

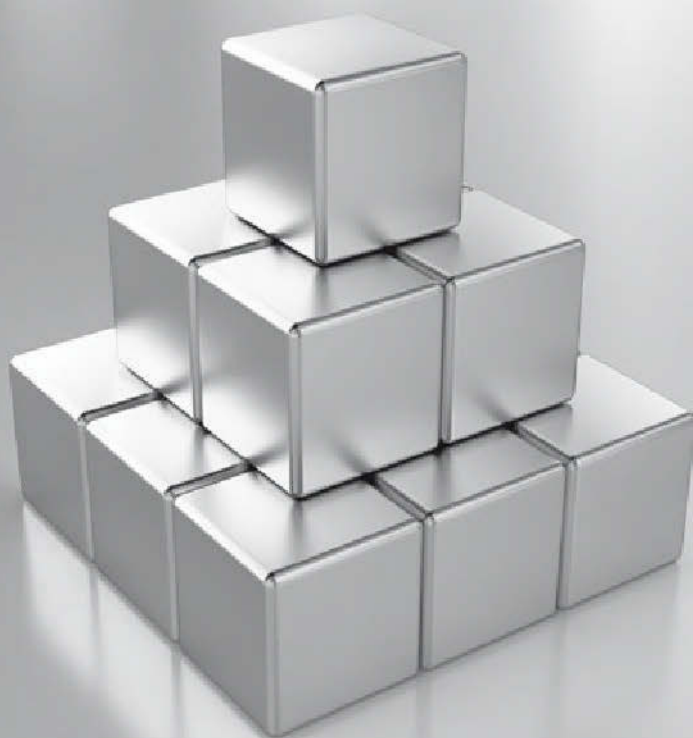


ADVANCES IN
LABOUR STUDIES

Sangheon Lee and Deirdre McCann

REGULATING FOR DECENT WORK

New Directions in Labour Market Regulation



Regulating for Decent Work

ADVANCES IN LABOUR STUDIES

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Regulating for Decent Work

New Directions in Labour Market Regulation

Edited by

Sangheon Lee

and

Deirdre McCann

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Preface

Despite the shock of the global financial crisis and its origins in regulatory failure, deregulatory rhetoric has proved remarkably durable. Indeed, the recession has come to be characterized by the dismantling of regulatory frameworks in the desire to create jobs. This volume is a response to that deregulatory project. It aims to contribute to ongoing efforts to build new conceptual frameworks and modes of analysis to investigate the role, value and limitations of labour market regulation. To this end, it brings together an international group of researchers to consider, from a range of disciplinary traditions and perspectives, the future of the field. It is hoped that the volume will enrich and advance the academic and policy debates on post-crisis labour regulation.

The book is a testament to the work of its contributors. We are immensely grateful to them for their contributions and enthusiasm for this project. We believe the book showcases the best of contemporary research on labour market regulation and hope that it conveys the importance of this vigorous and exciting field of study.

The contributions have their origins in the inaugural conference of the Regulating for Decent Work (RDW) Network, which was held at the International Labour Office in Geneva from 8–10 July 2009. The Network emerged from a widespread unease about the expanding grasp of the deregulatory project, a desire to fully integrate regulation into efforts to advance ‘decent work’, and an intuition that a space should be carved where research on the design and effectiveness of regulatory frameworks could be sheltered from the need to adopt a defensive stance. The Network members are researchers from universities, research centres, government agencies and NGOs across the world and represent a range of disciplinary and theoretical perspectives. We are privileged to benefit from the insights and engagement of this vigorous intellectual community.

We acknowledge the support of our friends and colleagues on the RDW Network Organizing Committee: Sandrine Cazes, Colin Fenwick, John Howe, Jill Murray and Anne Posthuma.

We are immensely grateful to the International Labour Office for funding and hosting the RDW Conference and for its assistance in the publication of this volume. Particular thanks are owed to Assane Diop for his enthusiasm for the Network and his commitment to the ILO’s role in encouraging and engaging with research communities. He also

very kindly agreed to give the opening address to the Conference. We owe an immense debt of gratitude to Manuela Tomei for her deft political skills, enduring support and invaluable advice, Gerry Rodgers for his guidance and encouragement, and Duncan Campbell and Sandrine Cazes for support both financial and moral.

Carola Nolte bore most responsibility for organizing the RDW Conference. She performed this demanding role with patience and good grace and we greatly appreciate her for her outstanding work. Thanks are due to all other individuals who contributed to the success of the Conference, not least to the participants but also to the ILO colleagues who chaired sessions and others who contributed in various ways, including Claire Piper, Coralie Thompson, Susie Choi and Seungeun Lee.

We again marvel at the energy and commitment of Charlotte Beauchamp in the ILO Publications Department and her skill in preparing the manuscript for publication while dealing with editors and contributors across institutions, countries and time zones. We thank the staff at Palgrave Macmillan for supporting this first stage of what we expect to be a fruitful collaboration. We are grateful also to Seung-Suk Ryu, who provided invaluable research assistance during the preparation of the manuscript. On behalf of the contributors, we extend sincere thanks to our two anonymous reviewers for their incisive and constructive comments and appreciation for the aims of the project.

Finally, we extend sincere thanks to our families, friends and colleagues for their invaluable support.

1

New Directions in Labour Regulation Research

*Sangheon Lee and Deirdre McCann**

This volume is an international and interdisciplinary response to the most influential account of the role and significance of labour market regulation, namely that derived from orthodox economic theory. It also responds to the most prominent alternative to the orthodox narrative: the contention that the central objective of labour and development policies, including in their regulatory dimensions, should be to realize and sustain 'decent work'. In recent years, these theoretical and normative approaches have galvanized research on labour market regulation. This volume highlights certain of the more significant and novel developments reflected in these literatures. The aim is to feature innovative ideas and approaches, new subjects and debates, and theoretical perspectives and methodologies that characterize contemporary research on labour market regulation. In doing so, it is hoped that this book will enrich and advance the academic and policy debates on post-crisis labour regulation.

This chapter introduces the preoccupations that animate the Regulating for Decent Work (RDW) project and the essays in this book and attempts to draw out their implications for future research agendas on labour market regulation. To this end, the chapter first outlines the recent evolution of the deregulatory narrative then reviews the response of the Regulating for Decent Work Network. After introducing subsequent chapters, it draws on them to identify issues of central relevance to the design of theoretical, conceptual and methodological frameworks through which research on labour market regulation can be advanced.

*This chapter is dedicated to the memory of Jonas Agell (1957–2007), whose work inspired the Regulating for Decent Work Network. His plans to be involved were sadly defeated by his failing health.

The authors are grateful to Damian Grimshaw, Leah Vosko and the two anonymous reviewers for their comments.

Evolutions in the deregulatory narrative

It has long been recognized that the simplistic dichotomy between ‘regulation’ and ‘deregulation’ characteristic of the neoclassical economic tradition and Washington consensus policy agendas is both highly influential and also threatens the distributive objectives of labour market regulation. Theorists of labour regulation of various disciplinary backgrounds have resisted this account, in which labour regulations appear simply to distort the market and generate inefficiencies (see, for example, Berg and Kucera 2008; Manning 2003; Boeri and van Ours 2008). Yet the deregulatory project is not static. The key twist in its evolution over the last decade has been a heightened recourse to empirical methodologies that quantify and compare labour regulations (see further Deakin in this volume). This trend towards quantification has been most pronounced, and most controversial, in the use by the World Bank’s *Doing Business* project of indicators designed by Botero et al. (2004), which purport to evaluate and compare national regulations shaping ‘the business environment. This project embraces, through the Bank’s Employing Workers Index (EWI), a number of the central features of labour law regimes, including employment protections (dismissal and redundancy), working hours, rest and leave, minimum wages and regulations on fixed-term contracts (see World Bank 2009a and for the underlying methodology, Botero et al. 2004). The *Doing Business* indicators have been disseminated widely through a series of annual reports (most recently World Bank 2010) and other methods such as the annual selection of ‘top ten reformers’ (see, for example, World Bank 2010). They have also been used as the basis for policy guidance by other branches of the Bank, including in decision making on the allocation of resources by its International Development Association (IDA).

These quantification efforts have improved methods of tracking and comparing legal standards and prompted a vigorous literature, in particular on the effects of ‘legal origins’ on regulatory design and economic outcomes (Aherling and Deakin 2007; Deakin et al. 2007; Mitchell et al. 2010). They have also been instrumental in consolidating deregulatory rhetoric, through the pairing of indices that implicitly favour deregulated labour markets with assertions on the association of ‘light’ regulation with economic growth that are empirically difficult to sustain (see further Berg and Cazes 2009; Lee and McCann 2008; Deakin in this volume).

Other mutations in this evolution are less often the subject of examination in scholarly and research treatments of the quantitative turn in labour market policy design. Yet the trend towards the construction of

legal indicators has encompassed at least two significant refinements of the deregulatory narrative that expand its influence while potentially undermining its efficacy: a shift from the preoccupation with minimum wage and employment protection laws to encompass broader elements of the labour law corpus; and a geographical expansion beyond the advanced industrialized economies to the developing world (Lee and McCann 2008). Also less frequently observed is that this discourse has become more nuanced in response to the growing evidence that the processes of economic globalization are associated with growing inequality (ILO 2008). The preoccupation with the impact of regulations on economic performance remains, but is accompanied by a heightened emphasis on the assertion that labour markets liberated of regulatory interventions also advance equality, in particular by aiding the entry into the labour market of disadvantaged groups such as women and young, uneducated and rural workers (for example, Heckman and Pagés 2004; Basu and Maertens 2007).

Finally, it is worth recognizing, as a distinct element of the development of the deregulatory narrative, its persistence. The quantification project, when pursued through unsophisticated methodologies, has generated intense criticism. Most notably, substantial criticism has been directed at the EWI, on its design, its embrace of the social objectives of regulatory interventions, and, most forcefully, its deployment as a satisfactory guide to legal policy (see Lee et al. 2008 for a review). These criticisms have been of such intensity that following a critical report by the World Bank's Internal Evaluation Unit (IEG 2008), the Bank prohibited the use of the Index in policy advice and assigned it to an ongoing process of reform (see World Bank 2010). The EWI has been relegated to an annex in the most recent *Doing Business* report and excluded from the overall assessment of countries' business environments (World Bank 2010).

In light of this curbing of the deregulatory project, it may have been assumed that the disruption caused by the global financial crisis, and its origins in regulatory failure, would spur a serious reconsideration of the role of labour market regulation. Yet it has become clear that labour market interventions have not garnered a level of support to match the acceptance of more rigorous regulation of financial markets, now relatively influential at least at the level of rhetoric. In contrast, the response with regard to the labour market realm has more often been a call to persevere with deregulatory reform. In the (albeit strikingly tentative) words of *Doing Business 2010*, 'Setting long-term goals and keeping a steady course of reform might help economies recover from shocks, including the current global financial and economic crisis' (World Bank 2009a, p. 9).

Regulating for Decent Work

The Network on Regulating for Decent Work was established with the goal of nurturing efforts to fashion a coherent response to the deregulatory agenda in its contemporary guise.¹ The Network's objectives are therefore in part reactive: to encourage and disseminate research that investigates this discourse, whether by interrogating its theoretical underpinnings or methodologies or by clarifying and enunciating the potential benefits of regulatory interventions. RDW's more ambitious project is to prevent research agendas on labour market regulation from being shaped primarily in response to the deregulatory narrative. To this end, it encourages research into dimensions of the field that are being drowned out by the reigning narrative. In particular, conceptual models are favoured that reject a stark regulation/deregulation dichotomy in favour of richer understandings of regulatory frameworks, including those that support detailed empirical work to assess labour law's *de facto* operation.

To this end, Network participants have, as is evident from the contributions to this volume, continued to be inspired by the notion of 'decent work' that was elaborated at the end of the last century as the guiding objective of the International Labour Organization (ILO 1999). The ILO's Decent Work Agenda has inspired research efforts that elaborate on the policy and regulatory demands of decent work, whether as an overarching concept or in its specific dimensions, and which have incorporated an exploration of the role of legal measures (see, for example, Owens 2002; Boulin et al. 2006). Yet this project is not complete. Participants in the RDW Network are building on this work by further investigating the role of regulatory measures at multiple levels in realizing decent work, albeit in the recognition that this objective may not demand the same solutions in different contexts.

The Network is both international and interdisciplinary. It therefore recognizes that the challenges of regulating the labour markets of the contemporary global economy are unlikely to be addressed adequately from a narrower platform. Network participants are based in universities and research institutes in all regions and research the processes of labour regulation in countries across the world. RDW recognizes, however, the urgent need to strengthen the available knowledge of regulatory measures in low-income settings. In this regard, the concern is to avoid too ready an assumption that theoretical models and research themes designed for industrialized countries will inevitably be relevant to the developing world, while also identifying the contexts in which such an assumption might be valid (see further Benjamin 2007).

The Network was also established with the goal of fostering the exchange of ideas and experience among researchers from a range of disciplinary and theoretical traditions. The intention in this regard is to underscore and build on the linkages between disciplines in which similar preoccupations are being pursued and similar challenges encountered. Such interdisciplinary engagement, it is hoped, will serve to clarify the themes that animate different literatures, highlight intersecting preoccupations and insights from diverse theoretical traditions, allow researchers to draw on conceptual, theoretical and methodological advances in other fields to inform and enrich their own, and encourage interdisciplinary research. This approach is particularly apt for a field in which doctrinal analyses of labour laws and the interpretive practices of judicial bodies, knowledge of the law's influence in practice and assessments of its economic repercussions are all required. These points are returned to below.

Chapter overview

It is hoped that this first volume of contributions drawn from the work of its participants reflects the founding objectives of the Network. The book is international in scope. Compiled from the work of contributors based in research institutions around the world, it examines the regulatory frameworks of countries as diverse as Brazil, China, France, Indonesia, Tanzania and the United States (US). It also showcases research from a range of disciplinary perspectives, highlighting the vibrancy of scholarship on regulation across fields that include economics, law, industrial relations, sociology and political science.

The first part of the book identifies a set of contemporary challenges for labour market regulation that are indicative of key contemporary trends in legal evolution and in the research literatures. Part I (*Theories and Perspectives*) identifies three central themes that, explicitly or implicitly, underpin most of the contributions in the remainder of the volume: the role of empirical research in assessing and supporting labour market interventions (Deakin, Chapter 2); the historical limitations in the coverage of regulatory frameworks and the recent trend towards extending their reach to excluded constituencies (Vosko, Chapter 3); and the decline of traditional institutional mechanisms and consequent search for regulatory techniques to replace them (Marsden, Chapter 4).

Simon Deakin's analysis of the evidence-based case for labour regulation (Chapter 2) highlights the development of new data sources that are capable of measuring cross-national difference in legal regimes and the resulting proliferation of indicators. Deakin notes that these developments

have challenged conventional understandings of the economic impact of labour regulations, by suggesting that they are not as negative as hitherto assumed, while also revealing the complexity of this relationship. He concludes that the effects of labour law cannot be predicted through models of universal application, but require more sophisticated analyses of national, regional and industry conditions and complementary institutions, as well as more reliable data on laws and their operation in practice. Deakin cautions, however, that theory still remains more significant in shaping policy-making than empirical findings.

In Chapter 3, Leah Vosko examines the disjuncture between labour force participation patterns and regulatory frameworks, focusing on a range of precarious forms of employment. Building on her earlier work, which has highlighted the regulatory exclusion of these work-forms due to the influence of the standard employment relationship (SER), Vosko examines the trend over the last decade towards crafting legal measures designed explicitly to protect workers in precarious jobs. Drawing on international labour standards and laws and policies from Australia, Canada, the European Union (EU) and the US, Vosko reveals these frameworks still to be grounded in the SER, and consequently unlikely to improve working arrangements that deviate sharply from its contours. Proposing instead a model of 'global labour market membership', Vosko concludes that strategies of re-regulation must dispense with the notion of a singular employment model and be attentive to gender, citizenship and age, and outlines a range of innovative measures to respond to this need.

David Marsden (Chapter 4) singles out for consideration a conventional regulatory institution in decline: the internal and occupational labour markets that until recently dominated in many industrialized countries. Marsden takes the UK as his focus and explores labour markets in which competition for entry has become prolonged over a considerable period of time, which he characterizes as extended 'entry tournaments'. He suggests that such tournaments are of relevance to the analysis of labour market regulation, in that they appear to have developed in line with the decline in internal labour markets. Marsden questions whether tournament-style transitions are desirable for society as a whole and how far they are compatible with promoting the goal of decent work. He concludes by suggesting certain strategies of legal regulation that could potentially take the place of the declining institutions.

The subsequent chapters elaborate on these themes. In particular, they take up the implication of the three foundational chapters that the proper evaluation of the effects of regulatory measures requires sophisticated analyses of national, regional and industry contexts. Part II (*Recent Country*

Experiences) pursues recent trends in labour market regulation through case studies of low-income countries. Janine Berg (Chapter 5) examines the trend towards increasing formalization in Brazil. She concludes that this experience confirms the significant role of government policies in ensuring that workers share in the gains of economic growth. Berg further concludes that the labour market flexibility debate has been exaggerated in the case of Brazil, where the data do not support the claim that labour regulations cause growing informality. Iyanatul Islam (Chapter 6) considers the influence of labour market regulations on the welfare of workers by examining the Indonesian version of the deregulatory narrative. He contends that this thesis is erroneous in the case of Indonesia, on both analytical and empirical grounds. The challenge for policy, he suggests, is to strike the right balance between growth and employment creation on the one hand, and worker protection on the other. The contribution of Fang Lee Cooke (Chapter 7) examines the recent departure from an efficiency-driven development policy in China to one that pursues social justice, social harmony and environmental protection. Her particular focus is on the adoption of a set of three major employment laws and the role of new policy actors that has emerged in this process. Cooke concludes that these new actors have introduced novel dynamics and are playing a significant role in shaping legislative outcomes.

Part III (*Old Challenges, New Techniques*) brings together contributions that, in different ways, examine the role of novel or neglected techniques in addressing long-standing regulatory challenges. Robert LaJeunesse (Chapter 8) interrogates neoclassical theory on its own terms, identifying the predicament of the US in the wake of the crisis as a failure of the 'flexibility' model to achieve one of its central goals, of enabling swift job creation. From this premise, he returns to the solution offered by past crises, of adopting work-sharing policies, and examines the role of work-sharing in insulating labour markets and their revival during the crisis. Rubery and Grimshaw's contribution (Chapter 9) also addresses one of the central contentions of orthodox economic theory, in this case that minimum wages distort the functioning of markets. The authors draw on cross-national empirical evidence to suggest instead that minimum wages can counter such distortionary effects and smooth out some of the imbalances caused by the sex segmentation of labour supply. They argue for a renewal of minimum wage analyses that take into account women's relative employment position. Manuela Tomei (Chapter 10) draws on Vosko's analysis of precarious work by situating the ongoing progress towards an ILO standard on domestic workers as part of the broader trend towards minimum standards for atypical and highly feminized workforces.

Through a comparative analysis of regulatory schemes in Belgium, France and Switzerland, Tomei concludes by suggesting approaches and strategies to ensure that the notion of decent work encompasses domestic workers.

Part IV (*Elements of Effective Regulation*) addresses one of the key subjects in contemporary labour market regulation research, the effectiveness of regulatory frameworks. It takes as its particular focus the notion of effective regulation in developing countries and analyses the constraints that characterize these settings, without adhering to the prevalent assumptions about regulatory failure. Lee and McCann (Chapter 11) note the unsophisticated understandings of legal measures in the research on the economic impacts of regulation and call for legal effectiveness to be integrated into the analysis. They draw on new survey data from Tanzania to explore workers' knowledge of legal standards and the actions they take in response to the breach of legal norms. The authors conclude that there is significant potential for improving working conditions by increasing worker awareness. In Chapter 12, Roberto Pires responds to the widespread characterization of labour inspection as ineffective and lacking in innovation. Noting that the literature has identified innovative practices in various settings, he examines how such initiatives might emerge, drawing on the case study of labour inspection in Brazil. Pires concludes that management models and the organization of street-level regulatory work are crucial and calls for a deeper understanding of these elements of enforcement regimes. Finally, Diane Frey (Chapter 13) presents a methodology geared towards generating insights into the interventions necessary to achieve decent work. She applies institutions theory from the international law tradition to an analysis of working time regulation. Frey presents a complex depiction of the operation of legal norms in Honduras, acknowledging that formal regulation alone cannot account for the observance of legal standards, which also depends upon informal social norms, social conventions and the institutional influence of other dimensions of social and economic life.

Towards new theoretical and conceptual frameworks: the benefits and indeterminacy of labour market regulations

It is hoped that the contributions to this volume will be drawn on to advance the broader project of designing theoretical and conceptual frameworks that can guide future research efforts and policy. To this end, the remainder of this chapter identifies and explores certain of the starting points for this project. Drawing on the volume contributions,

it elaborates two issues of central relevance to this project: the potential benefits of labour regulation and the complexity of regulatory frameworks. This section is intended both to contribute to the development of a full theoretical synthesis' (Deakin, Chapter 2 in this volume) and to frame the analyses pursued in subsequent chapters.

The potential benefits of labour regulations

The first important step in devising the more balanced approach to labour regulation called for by the RDW project is to recognize the potential benefits of regulation and to reflect them in the design and evaluation of labour market policies. This effort is missing from much of the economic literature, which, as elaborated above, has tended to be consumed by the potential detriments of regulation.

As a preliminary observation, it is apparent that a central feature of a more balanced theory of regulation is a recognition that the predicted impacts of regulations are heavily dependent on the labour market model assumed in the analysis. It is well known that under the neoclassical model's assumption of a perfectly competitive market, it is impossible to expect any positive impact from labour regulations. In this model, labour regulations simply distort the market and create economic inefficiencies, in the form of either higher unemployment or slower economic growth. Adjustments to some of the key assumptions, however, such as the introduction of imperfect competition and information asymmetry, alter predictions in favour of labour regulation (see Dickens 1984; Boeri and van Ours 2008 for a recent summary). The employment-enhancing effects of minimum wage regulations in the monopsony model are a case in point (Manning 2003).

The contrasting predictions that emanate from competing theoretical models have often been interpreted as suggesting that the outcomes of labour regulations are in essence a matter of empirical findings. However, theoretical models guide empirical research strategies, which typically involve choices over the variables to be considered. In other words, they determine the list of explanatory variables and the relations between them, and hence the ways in which statistical relationships are interpreted. This means that unexpected empirical findings under the neoclassical model tend to be taken to indicate the need for improvement of the statistical models and data, rather than as raising questions about the model itself. Therefore, alternative theoretical models need to be further developed to guide more balanced empirical research and policy discussions. In this respect, the current models of imperfect labour markets appear still to be narrowly focused on certain aspects of

the labour market, thus failing to capture other important dimensions of the kind discussed below (for example, Kaufman 2007). In this sense, even empirical studies within non-mainstream models may underestimate the potential benefits of labour regulations.

A related problem is the tendency to portray the macro-level outcomes of labour regulations in terms of individual enterprise responses. In other words, the macro-outcomes are reduced simply to the sum of these individual responses. This view does not recognize the well-documented phenomenon that individually rational responses can produce inferior outcomes at the aggregate national level. For instance, during the current economic crisis, many observers have been concerned about the risk that competitive wage reductions (even to below the level of the minimum wage) deployed as a rational enterprise strategy to secure comparative advantages would create shortfalls in consumption demands, in turn making economic recovery more difficult (ILO 2008). The recognition of this fallacy of composition, and of the need to improve collective action among firms, is an important element of an improved understanding of labour regulations, and permits the elaboration of potential benefits.

With these observations in mind, it is possible to identify at least three distinct modes in which labour regulations create benefits.

Labour regulations as second-best instruments of improving workers' welfare: 'risk sharing' versus 'rent sharing'

The characterization of labour regulations as the outcome of rent-seeking activities, particularly by 'insiders' at the expense of 'outsiders', that dominates the economic literature obscures an at least equally important dimension of labour regulations, as the 'second-best instruments of risk sharing' (Agell 2002). In a market economy, workers are exposed to various types of risks, notably employment and income risks, which are inherent in the market system itself; yet markets tend to provide only incomplete insurance against these risks. It is difficult to imagine, for instance, that the private insurance market would offer complete insurance to workers for income risks (Bertola 2009). It is known that in the absence of comprehensive insurance, the resulting levels of labour inputs and productivity are suboptimal (see Pissarides 2001, 2010).

Further, the risks workers encounter in the labour market tend to be underestimated by individual firms. For instance, job characteristics such as security and workload affect not only job-holders and firms, but also society as a whole, which is not typically taken into account in firm decision making. It follows that, in addition to the limitations of private

insurance against labour income risks, firms tend to underestimate the real cost of income or job loss, and thereby to offer suboptimal levels of job quality, including wages and job security. In these circumstances, as Cahuc and Zylberberg (2006) have observed with respect to employment protection, 'the value of a job for the collectivity – its *social* value – does not coincide with its private value' (p. 89, emphasis in the original), and 'the state must then intervene in order to realign the interest of the firm with that of the collectivity' (p. 91).² This kind of approach is compellingly pursued by LaJeunesse (Chapter 8), whose reformulation of the regulatory field of working time is based on a recognition of the role of hours reduction in risk sharing, in that it is premised on a sharing of the costs of unemployment, rather than on permitting these costs to be borne by a relatively small proportion of workers (p. 12).

This emphasis on labour regulations as 'risk sharing' (rather than 'rent sharing') instruments have important implications for two issues that have galvanized the research and policy debates in recent years: globalization and 'employability'. First, if globalization is to be understood as rendering an economy more open to the rest of the world, and thereby heightening the interconnectedness of national economies, it would also render those economies vulnerable to external shocks and, in so doing, increase the overall risk and uncertainty in the labour market (ILO 2004; Scheve and Slaughter 2004; cf. Bourguignon and Goh 2004). In this case, contrary to the conventional wisdom, globalization is likely to increase workers' need for public interventions that protect against these increased risks. It should therefore come as no surprise that, among advanced economies, the level of economic openness measured by trade share of GDP is positively correlated with the intensity of job protection and the generosity of unemployment benefits (Agell 1999). If this logic can be extended further, it can be argued that the integration of a national economy into the global economy will be facilitated, rather than discouraged, by the introduction of more effective worker protection mechanisms. For the sake of clarity, we do not argue for a 'more is better' approach to labour protection. As will be discussed later (see Figure 1.1), caution should also be directed at the risk of 'over-regulation'. The point is that economic developments of increasing complexity and sophistication (such as globalization) require corresponding mechanisms that evolve to address new and increasing risks, as is illustrated by the recent policy experiences in Brazil (see Berg in this volume).

The second observation is in response to the popular argument that, faced with rapid technological and economic changes, workers should no longer expect more secure forms of employment, and instead accept

mobility and therefore improve their 'employability'. In this view, the 'flexible' or 'mobile' worker is portrayed as the ideal-type of the future generation of workers, since he is able to ensure firms' adaptability. In effect, the demand is that workers should be encouraged to take more risks in the labour market. However, given that such a change would involve higher risks for individual workers, the drive towards flexible work may not be successful unless the higher risks are taken care of in alternative ways. In other words, as Schmid (2006) has pointed out, '[N]ew securities are a precondition for encouraging riskier decisions such as moving from dependent employment to self-employment or even embarking on the venture of changing occupation' (p. 28).

In fact, one can argue that this approach, which may be called 'risk-neutralizing' flexibility was successfully implemented at the enterprise level in Japan, where functional flexibility (or a high level of adaptability from workers to accommodate substantial flexibility in their job content) was enhanced by the provision of life-long employment security.

This understanding of labour regulations as instruments for risk sharing suggests that economic studies have often put too much weight on the disincentive or 'moral hazard' effects of labour regulations (see, for example, Dufwenberg and Lundholm 2001). Legal regulation of unemployment insurance is a case in point. It is commonly argued that generous unemployment benefits reduce work incentives and thus contribute to an increased level of unemployment. However, this possibility should be viewed in relation to the 'liquidity effects' of unemployment benefits (Boeri et al. 2008). When such schemes exist, workers are more likely to be able to address liquidity constraints during the period of unemployment. The resulting improved stability of household consumption not only improves workers' well-being but also contributes to macroeconomic stability. These welfare-enhancing effects, which have attracted renewed interest during the current economic crisis, can be expected to be particularly strong for poor households that are vulnerable to external income shocks. If these effects are not taken into account, the negative effects of unemployment insurance, which rest solely on the notion of moral hazard, will inevitably be overstated.

Labour regulations as 'beneficial constraints'

The discussion so far has concentrated on the role of labour regulations in improving workers' welfare in relation to labour market risks. While such improvements may have beneficial impacts on employers, such as through productivity increases, it is also significant that labour regulations are often developed directly to address employers' problems, which

are especially acute in the context of market failure. One prominent aspect of labour regulations in this respect is their role in addressing coordination failures among employers. Labour regulations need to be understood as 'devices for coordinating the expectations of actors under conditions of uncertainty' (Deakin in this volume, p. 35). For instance, we have already seen that the provision of better wages and working conditions harbours potential productivity gains, but the question remains of why it should not be initiated by individual employers rather than through regulation. This is related to the collective nature of such gains.

One of the classic examples is working time regulation. It is well known that excessive hours are harmful to both workers' well-being and productivity, at least in the medium and long term. Many employers are also aware of this and, in the latter part of the nineteenth century, some introduced factory-level initiatives to cut hours. The problem, as is shown by the UK history of industrialization, is that individual initiatives to reduce hours to a reasonable level may not be effective when other firms do not follow such initiatives in order to make additional short-term gains from excessive hours, such as labour cost advantages. Therefore, employers may find themselves in a 'prisoners' dilemma' which requires coordinated actions to reach socially optimal outcomes (see Lee and McCann forthcoming). While different regulatory arrangements can be developed depending on the way different institutional elements are articulated,³ it can be said that the presence of regulations would help in directing the labour market away from the trap of long hours.

Similarly, it has been argued that the labour market impacts of minimum wages, job protection and unemployment benefits need to be considered, including their positive impacts on developments in relation to workers' levels of training and skills, thereby upgrading the employment structure towards good-quality jobs with high wages (see Bertola 2009 for a review). As with the effects of employment benefits on workers' search behaviours, the unregulated labour market tends to result in an inefficient equilibrium in which low-wage jobs are 'over-created'. In this situation, employers who can afford more high-wage jobs may have little incentive to create them. The introduction of minimum wages, for instance, can encourage employers to offer good jobs and improve the composition of jobs in order to achieve productivity gains (see, for example, Acemoglu 2001; Mortensen and Pissarides 1999). As Agell (2004, p. 259) puts it (in rather ironic fashion), '[I]t is important to note that it is the very fact that the minimum wage creates unemployment among unskilled workers (i.e., the standard objection to minimum wages) that leads to an upgrading of