Chapter One. Regulatory indeterminacy and protection in contemporary labour markets: innovation in research and policy

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Introduction

The first volume of papers drawn from the work of the RDW Network responded to the simplistic empirical studies on the economic impact of labour regulations that have become increasingly influential since the 1990s (Lee and McCann 2011a). That volume identified the use of indicator-based methodologies to quantify and compare labour regulations, most prominently in the World Bank's *Doing Business* project, as a key evolution in the deregulatory project that has been associated with Washington consensus policy agendas and fuelled by the neoclassical economic tradition (Lee and McCann 2011b). This empirical work, and its absorption into policy discourses, was identified to significantly expand the deregulatory narrative along two axes: (1) to extend the preoccupation with minimum wage and employment protection laws to other facets of labour law; and (2) to reach beyond the advanced industrialized economies more firmly to embrace the regulatory frameworks of the developing world (Lee and McCann 2008).

The earlier volume exposed a set of assumptions about the nature and functioning of legal rules that is embedded in these theoretical and policy literatures. Deakin's (2011) critique of neoclassical economic analysis laid bare the theory of the operation of regulatory frameworks that underpins this work. He singled out two related assumptions: that legal rules are exogenous to market relations (and so operate as an external imposition) and that they are 'complete' (in the sense of being certain in scope and self-executing). The literature on the economic impact of labour laws was identified by Lee and McCann (2011) as harbouring two apparently contradictory accounts of legal regulation. A 'formalist' narrative, characteristic of the most prominent legal indices, assumes labour regulations to be comprehensive (protecting all workers within their formal ambit) and complete (workers are entitled to the full array of legal protections, to the maximum permissible extent). The policy discourse, however, simultaneously harbours a 'pessimist' account of legal regulation, which implicitly depicts labour laws as largely irrelevant to a large segment of the developing world labour force. This latter account hinges on a clear-cut dichotomy between the 'formal' and 'informal' economies, in which labour standards emerge as unknown in, or entirely irrelevant to, the latter (see e.g. World Bank 2005).

Many of the papers in the earlier volume instead implicitly adopted a neo-institutional account of legal regulation, in which legal rules are endogenous to market processes (Deakin 2011) and in which political structures and laws are neither self-executing nor operate by enforcement alone (see Frey's (2011) elaboration of a diagnostic methodology for improving labour market regulation and Lee and McCann (2011) on the awareness of statutory standards in Tanzania). Drawing on this model, labour regulations can be understood as the outcomes of evolutionary processes that hinge on a wide range of contextual factors (Deakin 2011). As

[1] The authors are grateful for valuable comments on an earlier draft by Damian Grimshaw, David Kucera, Guy Mundlak, participants at the *Workshop on Labour Law and Development*, Geneva, February 2013, and two anonymous reviewers.

a consequence, similar regulatory frameworks, even of the same 'legal origin,' can generate diverse economic outcomes.

Subsequent advances in both empirical and theoretical studies have confirmed that the impacts of labour regulation are difficult to predict a priori. Since the previous RDW volume, there have been signs of progress in the economic research towards more rigorous and contextual thinking on the operation of labour market regulation. A series of empirical studies have generated outcomes at odds with the theoretical predictions of standard textbook economics. A recent survey by MacLeod (2011) of empirical evidence on the impacts of employment protection laws, for instance, concluded that theoretical predictions about negative employment impacts lack empirical grounding (Table 2).[2] Similar conclusions have been reached with respect to minimum wage laws (see ILO 2010 for a review and Groisman in this volume on Argentina).

It can be hoped that this growing body of empirical research will sustain a reconsideration of the theoretical framework that guides most of the empirical studies, and perhaps trigger a quest for a more suitable theory. This development is crucial, in that policy decisions in the area of labour regulation are often driven by theory (the assumption, for example, that any form of "non-market" intervention generates distortions and inefficiencies). As Deakin has noted,

> [M]ore constraining is the role that theory, relatively uninformed by empirical work, plays in shaping policy perceptions … Refutation of the theory will not occur through new empirical findings alone. However, empirical work may play a role in shifting some of the theoretical underpinnings of the model. This is beginning to happen with the growing use of transaction economics and behavioural approaches to theorize labour market institutions, but the process is slow. (2011 p. 53)

More recent work has produced significant improvements in the conceptualisation of legal regulation in economic theory, primarily from within the traditions identified by Deakin. This contention is illustrated by a number of contributions to the *Handbook of Labor Economics* (2011). Charness and Kuhn (2011) review recent studies grounded in behavioural economics and laboratory experiments, which explore the relationship between worker and firm and its productivity outcomes. This research demonstrates the worker/firm relationship to be far more complex than is typically assumed in conventional theory, allowing a role for fairness, trust and institutions. Boeri (2011) also argues that studies on regulatory impacts in Europe have paid insufficient attention to institutional interactions and enforcement, calling for a "more realistic theory of the effects of institutional reforms on the labor market" (p. 1222).

In the field of transaction economics, the employment contract is recognised to be incomplete, leaving space for discretion and uncertainty. Within this tradition, MacLeod (2011) has highlighted the importance of regulatory design that is often neglected in economic empirical research. Taking the example of employment protection laws he concludes that,

> [E]conomic research uses a relatively crude representation of the law. We know virtually nothing about how specific legal rules interact with different types of

[2] In contrast, reforms of employment protection regimes have had substantial repercussions for worker-protection. See Cazes and Tonin (2010) showing, based on a cross-sectional analysis, that recent European reforms have had negative impacts on job security.

> worker-firm matches. At a policy level, employment protection entails changes to specific rules, such as the number of days' notice for a dismissal, mandatory dismissal payments, and specification of the conditions under which a protected employee may be dismissed. At the moment, policymakers have little guidance on how to set these parameters, aside from the blanket recommendation to reduce them all. (p. 1685)

Similarly, Manning (2011) questions the relevance of the perfect labour market assumption that underpins both theory and empirical models. Realistic modifications to the assumption of imperfect competition in the labour market, he demonstrates, generate different predictions about the impacts of labour regulation on labour market outcomes. In line with MacLeod's review (2011), Manning argues that the imperfect labour market creates "rents" within the employment relationship, estimated to range from 15-30 per cent. He further notes that "it is the very existence of rents that gives the 'breathing-space' in the determination of wages in which the observed multiplicity of institutions can survive" (pp. 995-6) This observation implies that institutional interventions in wage determination, notably through legal regulation and collective bargaining, could have positive outcomes in terms of wages, employment and productivity (as has been demonstrated in numerous empirical studies; see further MacLeod 2011).

The difficulties, highlighted by these studies, of establishing a clear linkage between labour regulations and labour market performance effects was noted in the first RDW volume, by drawing on the notion of "regulatory indeterminacy." This notion emerged in Deakin and Sarkar (2008) as a critique of standard economic analysis, to convey that the economic effects of a labour law reform project are a priori indeterminate. It has since been extended by Lee and McCann (2011) to capture uncertainty in the protective capacities of labour law - distinct from, although related to, its economic impacts.

The repercussions of recognising regulatory indeterminacy have been suggested to be wide-ranging: to imply, for example, efforts to craft economic models that capture the intricacies of regulatory design and implementation; to embed in legal indictors a more complex grasp of the regulatory subject and of legal effectiveness; to design research and policy interventions beyond indicator-based strategies; and to discard any assumed irrelevance of state norms in low-income settings (Lee and McCann 2011b). It is now of some urgency to elaborate with more precision the pressures that drive and underpin regulatory indeterminacy. That task is the central aim of this volume.

Regulatory indeterminacy, in its extended elaboration, has implicitly been attributed to a number of factors. Context-specific origins are the most prominent suggestion. The 'legal origins' thesis associated with the indicators project offers as its central claim that the legal family to which a given system belongs has outcomes in both regulatory style and economic impacts (Botero et al 2004). Indicator-based strategies, however, have since been deployed to test this hypothesis, and have found it to be unconvincing. A longitudinal labour law index developed at the Cambridge Centre for Business Research (CBR) to measure the convergence of labour law systems found an absence of a consistent legal origins effect (Deakin, Lele and Siems 2007). This work has been extended to Australia by Mitchell et al (2011) with similar outcomes.

In contrast, institutional and regulatory design is clearly crucial in shaping the effects of labour regulation. "Human error" in the drafting of legal provisions, for example, tends to

generate legislative instruments that do not function as expected. This phenomenon is relatively common in low-income countries, especially when legal reforms are carried out in a hasty manner under political pressure. In a study of wage protection laws in Africa, for example, Ghosheh (2012) found many of the countries in the region have legislation of fundamentally sound design. Typically, however, these laws were found to lack one of the essential components of wage protection frameworks, namely an explicit definition of 'wages.' They also often contained insufficiently detailed guidance on the role of enforcement mechanisms, and in particular labour inspectorates. As a result, African labour law frameworks, although commonly equated in labour law indices with "rigid" regulation (see e.g. World Bank 2011), in reality often have negligible effects on the practice of working relations. On a more positive note, this insight also implies that potentially negative impacts of legal reforms can be alleviated, or even removed, through skilful and creative legal design (see Belser and Sobeck 2012; Lee 2012).

This volume, however, centres on three other of the drivers of regulatory indeterminacy: (1) the accelerating fragmentation of labour markets into diverse forms of employment; (2) the complex interactions between labour market institutions; and (3) the impediments to effective implementation of labour norms. These factors are posited as the key variables that generate regulatory indeterminacy in contemporary labour markets. As such, they are contended to be essential to scholarly and policy projects that aim properly to understand and to realise the demands of effective legal regulation. These factors are discussed in turn in the following sections. The aim is to highlight the significance of each component of indeterminacy, and to indicate how the available knowledge on these factors is advanced by the chapters in this volume. Research and policy responses are suggested in the Conclusions.

A broader aim, shared with the first RDW volume, is to bring to bear the preoccupations, concepts and methodologies of a range of academic disciplines to the complexities of labour market regulation encountered in countries across the world. An intuition that the proximity of discrete scholarly fields and traditions will generate useful insights is borne out in this volume. This interdisciplinary ethos serves to highlight urgent research themes, air new findings, and offer novel concepts, theories and methodologies. Contributions to this volume also confirm the faith in comparative international research that lies at the heart of the RDW project. It addresses countries and regions of diverse socio-economic contexts and institutional traditions (Argentina, Cambodia, Europe, South Africa, the US and Vietnam). The chapters that follow examine regulatory strategy in these different settings to produce findings that both enrich and challenge the global debates.

Regulating the fragmented labour market: theory, doctrine and enforcement

Labour market fragmentation unleashes the potential for divergent application of legal entitlements and obligations across a range of regulatory subjects. It is therefore an essential element of any typology of the components of regulatory indeterminacy. Fragmentation is associated with a range of processes, centrally the heightened recourse to 'non-standard' working arrangements that has characterised hiring strategy in recent decades, and the intersecting pressures that generate informality (see e.g. Vosko 2000; Fudge and Owens 2006; Stone 2013). Labour market fragmentation therefore triggers substantial variation in the effectiveness of regulatory frameworks. Yet these variations are proving difficult to conceptualize in labour regulation research, and in particular to capture through the use of

empirical methods, inhibiting the accurate understanding of the nature and influence of labour regulation.

This point can be illustrated by considering the indicators project. Indices-based research has been expanded to cover a wider range of countries and regulatory sub-fields. The 'leximetric' methodology developed by the CBR (Deakin et al 2007) has recently been extended to Australia (Mitchell et al 2011) and India (Gahan et al 2012) and a labour market regulation indice has been developed for the IMF by Aleksinskya and Schindler (2011). Legal indictors have also been designed that gauge not only intensity of regulation but also the effectiveness of regulatory interventions (the influence of regulatory frameworks on the practices of working life) (Lee & McCann 2008; Sari and Kucera 2011).

Yet the most prominent indicators are ill-attuned to capturing the range of work relations that either entirely elude legal regulation or are subject to diminished standards. To do so, legal indices must accurately incorporate exceptions to, and permissible derogations from, regulatory instruments. In particular, exclusions - of sectors, occupations, small firms, agency work and other 'dispatched' relationships etc. – must be accounted for. Indeed, it can be contended that measurement projects that lack such a component have a potential risk of bias, and may even be misleading. These features are measured by the CBR indices (Deakin, Lele and Siems 2007). Their absence is most transparent in the indicator devised by Botero et al (2004), and subsequently adapted in the World Bank's *Doing Business* index, which is explicitly concerned with the application of regulatory frameworks to the 'standard' model of both worker and employer.[3] This limitation reflects a broader deficiency of the indicators research that impedes the project of clarifying the regulatory effects of fragmentation.

In this volume, fragmentation is pursued in two of its dimensions: by Weil, centring on enforcement (Chapter Two) and by Freedland, at the level of theory and legal doctrine (Chapter Three). Both Freedland and Weil examine, through different frames of reference, the continuing disintegration of the employment relationship. Weil points to an acceleration in this disintegration process: an enduring and expanding fragmentation of employing entities. He characterises the phenomenon as a 'fissuring' of employment, from large employers towards complex networks of subordinate firms. It is propelled by an armoury of distancing strategies, which include subcontracting, franchising, third-party management, and the conversion of employment to self-employment. Larger businesses, as a consequence, no longer directly employ a significant number of workers. These 'lead firms,' further, create competitive conditions that reduce customer costs but create pressure to lower labour costs, often with negative consequences for employment conditions.

Weil's analysis advances the theoretical underpinnings of fragmentation as an element of indeterminacy in labour regulation by situating employment fissuring at the intersection of three business strategies: the desire to gain competitive advantage through branding; the transfer of production to smaller entities as a cost-cutting measure; and the establishment and enforcement of brand standards by lead firms, to promote uniformity across associated enterprises. Weil's primary consideration is the implications of fissured employment for enforcement strategies, broadly defined. He cautions against any ready assumption that the association of fissured employment with poor working conditions can be remedied either by traditional methods of enforcement or by relying solely on the commitment of lead firms to

[3] The regulatory subject is explicitly assumed to be male, full-time, employed on an open-ended basis, working for a large employer etc. See Botero et al 2004 and Berg and Cazes 2008.

corporate social responsibility tenets. Traditional mechanisms, he points out, tend to target the workplace, while pressures towards non-compliance operate at a higher level. Weill concludes that strategic enforcement should be directed at the lead firm, and proposes strategies to this end. Enforcement agencies, he suggests, should carefully map business relationships in a sector, such as by tracking and comparing the records of units owned by the same franchisor. Specific outreach programmes can then be used in response to records of compliance, including where there is a history of systemic violations. As Weill observes, further, firms that rely on business strategies centred on brand reputation are sensitive to reputational damage. These incentives, in consequence, can operate as conduits to more effective regulation. To this end, Weil suggests 'targeted transparency,' such as disclosure of standardized information on compliance with regulatory demands.

Paralleling the investigation of the repercussions of labour market fragmentation for enforcement strategy, labour law scholarship has addressed fragmentation in recent decades. The focus of this enquiry has been the doctrinal and statutory concepts that function to exclude the working relations generated by fragmentation from the full scope of protective standards. A body of work has tracked the declining coherence of one of the core tasks of employment law systems: the allocation of risks, duties and obligations among the parties to a working relationship (see for example, Davies and Freedland 2000; Deakin 2001). The profound restructuring of employing entities has been identified as crucial to generating fragmentation. More than twenty years ago, Collins (1990) highlighted the 'vertical disintegration' of employing entities into smaller units, distancing employees from the ultimate beneficiary of their labour. He enunciated the impact for labour regulation, in which a substantial cohort of the workforce is pushed beyond the 'standard' model of employment that is the paradigm of protected working relations in most legal frameworks and doctrinal schema.

In this volume, Freedland extends this line of research by exploring the relevance to the RDW project of his recent collaborative efforts to develop a concept of "the legal construction of personal work relations" (LCPWR) (Freedland and Kountouris 2011). LCPWR captures the legal processes through which individual working relations are recognised as protected forms of labour market engagement. This work confirms the contingent nature of such processes, by exposing cross-cultural variations in LCPWR across European labour law systems. It also highlights the deeper theoretical currents that underpin the divergent outcomes: centrally, the dominant perception in each system of the appropriate degree of autonomy of labour law systems from the mainstream of private law, and the extent to which freedom of contract is prized.

LCPWR also offers a number of other distinct contributions to the RDW project. The role of labour market fragmentation as a component of regulatory indeterminacy has been illuminated in labour law scholarship in part by exploring the evolving tendency for working arrangements to be embedded within a web of relationships among a range of actors. The complexity of multilateral employment configurations has traditionally been obscured at the doctrinal level by an orthodoxy that envisages employment relations as exclusively bilateral (see in particular Davies and Freedland 2000). Freedland's chapter proposes a theoretical construct that would enable receptive legislators and adjudicators to advance the protection of workers in multilateral relations. The notion of the 'personal work nexus' is an attempt to capture the complexity of fissured employment in a doctrinal construct. To expand notions of employment beyond the bilateral default, it demands that the networks of actors in which

contemporary employment relationships are embedded be understood to play a role in LCPWR, and therefore be recognised by labour law regimes.

The LCPWR concept is also an aid to empirical studies that assess the impact of regulation. Two contributions are worth singling out. It has been observed, first, that recognising legal indeterminacy precludes the simplistic regulation/deregulation dichotomy offered by mainstream economic discourses (Lee and McCann 2011b). Freedland provides a clarification: that regulation may become more intensive while offering less protection to workers by precipitating a 'demutualisation' of labour market risks, by transferring them to workers as individuals. Further, measures that tend to demutualise risks, are particularly likely to introduce greater precarity (vulnerability to the loss of or diminution of welfare). Second, Freedland offers the notion of "differential integration of layers of regulation." As he elaborates,

> [E]ven as between labour law systems which may display very closely comparable levels of intensity of regulation, there are considerable and important differences in the ways in which and the extent to which those labour law systems see different kinds or layers of regulation as linked or integrated with each other. (p ****)

Differential integration is of some value, then, to efforts to investigate or predict differences in outcomes that emerge from comparable regulatory interventions. One of its contributions is to illuminate the legal origins hypothesis (see above) Freedland points to a marked difference in how civil and common law systems envisage the relation between different modes of regulation. Common law systems, he observes generally host a disintegrated account, in which statutory regulation is superimposed on a base of judge-made law. In civil law systems, in contrast, these different modes of regulation are understood to form an integrated hierarchy of norms.

Weil and Freedland's contributions, then, illustrate the advantages of bringing to bear the preoccupations and methods of scholarship from the social science and theoretical/doctrinal labour law traditions to the same sets of problems; in this case, to the nature of employment in contemporary economies and its repercussions for worker protection. These chapters converge on the complexity of the contemporary employment relationship. They also expose its elusiveness: to both conventional enforcement mechanisms and traditional doctrinal strategies that usher working relations within the scope of labour law frameworks and attach legal responsibilities. Legal scholarship offers to other traditions an awareness of the complexity of legal notions of employment, of the allocation of risks and responsibilities among the parties, and of the adjustment of existing strategies. Research that approaches employment regulation through the lens of business organization exposes the incentives that underpin contemporary forms of fragmentation and reflect on the regulatory implications. Both suggest that innovation is possible.

Institutional interactions: the case of the minimum wage

The influence of institutional interactions on economic outcomes has been observed. A central critique of the labour law indices of the OECD and World Bank is their neglect of interactions between labour law and cognate legal fields, such as company or insolvency law (Berg and Cazes 2008; Deakin and Sarkar 2008). Certain institutional interactions, however,

take place between different elements of the labour law system. The economic impact narrative implicitly depicts labour law frameworks as static and constrained, a corollary of the formalist narrative outlined above. This literature assumes the influence of legal standards to be determined by their textual and institutional parameters. In contrast, this chapter suggests that labour law systems are better understood to harbour dynamic capacities beyond their textual demands. This feature of labour law systems is characterised as 'institutional dynamism.'

Institutional dynamism can be classified as taking either an external or internal form. External dynamism denotes the influence of labour law norms beyond their formal parameters. This notion is intended primarily to capture the influence of formal norms in informal settings, for analytical, measurement and policy purposes. It embraces the range of processes, as yet imperfectly understood, through which labour norms take effect in informal settings, such as through adherence to norms of social behaviour or awareness of statutory legal norms (on legal awareness, see further Lee and McCann 2011c). Internal institutional dynamism offers an imagery of labour regulation that hosts multiple interactions between a range of institutions. This characteristic of labour law systems has been recognised in the literature, in which it has been explored most extensively as it emerges in employment protection regulation (Boeri and van Ours 2008; Berg and Cazes 2008). Internal dynamism can therefore be equated to some degree with Berg and Caze's (2008) notion of 'interactive effects,' which they elaborate in the context of employment protection regulation as follows,

> [I]t is never one institutional setting that on its own determines the question of labour flexibility, labour market mobility, and security, but systemic interaction between the main national labor market institutions, such as labour legislation, unemployment benefit schemes, active labour market policies, and wage-setting institutions. (p 361)

The notion of internal dynamism, however, is intended to capture the fluidity and unpredictability of these engagements, including the capacity of internal dynamism to generate external effects (see further below).

In this volume, institutional dynamism is posited as both a significant component of regulatory indeterminacy and a gateway to improved protective outcomes. It is explored in both its external and internal dimensions. The analysis is pursued by examining a single regulatory technique that is central to the poverty alleviation and working conditions dimensions of decent work, namely the minimum wage.

Contemporary labour law policy orthodoxies routinely predict damaging economic impacts from minimum wage regulation, with particular criticism reserved for the relatively high level of minimum wages in many developing countries (e.g. World Bank 2011). It is contended that minimum wages in these countries are associated with poor employment performance and with a labour market duality that hosts substantial informal employment. Most often, the recommendation is that minimum wages should be cut. The recent empirical research, however, does not support these contentions (for a summary, see ILO 2010, 2012). Relying on the Kaitz index (which expresses the value of the minimum wage as a percentage of median or average earnings), scholars have investigated whether demand for labour is reduced as an effect of adjustments in the level of the minimum wage. These studies have found minimum wage regulation to have little effect on employment (Katz and Krueger 1992; Card and Krueger 1994; Dickens, Machin and Manning 1999; Manning 2003).

In this volume, the analysis is extended to a low-income country, in Groisman's investigation of the effects of the minimum wage in Argentina (Chapter Four). The Argentinean case, although widely overlooked, is crucial to the global debates. It reflects a renewed interest in the minimum wage as a poverty alleviation tool across Latin America and the Caribbean (Maloney and Nunez 2004; Cunningham 2007). Even in this regional context, however, Argentinian social policy is characterised by a particularly intense and enduring commitment to wage regulation: the minimum wage has been notably high and regularly adjusted by successive governments. Argentina also offers to the analyses a highly segregated labour market, in which informal work is widespread.

Groisman uses data from the Argentinian Permanent Household Survey (EPH) to analyse the effects of the minimum wage. He finds it to have had a substantial impact on wage levels, and to have reduced poverty and inequality. Yet using multinomial logistic regression models, Groisman concludes that the minimum wage has had no significant impact on employment. Instead, it has been associated with substantial employment growth and lower unemployment. Groisman's chapter also responds to a central contention of the international policy guidance - tailored for developing country governments - that minimum wage laws propel workers into informal employment (World Bank 2011). His findings again do not substantiate this prediction. Increases in the Argentinian minimum wage were accompanied by a declining share of informal employment and a sharp rise in formal employment and had no effect on workers moving from formal to informal work.[4]

This analysis therefore exposes the guiding international policy discourse as problematic, even in its application to a textbook illustration of a segmented labour market. For present purposes, the analysis of the impact of the minimum wage on informal work also helps to illuminate the external dynamism of regulatory labour law norms, in the process providing evidence of the influence of the minimum wages in informal settings. Finding the Argentinean legislation to have had a substantial impact on the wages of informal workers, Groisman concludes that it operates as a reference wage in the informal sector, by serving as a basis for wage determination (for an alternative interpretation of the impact of minimum wages in the informal sector, see Lemos 2009; Boeri, Garibaldi and Ribeiro 2011). Groisman's chapter therefore illustrates the external dynamism of minimum wage regulation. In doing so, it suggests a significant, if neglected, policy role for the minimum wage, which is available to integrate into formalisation and poverty-alleviation strategies in low-income countries (see also Dinkelman and Ranchod 2012).

In addition to the lack of support in the empirical research, the simplistic depiction of minimum wage laws in the economic impact literature – as barriers to employment - does not account for the institutional interactions that characterise these legal frameworks and shape their outcomes. This internal dimension of institutional dynamism can be explored in the relationship between minimum wage regulation and collective bargaining systems.

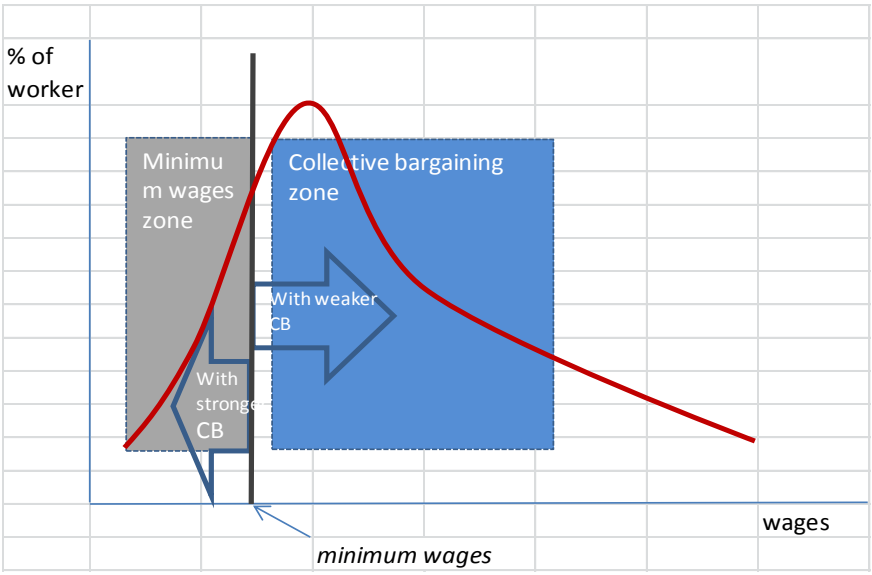
Perhaps paradoxically, for example, the most prominent models fail properly to understand why a given minimum wage may legitimately be considered too high. Centrally, conventional policy prescriptions do not recognize that the relatively high levels of minimum wages sometimes observed in developing countries can in part be attributed to these countries'

[4] Informality is equated with a proxy common in the research on Latin America: workers who are not registered for social security (Groisman in this volume).

underdeveloped collective bargaining and broader industrial relation systems. In theory, minimum wages should be relied on by low-paid workers who are not organized and/or cannot engage in any meaningful form of wage negotiation. In this scenario, collective bargaining is the primary wage determination mechanism for other workers. A common tendency in developing countries, however, in which collective bargaining is usually weak, is for workers (and, to some extent, employers) to attempt to rely on statutory minimum wages as a substitute for wage-bargaining. Where this phenomenon is present, the minimum wage tends to be set at a relatively high level, sometimes approaching the average wage. The risk in such contexts is that minimum wages come to be viewed as unrealistic, are unlikely to be rigorously enforced or widely implemented, and thus do not "bite." For this reason, minimum wages that are "too high" tend, rather than to inhibit employment, to have little effect in reducing low pay (Lee and Sobeck 2012). There are legitimate reasons, then, to consider minimum wages to be too high in certain contexts. The most effective policy response, however, would be to intervene to strengthen collective institutions.

This logic can also run in the opposite direction: where collective bargaining is stronger, less reliance tends to be placed on the minimum wage. In "extreme" cases, in which an overwhelming majority of workers are protected by collective agreements (e.g., Denmark), the need for statutory minimum wage regulation may even disappear (Lee 2012). The dynamic relationship between the two regulatory mechanisms is illustrated in Figure 1, which shows how the relationship between minimum wages and collective bargaining systems can influence the level of minimum wages in a hypothetical wage distribution.

Figure 1. The dynamic relationship between minimum wages and collective bargaining



These static institutional relations can have further dynamism over time, which depends on the strategies of actors in wage determination. In Chapter Five in this volume, Grimshaw, Bosch and Rubery explore this instance of institutional dynamism, to argue that strong collective bargaining frameworks can bolster the effects of minimum wage legislation. The starting point of this chapter is the growing evidence that minimum wage laws improve pay equity through their impact on low-wage employment, gender pay inequality, and wage compression in the lower half of the wage structure (on the effects on gender equity, see also Rubery and Grimshaw 2011). Their chapter further investigates this contention, by drawing on cross-national comparative research conducted in Europe.

Grimshaw, Bosch and Rubery's analysis stems from an explicit recognition that different sets of institutions will generate divergent wage outcomes. The authors identify interactions between institutions as a determining factor in the pay equity effects of the minimum wage (see in particular Figure 5 in Grimshaw, Bosch and Rubery in this volume, p ***). Their conclusion is that strong - dual or inclusive (Gallie 2007) - industrial relations systems support the higher value minimum wages that enhance pay equity. This goal can be reached by two routes: through the association of strong industrial relations models with more compressed wage distributions or as an upshot of trade unions being in a strong position to campaign for higher minimum wage levels.

Grimshaw, Bosch and Rubery next identify strategies that can be adopted by collective bargaining actors to heighten pay equity outcomes. Particularly notable, for present purposes, are the authors' observations on so-called "ripple effects" (or "spill-over effects"): the extent to which minimum wage increases affect wages above the level of the minimum wage. Empirical studies have generally understood the size of ripple effects to be a function of the level of the minimum wage (Lee and Sobeck 2012). However, this analysis can be reassessed with an eye to institutional interactions. From this perspective, minimum wage effects become a function of the industrial relations system in which they are embedded. In Europe, Grimshaw, Bosch and Rubery find ripple effects to play a significant role in low-wage sectors. Further, they conclude that strong unions with defined pay equity strategies can heighten them (see also Freeman 1996). Specifically, strong ripple effects are realised where bargaining outcomes peg either the sectoral minimum wage or entire wage grid to minimum wage increases. This is an illustration, then, of the internal dimension of institutional dynamism generating external effects, by expanding the influence of minimum wage legislation beyond its formal beneficiaries.

Ripple effects are also worth investigating in low-income countries. In this context, even where the relative level of the minimum wage is low, ripple effects can be substantial if the minimum wage (and especially the magnitude of an increase) is used by workers as a basis for wage negotiation. In some Asian countries, including the Philippines, China and Vietnam, this tendency is clear (Lee and Gerecke 2013). Workers who already earn more than the new minimum wage rate use it as a benchmark for wage demands, to compensate for limited union strength. In these countries, then, and in contrast to industrialized settings, such ripple effects emerge as an indication of weak collective bargaining (ILO 2010).

From these observations, a number of conclusions can be drawn for future research and policy on institutional interactions. Most obviously, it is clear that interrelationships among labour market institutions should be integrated into research, both theoretical and empirical, on regulatory impacts. The findings featured in this volume confirm the potential for empirical research to challenge (if not to displace) theoretical models (on the durability of neo-classical economic models, see Deakin 2011). In contrast, this volume makes a case for sustaining, developing and extending collective bargaining institutions, in particular in low-income settings.

Effective implementation: new theoretical and empirical approaches to enforcement indeterminacy

One of the fundamental challenges to effective state regulation of labour markets is to ensure the widespread alignment of formal legal norms with de facto labour market practices. Evidently labour law implementation does not rest exclusively on enforcement: the effective operation of regulatory frameworks is also dependent on the influence on labour market actors of broader social norms (Deakin 2011). Yet enforcement mechanisms are a key dimension of legal effectiveness in most contexts. The economic impact literature, however, tends to overestimate the potency of enforcement mechanisms in formal settings, as a corollary of the 'formalist' narrative outlined above. In consequence, a powerful critique of labour law indices is that they do not account for indeterminacy in enforcement. They do not properly represent the influence of statutory standards in a given country, which can range from conclusive to irrelevant (for an alternative, see Lee and McCann 2008).

This volume draws on research from other scholarly traditions, which recognise and investigate enforcement indeterminacy. In recent years, separate literatures have pursued two apparently distinct topics of enquiry: the reception of labour protective goals in global value chains and the operation of traditional enforcement mechanisms. Global value chains have become the focus of research that investigates their capacity to render both economic and social objectives, including by improving working life (for an overview of the debates, see Barrientos et al 2011). This work extends to value chains as a site for the dissemination and implementation of labour standards. Research such as that associated with the *Capturing the Gains* project has addressed global value chains, including as a conduit of external standards - whether derived from international norms, domestic legal systems or codes of conduct (on *Capturing the Gains*, see the *International Labour Review* Special Issue on 'Decent Work in Global Production Networks' (2011)). This research considers the extent to which codes of conduct, private monitoring mechanisms and external pressures shape protective outcomes for the producers and workers at the end of the supply chain.

Over the last decade, enforcement by state agencies, and in particular labour inspectorates labour law enforcement has become a subject of heightened scholarly interest. In the economic literature, the role of these institutions in effective regulation in the developing world is implicitly dismissed. In contrast, other lines of research are gauging the pertinence of state enforcement mechanisms to contemporary labour markets by investigating them with an eye to innovation in their practices and their success in ensuring compliance with state labour norms (Piore and Schrank 2006, 2008; Cooney 2007; Pires 2008, 2011; Weil 2010; Silbery et al 2009; Howe et al 2011). This research, which has had a particular focus on Latin America, suggests that labour inspectorates, even when they operate under profound constraints, have the capacity to devise technological and managerial strategies that effectively encourage compliance with labour law obligations.

The aim of this volume is to bring together these distinct scholarly discourses. It situates research on enforcement and implementation of labour standards within the quest to clarify the components of regulatory indeterminacy, with the aim of exploring emerging theoretical and empirical strategies.

At the level of theory, frameworks for understanding the operation of labour enforcement mechanisms are useful in predicting the outcomes of different strategies and designing empirical research. Willborn (Chapter Six) proposes such a theoretical framework for labour enforcement. His objective is a more robust and responsive theory, suited to the investigation of legal effectiveness. His guiding concern is the balance between enforcement by government agencies (public) and individual litigation (private). To this end, Willborn

enunciates a standard economic model of enforcement, which posits that an employer will comply with labour laws only if the probability, *p*, of getting caught times the damages incurred, *D*, is greater than the cost savings of non-compliance times the probability of being undetected ($p(D) > (1-p)(c)$). Willborn reflects on its implications of this model.

This chapter, highlights the unavoidable complexities of constructing theoretical models of labour enforcement. Although Willborn finds the standard model useful, he points to a number of indeterminacies. His method is to complicate the central components of the model, which he identifies as (1) compliance costs (2) the applicable penalties for violations of legal standards and (3) the probability of detection. Each of these components, he points out, is affected by a set of variables that include the employment standard breached, the means of detection deployed (employee reporting or government inspection) and the likelihood of enforcement. Willborn's chapter also illustrates the tendency, referred to earlier, of recourse to behavioural economics to theorize labour market institutions. This tradition is useful properly to understand enforcement mechanisms. Willborn turns to the insights of this field of economics to found a set of reservations about the standard economic model as a theoretical framework for enforcement, pointing to the variables that complicate its operation and thereby limit its capacity to predict compliance with legal standards. These limitations emerge as a set of indeterminacies: that strengthened enforcement may reduce voluntary compliance, for example, and that the model neglects enforcement in the form of compliance incentives (to accompany penalties for non-compliance).

Willborn's contribution offers a refined understanding of the operation of enforcement mechanisms. Yet, as he observes, further work is needed to theorise the additional complexities of enforcing legal standards in developing countries, in the absence of well-resourced governmental and judicial institutions. Empirical exploration of these settings has been pursued most vigorously in the research on global value chains. Given the limitations on public enforcement, a range of governance mechanisms have been integrated into global value chains that combine the efforts of state and private parties (buyers, NGOs trade unions etc.) Such hybrid public/private mechanisms have come to be widely accepted as the most reliable option for improving working life in low-income countries.

Limitations in firm- and worker-level data initially rendered attempts to transmit labour standards across global value chains difficult to evaluate. Research efforts in more recent years have begun to overcome this deficiency. Centrally, the need for empirical research has been recognised, and integrated into, the best-known project of this type, the ILO/World Bank *Better Work* programme. *Better Work* expands on an earlier initiative tied to the 1999 US-Cambodia Textile and Apparel Trade Agreement, which offered increased export quotas for working conditions in the Cambodian garment industry in line with national and international legal standards (see e.g. Kolben 2004; Polaski 2006). Under the *Better Factories Cambodia* programme, the ILO monitored establishment-level working conditions and provided training. This methodology has since been extended to a number of other countries through the *Better Work* programme, beginning with Vietnam.[5]

Better Factories/Better Work has facilitated independent evaluation of programme outcomes, which has generated factory-level data in Cambodia that demonstrates improvement in compliance with legal standards. (Beresford 2009; Berik and van der Meulen Rogers 2010; Shea et al 2010). Brown, Dehejia and Robertson (Chapter Seven) advance this literature by

[5] See http://www.betterwork.org.

offering a preliminary assessment of the latest phase of the programme, *Better Work Vietnam*. This research is the first to examine the *Better Work* model and to evaluate the effectiveness of the broader monitoring methodology as it operates in the absence of quota incentives. The chapter offers a preliminary assessment of the influence of *Better Work Vietnam* on legal compliance and worker wellbeing.

Brown, Dehejia and Robertson investigate *Better Work Vietnam* through an analysis of data drawn from independent surveys of factory workers, using formal regression analysis to identify the influence of the programme. Exposure to *Better Work* is measured using two factors: the number of months since a Performance Improvement Consultative Committee (PICC) (an advisory committee on compliance) was established in the factory and (2) the number of months since the first visit by monitors ('the treatment variables'). The preliminary empirical results suggest that *Better Work Vietnam* has been successful in improving compliance with labour standards and worker wellbeing. Perhaps most significantly, wage levels were found to be positively associated with the two treatment variables. The programme was also found to be associated with increased access to free medicine, reduced verbal abuse, and an increased perception of mangers as 'fair and respectful.'

As a result of the surge in enforcement research, research on the operation of innovative governance mechanisms is now accompanied by empirical investigation of traditional enforcement mechanisms. By bringing these literatures together, this volume reveals them to converge on hybrid public-private strategies as the most effective mode of implementing legal standards. In the enforcement literature, this contention is grounded in the merits of integrating non-state actors in state-led enforcement (see in particular Weil and Mallo 2007; see also Graham and Woods 2006, Amengual 2010). This approach, further, is suggested to be particularly valuable for settings in which public enforcement is subject to profound financial constraints. As Amengual explains,

> Dominant accounts of state capacity….suggest that the principal components of state enforcement capacity are bureaucratic autonomy and resources, which are relatively stable and, consequently, difficult to reform in the short-term. But scholars are increasingly pointing to the potential for complementary state-society interactions promoting enforcement capacity. While these solutions are not a substitute for building internal strength in labour inspectorates in the long term, they demonstrate that there are ways in which capacity can be improved in the short-term even in places that lack well-developed inspectorates. (in this volume, p ***)

In this volume, Amengual (Chapter Eight) extends this exploration of public/private alliances to Argentina, by investigating a successful enforcement strategy in the garment industry in Buenos Aires. As he points out, the expectation of conventional analyses would be for labour enforcement in Argentina to be stable and very low, since enforcement agencies lack both bureaucratic autonomy and resources. Yet he identifies a striking intensity of enforcement in the Buenos Aires, which was triggered by a fatal fire in a garment workshop in 2006, and subsequent criticism of the enforcement authorities. Prior to the fire, enforcement was erratic and a burgeoning network of clandestine workshops operated in extremely poor conditions. Subsequently, high levels of enforcement were maintained for a two-year period before falling off.

The reasons for this unexpected outcome are compelling for the investigation of enforcement indeterminacy. Amengual attributes the upswing in enforcement in part to an increase in administrative resources. Of substantial significance, however, were the efforts by the state enforcement agency to work with *La Alameda* - a community organization with extensive links to workers in the garment industry. *La Alameda* played an effective intermediary role that was vital to relations between the inspectorate and garment workers, including by informing them about their legal rights and the inspection process. Also on the advice of *La Alameda*, the labour inspectorate took a strategic approach strikingly reminiscent of Weil's suggestions (in this volume), by mapping entire supply chains and targeting prosecution at the peak firms.

Amengual concludes that the agency's enforcement capacity was not determined exclusively by its resources or organizational form, but also by its capacity to leverage the resources of *La Alameda*. His broader conclusion is that enforcement capacity can be improved through such innovative alliances between state and civil society bodies, at least in the short-term. Amengual observes that the capacity of labour inspectors to mobilize societal resources is a pivotal yet neglected component of enforcement capacity, and calls for a richer appreciation of state/society linkages, which can illuminate the conditions under which enforcement is possible.

This confluence of the literatures on global value chains and enforcement also suggests that hybrid strategies hold particular promise for the regulation of informal work. Most garment sector workers in Buenos Aires, for example, are informal, in the sense of not being registered with the social security system. Ordor's investigation of civil society involvement in labour regulation also supports this hypothesis (Chapter Nine). She investigates a role for non-state bodies in the implementation of labour standards that is infrequently absorbed into the effective regulation literature: the provision of support to workers to negotiate regulatory frameworks and effect substantive rights. To explore this form of interaction, Ordor investigates partnerships in South Africa between a range of non-profit organizations and collectives of historically vulnerable women workers (in agriculture, informal work, domestic work and commercial retail).

Ordor identifies a number of strategies that are used in these alliances to effect labour rights and appropriate legal and policy entitlements. She provides a typology of these interventions as centring on (1) notions of the right to work (e.g. supporting access to unused land, training); (2) recourse to the range of law and policy frameworks that regulate labour markets (e.g. establishing co-operatives to promote proprietary farming, company law strategies, contesting evictions); (3) strategies to advance enforcement (negotiating skills, training for engaging with government agencies, mediation and representation); and (4) advocacy for legal reform. These forms of engagement are wide-ranging. Strikingly, they invoke a range of legal fields that regulate labour markets beyond conventional labour law frameworks (on an expansive agenda for the academic study of labour market regulation, see Mitchell 1995; Arup et al 2006).

This chapter also illustrates a fruitful conjunction of the labour regulation and civil society traditions, an approach suited to research on South Africa in which civil society engagement with labour regulation has been unusually intense, as a legacy of the anti-apartheid struggle. This line of enquiry is also useful in situating hybrid mechanisms as a lifeline to vulnerable workers. The changing complexion of contemporary employment, Ordor argues, makes the

study of hybrid strategies imperative, since non-profit organizations are particularly suited to informal and precarious workers

> [T]he daily lives of [vulnerable] workers …. are characterised by uncertainty and insecurity in a way that workers in more formal types of employment are not. Consequently, workers in these informal and semi-formal economies are more inclined to explore and embrace alternative forms of organising to secure their livelihoods. The non-profit sector readily offers a diversity of services accessible to groups of vulnerable workers. (p ***)

Ordor's research confirms the potential of NGOs to strengthen grassroots initiatives by accessing regulatory frameworks. She concludes that by developing hybrid strategies, non-profit sector resources can be channelled more effectively to support the efforts of government and trade unions. For present purposes, this chapter reveals a further conduit to the implementation of legal standards in the informal economy. The hybrid mechanisms reviewed by Amengual and Ordor upend the economic impact literature's pessimistic portrayal of informal working relations as inescapably resistant to statutory standards. These chapters confirm that the recognition and cultivation of external institutional dynamism, as outlined above, holds promise for the legal ordering of this subset of working relations. In this case, legal standards influence informal settings through the engagement of civil society organisations with enforcement in both the public and private modes identified by Willborn.

This volume, then, indicates a growing consensus that hybrid initiatives support the implementation of legal standards. It also identifies a promising direction for future scholarly enquiry: to gauge the most effective configuration of these relationships. A more probing examination of hybrid initiatives, that is to say, would seek to identify the most effective interactions between public and private bodies, in both individual engagements and at the level of leadership. This line of enquiry is pursued by Ordor. Although she concludes that non-profit organisations can effectively support grassroots organizations, she cautions that these alliances must unfold within the right framework of engagement. To this end, she identifies a set of principles fundamental to these engagements, including that workers' groups supply the agenda for the alliance, interventions are tailored to the experience of workers, and non-profit organizations establish effective channels for conveying workers' concerns to the state labour administration.

The identification of the most effective configuration of hybrid regulatory mechanisms is equally crucial to the complicated alliances among the multiple actors in global value chain governance. In the final chapter in this volume, Oka (Chapter Ten) reflects on this question. She returns to the *Better Work* experiment, in this case to examine *Better Factories Cambodia* as an institutional mechanism of non-state regulation. Oka's case study-based method complements the quantitative approach of Brown, Dehejia and Robertson by investigating the details of day-to-day compliance in the *Better Factories Cambodia* programme.

Oka finds the Cambodian experiment to confirm the virtues of hybrid regulation. Drawing on O'Rourke's (2006) criteria for evaluating non-state labour regulation, she finds *Better Factories Cambodia* to improve upon purely private initiatives in rigour, legitimacy, coordination and capacity-building. Oka identifies the key factors that underpin its effectiveness as public authority (government-mandated industry-wide monitoring), market forces (buyer-driven enforcement) and empowerment of workers and unions (capacity and

institution building). Oka also singles out as crucial the coordinating role of the ILO (while striking a note of caution about the potential for the Cambodian experience readily to be replicated in the *Better Work* programme).

Yet Oka also points to flaws in the Cambodian model, which it shares with purely private regulatory mechanisms. These constraints include restricted accountability due in part to the limited transparency of the monitoring system, in which access to information on compliance by individual factories was initially openly available but later restricted to the buyers. Complementarity with the state enforcement system is also constrained due to a duplication of enforcement efforts by local authorities and the ILO. Reflecting on these and other limitations of the Cambodian model, Oka's conclusion is that state enforcement should take centre stage in the long term. To this end, she suggests that government officials be ensured adequate incentives effectively to enforce labour laws, coupled with broader anti-corruption strategies. These suggestions echo those of Amengual (in this volume), who observes that alliances with civil society engagements cannot in the long-term substitute for strengthening the internal enforcement capacities of state agencies. This preference for state-led mechanisms as the sustainable future of labour enforcement, then, is a broader lesson that can be derived from the conjunction of the global value chain and enforcement literatures.

Conclusions

It is increasingly recognised that the impacts of labour regulation cannot be predicted a priori. This volume draws on the notion of 'regulatory indeterminacy' to express this fundamental challenge to contemporary labour regulation research and policy. Its particular preoccupation is the protective dimension of indeterminacy: the varying capacity of labour law frameworks to generate protective outcomes. The underlying objective is to highlight the urgency of elaborating and explaining the drivers of regulatory indeterminacy. To this end, the volume explores three phenomena that it posits as the key variables generating indeterminate protective outcomes in contemporary labour markets: accelerating labour market fragmentation, institutional interactions, and constraints on the effective implementation of labour norms. The chapter has investigated each factor in turn to reach the following conclusions.

The interdisciplinary investigation of labour market fragmentation suggests for labour regulation policy and scholarship - of all genres - the need for an accurate understanding of the intricacies of contemporary working relationships and for more expansive regulatory models. The contributions to this volume contend that indeterminacy in regulatory outcomes is in part generated by the disjuncture between the traditional beneficiaries of protective measures and large swathes of contemporary workforces. Situating fragmentation at the nexus of a suite of distinct business strategies clarifies the forces that trigger and mould this phenomenon. By exposing the inherent tensions among these commercial objectives, further, it also prompts innovative thinking on enforcement. The analysis of doctrinal evolution in a comparative perspective unveils the structural reasons that labour law has singularly failed to halt its protective decline. It also generates novel theoretical constructs that can embrace multilateral relationships by recognising contemporary labour relationships as increasingly situated at the centre of a maze of intricate networks of commercial relations. These insights hold promise for refining future research and policy initiatives, not least those associated with the quantification project. Most urgently, it can be suggested that a new imagery of contemporary employment relations is needed. Such imagery would embrace the range of

actors implicated in a given working relationship, the respective degrees of influence of each, and the incentives and business strategies that underpin complex organizational structures. The conclusion that can be derived from the pairing of parallel research traditions in this volume is that integrated reform is needed - at the levels of both doctrine and enforcement. Initiatives on each must enshrine worker protection as a legitimate objective of contemporary public policy, be grounded in comparable conceptions of the employment relationship, and reinforce each other.

A refined appreciation of institutional interactions is also essential for future research and policies towards decent work. Research is needed into the direction and degree of institutional dynamism in a range of settings and the modes through which its protective outcomes can be enhanced. With regard to the regulatory intervention examined in this volume – the minimum wage – two policy strategies can be suggested. First, given the potential of minimum wage legislation to influence the informal sector, developing country policy actors should consider integrating minimum wage mechanisms into formalisation policies or broader development strategies. Second, efforts should be made fully to exploit the potential of ripple effects for redistributive outcomes, in both high- and low-income settings. In advanced industrialised economies, this outcome rests on the capacity and willingness of trade unions to nurture strong ripple effects, through carefully designed strategies that are grounded in a commitment to pay equity. In low-income countries, in contrast, the priority is to strengthen collective bargaining mechanisms, in order to avoid an inefficient and counterproductive reliance on the minimum wage in the absence of alternative options. Finally, this volume's investigation of minimum wage legislation is intended as a starting point for further empirical exploration of institutional dynamism in other components of labour law systems. It would be worth extending the analysis to a broader range of labour law sub-fields, presumably starting with those that lend themselves to quantification, such as working hours limits and rest periods.

Finally, efforts to quantify and compare the effectiveness of legal regulation - intended to measure or predict actual effects - encounter indeterminate enforcement outcomes as a central problem. Enforcement indeterminacy inhibits the use legal indices to found impact predictions, since the indices tend to overestimate the effectiveness of legal norms in formal settings. In policy discourses, legal standards are also assumed to be inevitably adrift from working relations that are characterised as 'informal' according to their tendency to elude one or more of a range of regulatory regimes (social security, taxation, corporate law, labour law etc.). Yet enforcement outcomes depend on multiple variables that are complex both to theorise and to capture in empirical study. This complexity demands an interdisciplinary approach, reflected in this volume, which draws from the insights of theoretical, global value chains, civil society and enforcement literatures. In the theoretical research, the complexity of designing models for evaluating enforcement mechanisms is beginning to be revealed by recourse to behavioural economics. At the level of empirical investigation, this volume hosts a fruitful conjunction of the thriving literatures on the governance of global value chains and labour inspectorates. These lines of enquiry converge on the merits of hybrid public/private mechanisms, in particular to govern settings and working relations that are resistant to the reach of the state. Both confirm that state labour law norms can effectively govern settings in which enforcement resources are constrained, or where informal work is widespread, disrupting the assumptions of the mainstream economic tradition. These literatures also concur on the existence and potential of institutional dynamism, by exploring how civil society organisations are integrated into enforcement and implementation processes. A central task for future research is to examine in more depth how to build and enhance

relationships between state bodies and civil society organizations, and to identify the most effective interactions between the parties. In particular, a degree of consensus has emerged that to ensure sustainable regulation, the state must remain the dominant agent of enforcement. Further research is therefore needed in how to convert the experience of successful hybrid initiatives into enduring and strengthened state capacity.

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