

Quality, Formality and the Evolution of International Labour Law: The New ILO Quality Apprenticeships Standard

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ABSTRACT

In an era of sequential crises and spiralling youth unemployment, the International Labour Organization (ILO) has adopted a historic instrument: the Quality Apprenticeships Recommendation, 2023 (No 208). This article explores the recommendation as both a landmark in the regulation of training and a site of regulatory innovation and contestation at the heart of contemporary labour law. It first traces the history of apprenticeship standards and the discursive processes that generated the new Recommendation. The article then adopts a dual analytical framework to explore key aspects of the Recommendation as driving and illuminating both the regulation of apprenticeships and the broader evolution of labour law. We highlight the Recommendation's articulation and ascription of 'quality', including as crucial to the debates on the personal scope of labour law; the evolving presence of precarious work in the international normative arena; equality, diversity and inclusion as a heightening aspiration of both apprenticeship regimes and international labour norms; the Recommendation's exclusion of non-apprenticeship training, and traineeships as an urgent site of future international standard-setting; and the significance of the instrument's notion of informality for the regulation of informal apprenticeships, not least in the Global South, and for the global debates on the concept, transition, and regulation of informal work.

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1. INTRODUCTION

The Quality Apprenticeships Recommendation, 2023 (No 208) is a landmark. The first international standard on apprenticeships since the 1960s, it has been adopted in an era of interlinked crises that have impeded economic growth, imperilled decent work, and left more than a fifth of young people adrift from working life.¹ Recommendation No 208 is a pivotal international normative response to this challenge. Its aim is to extend meaningful and protected training opportunities across the world, by articulating standards for ‘quality’ apprenticeships, specifying minimum rights and protections for apprentices, providing guidance on the design of regulatory frameworks, calling for equality and diversity and promoting the availability of, and demand for, apprenticeship systems.

The first in-depth exploration of the labour law dimension of apprenticeships in recent years, and from an international perspective, this article explores Recommendation No 208 as both a watershed in the regulation of training and labour market entry/transition, and a site of regulatory innovation and contestation at the heart of contemporary labour law. We argue that the new standard is crucial to the evolution of apprenticeship regulation. We also contend that the recommendation is of considerable significance, perhaps more than may intuitively be assumed, to the unfolding scholarly and policy debates on the evolution of labour regulation. Part 2 outlines our conceptual and methodological model, introducing a dual analysis that explores the instrument as both a milestone in the regulation of apprenticeships and a driver of international labour law. Following a brief account in Part 3 of the nature and regulation of apprenticeships, Part 4 traces the history of international labour standards in this area, critically examining the role of the International Labour Organization (ILO) and the discursive processes that generated the new standard. In Parts 5–9, we identify key features of the recommendation and explore their significance for the debates and scholarship on both apprenticeships and contemporary labour law. Part 10 concludes.

¹ILO, *World Employment and Social Outlook: Trends 2023* (Geneva: International Labour Office, 2023) 11–17.

2. APPRENTICESHIP REGULATION IN CONTEMPORARY LABOUR LAW: A CONCEPTUAL AND METHODOLOGICAL APPROACH

While extensively explored in the vocational education and training (VET) literature from other disciplinary perspectives,² apprenticeship is strikingly under-studied in English-language labour law scholarship. Some notable exceptions address the historical dimensions of apprenticeship regulation as part of broader treatments of the evolution of labour law,³ consider the modern legislative and policy framework in the UK⁴ and treat apprenticeships as an element of vocational training law and policy.⁵ This article instead has an exclusive focus on apprenticeship regulation, with a particular interest in the international level. The article is, as far as we are aware, the first piece in recent labour law literature devoted to apprenticeship regulation and the first in-depth analysis of the new international labour standard. The objective is to situate the regulation of apprenticeships in what we contend to be its rightful place: as a vibrant and consequential site of labour regulation and an indispensable subject of labour law analysis. This aim is in line with Freedland's assessment that the regulation of work-based vocational training should legitimately be regarded as an aspect of labour law, rather than part of educational policy.⁶ It is a conclusion shared by the recent literature that has identified internships and other forms of work experience as an important challenge for contemporary labour law regimes.⁷

²See eg P. Ryan, 'Apprenticeship: Between Theory and Practice, School and Workplace' in M. Pilz (ed), *The Future of Vocational Education and Training in a Changing World* (Dordrecht: Springer, 2012) 403; T. Deissinger, 'The Sustainability of the Dual System Approach to VET' in D. Guile and L. Unwin (eds), *The Wiley Handbook of Vocational Education and Training* (Hoboken, NJ: Wiley, 2019) 293; E. Smith, 'Apprenticeships and "Future Work": Are We Ready?' (2019) 23(1) *Int J Training Dev* 69; M. Chankseliani, E. Keep and S. Wilde, *People and Policy: A Comparative Study of Apprenticeship Across Eight National Contexts* (RR.9.2017) (Doha: World Innovation Summit for Education, 2017).

³S. Deakin and F. Wilkinson, *The Law of the Labour Market* (Oxford: OUP, 2005) ch 2, in particular 54–8; Z. Adams and others, *Deakin and Morris' Labour Law* (7th edn, Oxford: Hart, 2021) 2.23; Z. Adams, *The Legal Concept of Work* (Oxford: OUP, 2022) 47, 67, 83, 101, and on sectoral/occupational systems of professional formation 113, 115 (management), 272, 275, 277 (medical work), 314, 318, 321 (retail work).

⁴Adams and others (n 3) 2.23.

⁵M. Freedland, 'Labour Law and Leaflet Law: The Youth Training Scheme of 1983' (1983) 12(1) *ILJ* 220; M. Freedland, 'Vocational Training in EC Law and Policy – Education, Employment or Welfare?' (1996) 25(2) *ILJ* 110.

⁶Freedland, 'Labour Law and Leaflet Law' (n 5) 225.

⁷See eg R. Owens and A. Stewart, 'Regulating for Decent Work Experience: Meeting the Challenge of the Rise of the Intern' (2016) 155 *Int Lab Rev* 679; A. Stewart and R. Owens, 'Work at the Intersection of Employment, Education, Training, and Volunteering' in G. Davidov, B. Langille and G. Lester (eds), *Oxford Handbook of the Law of Work* (Oxford: OUP, forthcoming) ch 18.

This conceptual step permits us to highlight apprenticeship regulation, including Recommendation No 208, as both (1) intrinsically significant, including to the broader regulation of training and labour market entry/transition and, simultaneously (2) driving and illuminating core challenges of contemporary labour regulation. We elaborate these contentions through a conceptual and regulatory interrogation of the new ILO recommendation. In line with our dual analysis, we identify a set of key dimensions of the Recommendation and explore each from a micro and macro perspective:

- the instrument’s notion of ‘quality apprenticeships’, for what it portends for labour rights in labour market entry and transition and reveals about the expanding personal scope of modern labour laws;
- the recognition of apprenticeships as a route to unacceptable work, as both situating apprenticeship regulation in relation to initiatives to curb precariousness and illuminating the evolving design of laws and policies on vocational training and employment;
- the heightened status of equality, diversity and inclusion (EDI), as both a core objective of apprenticeship regulation and a cross-cutting feature of international labour laws;
- the exclusion of other forms of work-based training, as consequential for the regulation of both training and ‘informal apprenticeships’ and
- the conception of ‘apprenticeships’ and the consequences for both the regulation of informal apprenticeships and debates on the contested concept and boundaries of ‘informal work’.

The project’s central methodological strategy is documentary analysis. The article’s themes and foci have emerged from the collation, close analysis, and comparison of primary and secondary materials. Our two most significant primary sources are the series of reports that punctuate the process for creating new ILO standards (the ‘White’, ‘Yellow’, ‘Brown’ and ‘Blue’ reports)⁸ and the reports on the discussions of the Standard-Setting Committee on Apprenticeships at the International Labour Conference (ILC) in 2022

⁸International Labour Organization (ILO), *A Framework for Quality Apprenticeships* ILC.110/IV/1 (November 2019) (‘The White Report’) (Geneva: ILO, 2019); *A Framework for Quality Apprenticeships* ILC.110/IV/2(Rev.) (January 2022) (‘The Yellow Report’) (Geneva: ILO, 2022); *Quality Apprenticeships* ILC.111/Report IV(1) (August 2022) (‘The Brown Report’) (Geneva: ILO, 2022); *Quality Apprenticeships* ILC.111/report IV(2) (March 2023) (‘The Blue Report’) (Geneva: ILO, 2023). The colour-coded references reflect internal Office usage: see eg <<https://guide-supervision.ilo.org/reporting/ils-are-adopted-by-the-international-labour-conference/>> accessed 28 March 2024.

and 2023.⁹ The Committee, comprising government, worker and employer representatives from ILO member States, debated, amended and finalised text for the new standard prepared by the International Labour Office ('the Office'). The other core primary sources are antecedent ILO standards, either directly referencing apprenticeships or governing matters encompassed by Recommendation No 208.

The article equally draws on significant secondary materials on both apprenticeships and labour regulation authored primarily by academic researchers, transnational organisations and national governmental ministries and agencies. Given our interdisciplinary method, these resources encompass scholarship from a range of disciplines including law, industrial relations, education and labour sociology.

The article is also informed by the authors' roles as advisory experts on international labour standards for the Quality Apprenticeships standard-setting process (2019–23), including extensive and detailed discussions with ILO officials with key roles in leading and supporting the process.¹⁰ This role gave us a unique opportunity to observe the evolution of drafts of the Recommendation and to reflect upon the positions and perspectives of key actors.

As an interdisciplinary and socio-legal project, the article evaluates apprenticeship laws in their socio-economic context. Drawing on the methodological strategies of the cross-disciplinary labour regulation literatures,¹¹ we interrogate legal, policy and scholarly discourses for their accounts of core concepts and debates. This socio-legal analysis is paired with legal-doctrinal analysis, primarily of principles articulated and distilled in international labour standards and the decisions of the ILO supervisory bodies.

3. THE EVOLUTION AND REGULATION OF APPRENTICESHIPS¹²

Systems of training in which a young person, an apprentice, learns a craft or profession while working for a skilled practitioner or 'master' date back at

⁹*Report of the Standard-Setting Committee on Apprenticeships*, Record No 5B Rev.1, ILC, 110th session (2022) ('First Discussion'); *Report of the Standard-Setting Committee on Apprenticeships*, Record No 5B, ILC, 111th session (2023) ('Second Discussion').

¹⁰The opinions expressed in this article are the authors' alone and not those of the International Labour Office.

¹¹See eg D. McCann and others, *Creative Labour Regulation: Indeterminacy and Protection in an Uncertain World* (Geneva/Basingstoke: ILO/Palgrave, 2014).

¹²This section draws on material originally prepared for the White Report (n 8).

has been conveyed in guidelines issued by both the ILO and the European Union (EU), along with the need for a written agreement, and some form of remuneration or other compensation for the work-based component.¹⁹ Yet it is notable that in some countries the off-the job training element is missing from apprenticeship systems. These include regimes characterised by Deissinger as the ‘market model’ or ‘liberal skill regime’,²⁰ notably in the UK, Italy and India.²¹ It has been estimated that around 50 economies currently have apprenticeship participation rates above one for every thousand members of the labour force, with countries such as Germany, Switzerland and Austria leading the way,²² although the supply of apprenticeships has been disrupted recently by the COVID pandemic.²³

Informal or ‘traditional’ apprenticeships also remain common, however, especially in the Global South.²⁴ These involve an agreement, often oral and ‘embedded in local norms and traditions of a society’, to learn the skills of a craft or trade from a master craftsman, with the costs of training typically being shared and no external training element in an educational institution.²⁵ Most apprentices are remunerated in some form, albeit often with ‘pocket money’ rather than wages, and some may need to pay fees for the privilege of being taken on.²⁶ In some African countries, it has been estimated that up to a

¹⁹ILO, *ILO Toolkit for Quality Apprenticeships, Volume I: Guide for Policy Makers* (Geneva: International Labour Office, 2017); Council of the EU, Council Recommendation of 15 March 2018 on a European Framework for Quality and Effective Apprenticeships, 2018/C 153/01.

²⁰Deissinger, ‘The Sustainability of the Dual System Approach to VET’ (n 2) 293.

²¹P. Ryan, H. Gospel and P. Lewis, ‘Educational and Contractual Attributes of the Apprenticeship Programmes of Large Employers in Britain’ (2006) 58(3) *J Voc Ed Training* 359; Ryan (n 2) 405.

²²M. Chankseliani, E. Keep and S. Wilde (n 2) 23–4; Organisation for Economic Co-operation and Development (OECD) and ILO, *Engaging Employers in Apprenticeship Opportunities* (Paris: OECD Publishing, 2017) 20. Australia is also shown in these studies as having high rates of participation, but that appears to include a broader class of ‘traineeships’ — programs of 1–2 years in duration, in occupations not traditionally regarded as ‘trades’. Whether programs of that sort should be classed as apprenticeships, when used for low-skill jobs, may be a matter of controversy: see eg T. Richmond and E. Regan, *No Train, No Gain: An Investigation into the Quality of Apprenticeships in England* (London: EDSK, 2022).

²³ILO, *Skilling, Upskilling and Reskilling of Employees, Apprentices & Interns During the COVID-19 Pandemic: Findings from a Global Survey of Enterprises* (Geneva: International Labour Office, 2021).

²⁴As to the difficulties in measuring their prevalence, see ILO, *Apprentices in Countries with Large Informal Economies*, Statistical Brief (Geneva: International Labour Office, 2023).

²⁵C. Hofmann and others, *How to Strengthen Informal Apprenticeship Systems for a Better Future of Work? Lessons Learned from Comparative Analysis of Country Cases*, ILO Working Paper 49 (Geneva: International Labour Office, 2022) 9, citing ILO, *Upgrading Informal Apprenticeship, A Resource Guide for Africa* (Geneva: International Labour Office, 2012).

²⁶Hofmann and others *ibid* 29.

third of 16–24 year olds have undertaken this form of training,²⁷ with apprenticeship rates mirroring those in certain European nations.²⁸

With regard to regulatory frameworks, in pre-industrial Europe, apprenticeships were initially governed by a varying mixture of craft guilds, town authorities, private agreement and local or industry custom.²⁹ Subsequently state regulation of apprenticeships gradually assumed this role in many countries. A core legislative measure in the UK, for example, the Statute of Artificers 1563,³⁰ sustained an apprenticeship system that controlled entry into trades.³¹ In Germany, the VET model emerged from the preservation of aspects of the guild system across the nineteenth century, including through a series of statutes enacted in the latter decades of the century that encompassed the training of apprenticeships.³² This legislation, and in particular the 1897 *Handwerkerschutzgesetz*, established the corporatist framework that continues to underpin the dual system. In the modern era,³³ in some countries specific statutes are devoted to apprenticeships, while in others the main rules are laid down in more general legislation on VET, and/or a labour code.

Two points can be singled out for the purposes of our analysis. First, definitions in these laws reflect the variations already noted, including as to whether any off-the-job training is required. Nor is there any standard approach as to whether apprentices are regarded as employees.³⁴ In some jurisdictions, the apprenticeship agreement itself is treated as an employment contract or, as in Australia, the apprentice is regarded as having an employment contract

²⁷Ibid. 14, citing D. Filmer and others, *Youth Employment in Sub-Saharan Africa*, Africa Development Series (Washington, DC: World Bank, 2014) 90.

²⁸ILO, *Apprentices in Countries with Large Informal Economies* (n 24) 4–6.

²⁹See eg Deakin and Wilkinson (n 2); Deissinger and Gonon (n 13).

³⁰Elizabeth I c. 4.

³¹Deakin and Wilkinson (n 3); Adams and others (n 3) 1.5; Adams (n 3) 47–50; P. Wallis, ‘Apprenticeship and Training in Premodern England’ (2008) 68 *J Econ Hist* 832.

³²Deissinger and Gonon (n 13) 203–4; T. Deissinger, ‘Apprenticeship Systems In England And Germany: Decline And Survival’ in W.D. Greinert and G. Hanf (eds), *Towards a History of Vocational Education and Training (VET) in Europe in a Comparative Perspective* (Luxembourg: Office for Official Publications of the European Communities, 2004) 30–1.

³³As to what follows, see White Report (n 7) ch 3 and the sources cited there, including: E. Smith and R. Brennan Kemmis, *Towards a Model Apprenticeship Framework: A Comparative Analysis of National Apprenticeship Systems* (Geneva, Washington, DC: ILO and World Bank, 2013); M.V. Fazio, R. Fernández-Coto and L. Ripani, *Apprenticeships for the XXI Century: A Model for Latin America and the Caribbean?* (Washington, DC: Inter-American Development Bank, 2016); Cedefop, *Apprenticeship Schemes in European Countries* (Luxembourg: Office for Official Publications of the European Communities, 2018).

³⁴A. Jeannot-Milanovic, N. O’Higgins and A. Rosin, ‘Contractual Arrangements for Young Workers’ in O’Higgins *Rising to the Youth Employment Challenge* (Geneva: International Labour Office, 2017) 113, 131–3; *ILO Toolkit* (n 18) 36–7. See Part 5 below.

with the host enterprise that operates alongside a training agreement. In the UK, ‘apprenticeship’ is one form of the contract of employment, in conjunction with ‘service’.³⁵ In countries such as Germany, where apprentices are treated as having a special status, they are often still accorded the benefit of many labour standards. Irrespective of the conceptual approach, however, it is common for apprenticeships to attract special rules or exemptions. For example, even if apprentices must be paid wages for their work (as opposed to a stipend or allowance that merely covers expenses), they are generally entitled to a lower minimum rate than would apply to other workers. There are likewise variations in entitlement to payment for off-the-job instruction, and to social insurance contributions.³⁶ Apprentices are generally, however, brought within the scope of both occupational health and safety laws and prohibitions on discrimination and harassment.

A further source of variation, second, is the role of collective organisation in the regulation of apprenticeships.³⁷ Worker organisation and freedom of association were intrinsic to the early regulation of apprenticeships. As Deakin and Wilkinson have elaborated in the English and Welsh context, under the ‘corporative’ system of regulation governed by the Statute of Artificers, apprenticeship was the condition of entry into a trade.³⁸ The Statute made it an offence to practice a trade, or to employ someone to do so, without an apprenticeship of at least 7 years.³⁹ The institution of apprenticeship, as Deakin and Wilkinson point out, thereby maintained producer control of the knowledge and skills of a trade, and ‘the decline of the apprenticeship system paved the way for the transition to capitalist work relations in Britain.’⁴⁰ Subsequently, apprenticeship remained a core element of the organisation strategies of craft-based trade unions in the UK until a second decline from the 1980s.⁴¹

³⁵See Adams and others (n 3) 2.23.

³⁶See the examples in M. Kuczera, *Incentives for Apprenticeship*, OECD Education Working Paper No 152 (Paris: OECD Publishing, 2017).

³⁷Deakin and Wilkinson (n 3); Deissinger and Gonon (n 13).

³⁸Deakin and Wilkinson (n 3) 47–8, 54; Adams and others (n 2), 1.6. See also E.P. Thompson, *The Making of the English Working Class* (London: Gollancz, 1963) *passim*.

³⁹Elizabeth I c.4 s. 21, ss 31, 33; Deakin and Wilkinson (n 3) 48, 54.

⁴⁰Deakin and Wilkinson (n 3) 54. On the decline of this system, see *ibid.* 54–8. On Germany, see R. Biernacki, *The Fabrication of Labor: Germany and Britain, 1640–1914* (Berkeley: University of California Press, 1995).

⁴¹See further P. Ryan, ‘Trade Union Policies Towards the Youth Training Scheme: Patterns and Causes’ (2009) 33 *BJIR* 1, ‘Apprentice Strikes, Pay Structure and Training in the Twentieth Century UK Metalworking Industry’ in C. Brown et al. (eds), *Labor in the Era of Globalization* (Cambridge: CUP, 2012) 317; Adams and others (n 3) 150–3. For comparisons of the UK and Germany, see T. Deissinger, ‘Apprenticeship Systems in England and Germany’ (n 32); F. Behling, *Welfare Beyond the Welfare State: The Employment Relationship in Britain and Germany* (London: Palgrave-Macmillan, 2018).

new instruments were silent on apprenticeships. The same approach was reflected in the Human Resources Development Recommendation, 2004 (No 195), which superseded Recommendation No 150. In its 1991 General Survey on Human Resources Development, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) elaborated upon the rationale for this change:

[The 1975 instruments] marked a move away from the traditional concept of vocational training purely as a means to achieve balance on the employment market and towards a broader and more dynamic concept of ‘human resources development’ as a major factor of economic and social development. This new term embraced training and guidance as part of a continuous and lifelong process of expanding the individual’s opportunities for education, both in the individual’s own interest and for the welfare of the community, thus contributing also to the achievement of social justice and equity.⁴⁶

From 1975, then, there were no detailed ILO standards on apprenticeships, although they continued to be mentioned in other instruments, either directly or in more general references to education and training.⁴⁷ The absence of more targeted provisions on apprenticeship was highlighted by a significant regional initiative. In 2018 the EU adopted a Recommendation on a European Framework for Quality and Effective Apprenticeships.⁴⁸ This encourages EU Member States, in accordance with national legislation and in close cooperation with stakeholders, to ensure that apprenticeship schemes are responsive to labour market needs and provide benefits to both learners and employers.⁴⁹

In 2017, apprenticeships were identified as a significant gap in international labour standards.⁵⁰ After some initial resistance,⁵¹ the ILO’s Governing

⁴⁶CEACR, *Human Resources Development: Vocational Guidance and Training, Paid Educational Leave*, ILC, 78th session (1991) 3. For further discussion of Convention No 142, see CEACR, *General Survey Concerning Employment Instruments*, Report III(1B), ILC, 99th session (2010) ch II.

⁴⁷White Report (n 8) 20–2. Most notably for present purposes, Art 15(f) of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No 204) explicitly alludes to informal apprenticeships.

⁴⁸Council of the EU (n 19).

⁴⁹For a comparison between this measure and the new ILO Recommendation, see J. Bridgford, ‘Quality Apprenticeships in the ILO and EU: Intersections and Divergences’, 8th Regulating for Decent Work Conference, Geneva (10 July 2023).

⁵⁰ILO, *The Standards Initiative: Report of the Second Meeting of the Standards Review Mechanism Tripartite Working Group*, GB.328/LILS/2/1(Rev.) (Geneva: ILO, 2017) 6, 11.

⁵¹C. La Hovary, ‘The Impact of the Standards Review Mechanism on the Future of ILS: Not Even Diamonds are Forever’ in B. Langille and A. Trebilcock, *Social Justice and the World of Work: Possible Global Futures* (London: Bloomsbury, 2023) 167, 170–1.

Body resolved to debate the adoption of a new standard. The first of two scheduled discussions were held at the 110th session of the ILC in 2022, informed by a report on existing law and practice,⁵² together with the results of a questionnaire directed to member States.⁵³ There was strong support for a new instrument, with most respondents preferring a Recommendation rather than a Convention.⁵⁴

In June 2022, after detailed deliberations by the Standard-Setting Committee,⁵⁵ the ILC resolved to debate a ‘Recommendation concerning a framework for quality apprenticeships’ at its next session.⁵⁶ Following a review of the conclusions and a call for feedback on certain issues,⁵⁷ a revised proposal was prepared by the Office.⁵⁸ While the second discussion in 2023 saw a number of further amendments being agreed,⁵⁹ the recommendation on quality apprenticeships ultimately adopted differed only in minor ways from the version agreed upon the previous year.⁶⁰

Recommendation No 208 is notable for its emphasis on promoting the value and uptake of apprenticeships,⁶¹ the prominent role envisaged for employer associations and trade unions in the design and oversight of apprenticeship systems;⁶² and a recognition of both the role of ‘intermediaries’ in facilitating or supporting apprenticeships and the need to regulate their activities.⁶³ Both the Workers’ and Employers’ Groups expressed

⁵²White Report (n 8).

⁵³Yellow Report (n 8).

⁵⁴Ibid. 13–5.

⁵⁵First Discussion (n 9).

⁵⁶Resolution to place on the agenda of the next ordinary session of the Conference an item entitled ‘Apprenticeships’, Resolution III, ILC, 110th Session (2022).

⁵⁷Brown Report (n 8).

⁵⁸Blue Report (n 8).

⁵⁹Second Discussion (n 9).

⁶⁰*Plenary Sitting: Outcome of the Work of the Standard-Setting Committee on Apprenticeships*, Record No 5C, ILC, 111th session (2023).

⁶¹See especially the detailed provisions in Section VI (paras 25–27), as well as the further provisions in Section VII concerning international, regional and national cooperation.

⁶²Besides the general exhortations to this effect in Paragraphs 4 and 6, explicit mention is made of such organisations being: represented on regulatory authorities (para 7) and included in any process for determining whether an occupation is suitable for apprenticeships (para 9). They should also be consulted over the development of apprenticeships standards (para 10), model apprenticeship agreements (para 19), promotional strategies (para 25), and measures to encourage transitions from the informal to the formal economy (para 27). Paragraph 13(a) encourages Members to take measures to ‘develop and strengthen the capacity’ of employer and worker organisations.

⁶³Paragraph 12(c), for example, provides that ‘Members should prescribe the conditions under which ... intermediaries may coordinate, support or assist in the provision of apprenticeships’. Paragraph 10(d) also lists the responsibilities of intermediaries as a matter that should be addressed by general or occupation-specific standards for the conduct of apprenticeships.

208 should be recognised, we contend, as shifting work-based learning more emphatically into the realm of labour law. It envisages apprentices as entitled to a much wider range of labour rights, including through a heightened interaction with other international labour norms.

One of the Recommendation's critical advances, unstated in the Committee discussions and therefore worth stressing, is that it marks the first explicit recognition in an international labour standard that the fundamental rights extend to apprentices. Paragraph 15 specifically exhorts Members to take measures in relation to apprenticeships to 'respect, promote and realise the fundamental principles and rights at work' (freedom of association and access to collective bargaining, freedom from forced labour, the abolition of child labour, protection against discrimination, and a safe and healthy working environment⁶⁹).

It is worth singling out, in this regard, the unambiguous recognition that the rights to freedom of association and collective bargaining encompass apprentices. This aspect of the Recommendation should, we suggest, be recognised as a notable international-level statement on the scope and role of collective labour rights, and also as a recognition of the longstanding organisational dimension of apprenticeship regulation discussed in Part 3. The adoption of the Recommendation could be a valuable opportunity for trade unions, having the potential to galvanise the organisation of apprentices, including by conveying an international-level antipathy towards the replacement of unionised workers by unorganised apprentices.⁷⁰ The Recommendation's explicit recourse to the fundamental rights, further, is entwined with an evolving reflection upon the role of employment status in the protection of apprenticeships, and of workers more broadly. The Recommendation, as we have noted, acknowledges that the fundamental

⁶⁹ILO Declaration on Fundamental Principles and Rights at Work, 1998 (as amended), encompassing Forced Labour Convention, 1930 (No 29), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), Right to Organise and Collective Bargaining Convention, 1949 (No 98), Equal Remuneration Convention, 1951 (No 100), Abolition of Forced Labour Convention, 1957 (No 105), Discrimination (Employment and Occupation) Convention, 1958 (No 111), Minimum Age Convention, 1973 (No 138), Occupational Safety and Health Convention, 1981 (No 155), Worst Forms of Child Labour Convention, 1999 (No 182) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No 187). Paragraph 10(a) and (b) of Recommendation No 208 also specifically reference four core Conventions (Nos 138, 182, 155 and 187) in recommending that occupation-specific or general standards for apprenticeships should address the minimum age of admission, and occupational safety and health.

⁷⁰This risk is also addressed by the recommendation in Paragraph 10(f) that the replacement of workers should be avoided. See also Section 6 below.

rights apply even in the absence of a contract of employment. The instrument thereby makes a significant contribution to the unfolding reconsideration of the linkage of labour rights with employment status, which we discuss further below. The path to this advance was smoothed by a shift in the Employers' Group's stance between the first and second discussions at the ILC: from insisting that the fundamental rights do not apply to apprenticeships in the absence of an employment relationship,⁷¹ to defending the Worker Vice-Chairperson's assertion that freedom of association extends to all in a workplace irrespective of status.⁷²

Beyond the fundamental rights, Paragraph 16 calls for wide-ranging protections, most associated with the corpus of international labour standards, concerning remuneration, working hours limits, paid holidays, sick pay, injury compensation, paid family leave, social security and maternity protection, access to effective complaints and dispute resolution mechanisms, and the protection of personal data.

The recommendation's treatment of remuneration is worth singling out, given the debate it generated during the first discussion.⁷³ Payments to apprentices can take different forms, including wages, training allowances, stipends and payments-in-kind.⁷⁴ Ultimately, the Committee opted to speak of 'adequate remuneration or other financial compensation', both as an entitlement listed in Paragraph 16 and as an element of the definition of 'apprenticeship' in Paragraph 1(a).⁷⁵ This terminology was intended to capture the range of forms and sources of payments to apprentices. Arguably, a reference to 'remuneration' would have been sufficient. The breadth of that concept is emphasised by Article 1(a) of the Equal Remuneration Convention, 1951 (No 100), which defines it to include 'the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind'. The CEACR, further, has clarified that 'remuneration' includes allowances paid under social security schemes financed by the undertaking or industry concerned.⁷⁶ Nevertheless, the

⁷¹First Discussion (n 9) para 1023. See also para 231.

⁷²Second Discussion (n 9) paras 316–7.

⁷³First Discussion (n 9) paras 342–74, 491–501, 1046–74, 1088–99, 1277–9.

⁷⁴See eg Ryan, 'Apprenticeship' (n 2) 417–9.

⁷⁵The reference to remuneration needing to be 'adequate' had previously appeared in Paragraph 7(4) of the Vocational Training Recommendation, 1962 (No 117), in relation to all persons 'training in undertakings'.

⁷⁶CEACR, *Giving Globalization a Human Face: General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report III (Part 1B), ILC, 101st Session (2012) paras 686–92 (Geneva: ILO, 2012).

addition of ‘other financial compensation’ confirms that apprentices may legitimately receive payments from sources other than the host enterprise, such as stipends or allowances provided by or through educational or training institutions or government agencies. Crucially, too, these payments must be adequate.

On the role foreseen for institutional frameworks and work cultures, the instrument is closely aligned with a 2017 Office guide for policymakers.⁷⁷ As summarised in the White Report,⁷⁸ the Office identified a range of supports (‘building blocks’) for an effective apprenticeship system: a robust regulatory framework; meaningful social dialogue; clear roles and responsibilities; equitable funding arrangements; strong labour market relevance and inclusiveness.⁷⁹ These features, and others, are explicitly acknowledged in the ninth paragraph of the preamble to Recommendation No 208:

an effective framework for quality apprenticeships requires apprenticeships to be well regulated, sustainable, sufficiently funded, inclusive and free from discrimination, violence and harassment and exploitation, to promote gender equality and diversity, to provide adequate remuneration or other financial compensation and social protection coverage, to lead to recognized qualifications and to enhance employment outcomes

Institutional/organisational supports for these protections are then operationalised in the Recommendation, in a separate part devoted to regulatory frameworks (Section II), as well as exhortations for consultation with the social partners which are both overarching (para 4) and specific (paras 10, 19, 25, 27); a call for clearly defined responsibilities of both public authorities (para 8) and apprentices, employers, educational and training institutions and intermediaries (para 10(d)); references to adequate funding of those authorities (para 8) and labour market relevance (para 10(i)) and a part that centres inclusiveness among the objectives of an apprenticeship system (Section V).⁸⁰

Having highlighted the ways in which the Recommendation represents an advance on previous conceptions of a decent apprenticeship, our second general point about the new instrument’s comparatively robust framework involves one of the galvanising issues in modern labour law, that of the

⁷⁷ILO, *ILO Toolkit for Quality Apprenticeships* (n 19).

⁷⁸White Report (n 8) 8.

⁷⁹*Ibid.* The *ILO Toolkit for Quality Apprenticeships* (n 19) also refers to a tripartite system of governance.

⁸⁰See further Section 7 below.

expansive scope of labour protections is either specified in legal instruments themselves or is realised through the rulings of adjudicative and interpretative bodies, including the ILO's supervisory bodies. The Recommendation illustrates some of the complexities of this evolution. Apprentices may be entitled to the protection of international standards, beyond those that contain the entitlements mentioned in the Recommendation. These may provide more extensive protections than paragraphs 15–16 would suggest, vary among member States, and apply on a compulsory rather than advisory basis.

Many ILO instruments explicitly extend to all 'workers', or indeed 'persons'.⁸⁵ This is true of the fundamental Conventions, the application of which to apprentices is now explicitly confirmed, as noted above, by Paragraph 15 of the Recommendation. Those standards were already expected to be respected in all member States, 'apply[ing] irrespective of the kind of contractual arrangement (if any) under which individuals are engaged and, with very limited exceptions, irrespective of the sector of the economy in which they work'.⁸⁶ Hence, for example, all persons hired under training agreements, including apprentices, were already considered by the Committee on Freedom of Association to have the right to join workers' organisations and participate in their activities, regardless of whether they are employed.⁸⁷ In a similar vein, Article 2(a)(ii) of the HIV and AIDS Recommendation, 2010 (No 200) expresses an intention to cover 'all workers working under all forms or arrangements, and at all workplaces, including ... those in training, including interns and apprentices'.⁸⁸

⁸⁵The following discussion is drawn from the White Report (n 8) 22–3. It is notable that the personal scope of the right to work in Article 6 of the International Covenant on Economic, Social and Cultural Rights is similarly expansive. On the human rights dimension of apprenticeship and training, in particular in relation to the right to work, see further S. Deakin, 'Article 15 – Freedom to Choose an Occupation and Right to Engage in Work' in F. Dorssemont and others, *The Charter of Fundamental Rights of the European Union and the Employment Relation* (Oxford: Hart, 2019) 331; A. Eleveld and others, 'Implementation of the European Youth Guarantee and the Right to Work: A Comparative Analysis of Traineeships Programmes under the EU Active Labour Market Policy' (2022) 38(3) *IJCLLIR* 269.

⁸⁶B. Creighton and S. McCrystal, 'Who Is A 'Worker' In International Law?' (2016) 37 *CLLPJ* 691, 706.

⁸⁷Committee on Freedom of Association, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association* (6th edn, Geneva: ILO, 2018) para 394.

⁸⁸Cf Art 2(1) of the Violence and Harassment Convention, 2019 (No 190), which expressly brings 'persons in training, including interns and apprentices' within the coverage of the instrument, but without explicitly recognising such persons as 'workers'.

Recalling the overarching principle of equal pay for work of equal value, the Committee considers that persons covered by apprenticeship or traineeship contracts should only be paid at a differentiated rate where they receive actual training during working hours at the workplace. In general, the quantity and quality of the work performed should be the decisive factors in determining the wage paid.⁹⁵

6. APPRENTICESHIPS AS A CONDUIT TO UNACCEPTABLE WORK

The risk that apprenticeships can be associated with labour market precarity was not a central concern of the earlier ILO training instruments. In line with the dominant orientation of apprenticeship policy towards the education realm, the core risk for apprentices was assumed to be poor quality of training, rather than the presence of mistreatment or exploitation.⁹⁶ The new Recommendation, by contrast, aspires to prevent various forms of potential abuse, both within individual working relationships and through the design and implementation of apprenticeship programmes. This innovation is a telling response to the expansion of workplace training mechanisms, heightening awareness of the concern that they may disguise unacceptable forms of work (UFW).⁹⁷ That risk had been explicitly recognised by the ILC in a 2012 resolution concerning the high rates of youth unemployment in the wake of the global financial crisis of 2008–09. The Conference cautioned that apprenticeships, internships and other work experience schemes may be used ‘as a way of obtaining cheap labour’.⁹⁸ Governments were encouraged to regulate and monitor these forms of training ‘to ensure they allow for a real learning experience and do not replace regular workers’.⁹⁹

The shift towards acknowledging the apprenticeship/precarioussness nexus is reflected in at least two ways in Recommendation No 208. First, the twelfth paragraph of the preamble recalls a set of ILO Declarations deemed relevant to the promotion of quality apprenticeships and to the effective

⁹⁵CEACR, *Minimum Wage Systems: General Survey of the Reports on the Minimum Wage Fixing Convention, 1970 (No 131) and the Minimum Wage Fixing Recommendation, 1970 (No 135)*, Report III(1B), ILC, 103rd Session (2014), para 188.

⁹⁶Although Paragraph 2(4) of the Vocational Training Recommendation, 1962 (No 117) did express a requirement that training be free from any form of discrimination; see Part 7 below.

⁹⁷On UFW, see D. McCann and J. Fudge, ‘Unacceptable Forms of Work: A Multidimensional Model’ (2017) 156 *Int Lab Rev* 147.

⁹⁸ILO, ‘The Youth Employment Crisis: A Call for Action’, ILC, 101st Session (Geneva: ILO, 2012) para 24.

⁹⁹*Ibid.* para 26(e). On internships, see Owens and Stewart (n 7); and see further Section 8 below.

protection of apprentices. This list, notably, extends beyond the fundamental principles and rights. The references to the 2008 Declaration on Social Justice for a Fair Globalization and the 2019 Centenary Declaration for the Future of Work, in particular, recognise risks to decent working conditions that lie beyond the purview of the fundamental Conventions.

Second, the recognition that apprenticeships can manifest precarity appears in elements of the Recommendation that explicitly envisage abuse. Most transparent is the Recommendation's recognition of exploitation as a potential feature of apprenticeships. The ninth paragraph of the preamble elaborates an aspiration that apprenticeships be free from exploitation, while Paragraph 22 calls on Members to take effective measures to prevent and eliminate exploitation, along with discrimination, violence and harassment, and to ensure that apprentices have access to meaningful remedies. The risk of apprentices being used as cheap labour and undermining broader workforce protections—the longstanding concern about substitution¹⁰⁰—is also explicitly addressed by Paragraph 10(f), which encourages general or occupation-specific standards to regulate 'the appropriate balance between apprentices and workers in the workplace', taking into account (among other things) 'the need to avoid the replacement of workers'.

The terminology of exploitation was vigorously debated by the Standard-Setting Committee. The first discussion explored the presence and status of the language of exploitation in the international normative corpus. In response to an objection by the Employer Vice-Chairperson that the term was 'intemperate and unparliamentary',¹⁰¹ the Office highlighted the relatively frequent references to exploitation across a range of international labour standards.¹⁰² Despite continuing objections from the Employers'

¹⁰⁰On the problem of substitution, see eg Freedland, 'Labour Law and Leaflet Law' (n 5) 233; J. Mohrenweiser and U. Backes-Gellner, 'Apprenticeship Training – What For: Investment or Substitution' (2010) 31(5) *Int J Manpower* 545; Wolter and Ryan (n 2). On the broader concern about the promotion of youth employment through a levelling down of employment rights, see J.J. Votinius, 'Young Employees: Securities, Risk Distribution and Fundamental Social Rights' (2014) 5(3–4) *Eur Lab LJ* 366.

¹⁰¹First Discussion (n 9) para 320.

¹⁰²The Indigenous and Tribal Populations Recommendation, 1957 (No 104), the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No 168) and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No 169) (in relation to migrant workers). In addition, exploitation is mentioned in the Recruitment and Placement of Seafarers Recommendation, 1996 (No 186). 'Sexual exploitation' is referred to in the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No 205), the HIV and AIDS Recommendation, 2010 (No 200), and the Protocol of 2014 to the Forced Labour Convention, 1930 (No 29).

Group,¹⁰³ a reference to exploitation was added to the draft preamble.¹⁰⁴ By the following year, however, opposition to this terminology had dissipated. When Paragraph 22's call for members to prevent and eliminate exploitation was added through an amendment proposed in the second discussion by the government member of Uganda, speaking on behalf of the Africa Group, it was supported by both the Workers' and Employers' Groups without protest.¹⁰⁵

This alertness to the potential for apprenticeships to host and nourish mistreatment, abuse and exploitation, then, merges with mainstream labour law's now-solidified attention to precarious work.¹⁰⁶ Further, it reflects an insight from a range of literatures (on precariousness, vulnerability, informality, job quality, decent work, etc) that UFW are centred in labour market constituencies that are already at risk of social and economic disadvantage, and that these groups include young workers.¹⁰⁷ These literatures identify the risks of poor quality working relationships at labour market entry as encompassing training relationships, including with potential repercussions for a young worker's future experience of employment.¹⁰⁸ In consequence, precarity in entry or training commonly features in typologies of decent/poor quality jobs. McCann and Fudge's Multidimensional Model of UFW, as an example, includes lack of opportunities for skill development or training among the indicators in its 'security' dimension.¹⁰⁹

The Recommendation's references to unacceptable work are significant for the evolution of international labour standards in a number of ways. First, the particular vulnerability of young workers to exploitation has been

¹⁰³The Employer Vice-Chairperson suggested the term was 'not contemporary and associated with unique vulnerabilities' and was inappropriate in the context of a contemporary learning environment: First Discussion (n 9) para 323. This was disputed by the government member of New Zealand: *ibid.* para 324.

¹⁰⁴*Ibid.* para 326.

¹⁰⁵Second Discussion (n 9) paras 536–40. Paragraph 24 of the Recommendation also calls upon Members to take measures to promote access to quality apprenticeships to facilitate the transition from insecure to secure work 'that is decent and provides access to social security and labour protection'.

¹⁰⁶See eg S. Fredman, 'Labour Law in Flux: The Changing Composition of the Workforce' (1997) 26 *ILJ* 337; J. Fudge, 'Fragmenting Work and Fragmenting Organizations: The Contract of Employment and the Scope of Labour Regulation' (2006) 44(1) *OHLJ* 4, 622; D. McCann, *Regulating Flexible Work* (Oxford: OUP 2008).

¹⁰⁷McCann and Fudge (2017) (n 97) 148.

¹⁰⁸See eg Rosin (n 81); P. Auer and S. Cazes, *Employment Stability in an Age of Flexibility. Evidence from Industrialized Countries* (Geneva: International Labour Office, 2003).

¹⁰⁹McCann and Fudge (2017) (n 97) Table 7. Training also features in the Equality, Human Rights and Dignity dimension of this Model: *ibid.*

recognised at the international level. It has also become clear, second, that training standards can no longer be articulated in isolation from broader regulatory objectives related to the curbing of precarious work. The preoccupations of ‘mainstream’ standards, that is to say, are shifting into the realm of training, including in calls for legislative entitlements for this set of ‘non-standard’ workers, the recognition of their freedom of association and collective bargaining rights, and the involvement of employers’ and workers’ associations in the design and implementation of regulatory regimes. Finally, UFW was also identified, in this standard-setting process, in relation to informal work—a point to which we return in Part 9.

7. A NEW REGULATORY OBJECTIVE: EQUALITY, DIVERSITY AND INCLUSION

In conjunction with identifying labour market entry and transition as sites in which precarity can be both triggered and averted, the new Recommendation exhibits another evolving trend. It confirms EDI as both a distinct objective of apprentice regulation and an increasingly prominent and cross-cutting dimension of twenty-first-century labour standards.

The inequalities associated with apprenticeship schemes are well documented through longstanding evidence that certain labour market constituencies face barriers to access, including women, persons with disabilities, religious and ethnic minorities, migrants, and refugees.¹¹⁰ This has included the conscious use of apprenticeships to restrict entry to certain occupations.¹¹¹ The academic literature has called for a reckoning with how inequalities manifest in VET and are shaped by institutions, cultures and labour markets,¹¹² while EDI is a feature of typologies

¹¹⁰C. Chadderton and A. Wischmann, ‘Racialised Norms in Apprenticeship Systems in England and Germany’ (2014) 66(3) *J Voc Educ Training* 330–47; T. Deissinger, ‘The German Dual Vocational Education and Training System as ‘Good Practice?’’ (2015) 30(5) *Local Economy* 557; C.H. Jorgensen, ‘Some Boys’ Problems in Education: What is the Role of VET?’ (2015) 67(1) *J Voc Educ Training* 62; ILO *Toolkit* (n 18) 51, 52, 93–103; B. Niemeyer and H. Colley, ‘Why Do We Need (Another) Special Issue on Gender and VET?’ (2015) 6(1) *J Voc Educ Training* 1; OECD, *Seven Questions about Apprenticeships: Answers from international Experience* (Paris: OECD, 2018) 132; K. Evans, ‘The Challenges VET Faces Through its Intersection with Social Class, Gender, Ethnicity, and Race’ in *Guile and Unwin* (n 2) 457.

¹¹¹See eg V. Wedekind, ‘Rearranging the Furniture? Shifting Discourses on Skills Development and Apprenticeship in South Africa’ in *Apprenticeship in a Globalised World: Premises, Promises and Pitfalls*, INAP (Network on Innovative Apprenticeship) Conference, University of Witwaterstrand, Johannesburg, 23–24 April 2013).

¹¹²See eg Evans (n 110) 457.

of un/acceptable work, both generally and specifically in relation to VET.¹¹³

The ILO had previously recognised anti-discrimination as an objective of training schemes, both singling out training in anti-discrimination standards and incorporating equality, especially for women, into training standards. The Discrimination (Employment and Occupation) Convention, 1958 (No 111) extends to access to vocational training (Art 1(3)), while Articles 21–22 of the Indigenous and Tribal Peoples Convention, 1989 (No 169) and Article 8(2) of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No 143) both include a right to equal treatment in training. In the older training standards, Recommendation No 117 included among its general principles that training should be free from any form of discrimination on the basis of ‘race, colour, sex, religion, political opinion, national extraction or social origin’ (Art 2(4)). Article 1(5) of Convention No 142 and Paragraphs 4(4) and 5(2)(a) of Recommendation No 150 stressed that all persons should be supported to develop and use their capabilities without discrimination, including through equal access to vocational guidance and training. Section VIII of the Recommendation was devoted to equality of opportunity for women and men, in proposals that encompassed awareness-raising on women’s equal role in waged labour, tailored vocational guidance for girls and women, and, strikingly, a call for day-care and other child services and for accommodations to permit women to participate in training, such as part-time or correspondence courses. Its replacement, Recommendation No 195, is broader in its vision of equality, if less forthcoming on policy detail. It calls for equal opportunities for ‘all workers’ (para 9(i)), including women (5(g), 9(h)), but also other ‘specific groups’ and people with special needs, including youth, the low-skilled, people with disabilities, migrants, older workers, indigenous people, ethnic minorities and the socially excluded (5(h), 9(h)).¹¹⁴

Recommendation No 208 advances these prior training standards by integrating the more expansive concept and policy orientation of EDI. At the aspirational level, the preamble’s ninth paragraph asserts that effective apprenticeship frameworks are inclusive. In the substantive clauses, Section V elaborates a suite of recommendations on ‘Equality and Diversity in Quality Apprenticeships’, centrally in a call in Paragraph 20 for member

¹¹³McCann and Fudge’s Multidimensional Model of UFW, for example, includes an Equality, Human Rights and Dignity dimension, which, as noted earlier, explicitly includes access to education and vocational training: McCann and Fudge (2017) (n 97) Table 7.

¹¹⁴Paragraph 7 of the Employment Policy Recommendation, 1984 (No 169) calls on member States to eliminate discrimination in access to vocational guidance and training.

These aspects of the new instrument, we suggest, are compelling for broader labour regulation literatures and policies in a least two ways. First, the instrument represents an explicit rhetorical/regulatory shift in the international realm, from anti-discrimination and equality to the broader and more complex demands of EDI. It also indicates an evolving interplay among the international labour standards, including in labour law sub-fields that hitherto have been widely perceived as distinct. In particular, at least some EDI objectives may have been considered distant from the aims and content of ‘employment standards’ (those classified by the ILO as related to ‘Employment Policy and Promotion’ or ‘Vocational Guidance and Training’).¹¹⁷ More specifically, the presence of EDI in Recommendation No 208 can plainly be attributed to the gravitational pull of the Violence and Harassment Convention, 2019 (No 190), which was repeatedly referenced during the Standard-Setting Committee’s deliberations.¹¹⁸ Recommendation No 208 echoes the terminology of inclusiveness in this earlier standard, the preamble of which urges ILO member States to adopt an ‘inclusive, integrated and gender-responsive approach’ to the prevention and elimination of violence and harassment in the world-of-work (preambular para 11).

8. THE EXCLUSION OF INTERNSHIPS AND TRAINEESHIPS

A further crucial element of Recommendation No 208 is its exclusive focus on apprenticeships. These working relationships are singled out from among the broader forms of work-based training that include, in the evolving terminology, ‘internships’, ‘work experience’, ‘placements’ and ‘traineeships’.¹¹⁹ The restrained scope of the Recommendation was a conscious—and contested—element of the standard-setting process. It unfolded as a retreat from a more expansive regime that would have encompassed measures to protect other types of trainee.

The initial proposals for an instrument, offered by the Office as a basis for the first ILC discussion, envisaged a limited set of provisions in a Section VI applicable to ‘traineeships’, defined as:

¹¹⁷See eg <www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/lang-en/index.htm> accessed 28 March 2024.

¹¹⁸See in particular First Discussion (n 9) paras 1364–88.

¹¹⁹See further Owens and Stewart (n 7).

[A]ny form of on-the-job learning, other than as part of an apprenticeship, that enables a trainee to acquire work experience and competencies with a view to enhancing their employability, and includes any form of internship or placement, whether or not undertaken as part of a programme of study.¹²⁰

The jettisoned section specified a set of entitlements for trainees that would have included a written agreement, ‘appropriate’ remuneration, working hours limits, paid holidays, sick leave, accident compensation and access to workplace protection and training on occupational safety and health, and discrimination, violence and harassment.¹²¹

Prior to the first discussion in 2022, the responses to the Office questionnaire evidenced strong support for the traineeship proposals, especially from governments.¹²² This element of the proposals, however, did not survive the first discussion, in which the Employers’ Group successfully led a push to remove all reference to trainees and traineeships.¹²³ A majority of the Standard-Setting Committee opposed the inclusion on the grounds that traineeships require detailed attention and analysis, that the mandate of the Committee was confined to apprenticeships, and that coverage of traineeships could dilute the focus of the new instrument.¹²⁴

Members of the Committee expressed the view, nevertheless, that traineeships are crucial to skills, productivity and employment opportunities and a vital element of the future of work, and that they require urgent, focused attention, including to protect trainees.¹²⁵ In lieu of adopting the measures proposed in the Yellow Report, the Committee recommended instead that

¹²⁰ Yellow Report (n 8) 138. The term ‘traineeship’ is used in parts of Europe in place of ‘internship’. As to the meaning of these terms, and the distinction between traineeships/internships and apprenticeships, see A. Stewart, ‘The Nature and Prevalence of Internships’ in A. Stewart and others (eds), *Internships, Employability and the Search for Decent Work Experience* (Cheltenham/Geneva: Edward Elgar/International Labour Office, 2021) 17, 19–23. See also *European Youth Forum (YFJ) v Belgium*, European Committee of Social Rights, Complaint No 150/2017, 8 September 2021, [68]–[70].

¹²¹ Yellow Report (n 8) 142. For the background to these proposals, see White Report (n 8) ch 6, which draws heavily on A. Stewart and others, *The Regulation of Internships: A Comparative Study*, Employment Policy Department Working Paper No 240 (Geneva: International Labour Office, 2018).

¹²² Yellow Report (n 8) 31–3, 125–36.

¹²³ The government members of France (on behalf of EU member states), Kenya (on behalf of the Africa Group) and Canada (on behalf of Switzerland and the United States) had also submitted amendments to delete any reference to traineeships: First Discussion (n 9) paras 529–36, 1762.

¹²⁴ *Ibid.* para 529.

¹²⁵ *Ibid.* para 1763–4. As to the various concerns expressed regarding traineeships, see *ibid.*, paras 10–1, 38, 51, 531, 1763.

the Office develop proposals for the ILO Governing Body regarding ‘the modalities, provision and conditions of traineeships and other forms of work-based learning.’¹²⁶

The approach ultimately taken by the ILC conceives apprenticeships as a discrete site of regulation among the broader array of work-based training mechanisms, generating a targeted and detailed instrument while highlighting an urgent need for additional international-level interventions. The narrowed focus is, to some degree, a departure from the previous trend in the international normative landscape towards recognising the role of apprenticeships as part of a broader suite of work-based learning arrangements. Recommendation No 117 in particular extended to ‘all training, designed to prepare or retrain any person for initial or later employment or promotion in any branch of economic activity.’¹²⁷ Inclusion of traineeships would have promoted protection of a wider range of workers in labour market entry or transition, enhanced the role of the Recommendation in targeting the continuum between decent and unacceptable work,¹²⁸ and further strengthened the regulatory recognition of training or pseudo-training relationships as conduits to precariousness.¹²⁹

The jettisoning of traineeships from the standard was not, however, merely a missed opportunity for ILO standards to address an important aspect of the future of work. It also presented, simultaneously, as a problem for how Recommendation No 208 conceptualises and regulates informal apprenticeships, a point to which we now turn.

¹²⁶Ibid paras 1764–5. This request was reiterated in the second discussion by both the Africa Group and GRULAC (the Group of Latin America and the Caribbean): Second Discussion (n 9) paras, 15, 759, 761. The importance of taking action was also emphasised by the Workers Group: *Plenary Sitting: Outcome of the Work of the Standard-Setting Committee on Apprenticeships* (n 50) 8. On the development of appropriate standards for such arrangements, see A. Stewart and others, ‘Developing New Standards for Internships’ in Stewart and others (eds), *Internships, Employability and the Search for Decent Work Experience* (n 120) 335.

¹²⁷Other than training for management, for seafarers and in agriculture (para 1). As outlined in Part 4 above, in the Human Resources Development standards, adopted in 1975, training was seen as a lifelong process of continuing education.

¹²⁸D. McCann and J. Fudge, ‘A Strategic Approach to Regulating Unacceptable Forms of Work’ (2019) 46 *J Law Society* 271, 276.

¹²⁹On the characterisation of internships as a form of precarious work, see G. Standing, *The Precariat: The New Dangerous Class* (London: Bloomsbury Academic 2011) 16, 75–6; R. Perlin, *Intern Nation: How to Earn Nothing and Learn Little in the Brave New Economy* (rev edn, London, New York: Verso Books, 2012) 36–41, 197–202.

9. INFORMALITY AND TRANSITION IN A NEW NORMATIVE ARENA

There were vigorous debates during the standard-setting process over how to configure informality, formality, and the path and prompts towards a transition from one state to the other. The outcomes will have enduring significance for domestic regulatory frameworks on apprenticeships and for international-level discourses on the concept and regulation of informal work. The Quality Apprenticeship standard-setting, it is argued in this Part, is of crucial importance to the ILO, and for other regulatory and scholarly projects that engage with the definition of informal work, its place on the continuum with formal work, its value, and its interaction with state or social partner-led regulation. These contentions are advanced through exploring informality in the apprenticeship standard-setting process as a definitional/conceptual challenge (Part 9(i)), the Standard-Setting Committee's preference for the dual training model and the consequential place of informal apprenticeships within the Recommendation's regulatory schema (Part 9(ii)), and the Recommendation's role in the evolution of the ILO's vision of informality and transition (Part 9(iii)).

A. Informality as a Definitional and Conceptual Challenge

During the apprenticeship standard-setting process, the issue of informality emerged as a matter of legal terminology and, therefore, legal concepts, as part of an intriguing debate about the definition of an 'apprenticeship'. The meaning ascribed to 'apprenticeships' is at the heart of Recommendation No 208: the opening definition in its first substantive paragraph. At the Standard-Setting Committee's first discussion, a crucial debate ensued as to whether the definition should embody the dual training model. As explained in Part 3, the 'dualist ideal' requires both on- and off-the-job learning, with competencies developed through time spent in both the workplace and the classroom and a formal qualification as the end-product. Yet informal or 'traditional' apprenticeships are much more prevalent than dual training arrangements, particularly given their presence in the Global South.¹³⁰ In many settings, as noted earlier, they are the primary mechanism for acquiring competencies for employment, through skills transfer in the workplace

¹³⁰On definitions of informality in relation to labour laws, see S. Deakin, S. Marshall and S. Pinto, 'Labour Laws, Informality and Development: Comparing India and China' in D. Ashiagbor (ed), *Imagining Labour Law for Development: Informal Work in the Global North and South* (Oxford: Hart, 2019) ch 10.

from a skilled craftsman to an apprentice.¹³¹ What these apprenticeships typically lack, even where formalised in certain respects and regulated by the state, is an element of classroom instruction.

Informal apprenticeships, are however, frequently embedded in a highly sophisticated and well-established institutional and cultural architecture. In Hofmann and colleagues' words, they are 'a complex, heterogeneous, yet self-sustained training system';¹³² and they cannot be casually dismissed as a form of exploitation.¹³³ Nor have informal apprenticeships been entirely unknown in the international normative domain. They are expressly recognised in Paragraph 15(f) of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No 204), in the context of recognition of prior learning, to which we return below.

Yet informal apprenticeships also raise the concern that they harbour low-quality work and exploitative practices.¹³⁴ ILO research on informal apprenticeships in Southern and Eastern Africa, for example, has revealed a number of shortcomings: poor quality training, unacceptable working conditions (long hours, unsafe working conditions, low/no wages), a lack of social protection, vague and poorly enforced verbal agreements, gender-based occupational segregation, and a lack of certification and widespread recognition that inhibits apprentices' mobility.¹³⁵ An international-level regulatory project on apprenticeship, then, inevitably demands a sophisticated reckoning with the role and status of informal training relationships, the place of informal apprenticeships within a global regulatory scheme and at country-level, and the repercussions of regulatory models for broader conceptual and regulatory projects on labour informality.¹³⁶

¹³¹ White Report (n 8) 56–7.

¹³² Hofmann and others (n 25) 9.

¹³³ ILO, *Upgrading Informal Apprenticeship* (n 25) 17.

¹³⁴ *Ibid* 17, 18, Table 4.

¹³⁵ White Report (n 8) 57, citing A. Aggarwal, 'Lessons Learnt from Informal Apprenticeship Initiatives in Southern and Eastern Africa' in S. Akoojee and others (eds), *Apprenticeship in a Globalised World: Premises, Promises and Pitfalls* (Zürich: LIT Verlag 2013) 113. See also A. Molz, 'Delivering TVET Through Quality Apprenticeships', Background Note, UNESCO-UNEVOC Virtual Conference, 2015; ILO, *Upgrading Informal Apprenticeship* (n 25) 2–3, 10, Hofmann and others (n 25) 14.

¹³⁶ Cf S. Akoojee and P. Werquin, 'Informal Apprenticeships for an Emerging Economy' in M. Carton and C. Hofmann (eds), *The Education-Training-Work Continuums: Pathways to Socio-Professional Inclusion for Youth and Adults* (NORRAG Special Issue 8 (Geneva: ILO and NORRAG, 2023) 16, warning against the dangers of policy interventions undermining the 'key premises, promises and potential' of such arrangements.

B. A Definitional Exclusion: Informal Apprenticeships and the Dual Training Model

The definition of apprenticeship proposed to the Standard-Setting Committee for consideration in the first discussion formally enshrined the dual training model. The term ‘apprenticeship’ was defined as education and training that, inter alia, involves ‘structured training consisting of both on-the-job and off-the-job learning’.¹³⁷ This definition thereby excluded informal apprenticeships, as well as formal apprenticeships that are restricted to on-the-job training.¹³⁸ This attracted concern from the African governments in particular. The Government member of Uganda, speaking on behalf of the Africa Group, observed that the Committee was crafting an instrument that did not recognise the reality of developing countries.¹³⁹ As the Office later summarised:

[D]uring the discussion on the definition of ‘apprenticeship’ some Committee members pointed out that, in many countries, young people are keen to acquire skills through an apprenticeship but cannot meet the minimum entry requirements of vocational education and training institutions. Many of those young people acquire the skills for a trade or craft through apprenticeships in the informal economy, learning and working side-by-side with an experienced practitioner, typically a master craftsman. These forms of traditional or informal apprenticeships usually take place in micro and small enterprises in the informal economy, and lack the element of off-the-job learning. Therefore, a number of governments noted that the proposed definition may exclude those apprentices who cannot access vocational education and training institutions.¹⁴⁰

The arguments for retaining the dual training model, while not fully elaborated in the first discussion, centred on promoting classroom-based training as part of a broader aim of preserving the ideal modern apprenticeship format.¹⁴¹ This stance echoes prominent resistance in the academic literature

¹³⁷ Yellow Report (n 8) 138.

¹³⁸ See Part 3 above.

¹³⁹ First Discussion (n 9) para 474.

¹⁴⁰ Brown Report (n 8) para 23.

¹⁴¹ The Worker Vice-Chairperson ‘considered a structured, off-the-job educational element a central part of apprenticeship’: First Discussion (n 9) para 471. She saw apprenticeships as distinct in this respect from other forms of workplace learning: *ibid* para 475. The Employer Vice-Chairperson likewise viewed an off-the-job element of training as ‘fundamental to apprenticeship arrangements’: *ibid* para 472. He did, however, suggest looking into ‘accommodating potentially any system where training would be completely on the job, at least in a transitional way’: *ibid* para 476. The EU and its Member States, India, Oman, Qatar, Saudi Arabia and the Philippines all expressed support for the retention of a dual training model: *ibid* paras 473, 477–8.

towards the inclusion of single-track training mechanisms in definitions of apprenticeship.¹⁴² The dualist model is valued as a tested route towards ensuring substantial and high-quality training, and as averting the risk of exploitation.¹⁴³ Latent, also, it can be assumed, was a desire to prevent states that currently host dual apprenticeship systems from retreating from their commitments to support training in VET institutions. This anxiety lies in part in the potential for informalisation: a discrete, and crucial, reversed formality/informality transition that involves the use of casualised and precarious forms of wage-dependent labour by formal firms, is too frequently overlooked in informality policies, and presents significant risks for the protective force of labour law.¹⁴⁴

The Africa Group was of the view that off-the-job training should be considered an optional supplement, proposing to refer in the definition merely to training ‘that could be both on- and off-the-job or entirely on-the-job’.¹⁴⁵ However, the Africa Group’s amendment did not find support,¹⁴⁶ and the requirement for dual learning was retained.

Reflecting on this aspect of the first discussion, the Office subsequently raised the possibility of broadening the definition ‘to capture all apprenticeship systems, including apprenticeships in the informal economy’, albeit without proposing revised text.¹⁴⁷ A majority of the governments and employer and worker organisations who responded to this suggestion were opposed to it, although some indicated they were willing to see the matter discussed again.¹⁴⁸ In the result, no amendments to this aspect of the apprenticeship definition were proposed during the Standard-Setting Committee’s second discussion, so the matter was not even debated. Accordingly, the dual training requirement was retained in what became Paragraph 1(a) of the new Recommendation,

¹⁴²Ryan, Gospel and Lewis (2006) (n 21); Ryan, ‘Apprenticeship’ (n 2).

¹⁴³European Commission, *Apprenticeship Supply in the Member States of the European Union* (Luxembourg: European Commission, 2012) 21.

¹⁴⁴See further D. McCann, ‘Informalisation in International Labour Regulation Policy: Profiles of an Unravelling’ in Ashiagbor (n 130), ch 3. The most recent ILO *World Employment and Social Outlook* (WESO) report notes, in relation to Asia and the Pacific, that new forms of work such as ‘gig’ and platform work are ‘presenting new challenges to reducing informality’: ILO, *World Employment and Social Outlook: Trends 2024* (Geneva: ILO, 2024) 49. On apprenticeships and ‘gig work’, see Smith (n 2).

¹⁴⁵First Discussion (n 9) para 474.

¹⁴⁶Ibid paras 475–81.

¹⁴⁷Brown Report (n 8) para 24.

¹⁴⁸Blue Report (n 8) 23–6.

reflecting what had previously been presented in ILO literature as a hallmark of *quality* apprenticeships, rather than an element of their definition.¹⁴⁹

The older ILO standards, by contrast, embodied a more expansive model. Paragraph 1 of the Apprenticeship Recommendation, 1939 (No 60) defined an apprenticeship, without any reference to the dualist ideal, as:

[A]ny system by which an employer undertakes by contract to employ a young person and to train him [sic] or have him trained systematically for a trade for a period the duration of which has been fixed in advance and in the course of which the apprentice is bound to work in the employer's service.

Similarly, Paragraph 46 of the Vocational Training Recommendation, 1962 (No 117) referred to 'systematic long-term training for a recognised occupation that takes place substantially within an undertaking or under an independent craftsman.' This Recommendation mentioned off-the-job training among matters to be taken into account in regulatory frameworks, but did not treat it as a defining feature.¹⁵⁰

In Recommendation No 208, a better formula would have defined apprenticeship to include off-the-job learning as a preferred but not essential component, not least to prompt upgrading of informal apprenticeships. A feasible formula, for example, would have required 'on-the-job training that should preferably be complemented by off-the-job learning and that leads to a recognised qualification.' This kind of definition could require, for example, an agreement to train, structured training, remuneration, and a recognised qualification. There would not need to be any requirement for a written agreement, or for a written training plan, and the resulting qualification need not be an educational diploma or degree. Such a definition would be sufficiently broad to cover at least some forms of informal apprenticeship, as well as the more formal programmes found in countries that have do not have a dual training system.

The regulatory challenge of informal apprenticeships was exacerbated, further, by the slimming of the Recommendation to apply only to

¹⁴⁹ *ILO Toolkit* (n 19) 3–4, cited in Hofmann and others (n 25) 13 (querying whether dual training is necessary even for a model of quality apprenticeship, 15). Smith has noted that this ILO definition includes many features of a 'quality apprenticeship' that are not present in many countries, such as social protection coverage, formal assessment, both on- and off-the-job learning, and a qualification. She concludes that should be viewed as aspirational rather than descriptive: Smith (n 2) 72.

¹⁵⁰ Referring in Paragraph 51(e) and (f) to a schedule of 'theory and related instruction' and release from work for the purpose of attendance at a training institution.

apprenticeships as narrowly defined, rather than to other forms of work-based training, through the jettisoning of the proposed clauses on traineeships (see Part 8 above). The traineeship dimension of the standard would have covered informal apprenticeships. With the excision of traineeships from the Recommendation, single-track-learning apprenticeships—and therefore informal apprenticeships—shifted entirely beyond the scope of the new standard. The risk, then, is that informal apprenticeships will continue to be unregulated by formal norms, or regulated with limited international-level guidance, despite being more numerous than dual training arrangements and equally in need of policy interventions that would eliminate unacceptable forms of work.

Ultimately, the locus for regulation of informal apprenticeships in the final text of the Recommendation shifted to ‘recognition of prior learning’ (RPL). This mechanism seeks to value skills gained prior to the start of an apprenticeship. It is defined in Paragraph 1(d) as the certification of competencies acquired through ‘formal, non-formal or informal learning’.¹⁵¹ Paragraph 27(d) encourages ILO member States to adopt a process to recognise prior learning, including when acquired in the informal economy, and to encourage the provision of bridging courses.¹⁵² In that regard, the final text is an advance on earlier iterations of the Recommendation, which did not suggest specific measures to recognise skills gained in informal training or ways to bridge informal and formal apprenticeships.¹⁵³ The final text reflects Paragraph 15(f) of Recommendation No 204, which calls on ILO member States to consider education and skills development policies that recognise prior learning, including through informal apprenticeship systems

This inclusion of RPL is a valuable step towards bridging informal and formal apprenticeships, especially if an element of broader strategies towards the informality/formality transition, on which see further Part 9(iii) below. Yet the inclusion of the dual model in the apprenticeship definition itself excludes most informal apprenticeships from the Recommendation’s protections, and the instrument does not call for, or elaborate upon, policy initiatives that could

¹⁵¹ See further White Report (n 8) paras 267–9.

¹⁵² Paragraph 10(h) of the new instrument also suggests that member States, in consultation with representative employers’ and workers’ organizations, should introduce measures that provide for ‘the extent to which the expected duration of the apprenticeship may be reduced on the basis of prior learning or progress made during the apprenticeship’.

¹⁵³ Brown Report (n 8) para 50. As to effective strategies for creating a bridge, see eg ILO, *Upgrading Informal Apprenticeship Systems*, ILO Policy Brief (Geneva: International Labour Office, 2011); ILO, *Upgrading Informal Apprenticeship* (n 25).

upgrade informal apprenticeships, including through the elimination of UFW.¹⁵⁴ Absent the adoption of future standards on traineeships, then, the conditions of informal apprenticeships is a striking regulatory gap at the international level.

C. Recommendation No 208 and the International Imagery of Informality

Recommendation No 208, we contend, also has a broader resonance for international-level visions of the concept, boundaries, transition, and regulation of ‘informal work’. The apprenticeship standard-setting process forms a crucial element of, and illuminates, the ongoing evolution of international labour law’s engagement with informality. The Recommendation showcases evolving conceptions of in/formality transition, outlines the policy strategies that are expected to nurture this transformation, and is the latest chapter of an enduring reflection on the pertinence of international labour norms in the countries of the Global South.

Centrally, the Recommendation configures formal and informal work as inescapably distinct. As most starkly articulated in Paragraph 24, the path to decent work, and to an effective transition from the informal to the formal economy, is centred in ‘access to quality apprenticeships’, which necessarily excludes, as outlined in Part 9(i) above, most informal apprenticeships. In this vision, RPL is the principal route for the formality transition. Indeed, this is how the Recommendation explicitly configures RPL. Its key appearance is in Paragraph 27, which is devoted to actions ‘with a view to facilitating’ the informality/formality transition. This clause was crafted by the Office specifically to respond to concerns about the Recommendation’s coverage of informal apprenticeships.¹⁵⁵

This vision, however, is out of step with the more sophisticated models that conceive of informality and formality as poised on a continuum, with legal regulation mediating a porous and variable boundary.¹⁵⁶ Strategies for formalisation must embrace fully-realised and complex conceptions of both informality

¹⁵⁴On upgrading, see eg ILO, *Upgrading Informal Apprenticeship* (n 25). See also Chankseliani, Keep and Wilde (n 2) 15.

¹⁵⁵Blue Report (n 8) 16.

¹⁵⁶McCann, ‘Informalisation’ (n 144) 82, citing among others J. Peck and N. Theodore, ‘Politicizing Contingent Work: Countering Neoliberal Labour-Market Regulation ... From the Bottom Up?’ (2012) 111 *S Atlantic Q* 741; S. Sassen, ‘Informalization in Advanced Market Economies’, Issues in Development Discussion Paper 20 (Geneva: International Labour Office, 1999).

and legal regulation.¹⁵⁷ Parallel contributions from the apprenticeship literature highlight the sophistication of informal apprenticeship systems. Crucially, this literature stresses that informal systems should not be understood as unregulated merely because they are not fully integrated into formal institutional and regulatory regimes. Rather, informal apprenticeships are regulated by the norms and customs of the societies, labour markets, and work cultures in which they are embedded, including through informal enforcement mechanisms such as reputational impacts, social sanctions, and reciprocity.¹⁵⁸

In the apprenticeship literature, these concerns animate what the ILO has termed a 'policy learning approach to build on the strengths of informal apprenticeship systems and reap their potential'.¹⁵⁹ This literature relays a complex account of informal apprenticeships and their existing and potential linkages with formal training regimes. Centrally, it calls for policy interventions that capitalise on, and avoid subverting, these indigenous systems.¹⁶⁰ A sensitive understanding of the informal economy, it is argued, permits policy-makers to identify both the strengths and frailties of informal regimes, and to adjust formal frameworks in ways that effectively embrace informal apprenticeships.¹⁶¹ Policies should aim to promote quality apprenticeships in informal settings and gradually build links with the formal system.¹⁶² At the highest level, informal apprenticeships are recognised in national skills, education and employment policies.¹⁶³ Lower-level interventions include measures to train master craftspersons, extend business development services and microfinance to informal entities, promote written agreements, ensure equal access and inclusiveness in informal apprenticeships, and strengthen the role of social partners,¹⁶⁴ in addition to

¹⁵⁷McCann, 'Informalisation' (n 144) 98 (in the context of informalisation as an aspect of informality).

¹⁵⁸eg D. Korboe, *Ghana: Vocational Skills and Informal Sector Support Project (VSP): Beneficiary Impact Assessment* Consultancy Report for NACVET/World Bank (Washington, DC: World Bank, 2001); H. Haan, *Training for Work in the Informal Micro-Enterprise Sector* (Bonn: UNESCO/UNEVOC, 2006) 161, 163; R. Walther and E. Filipiak, *Vocational Training in the Informal Sector* (Paris: Agence Française de Développement (AFD), 2007); I. Nübler, C. Hofmann and C. Greiner, *Understanding Informal Apprenticeship—Findings from Empirical Research in Tanzania*, Employment Sector Working Paper No 32, Skills and Employability Department (Geneva: International Labour Office, 2009); Hofmann and others (n 25); ILO, *Upgrading Informal Apprenticeship* (n 25) 2, 10.

¹⁵⁹ILO, *Upgrading Informal Apprenticeship* (n 25) 1.

¹⁶⁰Ibid 100–1; Hofmann and others (n 25) 63.

¹⁶¹Hofmann and others (n 25) 14; ILO, *Upgrading Informal Apprenticeship* (n 25) 1.

¹⁶²ILO, *Upgrading Informal Apprenticeship* (n 25) 2.

¹⁶³Ibid 100; Hofmann and others (n 25) 64.

¹⁶⁴ILO, *Upgrading Informal Apprenticeship* (n 25) 1, 100; Aggarwal (n 135) 113–6; Hofmann and others (n 25) 63–4.

smoothing the route to formal qualifications through RPL.¹⁶⁵ Lessons can be learned from policy experiments of this type, including at the regional level in Africa¹⁶⁶ and in Kenya¹⁶⁷ Jordan,¹⁶⁸ and Cote d'Ivoire.¹⁶⁹

This policy learning model, in particular, demands a sophisticated integration of informal apprenticeship and formal systems, rather than any wholesale replacement of informal regimes by a dualist system. Crude transplantation is unlikely to be successful,¹⁷⁰ as experiments in exporting the German model illustrate.¹⁷¹ It also risks unintended effects,¹⁷² including the loss of incentives for participating in informal apprenticeships.¹⁷³ More refined formalisation strategies, however, can incorporate strategies towards the gradual introduction of a dual system, by targeting national training funds at the provision of field trainers, for example, or establishing training centres.¹⁷⁴

Designing legal regimes that can support the policy learning model may require stakeholders at local levels to identify the most effective forms of regulation.¹⁷⁵ This approach is advanced by the Multidimensional Model of UFW alluded to in Part 6 above, which ascribes a uniquely central role to local actors in designing laws sensitive to local contexts.¹⁷⁶ It should be recognised, equally, that informal working relations are not entirely situated beyond the influence of formal laws.¹⁷⁷ Legal regimes on apprenticeships should seek to embody a pluralist normative vision, by embracing regulatory

¹⁶⁵ Aggarwal (n 135).

¹⁶⁶ See the African Union's *Continental Education Strategy for Africa* (Addis Ababa: African Union, 2016) and *Continental Strategy for TVET to Foster Youth Employment* (Addis Ababa: African Union, 2018).

¹⁶⁷ ILO, *Upgrading Informal Apprenticeship* (n 25) 48.

¹⁶⁸ ILO, *Main Findings from a Pilot on Upgrading Informal Apprenticeships in Jordan*, Policy Brief (Beirut: ILO, 2015).

¹⁶⁹ B. Crepon and P. Premand, *Creating New Positions? Direct and Indirect Effects of a Subsidized Apprenticeship Program*, Policy Research Working Paper No 8561 (Washington DC: World Bank, 2019).

¹⁷⁰ ILO, *Upgrading Informal Apprenticeship* (n 25) 2.

¹⁷¹ See Euler (n 15) 11–2; Deissinger, 'The Sustainability of the Dual System Approach to VET' (n 2) 306.

¹⁷² ILO, *Upgrading Informal Apprenticeship* (n 25) 21.

¹⁷³ *Ibid* 20–1.

¹⁷⁴ See ILO, *Upgrading Informal Apprenticeship* (n 25) 88 on interventions in Benin, and 100–1; Hofmann and others (n 25) 65.

¹⁷⁵ McCann and Fudge 2019 (n 128) 274. See also ILO *ibid* 3.

¹⁷⁶ McCann and Fudge *ibid*.

¹⁷⁷ For an investigation of the influence of formal norms in an informal setting, see S. Lee and D. McCann, 'The Impact of Labour Regulations: Measuring the Effectiveness of Legal Norms in a Developing Country' in S. Lee and D. McCann (eds), *Regulating for Decent Work: New Directions in Labour Market Regulation* (London/Geneva: Palgrave/ILO, 2014) 291.

systems that govern informal work, while ensuring that this objective is held in tension with eliminating or upgrading exploitative working relations.

Arguably, however, Recommendation No 208 cannot fully serve this role of leaving regulatory space for local innovation, because of the constrained vision of transition that is relayed through its informal apprenticeship/quality apprenticeship dichotomy. Indeed, there is a tension between the narrow definition of apprenticeships and the expansive coverage envisaged for the instrument. The Recommendation is stated in Paragraph 2 to apply to ‘apprenticeships in all enterprises and sectors of economic activity’. This formula was stressed by the Committee to be broad enough to encompass relationships in the informal economy.¹⁷⁸ Yet the standard’s restrictive definition of apprenticeships necessarily inhibits its intended scope.

The international framework on apprenticeships as it stands, then, does not fully recognise the core problem of informality as the presence of unacceptable work.¹⁷⁹ Instead it risks the impression that informal apprenticeship regimes are inherently undesirable. In the Recommendation, as outlined above, the regulation of informal apprenticeships is channelled through RPL, which is an element of policies to strengthen linkages between informal and formal apprenticeship systems.¹⁸⁰ It is to be hoped, then, that the RPL-centred model can be enhanced in country-level efforts to implement the Recommendation by embedding it within broader formalisation strategies. Otherwise, the Recommendation will be likely to play a limited role in supporting the transition to the full regulatory coverage demanded by the ILO’s notion of formality.¹⁸¹

For the ILO to play a prominent role in conceptualising and promoting informality/formality transitions in labour market entry and beyond, however, it is also necessary for the Organization, as we proposed in Part 8 above, to return to the broader regulation of training relationships. As the Government member of Kenya, speaking on behalf of the Africa Group, observed at the end of the second discussion, Recommendation No 208 recognises a desire to transition from the informal to the formal economy, but does not fully address informal apprenticeships. He reiterated the African governments’ request for a revived discussion of traineeships.¹⁸²

¹⁷⁸First Discussion (n 9) para 549.

¹⁷⁹McCann and Fudge (2017) (n 97).

¹⁸⁰Hofmann and others (n 25) 64.

¹⁸¹Recommendation No 204, para 2. On the role of conditions of work standards in improving informal jobs, see McCann, ‘Informalisation’ (n 144).

¹⁸²Second Discussion (n 9) para 759.

10. CONCLUSION

In an era of sequential crises, it is not unexpected that ILO standard-setting has gravitated towards labour market entry, transition, and the lifelong upgrading of skills. This regulatory turn has generated an historic instrument, the Quality Apprenticeships Recommendation, 2023 (No 208). The first international standard on apprenticeships since the mid-twentieth century, the Recommendation embodies a renewed emphasis at the international level on tackling youth unemployment and underemployment and providing reskilling opportunities for workers of all ages. The Recommendation's adoption, we have argued in this article, is an opportunity to reflect upon both the future of apprenticeships and key contemporary challenges to labour regulation. To this end, we have presented a detailed and critical analysis of the new instrument and the debates that generated it. We began by situating apprenticeship as a crucial facet of labour law, for substantive legal regimes and scholarly enquiry. This enabled us to design a dual framework of analysis, which exposes how the Recommendation both develops the labour dimension of apprenticeships and illuminates and responds to key conceptual and regulatory challenges of modern labour law. We next provided an account of the evolution of apprenticeships and their regulation, highlighting apprenticeship as a conspicuous gap in the international labour standards and the new standard as of crucial significance to the form, frameworks, and future of apprenticeships around the world.

Deploying our dual micro/macro analysis, we proposed a set of dimensions as simultaneously core to apprenticeship regulation and revealing of the path of international labour law. We first assessed the instrument's notion of 'quality' to be a considerable advance on prior models, including in elaborating labour protections. This model, we argued, is also of considerable significance to the debates on the personal scope of labour law. The latest stage of the ILO's experiments in expanded coverage, the instrument offers a status-neutral model, flexible enough to embrace all apprentices, yet revealing of the complexities of broadening personal scope within the lattice of international labour standards, which encompass variation and uncertainty in the entitlements that are expected to apply to apprentices.

We next argued that the Recommendation reflects a new international-level emphasis on apprenticeships as a site of unacceptable work. This advance aligns with labour regulation's heightened awareness of precariousness, recognises the particular vulnerability of younger workers, and ushers training

standards more firmly into the realm of labour law, yet also illuminates the instability of the precarity/informality boundary. Similarly, EDI, we suggested, has become a discrete objective of apprenticeship regulation, including in a firmer grasp of work/family rights, and also a cross-cutting objective of international labour norms. The Recommendation's jettisoning of other forms of work-based training, we contended, has produced an instrument tailored to the intricacies of apprenticeship systems. Yet the Recommendation offers a constrained vision of, and limited pertinence to, informal relationships, and reveals traineeships as an urgent future site of international standard-setting.

Finally, we explored informality as a definitional/conceptual challenge in the standard-setting process, in which a preference for the dual training model, paired with the aversion to coverage of trainees, excluded most informal apprenticeships from the scope of the instrument. The recourse to RPL as the central regulatory mechanism for informal apprenticeships supports bridging of formal and informal training systems. Yet the Recommendation also conceptualises informal apprenticeships as impervious to formal norms until linked to external training, offer an imagery of informality that configures formal and informal training as rigidly distinct. We drew on more sophisticated models of informality, formality and transition to advocate for experimentation with other bridging strategies, and the Multidimensional Model of UFW to call for local stakeholder involvement in the design and implementation of apprenticeship regimes.

There will be many challenges in implementing the new Recommendation, not least in meeting some of the lofty aspirations expressed both in the instrument itself and in the deliberations that preceded it. If apprenticeships are indeed to 'enhance productivity, resilience, transitions and employability', as the Recommendation's preamble asserts, effective action must be taken to promote and support their use. There are many barriers to the take-up of apprenticeships, not least poor social perceptions and a reluctance by businesses to invest in occupational (as opposed to firm-specific) training.¹⁸³ From a labour law perspective, however, there must also be concern about the continuing tendency in many countries to question the applicability of labour standards to work-based training. If apprentices are to be accorded the rights and protections identified in the new instrument, not to say those demanded by other potentially

¹⁸³See further White Report (n 8) ch 4.

applicable international labour standards, some clarification of their status seems long overdue. And if the issue of unacceptable work in labour market entry and transitions is to be adequately addressed, regulatory attention needs to extend beyond those fortunate enough to be undertaking 'quality apprenticeships'.