Interdisciplinarity, heterogeneity and precarity of work in the Philippines: The context and possibilities of defining work via legislation

Jonathan P. Sale
University of the Philippines

Theme: Class, public policy, and electoral politics

Introduction

Budd (2011) explains that work, which may be paid or unpaid and done within or outside the home, is fundamentally important as “a fully human activity” susceptible to different conceptualizations. Aside from discussing different types and concepts of work, he expounds on their intellectual origins. These reflect the interdisciplinarity and heterogeneity of work. They also show the precarity of work – many varieties of unpaid work within and outside the household.

In the Philippines, work precarity is indicated by unemployment and underemployment, and the prevalence of outsourcing arrangements. Precarious work is abundant in the informal economy. The interdisciplinarity and heterogeneity of precarious work may be understood, too, from different versions of a proposed Magna Carta of workers in the informal economy identifying over 20 varieties of work, which are now pending in the country’s elite-dominated Congress.

The Labor Code of the country has a narrow definition of “worker.” The rights stated in the Code are based on employer-employee relationship. Absent that relationship, the rights are inaccessible. Employment is just one type of work. And the Code and its Implementing Rules mention “work” and its derivatives like “worker,” “workplace,” and so on, more than 2,000 times yet there is no statutory definition of “work.”

This research explores how class affects labor law particularly the need for a definition of work that encompasses the interdisciplinarity, heterogeneity and precarity of work in the Philippines, and whether the country’s elite-dominated Congress would enact a policy framework on work not limited to employment relationships.

Literature review

1. Legal origins

The legal origins of the concept of work, that is, whether it is of common law or civil law origin, and their relationship, if any, with other phenomena in the Philippines are worth exploring and examining. This refers to legal origins theory. (Foster 2005, citing La Porta, et al.) “Most versions of legal origins theory share at least two common assumptions. First, the theories assume that most countries’ legal systems fit into one of two major families, common law and civil law, which date back as far as the twelfth...
century. Common law developed first in England, and emphasizes judicial discretion and the following of judicial precedents. Civil law, in contrast, originated in Roman law with the Justinian Code, and was reinvigorated by the great state-builders Napoleon and Bismarck. The modern civil law is typically divided into three families, French, German, and Scandinavian. The second common assumption of legal origins theories is that most countries receive their legal systems involuntarily, as through conquest or imperialism. From this observation, legal origins theorists deduce that legal origin is determined exogenously.” (Foster 2005, cited in Sale 2011)

The Philippine legal system is a hybrid. (Agabin 2011)

2. Varieties of capitalism

In comparing different systems, another approach that has emerged is the so-called varieties of capitalism approach. There are two broad varieties of capitalism: liberal market economies and coordinated market economies (Hall and Soskice). According to Deakin (2009), the distinction between liberal market economies and coordinated market economies “more or less precisely matches that between common law and civil law legal families.” This suggests that common law systems tend to be liberal market economies, while civil law systems are likely to be coordinated market economies.

If there are varieties of capitalism, there are varieties of work.

3. Varieties of work

In *The Thought of Work* (2011), John W. Budd explains that work, which may be paid or unpaid and done within or outside the home, is fundamentally important as “a fully human activity” susceptible to different conceptualizations that matter – work as a curse (unquestioned, necessary burden), freedom (independence from nature, humans), a commodity (effort having tradable economic value), occupational citizenship (activity done by citizens with rights), disutility (lousy activity tolerated to get pleasure), personal fulfilment (performance that satisfies individual needs), a social relation (interaction set in social norms, power structures), caring for others (effort necessary to maintain others), identity (way to understand who you are), and service (devotion of effort to others). (Sale 2013a; 2013b; 2013c; 2013d; 2013e; citing Budd 2011) Aside from discussing different types and concepts of work, Budd (2011) expounds on their intellectual origins. These reflect the interdisciplinarity and heterogeneity of work. They also show the precarity of work – there are many varieties of unpaid (and unfree) work within and outside the household.

According to Budd, these conceptualizations of work impact on our understandings and experiences as illustrated below: (Figure 1)
Figure 1

Conceptualizations of work

Research questions
HR practices
Public policies
Judicial interpretations
Social approval
Economic resources

Source: Budd (2011)

In the Philippines, work precarity is indicated by unemployment (7.5%) and underemployment (19.2%) rates, and the prevalence of outsourcing arrangements (about 12%). Precarious work is abundant in the informal economy (40% to 80% of workers as per International Labour Organization). The interdisciplinarity and heterogeneity of precarious work in the country may be ascertained, too, from different versions of a proposed Magna Carta of workers in the informal economy identifying from more than a dozen to over 20 varieties of informal work.

Under the Philippine Constitution, “all workers” have the right to: self-organization, collective bargaining and negotiations, peaceful concerted activities including the right to strike, a living wage, security of tenure, humane work conditions, and participation in policy and decision-making processes affecting rights and benefits. But the Labor Code of the Philippines has a limited definition of “worker.” A “worker” is “any member of the labor force, whether employed or unemployed,” while “employ includes to suffer or permit to work.” The rights stated in the Labor Code are based on employer-employee relationship. Absent that relationship, the rights are inaccessible. Employment is just one type of work. There are others, e.g., volunteer work, civic service, subsistence farming, housework, elder and child care, and that insidious kind of work called slavery (Budd 2011). The Labor Code and its Implementing Rules mention “work” and its derivatives like “worker,” “workplace,” and so on, more than 2,000 times yet there is no statutory definition of “work.” The Merriam-Webster Dictionary has over 30 definitions of “work” as a noun, an adjective and a verb.

According to Budd, work is purposeful human activity involving physical or mental exertion that is not done solely for pleasure and that has economic or symbolic value. In other words, work involves the production of something of value, whether paid or unpaid, for a living or not. (Budd 2011)

If work is defined in the Labor Code as the production of something of value, whether paid or unpaid, for a living or not, as Budd puts it, and this definition of work is made the basis for self-organization, collective bargaining, social security, and social protection coverage, among others, would more workers have voice, equity, security, and human dignity or what the International Labour Organization refers to as decent work? Are institutions important?
4. Varieties of institutionalism

Political science is rooted in the study of institutions. Thus, there are varieties of institutionalism. In normative institutionalism, the behavior of institutions and individuals is shaped by the logic of appropriateness, i.e., appropriate decision behavior. In rational choice institutionalism, individuals within institutions act to maximize their personal interests. (Peters 2011) Thus, the logic of consequence is involved. (Sale 2011) And in historical institutionalism, the logic is an extreme version of normative institutionalism in which values and symbols maintain existing patterns of behavior. The emphasis is on describing the path dependency and logic of action. (Peters 2011)

5. Political development

Political development is therefore crucial.

In defining political development, Chilcote (1981) cites Pye who argued for pluralistic participation, multiparty systems, and competitive politics, as well as political stability and an avoidance of excessive tension.\(^1\) Pye referred to political development as institution building and citizen development; mass mobilization and participation are essential to democracy and order.\(^2\) He associates political development with notions of democracy.\(^3\) A polity is thus considered more politically developed if more democratic, as measured by indicators like voting regularity\(^4\) and the universality of political and civil rights. Other writers focus on aspects of political development and change – the process of political change and “social conflict.”\(^5\)

But politics in the Philippines has been an intra-elite contest. For instance, Wurfel (1979), citing Abueva, pointed out that in 1960 more than 80% of the Senators had upper class and middle class backgrounds. Less than 20% had a lower class background.

Former Philippine President Ferdinand E. Marcos declared Martial Law in 1971 purportedly aimed as a “revolution from the center” to curb the alleged excesses of the so-called oligarchy at the time. However, the military-backed Marcos dictatorship under Martial Law centralized decision making into an elite group led by Marcos himself. Congress was abolished and the Judiciary was controlled.

More recently, too, this trend can be seen in the composition of the Post-Martial Law Congress of the Philippines which has been dominated by the country’s political and economic elite. Since the ratification of the 1987 Philippine Constitution, there have been only a few party-list/sectoral representatives in Congress.

\(^2\) Id., at 273.
\(^3\) Id.
\(^4\) Id., at 272.
\(^5\) Id., at 273.
The Philippine Constitution recognizes the vital role of sectoral organizations in nation building. The party-list system of representation is based on the principle of proportional representation whereby representatives of sectoral, as well as national and regional parties or organizations, registered with the Commission on Election (COMELEC) may be entitled to seats in the House of Representatives if they qualify in an election. Labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other marginalized or underrepresented sectors, except the religious sector, may participate.

In one study, the proportions of sectoral representation in the 11th, 12th and 13th Congresses were derived by obtaining the number of sectoral representatives divided by the total number of House members in each of the three Congresses. On the other hand, the proportions of laws passed affecting the labor market in the 11th, 12th and 13th Congresses were derived by obtaining the number of laws passed affecting the labor force divided by the total number of laws passed in each of the three Congresses. Based on the data, while sectoral representation in Congress appeared to be increasing (despite the drop in the 14th Congress of the number of sectoral representatives to 9% of total House membership [21 out of a total 240]), enacted laws affecting the labor market were decreasing. A plausible explanation for this was the inability of organized labor to elect more labor sector representatives in Congress due to its weakness. The same may be said of the cooperatives sector considering that only about half of registered cooperatives were actually operating. For instance, among the sectoral representatives, the late Representative Crispin Beltran (of Anakpawis, formerly of Bayan Muna) and Representative Renato Magtubo (of Partido ng Manggagawa, formerly of Sanlakas) were known to have originated from the labor sector itself. In the 2007 elections, Partido ng Manggagawa did not even land a sectoral seat, while cooperatives maintained their seat through Representative Guillermo Cua of COOP NATCO. The study concluded that the role of labor market institutions in the administration of political development is minimal and the labor and cooperative sectors are not dominant power blocs in Philippine society. (Sale 2008)

Methods and Significance

This research explores how class affects labor law, particularly, the need for a definition of work that encompasses the interdisciplinarity, heterogeneity and precarity of work in the Philippines and whether the elite-dominated Congress would enact a policy framework on work not limited to employment relationships. The study will also broach the related question of whether conceptualizations of work impact on public policies. (Figure 2)

---

7 Id.
8 See the COMELEC Primer on the Party-List System of Representation in the House of Representatives.
9 Based on the official tally of results of the May 2007 Philippine elections, the votes for Partido ng Manggagawa did not reach the required 2.0% threshold, which means that said party list was unable to get a seat in the 14th Congress. On the other hand, COOP NATCO has one (1) seat in the 14th Congress.
There is no existing descriptive and exploratory research on this. The present study aims to fill the research gap.

Findings and Analyses

1. Party list representation in the 15th and 16th Congress

In the present (16th) Congress, there are 290 representatives all in all.\(^{10}\) Of this total number, 56 are party list representatives\(^{11}\) while 234 are district representatives\(^{12}\). The number of sectoral representatives in the present Congress is slightly lower than that in the 15th Congress. There were 57 party list representatives in the 15th Congress.\(^ {13}\) But the proportion of party list representatives to total number of lawmakers appears to be increasing over time as reflected in Table 1.

<table>
<thead>
<tr>
<th>Indicators</th>
<th>11th Congress</th>
<th>12th Congress</th>
<th>13th Congress</th>
<th>14th Congress</th>
<th>15th Congress</th>
<th>16th Congress</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportion of Sectoral</td>
<td>6.8%</td>
<td>9.4%</td>
<td>10%</td>
<td>9%</td>
<td>19.65%</td>
<td>19.31%</td>
</tr>
<tr>
<td>Representatives</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Sale (2008) and this study.

However, a closer look at the party list representatives in the 16th Congress will reveal that there is only one representative of a registered labor organization.

2. Enacted laws affecting the labor market in the 15th Congress – House of Representatives

---


A total of 484 laws were passed by the 15th Congress according to the House of Representatives. Of these, only seven (7) had implications for the labor market, four (4) of which were merely about working holidays. Three (3) of the enacted laws are substantive in character, namely Republic Act (RA) 10151 (abolition of night work prohibition and regulation of night work), RA 10361 (Batas Kasambahay) and RA 10396 (mandatory conciliation-mediation for labor disputes). RA 10151 abolished the Labor Code rules or provisions that prohibited women from working at certain intervals of the night. The general rule now is night work is allowed, regardless of gender, but regulated. RA 10361 or Batas Kasambahay strengthened the rights of domestic workers or house helpers in the Philippines and established greater protections to such workers, thus amending certain provisions of the Labor Code. RA 10396 inserted a new rule or provision in the Labor Code mandating the conduct of conciliation-mediation of all labor disputes as a preliminary step. In conciliation-mediation, the conciliator-mediator persuades the parties-disputants to reach an amicable settlement regarding their dispute. At most, the conciliator-mediator makes proposals for the consideration of the parties but does not render any decision. The decision makers are still the parties-disputants themselves.

While these recent RAs (10151, 10361 and 10396) tend to demonstrate the capacity of Congress to enact legislation that has serious implications for the labor market, still it must be noted that these represent piecemeal or incremental changes to the present Labor Code of the Philippines. Changes or amendments to the Labor Code have been mainly incremental. This suggests that the Philippine Congress as an institution exhibits path dependency.

But the different versions of the proposed Magna Carta of workers in the informal economy are not in the nature of piecemeal or incremental changes, as may be ascertained from the next section. Would Congress be able to depart from its path dependency to pass the Magna Carta?

3. Some provisions of the proposed Magna Carta of workers in the informal economy

The following provisions of House Bills 2295, 2307 and 3400 (different versions of the proposed Magna Carta of workers in the informal economy in the House of Representatives) show that the proposed legislation is not in the nature of piecemeal or incremental changes –

“(c) Workers in the Informal Economy – hereinafter referred to as WIE include but are not limited to the following:

c.1. small farmers owning land not more than three (3) hectares;

c.2. rural and agricultural workers who are tenants, sharecroppers, or laborers;

c.3. small fisherfolk/operators owning boats of three (3) gross tons or less and other fishing equipment;

c.4. fisherfolk who are without fishing equipment and who market their catch;

c.5. on-call fish workers, porters and batillo;

c.6. home-based workers who are independent producers of goods or services;

c.7. industrial homeworkers – workers involved in a system of production under which work is carried out at their homes and where materials may or may not be furnished by the employer or contractor;

c.8. self-employed who are engaged by other enterprises through subcontracting arrangements;

c.9. ambulant vendors or peddlers refer to vendors who ply their trades in search of buyers;

c.10. street vendors refer to vendors who sell their merchandise on streets and sidewalks;

c.11. vendors with stalls in public and private markets and those engaged in sari-sari stores with operating capitalization of not more than one million pesos (P1,000,000.00) excluding land and building;

c.12. drivers and workers of modes of transportation on land and sea whether motorized or not, including: two (2) wheels such as calesa; three (3) wheels such as pedicabs, tricycles; four (4) wheels such as jeepneys and buses; and boats one (1) ton and below; ‘barkers’; fare collectors; dispatchers; and other workers who share income with self-employed or unincorporated operators;

c.13. operators of jeepneys, tricycles, pedicabs, taxi, and other vehicles or transportation whose capitalization is not more than one million pesos (P1,000,000.00) excluding land and building;
c.14. all unregistered and unprotected domestic workers who are generally not covered by social protection such as maids, cooks, family drivers, gardeners and baby sitters.

c.15. non-corporate construction workers;

c.16. small scale miners doing their own product processing; including those involved in small scale mining and quarrying with capitalization of below one million pesos (P1,000,000.00);

c.17. workers of Barangay Micro Business Enterprises (BMBEs);

c.18. non-corporate cargo handlers and allied workers;

c.19. waste pickers and recyclers;

c.20. workers engaged in producing seasonal products;

c.21. own account workers including but not limited to those engaged in the maintenance and repair of equipment and appliances, clothing and footwear, as well as those providing services such as beauticians, barbers, masseuses;

c.22. "on-call" workers in the entertainment, movie, and media industries such as but not limited to bit players, stuntmen and women, crew, make-up artists, etc.;

c.23. volunteer workers in government and non-government entities who only receive allowances or honoraria, including but not limited to: barangay health workers (BHW), barangay tanod, barangay nutrition scholars (BNS), barangay daycare workers, and volunteers in non-government or people’s organizations;

c.24. unpaid family members, or workers receiving allowances and seasonally hired workers who are engaged in micro-enterprises or assist unincorporated household enterprises; and

c.25. other similar economic activities that are not illegal, criminal or life-threatening in nature.

(d) **Worker** is a general term that refers to both self-employed and paid employee covered under the provisions of this Act.
(e) **Self-employed Worker** refers to any person who has no employer and who works for himself/herself by producing goods or services for the market.

(f) **Worker of Minor Age** refers to a child fifteen (15) to seventeen (17) years of age who is engaged in productive employment under a valid contract of employment.

(g) **Employer** refers to a natural person or group or partnership of people or a corporation for whom a paid worker renders productive employment or service.

(h) **Security in the Workplace** refers to the right of every worker to an enabling environment that guarantees and protects the spaces for WIE to undertake their work, including the right to feel safe in one’s own work space, legal security of tenure and freedom from discrimination, risk, danger, doubt, anxiety, or fear of being removed, evicted or prevented to work. Towards this end, the State shall take measures that will ensure legal security of tenure of workplaces, taking into account and including the physical environment, services, processes and systems needed to enable workers to productively and safely perform their work.

(i) **Hazardous Work Condition** refers to any activity or circumstance where a worker is exposed to any risk which constitutes imminent danger to his or her health or safety. This includes potential risks of disability, injury, illness or death due to the presence of biologic agents, radiation, chemicals, substances, hazardous materials; physical hazards in the work environment; or the nature of work, processes performed, or equipment used therein.”

These proposed provisions evince the legislative intent to protect these vulnerable workers through security of tenure and health, safety and welfare at the workplace, among others.

However, these proposed provisions also reflect how the proponents conceptualize work in the informal economy as an essentially economic activity.

**Conclusions**

The right to work is a human right. Thus, under Article 23 of the Universal Declaration of Human Rights –

“(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.  
(2) Everyone, without any discrimination, has the right to equal pay for equal work.  
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

---

15 Proposed *Magna Carta* of Workers in the Informal Economy (different versions of proposed legislation in the House of Representatives, Republic of the Philippines –House Bills 2295, 2307 and 3400).
(4) Everyone has the right to form and to join trade unions for the protection of his interests."

In this sense, the present Philippine Labor Code is inadequate as it limits coverage to workers within the employment relationship. Therefore, there is a felt need for a legal definition of work that encompasses and addresses the interdisciplinarity, heterogeneity and precarity of work in the Philippines.

But the different versions of the proposed Magna Carta of workers in the informal economy or sector seem to limit the meaning of "work" and "worker" to mainly activities of economic value. Such a perspective, with due respect to the proponents of the measures, might exclude many other types/concepts of work which are unpaid, like work as a social relation and work as caring for others. Customs, social norms and socially constructed hierarchies apply to such work in the absence of formal labor regulation. A regulatory framework that encompasses work not limited to that which has economic value may be a step in the right direction.

The Philippine experience shows that conceptualizations of work matter (Budd 2011) as they impact on public policies. And class affects labor law.

Thus, whether the current elite-dominated Philippine Congress (16th Congress) would enact a policy framework on work not limited to employment relationships remains to be seen, considering the path dependency that has been exhibited by it in the past as an institution.

References

1987 Constitution, Republic of the Philippines.


International Labour Organization. 1998. Declaration on fundamental principles and rights at work.


Labor Code of the Philippines (Presidential Decree 442, as amended).


Mahy, Petra. 2013. The Historical Development of Labor Law in the Philippines: Some Preliminary Research Findings, Visiting Professor Lecture, University of the Philippines School of Labor and Industrial Relations, 17 August.


Proposed *Magna Carta* of Workers in the Informal Economy (different versions of proposed legislation in the House of Representatives, Republic of the Philippines – House Bills 2295, 2307 and 3400).

Republic Act 10151

Republic Act 10361

Republic Act 10396


