UPDATING INTERNATIONAL LABOR STANDARDS IN THE AREA OF SOCIAL SECURITY: A FRAMEWORK FOR ANALYSIS

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I. INTRODUCTION

This paper is written as a contribution to the updating of international labor standards in the field of social security. The starting point for our analysis is ILO Convention 102 of 1952 ("Convention 102"),[1] a key labor standard of the immediate post-war period, and the centerpiece of the ILO's approach to social security over the following decades. We examine Convention 102 as the embodiment of a social-insurance based model for the extension of social security protection, and consider the reasons for the more recent crisis of this model, with reference to the British case as an example of more general trends. We then consider how far a program of international labor standards-related activity can build on, and where relevant, update the social insurance model in today's globalized social and economic context. We suggest that an important location for such a development is the intersection of the "independent" and "informal" work economies, and explain what we mean by these categories and why we see them as intersecting. Then we set out the case for using particular processes or methodologies, which we refer to as methodologies of strategic coordination, as the means by which new forms of standards-related activity in the areas of social security could be implemented. Here we emphasize the importance of understanding "local knowledge" of national and regional variations in the configuration of the informal and independent work economies, and in putting that local knowledge to

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1. ILO Convention No. 102, June 28, 1952 (concerning Minimum Standards of Social Security).

use when assessing social security needs and priorities. Finally, we consider the normative framework for an updated approach to social security. We suggest that the concept of "decent work," which has informed much of the ILO's recent standards-related activity, should form the basis for such an approach, in conjunction with the goal of promoting employment which, we suggest, should also be seen as an emergent theme of the activities of the ILO.

II. CONVENTION 102 AND THE SOCIAL INSURANCE MODEL OF SOCIAL SECURITY

Essentially, ILO Convention 102 lays down standards governing contributory and non-contributory social security benefits that operate regarding various causes of earnings interruptions, in particular unemployment, sickness, old age, and the death of a "breadwinner." This is, above all, a model based on social insurance systems of the type that were in place in more or less all developed economies at around the time the Convention was adopted.

Social insurance is a creation of modern labor markets, in which the vast majority of the adult population seek employment to earn a living. It is characteristic of societies in which more traditional alternatives or complements to wage labor (e.g., direct access to the land, or intra-family transfers) are either no longer available, or have come to play a greatly diminished role.

Social insurance can be defined in various ways. At its core, we would suggest, is the creation of income transfer mechanisms that are intended to safeguard individuals and households against the risks that arise from dependence on wages as a principal source of income. As the structure of Convention 102 illustrates,[2] benefits received while the claimant is, for example, unemployed, are linked to the contributions that he or she paid when previously engaging in insurable employment. Sometimes the purpose of the contributions is

2. Convention 102 sets out standards for the following benefits: Medical care (Arts. 7–12), sickness benefits (Arts. 13–18), unemployment benefits (Arts. 19–24), old-age benefits (Arts. 25–30), employment injury benefits (Arts. 31–38), family benefits (Arts. 39–45), maternity benefits (Arts. 46–52), invalidity benefits (Arts. 53–58), and survivors' benefits (Arts. 59–64). In each case, a broadly similar structure is followed: the Convention defines the risk or "contingency" against which the benefit in question provides protection, determines the persons to be protected in terms of "employees," "prescribed classes of the economically active population," "residents," and others; sets out general conditions for the provision of services and the payment of benefits; and lays down standards for qualifying conditions and the duration of benefits. It also stipulates standards linking the level of contributory benefits to, in certain respects, the previous earnings of the beneficiary and, in others, to the "wage of the ordinary adult male labourer" in the economy as a whole (Arts. 65 and 66).

to set a qualifying threshold, while the benefit itself is flat-rate (that is, payable at a single rate regardless of the size or frequency of the contributions that have been made). In other contexts, benefits are earnings-related, that is, payable in proportion to contributions. Either way, by virtue of the "contributory principle," social insurance schemes rest on some notion of *entitlement*, in contrast to social assistance benefits that are payable on the basis of *need*, or *universal* benefits that are paid without the need of recipients to demonstrate a record of contribution, such as certain tax reliefs, or benefits in kind (e.g., in the United Kingdom, access to NHS medical care services) that are free at the point of supply. It is a feature of modern social security systems that social insurance mechanisms almost invariably operate alongside needs-related or means-tested benefits and, less often, universal ones. Means-testing provides a basic level of support for those whose contribution record is inadequate; to that extent, it complements social insurance. This too is evident in the structure of Convention 102, which, among other things, lays down standards of a general kind for determining the level of means-tested benefits.[3]

If the risks that social insurance guards against are those created by dependence on employment, it is appropriate that it makes use of the traditional or "standard" employment form to construct its own modes of operation. It is only if employment is, on the whole, stable, that regular contributions can be levied and pay-outs for unemployment and sickness limited in their scope and duration. Highly irregular employment patterns, or long-term unemployment, tend to undermine the solvency of social insurance schemes, or make their application impracticable. The so-called short-term benefits, payable in respect of unemployment or sickness, tend to be time-limited for this reason; and the fall in mortality rates of those over retirement age is one reason for current concern over the "burden" of paying old age pensions, and for calls to raise the normal retirement age.

It is for the same reason that the mixing of social insurance benefits with income from waged employment has generally been prohibited, or at least restricted. "Retirement" tends to be defined as a status in which regular employment had come to an end; under U.K. legislation, the "retirement condition" for the receipt of old age pensions, now abolished, illustrates the point. In a similar way, "unemployment" denotes not just the absence of *work* but more

3. *See* Convention 102, Art. 67, referring to a level "sufficient to maintain the family of the beneficiary in health *and decency*" (our emphasis).

specifically a suspension of *employment*, understood as regular paid labor carried out under a relationship of "subordination" between employer and employee.[4]

Social insurance rules do not simply assume the existence of the "standard" model of employment; they may actively reinforce it. This is the effect of norms governing the definition of "voluntary" unemployment, availability for work, and the obligation actively to seek employment as condition of receiving benefit. In the United Kingdom, until recently, these rules were set up in such a way as to allow benefit recipients to refuse offers of work at rates below union rates (e.g., the going rate for the trade). When the rules changed in the course of the 1980s and 1990s to require recipients to accept a wider range of job offers, the move was part of a wider attempt to undermine the idea of a "going rate" for wages, and thereby contributed to the "erosion" of the standard employment model.[5]

The social insurance model must be placed in the context of what it replaced, which in the case of most European systems was a combination of private charity and disciplinary control by the state. In England, the "old Poor Law," which operated up to 1834 was based on the payment of cash doles (outdoor relief) that, by the standards of the time, were relatively generous. However, at the end of the eighteenth century in certain agricultural districts, the practice began of paying Poor Law supplements to top up low wages using a sliding scale, the so-called Speenhamland system, as an alternative to a minimum wage. The many perverse incentives to which the sliding scale gave rise are vividly described by Karl Polanyi in *The Great Transformation*.[6] The reaction came, after 1834, in the form of the "new Poor Law" under which outdoor relief could not, in principle, be paid to the "able bodied" unemployed, who were instead confined to the workhouse under conditions that had to be measurably inferior to those enjoyed by the lowest paid "independent laborer": the Benthamite principle of "less eligibility."[7] The 1834 system failed, in

4. *See* AUX SOURCES DU CHÔMAGE 1880-1914 (Malcom Mansfield ed al. eds., 1994); SIMON DEAKIN & FRANK WILKINSON, THE LAW OF THE LABOUR MARKET: INDUSTRIALIZATION, EMPLOYMENT, AND LEGAL EVOLUTION ch. 3 (2005).

5. *See* U. Mückenberger & S. Deakin, *From Deregulation to a European Floor of Rights: Law, Flexibilisation and the European Single Market*, 3 ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES ARBEITS- UND SOZIALRECHT 153 (1989).

6. KARL POLANYI, THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME (2d ed. 1957).

7. The source of the idea of "less eligibility" is Jeremy Bentham, *Essay II. Fundamental Positions in Regard to the Making of Provision for the Indigent Poor*, *in* ESSAYS ON THE SUBJECT OF THE POOR LAWS (1796), *reproduced in* I THE COLLECTED WORKS OF JEREMY BENTHAM. WRITINGS ON THE POOR LAWS (Michael Quinn ed., 2001).

its turn, when it became generally agreed that "less eligibility" was undermining stable employment. By attaching degrading conditions to the receipt of poor relief, it removed any effective "floor" to the employment of low-paid workers. There was also a perception that "test workhouses," which were designed to subject the unemployed to a particularly harsh disciplinary regime, were expensive to run, while having little impact on unemployment levels, which were understood to be largely driven by the business cycle.[8]

The British social insurance system of the twentieth century was the result. It began as part of a wider set of measures, including the introduction of labor exchanges and minimum wage laws, which aimed to regulate the supply of labor and combat casualization. Employment stability was regarded as desirable if marginalized groups were to be integrated into the workforce and, more generally, into society; it would also help to cut the costs of relief. For their time (and perhaps for ours), these were ambitious goals, which were nevertheless achieved to a large extent in the course of the first half of the twentieth century.

The public regulatory character of social insurance schemes is also one of their distinguishing features. In Britain, social insurance contributions are currently levied as a kind of employment tax. The principle of compulsion affects all wage earners, including those in higher income brackets who, nevertheless, benefit from a ceiling on employees' contributions, and are also in a position to take advantage of rebates for those who are "contracted out" of the state pension scheme in favor of an occupational or individual scheme. The introduction of what was, in effect, a tax on the income of the middle class groups who were the least likely to rely on state provision was the subject of a bitter political dispute during the passage of the National Insurance Act 1911.[9] However, the principle established by that Act, one of solidarity across different income groups, occupations, and industries, stood the test of time remarkably well, until the neo-liberal reforms of the 1980s that undermined this aspect of the scheme.

In particular, the compulsory and comprehensive character of social insurance was stressed by Beveridge in his 1942 report, *Social Insurance and Allied Services*,[10] which paved the way for the post-war

8. S. WEBB & B. WEBB, THE PUBLIC ORGANISATION OF THE LABOUR MARKET: BEING PART TWO OF THE MINORITY REPORT OF THE POOR LAW COMMISSION (1909).

9. *See* E.P. HENNOCK, BRITISH SOCIAL REFORM AND GERMAN PRECEDENTS: THE CASE OF SOCIAL INSURANCE 1880–1914 (1987).

10. Cm 6404 (1942).

welfare state. The nineteenth century poor law reformers had envisaged a substantial role for private charity in mitigating the harsh disciplinary effects of the poor law. Voluntary giving was preferable to government action in their view because it implied that that there could be no *right* to relief. In contrast, Beveridge explicitly designed his scheme around the proposition that access to social insurance was an aspect of citizenship and, as such, universally accessible.

The "pay-as-you-go" dimension of social insurance is a further aspect of its public-regulatory character. In contrast to "pre-funded schemes," contributions do not go into an identifiable "fund" on which the beneficiary draws when necessary. Instead, at any given time, current contributions are paying for current benefits. To varying degrees, schemes introduce an element of actuarial calculation in attempting to link current contribution rates to expected future claims. While still common on the continent of Europe, this type of calculation was largely abandoned in Britain in the 1950s.

The differences between "pay-as-you-go" and "pre-funding" must not, however, be exaggerated. Because labor cannot be stored, it is always and inevitably the case that retirees are being supported, either directly or indirectly, by those currently in employment. Thus a shift from public provision to pre-funding does not, in and of itself, solve the problem of the imbalances caused by the "ageing" of the population. Nor is either system demonstrably fairer than the other. They both involve a transfer or sharing of risks between generations. The essential differences relate to the legal form (which is not a trivial point, as we examine further below) and to a shift in focus from labor markets to capital markets as the preferred mechanism for risk distribution. In "pay-as-you-go" schemes, benefits are tied, on the whole, to shifts over time in average earnings, whereas funded schemes rely upon returns upon financial investments. The difference between these two routes is of course of fundamental importance to the way in which risk is managed, and has numerous wider implications for economic structure and performance, but there is no sense in which one option is *inherently* superior to or more appropriate in a market system than, the other. Thus the shift to funded schemes that many systems, including the United Kingdom, have encouraged may bring about a reduction in public expenditure and in the size of the public administration, but it involves more complex forms of public regulation without government necessarily avoiding a role as the guarantor of last resort if schemes fail.[11]

11. *See* DEAKIN & WILKINSON, *supra* note 4, at 180–82.

Therefore, as a mechanism for social protection, social insurance has a number of attractive features. It avoids the perverse incentives of means-testing and "targeting," it is relatively cheap to administer, and it creates a form of "industrial citizenship" that combines social integration with support for the efficient working of labor markets. Why, then, are social insurance regimes currently under pressure, both financially and politically, in a number of national systems, including the United Kingdom?

Some reasons are structural in nature, and relate to the inequalities that social insurance systems tend to reproduce. Thus most social insurance regimes have at one time or another adopted a version of the male breadwinner model of the household; the logic of this was reflected in higher than usual contribution rates for married women (on the grounds that they bore a greater risk of becoming unemployed), and the provision of survivors' and dependants' benefits that assumed for the most part that married women derived such social insurance rights as they had from their husbands' contribution records. Convention 102 is no exception to this tendency, referring at numerous points to contributors as "breadwinners" with their "wives and children" as dependants.

Additional inequalities are often present in social insurance schemes. Although lower level income groups were in a position to benefit from participation in social insurance, rates were often set at a level that was disproportionately high for them in relation to the benefits that they could expect to receive. The flat rate contribution scheme that Beveridge recommended in the 1940s was one example of this effect. In addition, workers with irregular contribution records were less likely to acquire substantial pension entitlements through social insurance than those with more complete and regular employment, so that the former were effectively subsidizing the latter. Part-time workers were another group who were unlikely to get a good return on their contributions. This may explain why, in Britain in the 1980s and 1990s, many married women were prepared to accept part-time employment below the rate for national insurance contributions; although such arrangements were clearly of most benefit to low paying employers, the employees may have felt that they had more to lose than to gain from making contributions.[12]

Nevertheless, many of these problems can be solved through improved institutional design. The traditional gender bias within social insurance schemes has largely been eradicated under the

12. *Id.* at 171–75.

influence of EU law[13] and domestic political pressures, so there are now few derivative benefits, and male and female contributors take part on an equal basis. Contribution structures can be revised so as to remove disincentives to take up insurable employment, as occurred in the United Kingdom in the late 1990s.[14] Lower income groups, part-time workers and those with irregular contribution records can be assisted through the device of contribution *credits*, again along the lines of recent U.K. practice (although the use of credits goes back to the very early days of the U.K. national insurance system).

Perhaps a more serious problem arises from the trend toward the outsourcing of production and the fragmentation of the enterprise, which undermines the assumption, in Convention 102 as in national social security systems, that stable employment would be available to a significant proportion, at least, and most likely a majority, of the labor force. Most agree that this is no longer the case. But without wishing to underestimate the difficulties that these developments cause to social protection regimes, we would suggest that the inherent flexibility of social insurance mechanisms is a highly relevant consideration here. Because contributions can be aggregated over time and across different employments, outsourcing, in itself, does not pose an insuperable barrier to the operation of the insurance principle. Indeed, in this respect state run social insurance schemes have an inherent advantage over employer run occupational schemes, in the sense that, with the former, no issue of the transfer of pension responsibilities from one employer to another arises; it does not matter how many times the employee moves between jobs as long as their contributions are paid.

Undoubtedly, greater difficulty is encountered in situations where vertical disintegration leads to a loss of employee status for the workers concerned. This mirrors the wider problem, present in both developed and developing economies, of how to integrate workers in the "informal sector" into insurable employment. To some degree, the problem can be partially addressed by the device of ad hoc statutory extensions of the "employee" concept; there are a number of examples in the U.K. case.[15]

However, this will not work in the case of casual workers for whom there is no clearly identifiable employer. For employer and

13. In particular Directive 79/7/EC on equality between men and women in state social security schemes.

14. Thanks to the Welfare Reform and Pensions Act 1999, inserting section 6A in the Social Security Contributions and Benefits Act 1992. *See* DEAKIN & WILKINSON, *supra* note 4, at 189.

15. *See* MARK FREEDLAND, THE PERSONAL EMPLOYMENT CONTRACT ch. 1 (2003).

employee, the need to pay a double contribution is a substantial disincentive to participation. The same problem arises when irregular or informal work leads to a situation in which the individual simply does not have the means to make adequate contributions. One solution is to take steps to repress casual work as such. This was the route taken in a number of casualized industries in the United Kingdom in the first half of the twentieth century, most significantly the docks. Such policies, whatever their technical feasibility, are unlikely to be adopted as long as the current vogue for the encouragement of "flexibility" continues. Alternatively, solutions may be found in the use of mechanisms outside the regular state social insurance system, for example, "micro-insurance," that is to say, voluntary schemes tailored to meet the needs of a particular sector, with an element of fiscal subsidy from the state to compensate for the extra administrative costs of running such schemes.

A further difficulty facing social insurance relates to its reliance on public regulatory mechanisms of delivery. Convention 102 assumes an activist state that is prepared to take on the task of organizing a publicly-run social insurance system. However, experience shows that the state is susceptible to collective action problems that can undermine the integrity of such schemes and their potential to promote solidarity. It is here that legal form matters. Rights to an income stream that take the form of claims over a trust fund or other accumulated set of assets may be less susceptible to "opportunism" or ex-post renegotiation of the kind that has undermined the operation of the U.K.'s national insurance system since the early 1980s. Successive legislative changes to the rules on contributions, coupled with a restriction of benefit qualifying conditions, have altered entitlements to the detriment of claimants.[16] Whether this has been more easily achieved because the claims of contributors do not take the form of legally protected contract and property rights is hard to judge. After all, it is open to governments to change not just the formulae for calculating social insurance benefits, but to use the fiscal system to change, again ex post, the terms upon which occupational benefits are taxed. A more meaningful reform might be to shift responsibility for the administration of the national insurance system to an independent body that is above short-term party politics. However, it is unlikely that this step will be taken, if only because it would inevitably involve the cession of governmental power over what is effectively an issue of employment taxation.

16. *See* DEAKIN & WILKINSON, *supra* note 4, at 175–85.

However, even if it is often difficult to discern what the true advantages or disadvantages of moving to a greater use of private sector provision would be, it is likely that greater use will be made in future of hybridized forms of public sector and private sector provision. The United Kingdom is already well advanced down this path, as a result, in the first place, of decisions taken in the 1950s, to allow employer-based occupational pensions to be contracted out of the national insurance scheme, and then, in the 1980s, to allow individuals to leave the earnings-related state pension scheme (or their employer's occupational scheme, if there was one), in favor of taking out an individual pension with a private provider. The experience of the 1980s in particular suggests that a move of this sort creates a need for financial regulation that is likely to be extremely complex and not necessarily very effective, leaving the residual responsibility with the government after all. Recent experience also suggests that if the state scheme is wound down, to the extent that it provides less effective competition with private sector provision, employers may take steps to withdraw from defined benefit schemes, at least for new earners, in favor of money purchase schemes in which the risk falls on the individual contributor (or, again, in the final analysis, on the government).

However, the recent stress in the United Kingdom on individualized pension provision may have distracted attention from the wider potential of non-state forms of delivery. Credit unions, cooperatives, and other local forms of collective saving may offer a way forward for occupational or other groups who do not currently have effective access to the state scheme.[17]

The British case suggests that notwithstanding the recent crisis of social insurance, the underlying model continues not just to be relevant to today's globalized context, but is more than ever necessary. It is therefore not surprising that the ILO should have concluded that the extension of contributory social insurance schemes is one of the means by which social security systems could be strengthened. The potential feasibility of this approach is indicated by the recent experience of several countries that have successfully combined economic growth with a widening of social insurance coverage.[18] However, the difficulties inherent in such a route are also

17. *See* Simon Deakin, *Workers, Finance and Democracy*, *in* THE FUTURE OF LABOUR LAW: LIBER AMICORUM SIR BOB HEPPLE QC 79 (Simon Deakin et al. eds., 2004).

18. *See* SOCIAL SECURITY: ISSUES, CHALLENGES AND PROSPECTS, REPORT VI TO THE INTERNATIONAL LABOUR CONFERENCE, 89TH SESSION ch. 3 (2001); EXTENDING THE

clear: these include problems in matching the social insurance model, which developed initially in western Europe, to the very different conditions of other regions and countries. This is not an issue to which Convention 102 currently offers a solution. How can this gap be addressed? We take as a starting point two complementary proposals, one methodological, the other normative.

III. METHODOLOGIES FOR EXTENDING STANDARDS-RELATED ACTIVITIES: THE IMPORTANCE OF "LOCAL KNOWLEDGE"

As in the previous section, our discussion starts in established doctrine and finishes in less familiar and more controversial territory. The established doctrine is to the effect that we can clearly recognize an "informal sector" of the labor economy—a sector of often very precarious and poorly conditioned work disproportionately peopled by disadvantaged and deprived groups (e.g., migrants and refugees) existing in less than complete integration into national legal and fiscal regimes.[19] Moreover it is widely asserted and accepted that this sector has to be a primary focus for standards-related activity in the sphere of social security, and that this focus is as necessary and appropriate in relation to developing economies as in relation to developed ones.

Perhaps more novel and debatable, but nevertheless important in our view, is an argument to the effect that we can discern an independent work sector or economy, which intersects with the informal labor economy but is analytically and practically distinguishable from it, and which deserves to be regarded as another very significant focus of attention so far as standards-related activity in the social security sphere is concerned. This is the sector of the "self-employed worker." It is of large and apparently increasing size in labor economies of many types and many regions of the world. It is striking how often definitions or descriptions of informal labor economies include such workers. Yet, the two categories are quite analytically distinct, because we find many fully dependent workers in the informal sector and many fully independent workers in the formal sector of the labor economy.

There has of course been a long tradition within labor and social security law of regarding the independent worker as being of lesser concern than the dependent worker, or even as of no concern at all by contrast with the dependent employee, so far as labor standard-

PERSONAL COVERAGE OF SOCIAL PROTECTION, *reproduced in* INTERNATIONAL LABOUR OFFICE, SOCIAL SECURITY: A NEW CONSENSUS (2001).

19. *Id.* at 59.

related activity is concerned, both generally and specifically in the social security sphere (though that tradition has perhaps been somewhat less persistent in that specific sphere). This latter tradition has come under question, mainly in the form of initiatives to broaden the category of dependent worker, or to accord treatment similar to that of fully dependent employees to newly recognized intermediate categories of semi-dependent workers. Our argument goes one stage further, by suggesting the importance of being prepared to consider the extension of standards-related activity in the social security sphere to include the independent work economy *as such*, that is to say, without having to identify it as necessarily a location of informal employment or "sham" self-employment in order to legitimate its regulation.[20] This might represent quite a subtle and complex shift in the nature and orientation of standards-related activity in the social security sphere. Shifts of that kind point the discussion in the direction of a processual dimension of standards-related activity, and more particularly toward methodologies of strategic coordination.

While taking Convention 102 as a point of departure, the kind of standard setting that Convention 102 represents is not easily going to provide a mechanism capable of capturing variations in economic development across countries and regions. If the ILO is to adopt new forms of standards-related activities in the sphere of social security, we suggest that this might be furthered most effectively by the use of processes or methodologies of strategic coordination of national norms and policies.[21]

We define processes of strategic coordination as processes that, instead of straightforwardly promulgating and seeking to enforce labor standards, seek to shape national norms and policies by means of dialogues in which guidelines and benchmarks of best practice are

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20. On the need, more generally, to construct rules and principles governing the position of independent workers as such within labor law, see FREEDLAND, *supra* note 15.

21. Perhaps the best known example of such strategies is the "Open Method of Co-ordination," which has been developed within the European Union, in particular in relation to employment promotion, under the aegis of the European Employment Strategy. For further discussion of the evolution and operation of the Open Method of Co-ordination, see, *inter alia*, Joanne Scott & David M. Trubek, *Mind the Gap: Law and New Approaches to Governance in the European Union*, 8 EUR. L.J. 1–18 (2002); Caroline de la Porte, *Is the Open Method of Co-ordination Appropriate for Organising Activities at European Level in Sensitive Policy Areas*, 8 EUR. L.J. 38 (2002); Caroline Barnard, *The Social Partners and the Governance Agenda*, 8 EUR. L.J. 80, 83–84 (2002); Sabrina Régent, *The Open Method of Co-ordination: A New Supranational Form of Governance*, 9 EUR. L.J. 190 (2003); D. Ashiagbor, *The European Employment Strategy and the Regulation of Part-time Work*, EMPLOYMENT POLICY AND THE REGULATION OF PART-TIME WORK IN THE EUROPEAN UNION ch. 2 (S. Sciarra et al. eds., 2004); OLIVIER DE SCHUTTER & SIMON DEAKIN, SOCIAL RIGHTS AND MARKET FORCES: IS THE OPEN COORDINATION OF EMPLOYMENT AND SOCIAL POLICIES THE FUTURE OF SOCIAL EUROPE? (2005).

articulated, and through which their application is monitored and they are themselves reevaluated. The factors that seem to make such processes particularly apposite in the social security sphere are as follows. First, standards-related activity in this sphere is, in contrast with what we might think of as "typical" labor standards, less concerned with the work conditions and of employer-employee relations, and more concerned with the norms of state action with regard to social protection and inclusion. The development of those norms is often best furthered by coordinative methods rather than by coercive ones.

Second, the development of standards-related activity in this sphere has been shown to involve complex and subtle conceptual and analytical moves and shifts. Again, development of that kind is especially likely to be furthered by the methodologies of coordination and mutually educative dialogue.

As a connecting factor between that discussion of the process by which the ILO might support the development and extension of social security, and this discussion of the importance of the informal and independent or semi-dependent sectors of labor economies, we refer to the relevance and value of "local knowledge." If, as we have done in this section, one identifies the considerable significance, for the development of social security, of an understanding of those informal and independent or semi-dependent sectors, we run the risk of implying that there is something approaching a set of universal stereotypes for those sectors, so that they could be the subject of uniform definition for all countries and regions. But that is very far from being the case, and we proceed to explain why we regard the acquisition of local knowledge as being crucial if these concepts of informal and independent or semi-dependent labor economies are to be useful ones.

Our suggestion is that, although these concepts of the informal labor economy and the independent or semi-dependent labor economy will have parallel manifestations in most if not all countries and regions of the world, nevertheless there will be major differences between those manifestations according to the particularities of each country and region, especially as to:

(a) the configuration of the local labor and product markets;
(b) the local social and economic conditions more generally; and,
(c) the local regulatory and fiscal regimes.

In fact, local variations around those axes may be so important as to render false or misleading the appearances of similarity between

the informal and independent or semi-dependent sectors in one country or region and another. The informal sector of one national labor economy may be concentrated upon the avoidance of fiscal or regulatory requirements among predominantly male workers in the construction sector, let us say, while the informal sector of another national labor economy might be posited upon illegal immigration or importation of predominantly female workers into the domestic service sector or into the "sex industry." It is hard to over-emphasize the importance of socio-legal research to obtain precise local knowledge of those variants. Otherwise there is the risk, in particular, that we may operate according to false pre-conceptions of the universality of certain models of the informal and independent or semi-dependent sectors that are actually very much confined to certain developed industrial or post-industrial national economies.

IV. THE NORMATIVE FRAMEWORK FOR A NEW APPROACH: DECENT WORK AND SOCIAL SECURITY, AND PROMOTING EMPLOYMENT

In addition to considering methodologies, we also need to consider the underlying normative approach that might frame the purpose and direction of development of standards-related activity building upon Convention 102. We suggest that it might be useful to think about ILO standards-related activity in the sphere of social security as developing against the background of two main agendas, those of decent work and employment promotion. This proposition is relatively uncontroversial with regard to decent work, because that is identified as an ILO agenda in a formal and substantive sense, and the terms of reference of this project are expressed accordingly. To speak of a distinct agenda of employment promotion is more controversial, so that proposition requires fuller explanation.

We suggest that it is possible that there is both in a formal and, in a substantive sense, an emergent ILO agenda or distinct strand relating to employment promotion. This can be observed in the Report on Promoting Employment from the 92nd Session of the ILC in 2004. This agenda or distinct strand could be regarded as constructed on the basis of the Employment Policy Convention 122 of 1964. But even if one is skeptical of this notion in a formal sense, one might nevertheless accept that employment promotion is necessarily and inherently part of the underlying agenda and general mission of the ILO in general and its standards-related activities in particular. In the less formal sense we suggest that it is useful to identify the

employment promotion strand in the thought and policy development of ILO history through today.

Whether one views employment promotion as a distinct policy strand or agenda in a formal positive sense or merely in an informal analytical sense, one might, equally on either basis, accept that this agenda, although separable from the decent work agenda, is nevertheless fundamentally interlinked with it. Articulations of the decent work agenda generally espouse employment promotion objectives, and vice versa. Of course, any institutional actor in the field of regulation of employment relations will wish to claim to combine and reconcile those objectives, but the commitment of the ILO to the understanding of those two agendas as interconnected seems to be increasingly serious and emphatic.

It may be that these propositions amount to vague and rhetorical aspirations; they merely identify the Holy Grail of standards-related activity in the labor field without guiding us to its location. However, we suggest that standards-related activity in the particular sphere of social security may have a central part to play in converting that general discussion into a more concrete and specific one. That is to say, social security standards very often constitute the hinge or the coupling between decent work policies and measures on the one hand, and employment promotion policies and measures on the other hand. Social security provisions in the nature of "workfare" provide the most vivid illustration of this kind of linkage, but, fortunately, the phenomenon extends well beyond mere "workfare" arrangements. We suggest that this notion of the key role of social security concerns in the agendas of decent work and of employment promotion is of general importance in helping to create an understanding of how the ILO might build upon Convention 102. Moreover, the notion may help devise ways of transposing its approach to social security provision, essentially based as it is upon U.K. and European historical development, to the situation and needs of the developing world. That has been the underlying preoccupation of this article and, more broadly, the whole symposium discussion of which it forms a part.