



Book Reviews

Living Wage: Regulatory Solutions to Informal and Precarious Work in Global Supply Chains, Shelley Marshall, Oxford University Press, Oxford, 2019, pp xviii + 240, ISBN 978-019-25-6601-0.

Shelley Marshall's *Living Wage: Regulatory Solutions to Informal and Precarious Work* is an important book that makes a valuable contribution to labour law scholarship.¹ Dedicated to investigate what kind of innovations in regulation may help to improve the conditions of informal and precarious workers worldwide, the book skillfully approaches a topic that is highly complex through the combination of different methods and levels of analysis.

The book combines a macro perspective, which focuses on regulatory theory and global supply governance (chap 2), with the micro- and meso-perspectives offered by the case studies presented in chaps 4–7. As a result, an assessment of the elements that shape labour regulations at a macro-level is coupled with an analysis of how regulation is applied at ground level. This ground level analysis delves into the effects of labour regulation on individuals and groups, and how they use and access different resources in an attempt to re-regulate their working conditions. Informality, its causes and the regulatory techniques that may fight it, take centre stage. The book also has a normative angle; drawing from the insights gained at the two levels of analysis (macro and micro), the author suggests a highly articulated proposal to improve the current framework, with a view to contribute to the global fight against informal and precarious work. The book's title may be misleading, since the book does not deal primarily with a living wage. That topic only appears in chap 9 as part of the normative proposal.

The book makes a great effort to engage with different social science literature on regulatory theory, globalisation, global supply chains, institutional and social change and transnational mobilisation. The methodology throughout the book is consciously multidisciplinary, applying political economy, ethnographic methods and an approach defined as historical institutionalism to the case studies.² This multidisciplinary approach is an answer to the very nature of informal work that, situated largely at the margins of the law, is difficult to grasp from a more conventional doctrinal analysis of legal regulation.

Another remarkable feature of the book is that the reader is confronted with stories of real people. Humanising the problem of informality, putting names to the consequences of the organisation of work in low wage global supply chains, helps the reader understand what is at stake in the rather complex and abstract debate about regulation. Although Marshall also uses statistics to illustrate that informality and working poverty affect millions of persons

¹ S Marshall, *Living Wage: Regulatory Solutions to Informal and Precarious Work in Global Supply Chain*, Oxford University Press, Oxford, 2019.

² *Ibid.*, at p 42.

worldwide, the appearance of individuals with names and personal stories is a refreshing approach to the problem.³

The book's underlying question, as Marshall explains in chap 2, is the role of regulation in relation to the problem of informality. Informality is understood as the result of a suboptimal solution to a regulatory problem. There is an assumption that 'state-based labour regulation is failing because it is not responsive to the problem it seeks to address and shape'.⁴ This state-based regulation is considered, to put it bluntly, as unresponsive. The ambition of the author is to understand what has failed in the 'traditional', 'state-based' labour regulation in each of her case studies — a failure that has resulted in an increase of informality — and what kind of new strategies have been adopted to solve the problems that arose. The author hopes the findings will help improve existing regulatory institutions and their shortcomings by bringing in new strategies and actors.

The discussed failures of traditional labour regulation are its incapacity to adapt to new forms of work (the works performed by the 'precariat'), its failure to respond to new patterns of production and control (such as global supply chains), its failure to respond to informal regulations, incentives and behaviour, and its incapacity to deploy responsive enforcement tools (by engaging a limited range of parties and deploying a limited range of penalties and incentives). To better understand the needed changes, building on the work of Kathleen Thelen,⁵ Marshall proposes an inquiry on institutional change through the analysis offered in the case studies.⁶

The case studies are the substantive and most original contribution of the book. One chapter is devoted to each case study. The countries and sectors are selected because of the innovative regulatory measures developed in each case. What these regulatory measures have in common is that they 'address the unresponsiveness of traditional methods of state-based labour regulation to the forms of informal labour found in each country' by expanding or sidestepping 'the employment relationship so as to encompass broader forms of work' and increasing 'the strength of regulation in order to push against countervailing pressures which lower working conditions'.⁷

Chapter 4 is a case study focused on head-load work (loading, unloading, carrying, shifting, weighing, tapping, and stacking goods on the back or the head) in the Indian state of Maharashtra. This case offers an interesting opportunity for regulatory learning 'because India's legislatures have been more active in regulating informal work, particularly in the domain of providing social security, than perhaps anywhere else in the world'.⁸ The key institutional feature of the regulatory response are the so-called Mathadi

3 For an analysis on care workers in the United Kingdom, see LJB Hayes, *Stories of Care: A Labour of Law: Gender and Class at Work*, Palgrave Macmillan, 2017.

4 Marshall, above n 1, at p 21.

5 PA Hall and K Thelen, 'Institutional Change in Varieties of Capitalism' (2007) 7 *SER* 7; J Mahoney and K Thelen, 'A Theory of Gradual Institutional Change', in J Mahoney and K Thelen (Eds), *Explaining Institutional Change: Ambiguity, Agency and Power*, Cambridge University Press, Cambridge, 2010.

6 Marshall, above n 1, at p 42.

7 *Ibid*, at p 41.

8 *Ibid*, at p 52.

Board, since 'labour users can only hire mathadi (head-load) workers through the Boards, which are overseen by government, representatives of management and unions'.⁹ Payment takes place through the Boards, which also collect levies from labour users that are 'used to finance pensions, workers compensation insurance, hospitals, education and so on'.¹⁰ The chapter unfolds by explaining the dynamics of informality, why a countermovement towards formalisation arose and how the new regulations (the Mathadi Act 1969,¹¹ which instituted the Mathadi Boards) contributed to the 'formalisation' of the sector. For the author, the Mathadi Act 1969 is an example of an alternative regulatory model that has displaced the normal labour law model. This model is an example of a localised strategy. Marshall indicates that localisation greatly improves its effectiveness, highlighting that 'boards are organised around the target populations — on the docks, in the markets — and respond to the particular needs of those populations'.¹²

In chap 5 we travel to Australia. The focus here is in the working conditions of migrant workers (mainly Vietnamese) in the apparel industry, which experienced a process of 'informalisation' during the 1980s and 1990s. The chapter tracks subsequent strategies and reforms trying to re-formalise work in the sector. Marshall describes well-known structural factors that exposed the apparel industry in Australia to increased global competition since the early 1980s. The combination of open markets, removal of tariff barriers, competition with countries whose main competitive advantage is cheap labour, and flexibilisation of migration rules (resulting in increased migration into Australia of migrants from poorer Southeast Asian countries) resulted in an 'informalisation' of working conditions in the apparel industry, as was the prevailing competitive strategy of Australian employers. The author describes the strategy to re-formalise work in the sector as one of 'layering', in the sense that reform proceeded by 'adding successive layers of regulation and additional regulatory levels to the existing labour laws'.¹³ These layers consisted of three different regulatory interventions. First, an amendment to the definition of 'employee', which expanded the scope of labour regulation to include home-based work ('outworkers'). Secondly, the establishment of a voluntary code, which companies could sign up to, regulated by an accrediting and promotional body called Ethical Clothing Australia and thirdly, the enactment of new supply chain legislation that allows informal outworkers to make claims for unpaid entitlements against another party higher up in the supply chain. The author advocates that this strategy may be useful in reducing employment informalisation, with each layer complementing the others. Where the enlargement of the personal scope of labour law may not suffice, because it does not offset the downgrading pressures that supply chains generate (and therefore the level of non-compliance remains high), the market-based sanctions of voluntary codes may prove more effective. Finally, regulating the supply chains — by allowing for recovery of lawful

9 Ibid.

10 Ibid, at p 63.

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

12 Marshall, above n 1, at p 71.

13 Ibid, at p 87.

entitlements against parties who may be contractually removed from the home-based worker — helps rendering labour law rules applicable beyond their ‘normal’ reach. In Marshall’s words: ‘Instead of viewing hard laws and market-based soft laws as alternatives, the strength of this system is that it sees different mechanisms as being best used in combination — as complements to each other.’¹⁴ However, she is cautious about the real impact of the strategies and does not hesitate to acknowledge real and potential shortcomings and limitations.

Chapter 6 focuses on informal work on light industries in Bulgaria. As with the previous chapters, it describes the dynamics of informalisation, which in this case are linked to the collapse of the Eastern European socialist bloc in 1989 and the integration of Bulgaria in the global capitalist economy, as well as the reforms towards a re-formalisation of at least some of the informal workers. In the case of Bulgaria, the strategy of reform consisted of the expansion of labour law to include home-based informal workers in its personal scope. A law passed in 2011 explicitly expanded the scope of labour laws to cover workers conducting any type of work at home. According to the author, the origins of this strategy are found in the successful lobbying effort of associations representing the interests of home-based workers, the need to comply with EU standards as a result of Bulgaria’s accession to the EU, and the ratification in 2009 of the International Labour Organisation’s (ILO) *Convention concerning Home Work*.¹⁵ Although this enlargement of the personal scope of labour law should be in principle welcomed, it will be very likely not enough to improve the situation of informal workers, as the author suggests in her conclusions for this chapter.¹⁶

Chapter 7, the last of the case studies, focuses on the garment industry in Cambodia. In this case, the dynamics of formalisation of a previously highly ‘informal’ industry are mostly external, namely, the combination of the system of quotas of the US-Cambodia Bilateral Textile Agreement (UCTA) and the ILO’s Better Factories initiative. Although, as the author highlights, the ruling elites and the country’s own political economy play a major role. The UCTA ‘is celebrated as one of the great success stories in regulatory innovations in developing countries for its role in facilitating the formalisation and the improvement of labour conditions in the garment industry of Cambodia’,¹⁷ while at the same time ensuring the garment industry became the biggest employer of the country. The signing of the UCTA in 1999 brought in institutional changes that eventually contributed to formalisation of the garment industry. The most critical feature of the UCTA in this sense was a provision for implementation of labour standards in Cambodian garment factories. This provision ‘enabled Cambodia to earn extra quota each year if it could demonstrate that it was making progress towards improving working conditions and supporting workers’ rights in the garment industry’.¹⁸ (The parties agree to set a regulatory compliance regime to be handled by the ILO).

14 Ibid, at p 93.

15 Ibid, at p 117. See ILO’s *Convention concerning Home Work*, 1996, No 177, ratified in 2009.

16 Marshall, above n 1, at p 121.

17 Ibid, at p 123.

18 Ibid, at p 134.

This was the origin of the Better Factories Cambodia (BFC), consisting of independent monitoring (of the level of compliance with labour standards), capacity building and technical assistance by training a core group of Cambodian labour inspectors. BFC began its operations in 2001. From 2009, it was placed under Cambodian supervision. As the author indicates, ‘numerous studies that have assessed the BFC all attested to its reliability’.¹⁹ However, BFC does not go without criticism. The author highlights the risk that BFC substitutes a system for a national labour inspectorate as well as the fact that the focus on factory level standards that may undercut efforts to improve labour laws in a more structural way. This second point is important, since some of the most blatant problems in the Cambodian system (for example, systematic repression of independent trade union activity) stem from a regressive legal framework coupled with Government policy. Importantly, the BFC ‘does not inhibit what is viewed as the most important factor in production for investors in Cambodia — low wages’.²⁰

The lessons learnt from the case studies are summarised in chap 8. For Marshall, each of the reforms is an example of co-regulation, because they combine two or more regulatory systems that added or augmented something to traditional labour law. Marshall defends the fact that the described reforms can be read as examples of what scientific literature has described as ‘New Governance’. However, Marshall warns that each process was different and had different political and institutional and political economy drivers, showing that reality is more complex than theoretical ideal types often framed in functionalist terms. In my opinion, it is very relevant that the author highlights that ‘none of the models entail comprehensive reform of the way work is regulated in a nation. Nor do they fundamentally challenge the international institutional arrangements, which have altered and undermined the power of national institutions to regulate work’.²¹

Finally, chap 9 brings in the normative content. It proposes a transnational initiative aiming to promote a global living wage and regulate supply chains. The ambition of the author is to contribute to the development of a (multi-level) regulatory framework to protect informal workers. The departure point is the idea that the ILO must have a role ‘in orchestrating transnational labour governance’.²² Then, a multilayered and multi-level strategy is suggested. First, with the aim to achieve an international floor of wages that could guarantee living wages for all workers, an ILO Convention or UN Treaty on living wages (Living Wage Instrument) that would oblige signatory nations to increase statutory minimum and living wages, should be adopted. The ILO, in coordination with other international organisations, would have an important supervisory role. Marshall sketches a series of incentives for states and unions to engage in the strategy based around naming and shaming non-participant and/or non-compliant states and companies, and involve unions and other civil society organisations in an enforcement mechanism. The enforcement mechanism, which would be the second pillar of the strategy,

19 Ibid, at p 136.

20 Ibid, at p 141.

21 Ibid, at p 143.

22 Ibid, at p 153.

is a 'Global Living Wage Dispute Mechanism'. In its first step, 'this mechanism would allow unions and other interested parties to bring claims, at an international level, against states on behalf of worker-citizens for failing to enforce minimum living wage laws and be awarded a portion of any of the funds recovered'.²³ Later, states could 'recover these funds from the relevant employers or other parties within the supply chain' via 'National Supply Chain Tribunals'.²⁴ These National Supply Chain Tribunals would operate at national level, as opposed to the Global Living Wage Dispute Mechanism. The tribunals would be created by each country that has ratified the Living Wage Instrument and would be given power to 'adjudicate disputes that arise as a consequence of breaches of worker's rights within supply chains, and (...) create positive duties for parties within the supply chains'.²⁵ Sanctions could be a combination of fines with other, more creative measures, such as suspension of intellectual property or import licenses.

Marshall succeeds in illustrating the complex mix of factors at stake in the shaping of informal work, including changes in regulatory framework, political economy, international relations, changes in the organisation of work and structure of companies, liberalisation of commerce and financial markets. Against this background, presenting informality as a problem of suboptimal regulation and blaming traditional labour laws for not being responsive to changes does not seem fully convincing. Some of the complex changes at the origin of 'informalisation', intended precisely to undermine 'traditional' labour laws. The view of innovative forms of regulation that include soft law mechanisms, public-private collaboration and other hybrid forms defended by proponents of 'New Governance' as solutions to the problem should be considered carefully. Sometimes these can be useful, but other times the adoption of these forms (when they displace labour law) may function to further deregulate labour law protections.

I do agree to a great extent with Marshall's arguments for a transnational instrument to fight informal and precarious work. I also think that her proposal is interesting and skillfully connects different elements: already existing structures, lessons learned in the case studies and bold ideas to move forward. Marshall notes pertinently that at the same time, if the institutional framework of globalisation, based heavily on 'large scale macro-economic and institutional liberalisation of economies'²⁶ as well as the changes in the 'dynamics of capital accumulation'²⁷ (is left untouched, it may prove an insurmountable obstacle). It is also clear in the book that locally adapted, partial solutions to the issue of informality may improve the relative situation of some groups of informal workers, but the case studies illustrate that the limits posed by the international institutional framework and the position of the sector in the global economy are not easy to overcome. Marshall is aware of these obstacles, as she points out in several parts of the book. My skepticism is not that of the stubborn realist that considers the legal obstacles

23 Ibid, at p 162.

24 Ibid, at p 163.

25 Ibid, at p 170.

26 Ibid, at p 187.

27 Ibid, at p 191.

posed by the current legal framework impossible to overcome. I would simply like to make the point that the process of economic integration and global division of work resulting from globalisation's current form makes it very difficult to end informality, especially if reforms are partial or limited to labour law regulations. Presenting informality as mainly a problem of suboptimal regulation in the field of labour law can be in this sense counterproductive, in a similar way that the idea that economic development per se would end informality was also counterproductive. It may hide the need to reform other fields that have made possible the dynamics of 'informalisation' (that is, unabridged global competition, removal of tariff barriers, free movement of capital, regulatory competition to attract foreign investment). It can lead us to think that the present global regulation of commerce and finance is compatible with decent jobs worldwide. I believe it is fair to suggest that this may not be the case.

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