

# **The Debate over the Basis of Labour Law**

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# The Stakes in the Debate

- Should we broaden the scope of labour law (both in its individual and collective aspects) beyond the contract of employment to encompass work?
- Con – dilute labour law protections
- Pro – expand coverage and better reflect the realities of work

# Contract of Employment as Platform for Labour Law

- Bilateral and on-going contractual relationship with entity known as employer
- Function – risk sharing device; uses corporate assets as basis for mutualising risks of loss of income during and after employment; health and safety; taxation
- Problem – exclusionary device especially with change in the nature of contracting for work; always ill-suited for informal economic activities
- Profoundly gendered

# Beyond the Contract of Employment

Functional approach to regulating work.

Goals of labour market regulation

1. Economic coordination;
2. Risk distribution;
3. Demand management;
4. Democratization;
5. Empowerment; and
6. Redressing the specific vulnerabilities and unfreedoms in a region or country

# Regulating Work as a Relationship

- In some cases, the regulation of work would be similar in many respects to the traditional forms of labour law as it would focus on work as a relationship between an ‘employing entity’ – an employer, a retailer, a supplier, purchaser – or some sort of entity that either exercises economic or labour process control over the worker.
- Examples: homeworkers at the end of supply chains; domestic worker employed by one household; single purchaser of waste pickers cull

# Techniques for Regulating Work as a Relationship

- Joint and several liability through the chain
- Wages boards
- Collective agreement extensions
- Some legal support such as non-application of competition law

# Regulating Work as an Activity

- In some contexts, such as household workers who are family members, street vendors who do not depend upon one or two suppliers, or self-employer seamstresses, there is no entity that exercises control over the worker.
- Work much be considered as an activity and it is important to find other platforms and techniques for regulating work and protecting workers that those traditionally associated with labour law.

# Techniques for Regulating Work as an Activity

- Social security schemes
- Economic and not employment risk
- Licensing
- Citizenship or basic income
- Municipalities



# Collective Bargaining, Social Dialogue and Empowerment

Non-exclusive forms of representation

- Unions represent workers with the goal of engaging in collective bargaining on their behalf with corporate enterprises, workers cooperatives and public authorities that directly or indirectly employ workers.
- Worker cooperatives, are a form of enterprise that is owned and democratically controlled by their members, who are also workers/employees themselves.

- Associations are membership-based groups that typically do not engage in collective bargaining.

Key criteria: Strategic, accountable, points of leverage, sustainable, goals may be broader than collective bargaining.

# Conclusion

- Starting point - the social activities bound up in work relations and not the existing legal categories of employee, worker, or independent contractor nor on pre-existing legal jurisdictions, such as labour, immigration, housing and planning law.
- Regulatory power - is not held solely by governments but dispersed throughout a number of bodies or groups such as firms, non governmental and supra-governmental agencies, standard-setting organisations, credit-rating agencies business and professional associations, trade unions, religious organisations, courts, tribunal per groups, and others.

- Successful regulatory strategies must engage with social actors whose behaviour is the subject of regulation with the broader goal of building capacities in order to ensure that labour market actors internalize norms, thus ensuring the sustainability of regulatory interventions to improve the terms and conditions under which informal workers work.