Beyond Protection: An Informal Economy Perspective on Labour Law

Liam McHugh-Russell
Citizenship at Work: Annual CRIMT Conference

May 12, 2014
“Beyond Protection”? 

- The problem with informal work as
  - “off-the-books employment” (Comp. Lab. L. & Pol’y J 2005)
  - Work “unregulated by the institutions of society” (Castells and Portes 1989)
  - not “within the practical reach of regulation” (Banks 2011)
  - “Outside the Law” (Miller 2006)
  - Work “beyond the regulatory and protective reach of the state” (Rittich 2003)
  - “unregulated and unprotected work” (Lund & Nicholson 2004)
Informal as “Beyond Labour Law’s Protection”

→ beyond its reach?

→ beyond its grasp?

→ beyond its remit?
Four Key Arguments

1. “Informal” is best understood as a way of looking at things

2. It’s not (only) about compliance

3. It’s not (just) about employees

4. Protection is not what (ultimately) matters
Four Key Arguments

1. There is no such thing as “informal”
2. Compliance isn’t the issue
3. Don’t worry about employees
4. Protection doesn’t matter
1. No such thing as informal

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Informal Employment
Formal Employment
Does Not Exist

The Policy Perspective

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
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<tbody>
<tr>
<td>Makes counting easier</td>
<td>An “uncomfortable amalgam”</td>
</tr>
<tr>
<td>A sense of relative scale</td>
<td>“Folk images” (Hart 1971)</td>
</tr>
<tr>
<td>Makes the informal “count”</td>
<td>Mixes multiple “problems”</td>
</tr>
<tr>
<td>Provides political clout</td>
<td>Awkward fit for legal analysis</td>
</tr>
<tr>
<td>A framework for</td>
<td>→ Imperfect guidance for</td>
</tr>
<tr>
<td>comparative policy analysis</td>
<td>policy development!</td>
</tr>
</tbody>
</table>
A Framework - Kanbur (2009)

Regulation

Rule

Relevance

Inapplicable Regulation (D)

Applicable regulation

Compliance

Compliant situation (A)

Non-compliant situation (B)

“Regulatory Avoidance” (C)
A Modified Framework: Informality as Imperfect Fit

- Normative Goal
- Regulatory Frame
- Legal Scope
- Compliance

- Irrelevant Regulation
- Relevant Regulation
- Inapplicable Rule
- Applicable Rule
- Compliant situation
- Non-compliant situation
Informality as Imperfect Fit (The Pedantic Version)

Normative Goal

Relevant Regulation

Irrelevant Regulation

Legal Scope

Nonetheless Applicable

Inapplicable Rule

Applicable Rule

Compliance

Compliance

Non-compliance

Compliant situation

Non-compliant situation
Defining the Informal (Essentialism)

What are the kinds of informal work?
Regulating Informal Work (Functionalism)

What is the problem?

**Normative Goal**
- Protect Workers

**Regulatory Frame**
- Irrelevant Regulation
- Relevant Regulation

**Legal Scope**
- Nonetheless Applicable
- Inapplicable Rule
- Applicable Rule

**Compliance**
- Compliance
- Non-compliance
- Compliant situation
- Non-compliant situation
2. Compliance Isn’t the Issue

- **Normative Goal**: Protect Workers
- **Regulatory Frame**: Irrelevant Regulation, Relevant Regulation
- **Legal Scope**: Inapplicable Rule, Applicable Rule
- **Compliance**: Compliant situation, Non-compliant situation

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Beyond Protection - Liam McHugh-Russell
# Inadequate Enforcement: Informal Employees

## Statistics for Mexico, 2000

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<td>2%</td>
</tr>
<tr>
<td>Informal Sector Enterprises</td>
<td>38%</td>
</tr>
<tr>
<td>Informal</td>
<td>6%</td>
</tr>
<tr>
<td>Households</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4%</td>
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</table>

Total Informal (% Workers) | 23 856 000 | (61%) |
Total Formal (% Workers)   | 15 125 000 | (39%) |

~38% (23% of total)
### Domestic Workers

#### Statistics for Mexico, 2000

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\[
\sim 7\% \text{ (of total)}
\]
Regulatory Gaps

- **Normative Goal**: Protect Workers
- **Regulatory Frame**: Irrelevant Regulation, Relevant Regulation
- **Legal Scope**: Inapplicable Regulation, Applicable regulation
- **Compliance**: Compliant situation, Non-compliant situation
### 3. Don’t Worry about Employees

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~15% (9% of total)
An Inappropriate Frame

- **Normative Goal**: Protect Workers
- **Regulatory Frame**: Relevant Regulation
- **Legal Scope**: Inapplicable Rule, Applicable Rule
- **Compliance**: Compliant situation, Non-compliant situation
An Alternative: “Ramified Subordination”

- Employer
  - Landlord; Suppliers; Creditors?
  - Family Head
    - Family Worker
But then also...

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Informality and Global Supply Chains

International Conglomerate

Exporter

Manufacturer

Family Head? Middle man?

Worker
4. Protection Isn’t What Matters

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Maybe they’re not really independent...

- International Conglomerate
- Exporter
- Manufacturer
- “Self Employed”
The Other 45% 20%

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Total Informal (% Workers) 23 856 000 (61%)
Total Formal (% Workers) 15 125 000 (39%)

~20%, once you’ve accounted for subordination
The Other 20%: Inappropriate Frame?

Normative Goal
- Protect Workers

Regulatory Frame
- Irrelevant Regulation?
  - Relevant Regulation

Legal Scope
- Inapplicable Rule
  - Applicable Rule

Compliance
- Compliant situation
  - Non-compliant situation

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Protection from What?  
The Labour Standards Approach

1. Exploitation
2. Risk
Are the Self-Employed “Unprotected”? 

Self-Employed

No subordination

No exploitation!
Are the Self-Employed “Unprotected”?

Self-Employed

(Voluntary) Acceptance of Risk

No need to protect against risk!
“Plucky Entrepreneurs”
The Difference

1. Poverty
2. Human Capital
3. Opportunity
Social Justice

1. Fair Returns
2. Dignity
3. Material Security
4. Equality
5. Opportunity
6. Autonomy

So why are we thinking in terms of protection?
Informal as “Beyond Labour Law’s Protection”

→ beyond its reach?

→ beyond its grasp?

→ beyond its remit?
Beyond Labour Law as Protection

→ beyond its reach?

→ beyond its grasp?

→ beyond its remit?
Beyond Labour Law *as* Protection

- **Normative Goal**
  - Empower Workers (e.g.)
  - Workers?

- **Regulatory Frame**
  - Irrelevant Regulation
  - Relevant Regulation

- **Legal Scope**
  - Inapplicable Rule
  - Applicable Rule

- **Compliance**
  - Compliant situation
  - Non-compliant situation
The Hard Questions

Normative Goal 1

Normative Goal 2
Four Key Arguments

1. There is no such thing as “informal”

2. Compliance doesn’t matter

3. Employees aren’t the issue

4. Protection isn’t the answer