) 169.

103 *Carmichael v. National Power Plc* [1999] ICR 1226.

104 Department for Business Innovation and Skills (BIS), *Zero Hours Employment Contracts: Consultation* (2013); BIS, *Zero Hours Employment Contracts – Banning Exclusivity Clauses: Tackling Avoidance* (2014).

105 Employment Rights Act 1996, ss. 27A–27B.

the confluence of employment status, legal protection, and working time, it offers an entry-point for more extensive improvements.

Yet the exclusivity ban is of limited value and does not meet the demands of the Multidimensional Model. Regulating casual work solely through exclusivity ignores the substantive multidimensionality of UFW, outlined in Part I, by neglecting the legal protection, working time, and income dimensions. The exclusivity ban, for example, does not target an obvious problem: an exclusive working relationship is as likely to be generated by the complexities of combining two jobs with unpredictable schedules as by an express contractual clause.<sup>106</sup> On the legal protection dimension, the legislation leaves entirely untouched the core problem of the exclusion of zero-hours workers from legislated labour rights.<sup>107</sup> Further, casualized working relations are not exclusively a matter of contractual form and status: they are also a function of the arrangement and predictability of working hours.<sup>108</sup> A multidimensional conception of casual work would sustain strategies that address casualization even where a working relationship is framed within an enduring contractual relationship.

It is evident that casual workers need specific rights that ‘recognise the intricacies of their working arrangements . . .’.<sup>109</sup> Such regulatory strategies are being explored in the academic literature. McCann and Murray have identified a set of ‘framed flexibility’ mechanisms:<sup>110</sup> the prohibition of casual work in vulnerable arenas; notice of schedules and overtime;<sup>111</sup> incentives for continuous hours; compensation for short or cancelled call-out periods;<sup>112</sup> and in-shift travel periods counted as working time. Other ideas include guaranteed hours or income,<sup>113</sup> ‘conversion rights’ to open-ended

106 See, also, Adams and Deakin on restraint of trade: Z. Adams and S. Deakin, ‘Work is Intermittent but Capital is Not: What to do about Zero Hours Contracts’ (2014), at <<http://www.ier.org.uk/blog/work-intermittent-capital-not-what-do-about-zero-hours-contracts>>.

107 id.; Freedland, op. cit., n. 98; Z. Adams et al., ‘The “Zero-Hours Contract”: Regulating Casual Work, or Legitimizing Precarity?’ (2015) European Labour Law Network Working Paper 5/2015.

108 McCann, op. cit., n. 33; McCann and Murray, op. cit., n. 32; B. Burchell and A. Wood, ‘Zero Hours Employment: A New Temporality of Capitalism?’ (2015), at <<http://critcom.councilforeuropeanstudies.org/zero-hours-employment-a-new-temporality-of-capitalism/>>.

109 McCann, op. cit., n. 98, p. 180.

110 D. McCann and J. Murray, *The Legal Regulation of Working Time in Domestic Work* (2010); McCann and Murray, op. cit., n. 32.

111 Proposed initially in K. Ewing (ed.), *Working Life: A New Perspective on Labour Law* (1996) 95–6.

112 See, also, V. De Stefano, ‘Casual Work Beyond Casual Work in the EU: The Underground Casualisation of the European Workforce – and What to Do about it’ (2016) 7 *European Labour Law J.* 421.

113 Ewing, op. cit., n. 111, pp. 95–6; see, also, Adams et al., op. cit., n. 107.

114 See, for example, Resolution Foundation, *A Matter of Time: The Rise of Zero-Hours Contracts* (2013); N. Pickavance, *Zeroed Out: The Place of Zero-Hours Contracts*

contracts,<sup>114</sup> abolishing or reducing qualifying periods,<sup>115</sup> and liberalizing rules on continuity.<sup>116</sup> More wide-ranging proposals tend to centre on the social protection system, to permit job-seekers to refuse ZHCs,<sup>117</sup> enhance unemployment benefits,<sup>118</sup> or adopt a new funding model for homecare.<sup>119</sup> Alternative models are also being tested in the policy realm. The Scottish government's statutory guidance on procurement encourages public bodies to avoid 'inappropriate and potentially exploitative' ZHCs.<sup>120</sup> More expansively, in New Zealand the Employment Relations Act was amended in 2016 to require that contracts and collective agreements specify guaranteed hours<sup>121</sup> and to prohibit employers from cancelling shifts without notice.<sup>122</sup>

The report of a recent government-commissioned independent review of employment practices in the modern economy (the 'Taylor Review')<sup>123</sup> proposed legislative reforms on ZHCs that pick up on some of these ideas: extending the permissible break in continuous service from a week to a month;<sup>124</sup> introducing a right to request fixed hours after one year and requiring larger firms to report on such requests;<sup>125</sup> extending the reference period for annual leave payments;<sup>126</sup> and investigating whether a higher minimum wage rate might be made applicable to non-guaranteed hours.<sup>127</sup> The regulatory reforms that will result from these proposals remain to be seen. In February 2018, the government issued a response that announced a consultation on the reform of employment status;<sup>128</sup> signalled the intention

*in a Fair and Productive Economy* (2014); Northern Ireland Department for Employment and Learning, *Zero Hours Contracts* (2014).

115 Adams et al., op. cit., n. 107.

116 McCann, op. cit., n. 98.

117 Adams and Deakin, op. cit., n. 106; Z. Adams and S. Deakin, *Re-regulating Zero Hours Contracts* (2014).

118 id.

119 J. Rubery et al., 'Zero hours contracts in social care' (2014) FairWRC Research Briefing No. 3.

120 Scottish Government, 'Statutory Guidance on the Selection of Tenderers and Award of Contracts. Addressing Fair Work Practices, including the Living Wage, in Procurement' (2015) 4, 8. See, further, P. Findlay, 'Calm Seas or Choppy Waters? The Role of Procurement in Supporting Fair Work' (2017) Fraser of Allander Institute Economic Commentary.

121 Employment Relations Act 2000 (New Zealand) s. 67C, inserted by Employment Relations Amendment Act 2016 (2016 No. 9).

122 id., s. 67G. On the New Zealand legislation, see, further, P. Nuttall, 'Good News at Last from Downunder on "Zero Hours" Contracts?' (2016), at <<http://ohrh.law.ox.ac.uk/good-news-at-last-from-downunder-on-zero-hours-contracts/>>.

123 BEIS, op. cit., n. 2.

124 id., p. 45.

125 id., pp. 48, 55.

126 id., p. 47.

127 id., p. 44.

128 HM Government, *Good Work: A Response to the Taylor Review of Modern Working Practices* (2018) 31. See, also, BEIS/HMT/HMRC, *Employment Status Consultation* (2018).

to introduce a right for all workers to request ‘a more predictable contract where appropriate’,<sup>129</sup> to extend the permissible break in continuous service beyond one week,<sup>130</sup> and to increase the holiday pay reference period to 52 weeks.<sup>131</sup> It also made a request to the United Kingdom’s independent advisory body on the minimum wage, the Low Pay Commission, to explore the impacts of introducing a higher National Minimum Wage rate for non-guaranteed hours.<sup>132</sup>

Yet even if such measures are adopted, the key challenge to regulatory frameworks on ZHCs is effective enforcement. In the exclusivity ban, as an illustration, the conventional ‘command-and-control’ model pairs statutory allocation of obligations with individualized enforcement. Yet this framework does not meet the deterrence principle and is unlikely to be sustainable or to have systemic effects: a vulnerable segment of the labour force is unlikely effectively to enforce their legal rights. In developing new legal mechanisms on zero-hours work, then, it is essential to transcend command-and-control models. The government *Response to the Taylor Review* stated an intention to extend state enforcement for vulnerable workers to a wider range of basic employment rights.<sup>133</sup> Yet in line with the experimental drive of the innovative regulation principle, a more promising method would be to require business representatives and trade unions to develop autonomous sector-specific agreements on the fair use of ZHCs. This approach is not unknown in the United Kingdom policy literature. The government consultation that preceded the ban hinted at this regulatory model,<sup>134</sup> and the Taylor Review identified collective agreements as a mechanism to implement guaranteed hours.<sup>135</sup> The Review also favoured sectoral approaches, including sector-specific codes of practice or guidance on quality of work that could incorporate advice on the use of certain types of contract.<sup>136</sup>

## CONCLUSION

This article responds to heightening awareness that a growing segment of the global labour force is in work that is unacceptable: low-waged, insecure, unsafe, harbouring mistreatment, beyond the reach of the state, adrift from

129 HM Government, *id.*, p. 39. The mechanism is the subject of a consultation: BEIS, *Consultation on measures to increase transparency in the UK labour market* (2018).

130 HM Government, *id.*, p. 31.

131 *id.*, p. 34.

132 *id.*, p. 39. See, further, Low Pay Commission Consultation Letter 2018, at <<https://www.gov.uk/government/consultations/low-pay-commission-consultation-2018>>.

133 HM Government, *op. cit.*, n. 128, at 48–9. See also HM Government, *Consultation on Enforcement of Employment Rights Recommendations* (2018).

134 See BIS, *op. cit.* (2014), n. 104, p. 5.

135 BEIS, *op. cit.*, n. 2, p. 44.

136 *id.*, p. 108. Mandatory sectoral collective bargaining is explicitly excluded: *id.* p. 93.

labour rights, devoid of collective strength. There is an urgent need to respond. Yet the mechanisms that can improve UFW are either elusive or heavily contested. The capacity of the legal construct of the ‘contract of employment’ to allocate the risks of working life is increasingly disputed, not least in its limited potential for the effective governance of the ‘gig economy’ and role in constructing informal economies. Collective mechanisms are weaker than they have been in recent history. And the reach, capacity, and effectiveness of state enforcement mechanisms are often inadequate, while promising innovations in the structure and practice of labour inspection are overlooked. New ideas are needed on which elements of traditional regulatory frameworks to retain, which to jettison, and which novel mechanisms to test and champion.

The article has built on earlier work that proposed a conception of UFW suited to modern economies and to contemporary working lives. The Multidimensional Model of UFW, as reviewed in Part I, elaborates a set of substantive dimensions of UFW and a methodology to predict the incidence and location of these forms of work. The model is designed to be relevant to countries across all levels of development and to help policy makers and regulators to diagnose which work to target.

This article elaborates upon the regulatory dimension of the Multidimensional Model by unveiling a new approach to UFW regulation. Part II investigated a set of overlapping literatures, from across the social sciences, that have elaborated the demands of effective labour regulation. Crucial insights from these literatures were integrated into Part III, which proposed a strategic approach to UFW regulation. Under this model, UFW are targeted not only by taking account of their severity or magnitude, but also to achieve the greatest impact from the available resources. To this end, the strategic approach has a particular focus on the sites and regulatory modes of intervention, with an emphasis on the design of legal frameworks, regimes, and tools. Further research is needed on the range of mechanisms that embody the strategic approach. As a preliminary contribution, however, two concepts were proposed. Policy actors, first, should be attentive to points of leverage, which enable interventions to change the conditions that produce UFW. Second, institutional dynamism, or the capacity of regulatory frameworks to extend beyond their formal parameters and to host interactions with cognate institutions, can also be harnessed to generate sustainable and system-wide effects.

Part IV highlighted revealing illustrations of existing regulatory initiatives on UFW. These were interrogated for pointers on the range of interventions that might embody the strategic approach. The first two – the Mathadi Act in India and domestic work laws in Uruguay – address informal work performed by vulnerable populations in lower-income countries. Contrasting regulatory strategies have been adopted: a unique tripartite regime for Mathadi workers and the extension of conventional legislated rights to domestic workers. Yet both initiatives have leveraged existing institutions,

especially the social partners, and are deterrent, sustainable, and oriented to system-wide effects. The third illustration, minimum-wage regulation, again targets disadvantaged segments of the labour force. The research is finding minimum-wage frameworks to exhibit dynamic effects, which extend their reach and strength and have significant potential for protecting low-waged workers in both North and South. The final regulatory model – the United Kingdom ban on exclusivity clauses in ‘zero-hours contracts’ – targets profoundly casualized labour and specifically regulates a form of UFW. Yet the ban neglects the multidimensionality of UFW and relies on a conventional implementation mechanism (command and control) that is unlikely to have systemic effects or much deterrence value.

Drawing on these illustrations, some initial observations can be made on the strategic approach to UFW regulation. First, the involvement of local actors is crucial. Under the Multidimensional Model, local policy makers and researchers are not only relied on to identify UFW, they are also expected to determine where to target initiatives cost-effectively. In particular, it is clear that there is a crucial role to be played by non-state actors in detecting and eliminating UFW. These include membership-based organizations in the developing world, which represent individuals in a range of informal working relations (in street vending, for example, transport, waste picking, and domestic work) and provide a public voice for people in UFW. Businesses too have an interest in identifying and eliminating unacceptable work, which gives competitors an unfair advantage and tarnishes the reputation of all firms in a sector. This locally-orientated – or ‘ground-up’ – approach does not preclude a role for international organizations. Indeed, the ILO in particular can be foreseen to play a crucial role, including through its network of field offices. Central would be support for local actors through, for example, capacity-building on negotiation and regulatory design and dissemination of documentation and advice on regulatory strategies that are being tested in other countries. This approach would build on the kinds of activities already being undertaken by the Organization, associated with the 2030 Agenda under Policy Outcome 8 (UFW)<sup>137</sup> and more broadly on effective labour regulation.<sup>138</sup>

As the inclusion of informal worker organizations has highlighted, second, many workers in UFW are situated beyond the traditional employment relationship. They therefore elude conceptions of the protected

137 See ILO, *Outcome 8: Protecting Workers from Unacceptable Forms of Work* (2017) Governing Body, 331st Session, Geneva, October 2017, GB.331/POL/2, at <[https://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-relconf/documents/meetingdocument/wcms\\_580114.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_580114.pdf)>.

138 For example, the involvement of ILO Pretoria in recent efforts to promote local dialogue on compliance in the garment sector in Southern Africa; see, further, the Decent Work Regulation in Africa project, at <<https://www.dur.ac.uk/law/policyengagement/ufw/africa/>>.

worker that are characteristic of conventional labour laws. Such workers are engaged, for example, in own-account self-employment, casual work, or multilateral working relationships. To the extent, then, that regulatory frameworks are tied to the model of the highly subordinate worker, permanently employed, with a predictable schedule of working hours and engaged in a bipartite working relationship, they inevitably neglect many vulnerable workers. To be effective in tackling UFW, legal regulation must therefore extend beyond the conventional employment relationship, whether by rethinking traditional models of employment that have been the foundation of labour laws or by relying on novel labour-law mechanisms or other institutions that can serve a protective function.

Finally, combatting UFW demands multifaceted policy responses. These are likely to cut across ministerial boundaries and to demand close cooperation between governmental agencies, the social partners, and a wide range of civil society actors. The aim of preventing or eliminating UFW must therefore be reflected in different policy realms (employment, social protection, poverty reduction, migration, industrial relations, and so on). It should be the subject of tailored national laws, policies, and action plans. In particular, a well-defined national regulatory framework would set out an integrated approach, which identifies UFW, the actions required for its elimination, and mechanisms for effective coordination between a range of stakeholders.

These initiatives – and others yet to be identified – offer regulatory lessons that are available for dissemination among policy makers across the globe. This circulation of regulatory innovations, further, should incorporate the exchange of experience between policy actors in countries at different income levels. It may be possible, as an example, that the Mathadi Act model can be adapted to apply beyond informal workers in developing countries to the growing legions who labour in the ‘gig economies’ of high-income countries.<sup>139</sup> Such a global exchange of ideas can be considered particularly critical for the United Kingdom, in which a narrowing focus on ‘illegal working’ by undocumented migrants, and an increasing reliance on the criminal law to tackle labour exploitation,<sup>140</sup> are proving highly ineffective strategies for combatting UFW.

139 See, further, Marshall, *op. cit.*, n. 62.

140 Trade Union Act 2016: see A. Davies, ‘The Immigration Act’ (2016) 45 *Industrial Law J.* 431.