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After ‘Subsistence Work:’ Labour Commodification and Social Justice in the Household Workplace

LIAM McHUGH-RUSSELL

I. Introduction

What might social justice mean for those engaged in subsistence work? This is not an obvious topic for a book dedicated to possible global futures of work. In keeping with the stadial view of economic (and social) progress embraced by the classical economists, the international development project has tended to view the extension of market work as a precondition of healthy, wealthy societies. At the ILO’s founding, the prevalence of market work (especially waged labour) was understood as the crux of the labour problem for industrialised countries, and its relative absence was one marker of the ‘imperfect development’ that countries would have to overcome to fully benefit from international labour standards. While some ILO standards now encompass subsistence production, the organisation continues to foreground market employment as the unique pathway to development. Contemporary political theory has sought to rehabilitate Marx’s concept of

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‘primitive accumulation’, originally deployed to chart how people were dispossessed from the means of subsistence. But such scholarship tends to invoke the concept metaphorically, to denote other processes that deploy violence to dismantle non-capitalist social relations. Recent labour law scholarship, likewise, has sought to recover the dispossession central to the construction of free labour on which contemporary labour law is conditioned. Yet that work, too, tends to seek the contemporary legacy of historical processes, rather than focusing on their occurrence in the present. In short: subsistence work, when it is seen at all, is largely seen as a vestige of the past.

This chapter develops three challenges to these narratives. First, subsistence work is a widespread, present reality. There is evidence that between 500 million and 1 billion people worldwide currently rely on subsistence activities as their primary income source. Second, subsistence work bears on the ILO’s mandate, not only because social justice requires attending to the margins but also because its regulation has underexplored import for the ILO’s so-called core mandate. Third, existing ILO standards already have and have had significant relevance to subsistence work, not least of which is ‘counting it out’ in official statistics. The conclusion addresses the broader question of how classification bears on the agenda of pursuing social justice within and beyond the ‘household workplace’.

II. Prevalence of Subsistence Work

How many people globally are engaged in or depend on subsistence work? Seeking an answer means confronting acute conceptual and measurement issues. Official statistical standards ignore and disregard the value of most of the work households do to support themselves. In line with the historical invisibility of all ‘domestic work’, these standards place unpaid reproductive labour – cooking, cleaning, caring for family – beyond the ‘production boundary’ which determines what counts as ‘productive’, as income and as work. Relying on a poorly motivated, ambiguous and deeply gendered distinction between goods and services, those measures do, however, encompass household work to grow, hunt or fish for food, construct and repair buildings, or gather fuel. Beyond these

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7 Roberts, above n 2, 534–36.
12 ibid, 6.27, 6.32–6.33. The gendered foundation of the goods/services distinction is well illustrated by the long treatment of water-carrying – generally women’s work – as non-productive. See Inter-Secretariat Working Group
conceptual issues with prevailing standards, those whose income is primarily derived from intra-household production may also engage in market-facing activities (and vice versa) and the allocation between the two is often seasonal. More pointedly, communities reliant on subsistence farming or similar activities have often engaged in communal production and reciprocity that transcend the household boundary and sometimes resemble market-based exchange.

Though official standards count some household work as ‘productive’, there is no reliable global accounting of how many engage in or depend on such work. It is worth exploring why. The clearinghouse for global labour statistics is the ILO’s Department of Statistics (ILOSTAT). ILOSTAT maintains standardised, up-to-date global labour statistics by aggregating country-level data and constructing country-level estimates where recent data is unavailable or out of sync with international standards. ILOSTAT’s focus, however, is on labour market indicators and especially on the makeup of the ‘labour force’, a category defined to include only people who have a job – work for pay or profit – or are actively seeking one. The best available analyses of who is working and what kind of work is being done, reflected in the ILO’s ‘flagship’ report on trends in the ‘world of work’, are thus based on data that exclude subsistence work entirely.

Since 2003, the ILO has also collected statistics about work and workers usually neglected in conventional labour statistics, under the rubric of ‘informal employment’ and work in the ‘informal economy’. Along with historically under-counted market-based work, the operational definition of informal employment can encompass ‘productive’ non-market work. Yet because national statistics have tended to exclude agricultural work wholesale, subsistence work was long excluded in practice from global estimates of informal employment. While the ILO has now compiled global estimates of informal employment that include agriculture, for various reasons those measures still exclude own-use household production.

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11 International Labour Organization, ‘ILO modelled estimates and projections’. Available at: ilostat.ilo.org/resources/concepts-and-definitions/ilo-modelled-estimates/.
17 International Labour Office, Women and Men in the Informal Economy, above n 16, 6–9. See also text to nn 60–69 below. The International Conference of Labour Statisticians (see text to n 60 below) will discuss a revised approach to informality at its 2023 meeting. See International Labour Office, ‘Draft Resolution concerning Statistics of the Informal Economy’. Available at: https://ilostat.ilo.org/topics/informality/#Methods.
Research concerned with global agricultural production sheds some light on the prevalence of subsistence farming. Best estimates suggest there are over 485 million farms of less than 2 hectares in area, with a similar number of 'family farms', on which family members provide the majority of labour. However, these estimates depend on uneven sources, including census data as much as 60 years old. They also offer only a rough proxy for the population engaged in household production, because they exclude hunting, fishing and pastoral production, and overcount farms where subsistence work complements rather than substitutes for market-based income.

There is illuminating household-level income data. The UN’s Food and Agriculture Organization (FAO) and the World Bank’s Living Standards Measurement Study support the collection of fine-grained data about rural income generation. Their data show that, across nine African countries representing over half of the continental population, nine out of 10 rural households earn part of their income from own-account agricultural production. One quarter have no other income source. Given that approximately 50 per cent of Africa's population is rural, a reasonable estimate is that Africa is home to 150 million people who rely solely on subsistence work to meet their needs, with even more relying primarily on such work. Unfortunately, this data exists only for a small, unrepresentative sample of countries, so there is no way to extrapolate to a global estimate.

Perhaps the best way to grasp the global scale of subsistence work is to deliberately attend to those who go uncounted. Estimates of the global working age population (between 15 and 64) is 5.1 billion. The global labour force, per the ILO’s definition, is estimated at 3.5 billion. Thus, about 1.6 billion people between the ages of 15 and 64 are neither participants in the labour market nor seeking to join it. Of course, this residual includes more than just subsistence goods production. It includes many students; people unable to work who survive on a combination of social assistance, personal savings and family and community support; and the idle rich, including those from wealthier countries who can afford to retire before age 65. A large portion is represented by people – mostly women – engaged primarily in unpaid reproductive labour. Even accounting for these other categories, these numbers suggest, in line with the other available data, that between 500 million and 1 billion people of working age rely primarily on subsistence work worldwide.

III. Competence

Does the ILO have competence to regulate such work? Despite the centrality of market-facing work in ILO activity, few today explicitly dispute the ILO’s competence to regulate

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21 ibid, 20.
23 B Davis, S Di Giuseppe and A Zezza, ‘Are African Households (Not) Leaving Agriculture? Patterns of Households’ Income Sources in Rural Sub-Saharan Africa’ (2017) 67 Food Policy 153, 156 (Table 1).
beyond it. Many once did, however, as shown by the 1921 opinion of the Permanent Court of International Justice (PCIJ) regarding the scope of the ILO’s competence.26 The key holding in that case was a rejection of claims, rooted in constitutional references to ‘industry’, that the ILO lacked competence to address any agricultural work, market-based or not. In rejecting such sectoral limits, the court embraced two lines of reasoning which on their face are incompatible with ILO competence over non-market work.

The court’s first line of reasoning, about the personal scope of ILO competence, placed the interests of wage earners at the core of the ILO’s mandate.27 The second was functional. The constitution links the organisation’s mandate to the idea that ‘the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own’, grounding the common presumption that ILO standards function as ‘rules of the game’ to prevent global economic integration from fostering a ‘race to the bottom’ in domestic labour standards.28 Though the preamble of the constitution articulates ‘social’ and ‘political’ aims beside this ‘economic’ goal,29 the PCIJ read those functions conjunctively, implying that international labour standards were justifiable only insofar as they affect the competitive position of countries – that is, only if they impact on production costs for goods and services tradable in global markets.30 If this were right, it could be argued that work which produces no goods or services for the market is neither a proper subject of regulation aimed at ensuring fairness in global markets nor, a fortiori, within the ILO’s competence at all.

However strong those arguments may have been a century ago, neither has held water since the 1944 constitutional amendments which inter alia replaced Article 427 of the original constitution with the Declaration of Philadelphia. In contrast to Article 427, which gave the PCIJ strong warrant to prioritise ‘wage earners’, the Declaration of Philadelphia sets out an inclusive definition of social justice, under which ‘all human beings’ can pursue ‘both their material well-being and their spiritual development, in … freedom and dignity … economic security and equal opportunity’.31 The Declaration also gave the pursuit of that principle independent standing as a goal of ILO activity.32 As put by Francis Maupain, whose professional work and scholarship have consistently foregrounded the role of ILO standards as global rules of the game, ILO standards also serve a ‘magisterial’ role, giving concrete effect to social justice claims of particular groups of workers, be they employees or otherwise.33

27 ibid, paras 26, 38.
31 Declaration of Philadelphia, annex to ILO Constitution, above n 4, art II(a).
32 ibid, art II.
Though these arguments fail on legal grounds, there is value in confronting their underpinning premises head on. There is a substantial body of research and practice showing how the regulation of subsistence work matters for working conditions and productivity in market-oriented industries. Arthur Lewis offered a classical account of the interaction in his path-breaking contribution to development economics. Lewis suggested that developing countries were characterised both by a capitalist sector, in which employment was structured to generate a productive surplus that could fund capital accumulation, and a subsistence sector organised primarily to meet the basic needs of the population it supported. Inspired by Paul Rosenstein-Rodan, Lewis characterised subsistence work in these countries as a matter of ‘disguised unemployment’ or ‘surplus labour’. Rosenstein-Rodan’s basic premise had been that feeding, housing and caring for those ‘living on the land’ could be done by only a portion of that population’s available working time. According to this view, the average worker made a negligible contribution to overall output (thus ‘surplus labour’) and could have a higher output if they moved into more productive work (thus ‘disguised unemployment’). Lewis, like Rosenstein-Rodan, saw the key to growth in developing countries not in capital investment per se, but in the movement of workers into capitalist work in step with the expansion of capitalist production.

By formalising the model, Lewis clarified the political economy of the interaction between the two sectors. Capitalist firms, in seeking to boost their surplus, would seek to maximise the output they extracted from each hour of worker time they paid for. By contrast, disguised unemployment in the subsistence sector meant work was relatively ‘easy going’, at least on average. Wages in the capitalist sector would thus be shaped not only by competition among capitalist firms for workers, but also by the tacit comparison those workers would make between market-orientated employment and the more communal, less exploitative form of life they might enjoy if they stayed on the land. Insofar as wage rates impact profits, profits fuel capital accumulation, and capital determines real output, Lewis emphasised the strong political incentives that would align – and had historically aligned – to keep incomes low in the subsistence sector. Considered in terms of the functions of international labour law, his analysis suggests that a country’s competitiveness in global markets is significantly conditioned by prevailing working conditions for its population who live off the land.

IV. Standards

Notwithstanding the pronouncement in the Declaration of Philadelphia that ‘labour is not a commodity’, ILO standards have primarily been concerned with overcoming or moderating
the antinomies of selling labour power on the market – ie, with already commodified labour.\textsuperscript{40} Nonetheless, ILO standards intersect with both subsistence work and labour commodification in at least three ways sketched out here.

First, the history of international labour standards provides a regrettable index of the injustices that can characterise the relation between subsistence economies and market-based development. Lewis's work made clear that, in the transition away from subsistence production, workers available for profit-orientated, market-facing work must be compelled to take up a different pace and mode of work and, often, an entirely different mode of life. ‘Free labour’ needs to be \textit{made}. Lewis emphasised that workers might be pulled into market-facing work by wages offering a high premium over incomes under the subsistence alternative.\textsuperscript{41} But he also noted that meeting the demand for an adequate labour force at wages commensurate with capital surplus has often meant pushing people into that work – through coercion, expropriation and force. Marx’s account of primitive accumulation in Europe often provides an archetype for these processes: the violence of the enclosures, he argued, kickstarted capitalism by separating the population from the means of subsistence, thereby creating a population amenable to capitalist exploitation.\textsuperscript{42}

Though Marx cast this dynamic as largely accidental,\textsuperscript{43} colonialism reveals a litany of strategies deliberately aimed at ‘extracting colonised people from their land’.\textsuperscript{44} Providing adequate labour for both colonial infrastructure and capitalist enterprise was a perennial preoccupation of colonial administrators and a central aim of colonial policy.\textsuperscript{45} Beyond the pull to waged work entailed in fostering demand for consumer goods, market-facing work could be made quasi-compulsory by imposing taxes payable only in cash.\textsuperscript{46} Though international norms had turned against slavery, colonial administrators were willing to countenance various forms of forced labour – paid at ‘market rates’ – to make workers available for resource development and to build a culture (or ‘habitus’) of work.\textsuperscript{47} Though some ILO officials contested the approach, such practices were legitimated by ILO standards promulgated in the interwar years.\textsuperscript{48} As one example, the original text of the Forced Labour Convention 1930 (No 29), while mandating the elimination of forced labour, was primarily concerned with regulating its continued use in colonial territories during a ‘transitional period’ aimed at ‘educating’ colonised peoples in the habits of waged labour.\textsuperscript{49}

\textsuperscript{40} L Voško, \textit{Managing the Margins: Gender, Citizenship, and the International Regulation of Precarious Employment} (Oxford, Oxford University Press, 2010) ch 2.
\textsuperscript{41} Lewis, above n 34, 150.
\textsuperscript{42} Marx, above n 6, chs 27–30.
\textsuperscript{43} Roberts, above, n 2.
\textsuperscript{44} A Blackett, ‘Decolonizing Labour Law’ in D’Arcy du Toit (ed), \textit{Labour Law and Social Progress: Holding the Line or Shifting the Boundaries?} (Alphen aan den Rijn, Kluwer Law International, 2016) 91. Perspectives drawn from critical race studies and literature on racial capitalism emphasise flaws in historical narratives that account for the rise of European capitalism independently of Europe’s integration into circuits of colonial extraction. See also Ashiagbor, above n 8.
\textsuperscript{45} Rittich, above n 3; Fechner, above n 8.
\textsuperscript{46} Rittich, ibid, 35.
\textsuperscript{47} Fechner, above n 8; D Maul, \textit{Human Rights, Development and Decolonization: The International Labour Organization, 1940–70} (Basingstoke, Palgrave Macmillan, 2012) 20–22; Rittich, above n 3, 34–35.
\textsuperscript{49} Maul, above n 47, 23–25; Zimmermann, above n 4, 248–49. See also the Recruiting of Indigenous Workers Convention, 1936 (No 50); the Contracts of Employment (Indigenous Workers) Convention, 1939
Though the relevant conventions and provisions are no longer in force, this episode underlines the ILO's contribution to the conditions under which labour commodification occurs and its role in the process by which workers (and communities) move from subsistence to market-facing work. Job creation and the promotion of 'full and productive' employment has been the centrepiece of the ILO's bid for standing in global development circles, and one of few areas in which the organisation has actively sought common ground with the World Bank and the International Monetary Fund (the IFIs), as well as the World Trade Organization. Bracketing the ambiguities of 'job' and 'employment', the ILO's primary agenda to promote decent work for subsistence workers remains a matter of guiding them into market-facing work – that is, commodifying their labour. Given the broader contradictions in the approaches to employment advanced by the ILO and IFIs respectively, it is worth being vigilant that employment promotion does not make the ILO complicit in forms of labour commodification incompatible with its normative mandate.

Second, although non-market work either expressly or functionally falls outside the scope of most Conventions and Recommendations, there are numerous standards where coverage is broad enough to encompass subsistence work. The fundamental labour rights elaborated in the 1998 Declaration on Fundamental Principles and Rights at Work clearly apply to all workers, though the corresponding Conventions may not optimally express those rights for subsistence workers: the Equal Remuneration Convention 1951 (No 100) and the Right to Organise and Collective Bargaining Convention 1949 (No 98) are both aimed primarily at regulating employer conduct that would undermine the relevant fundamental rights. ILO standards also encourage the inclusion of subsistence workers in social security schemes, though much rests at the discretion of national authorities.

Third, a handful of international labour standards directly chart the social justice challenges faced by subsistence workers and possible responses to them. The most notable examples are the Indigenous and Tribal Peoples Convention 1989 (No 169), whose coverage includes a significant portion of communities who rely on subsistence farming, hunting and fishing and pastoral activities, and the Tenants and Sharecroppers Recommendation 1968 (No 132), which covers a large subset of subsistence farmers. Both standards promote continuing access to land as the keystone of livelihoods for subsistence workers and their families, and identify loss of access as a key threat to those livelihoods. Convention 169, however, makes clear that states not only shape the access threats posed by private interests, but have themselves been a source (often the primary source) of those threats.
Recommendation 132 makes clear that, in a context where subsistence work is done without title, formal right, or guaranteed access to land, ‘effective recognition of the right to collective bargaining’ may require empowering associations of workers to bargain with those who have ultimate control of the land.57

V. Counting

Beyond existing standards, constructive thinking about social justice for subsistence workers requires hearing their voices.58 Obstacles to effective voice are linked to challenges of visibility. One of the great lessons of research on global governance over the last two decades is that what counts politically turns on what gets counted and how.59 Sadly, as discussed above, official statistics tend to neglect subsistence work and that is at least partially attributable to often-overlooked ILO standards.

Elaborating global standards for the collection of statistics about work and workers is the wheelhouse of the International Conference of Labour Statisticians (ICLS), which operates under ILO auspices.60 Between 1954 and 1982, the keystone of ICLS standards was the ‘labour force’, a measure that encompassed only those performing or seeking work for a wage (‘employment’) or profit (‘self-employment’) and excluded subsistence work entirely.61 In 1982, the ICLS adopted a more expansive definition of employment and thus a wider scope for the labour force, that encompassed both market-based work and own-use goods production.62 It is unclear though that any country ever collected data using this more expansive definition.63

Current ILOSTAT estimates, discussed above, are based on the 2013 Resolution on Statistics of Work, which replaced the 1982 standards.64 Promisingly, the 2013 Resolution includes extensive guidance for consistent enumeration of persons engaged in ‘own-use production work’, including production of all goods and services for direct household use.65 The ILO has celebrated its construction of statistical standards capable of quantifying all

58 Ideally, the future of labour law would ‘create [...] space for historically marginalised actors to conceive and construct alternative regulatory frameworks, or a new, emancipatory common sense’. Blackett, ‘Decolonizing’ above n 44, 89.
65 ibid, paras 22–26.
forms of work. Nonetheless, the new standards return to a definition of ‘employment’, ‘job’ and ‘labour force’ that excludes non-market work of all kinds.

Although ICLS guidelines are not ‘international labour standards’ in the conventional sense, they influence how work is accounted for and whose work counts in national statistical practices. They are also given the force of law by the Labour Statistics Convention, 1988 (No 160), which requires ratifying members to collect and send the ILO statistical information based on ICLS standards. While Convention 160 urges members to collect statistics ‘representative of the country as a whole’, the emphasis is on ‘the economically active population’, ‘employment’, ‘unemployment’ and ‘visible underemployment’, concepts which, as noted above, have seldom been interpreted to include non-market work or workers.

The last 40 years have shown that changes at the margins of ICLS standards are not enough to get countries to count work beyond the market. If the case were more strongly made about the importance of subsistence production in the entire economic system; if, more generally, the relevant standards made household production more than an afterthought, then the ILO might help to make more work and workers visible. Allowing those workers to participate in crafting those standards might at once support and exemplify the political voice they deserve.

VI. Conclusion

Two closing thoughts about goals and concepts. First on the discourse of ‘informality’. As it was originally used, drawing on Lewis’s analyses, ‘informality’ was intended to capture the fraught interactions between labour market governance and actual practices of work in the transition from subsistence to capitalist production. Yet, in the intervening years, the concept’s linkages with labour commodification seem to have been swamped by more general concerns about mismatches between regulatory agendas and institutional forms. While ‘informality’ draws attention to work that departs from hegemonic forms, it always risks flattening socio-legal realities. And, as embodied in the Transition from the Informal to the Formal Economy Recommendation, 2015 (No 204), informality seems to function within the ILO as accessory to a model of development and its relationship to work centred on, albeit not limited to, (waged) employment. Employment has been a self-evident organising trope for advocacy to place work at the centre of policies to facilitate, as put in the

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68 Convention 160, arts 1, 2, 5.
72 Cf Alessandrini et al., above n 3; Benanav, above n 35. There are countervailing trends. See n 19 above.
Declaration of Philadelphia, ‘material well-being and spiritual development … economic security and equal opportunity’. However, as we imagine work in the ILO’s second century, it is crucial to be attentive to other modes of production, other ways of life and other forms of law through which decent work might be realised.

Second, as we do our imagining, ‘subsistence’ may prove an unhelpful category. Lewis was hardly alone in associating economic life beyond the market with indolence, stagnation and privation; *viz* Marx’s remark that capitalism had ‘rescued a considerable part of the population from the idiocy of rural life’ or Angela Davis’ claim that only paid work can free women from the ‘invisible, repetitive, exhausting, unproductive, uncreative … nature of housework’. Yet in seeking to grasp the work done and the value created in the ‘household workplace’ – and in the communal relations that transcend it – we should avoid tropes and schema that presume there is neither work nor value to be found.

73 Maupain, above n 30, 86–88. See also Ewing and Hendy, Chapter 6 in this volume.