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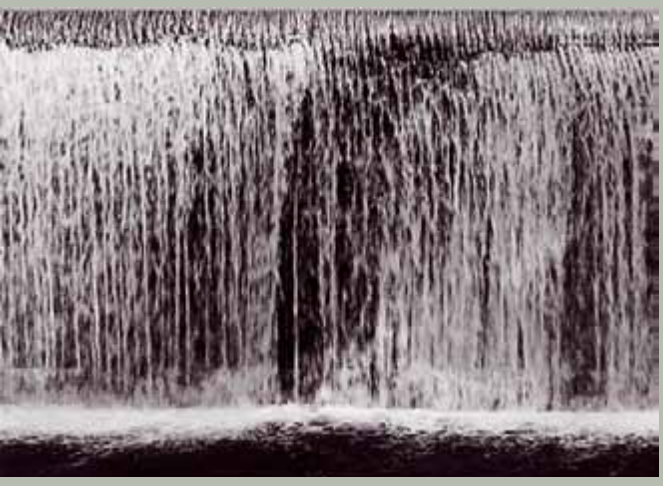

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Precarious Work, Regulation and Labour Standards in Times of Crisis

Charles Woolfson[1]

1. Introduction

The increase in labour precarity which has accompanied the global economic and financial crisis is itself part of a longer term historical trend towards the increasing vulnerability of labour through the growth of precarious and contingent forms of employment (Frade and Darmon, 2005). This has two elements that are especially relevant in the current economic downturn and its aftermath: 1. The immediate impact of crisis on regulated labour standards in general, that is, on employment protection, regulation and enforcement 2. The longer-term role crisis-induced migration flows in accelerating labour precarity on a European and transnational scale. Both these issues need to be seen against fundamental changes in the architecture of European labour rights and the diminishing regulatory reach of labour law as it seeks to accommodate the competitiveness agenda of the European Commission in promoting greater labour "flexibility" and an "individualisation" of employment rights. Yet the contemporary political economy of capitalism, not least, its spectacular regulatory failure, has placed the issue of the renewal of regulation back on the agenda of governments and supranational agencies. If capital needs regulation to control its financial excesses, an inescapable conclusion that the European Union and its member state governments appear to recognise, the need is at least equal for regulation to control the harms which capital directly perpetrates on labour at both a national and supra-national level. In this context, claims for effective labour standards pose a public policy imperative of devising protective regulatory strategies to counter precarity, not least those aspects of precarity heightened by the crisis. The challenge is to address the socially imperative task of "re-protecting" the "un-protected" in an increasingly globalised and insecure labour market.

2. The new EU member states

Nowhere has the debate concerning regulation and its appropriateness been more testing and tested than in the new European Union member states which have had to align their regulatory frameworks to conform to requirements of EU accession and, at

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the same time create a regulatory environment favourable to domestic business while attracting inward foreign investment on favourable terms. The new EU member states therefore represent a paradigmatic case study with respect to the vexed problems of securing decent labour standards which counter labour precarity.

In the process of both EU enlargement and of "market-making", the European Commission has proved a less than ardent champion of labour protection and regulation, arguing that such matters fall primarily within the competence of national governments. Many point the finger of blame for the European Commission's reluctance to regulate in the sphere of labour rights at the era of de-regulation, promoted in particular by a neo-liberal agenda. But the picture is more complex than a simple trajectory of politically inspired de-regulation. The true thrust of the regulatory agenda has been a complex mixture of de-regulation and re-regulation in which the ultimate aim has been to manage risk in order to preserve system integrity, but to do so in the least "intrusive" manner possible from the point of view of capital. This is the policy agenda of so-called "better regulation", or "smart regulation" (Burrows and Woolfson 2000). It is also encapsulated in allied discourses of "new modes of multi-level governance", "soft" law, "responsive" and "reflexive regulation" (Aalders and Wilthagen 1997). The objective has been not simply crude "capture" of the regulatory process or its avoidance, but the re-location of the centre of gravity of regulatory oversight from the state (seen as "command-and-control") to private interests (and "stakeholders") who take "ownership" of regulation. The actual trajectory of regulation has been from the public to the private sphere, in other words, an ongoing privatisation and diffusion of governance and the consequential dilution of regulatory efficacy under the guise of self-regulation. The ultimate purpose has been to expand the arena of self-regulation in order to promote Europe's competitiveness in which business is the lead actor, with the state, at best, a secondary onlooker and democratic accountability to interests such as labour, a peripheral concern.

In the "new" EU member states this "business-friendly" agenda has played out in very particular ways which directly increase labour precarity. This is not only a basic issue of labour standards but it is also relevant in assessing the transferability of a European "social model" to the new EU member states, and the implementation or otherwise, of the social *acquis*. The prescription for the new EU member states that has been on offer by its neo-liberal advisors also warrants scrutiny. The US-based Cato Institute, for example, in a discussion document originally hosted on a European Commission web site, has advocated the creation of a "dual standard" regulatory environment for safety and health in the workplace for the new EU member states, arguing that "excessive regulation" emanating from within the EU will reduce labour flexibility and impose an economic burden on business producing "sub-optimal growth" (Tupy 2003). It has suggested that "over-regulation of conditions of employment will diminish the comparative advantage that CEE workers enjoy over their more highly paid western counterparts". The Cato Institute has expressed its concern over the fact that "the EU explicitly rejects the possibility of different levels of safety and health protection of

labour within the Union" and instead, emphasises "the need to harmonize health and safety standards *irrespective of the different needs of the member states"* (*sic*). Such policies, Cato's spokesperson has warned "do not contribute to alleviation, but to worsening of the workers' lot" by "creating an artificial increase in labour costs". Indeed, the "*un*protecting of labour" or its differential access to the right to a safe and decent working environment is seen by such commentators as the "necessary price" of transition to market discipline from the "over-protected" world of the former state socialist system. Market-driven policy prescriptions such as these, with their brutal implications for the protection of employees at work have found a ready audience among domestic entrepreneurial elites in the new EU member states, but take little cognisance of actually existing working conditions.

Take evidence concerning working environment from the three Baltic states of Estonia, Latvia and Lithuania. The latest data from the European Foundation's Fifth Working Conditions Survey reveal the *highest* percentages of respondents in the Union reporting "work negatively affects your health" (q67) with the partial exception of Greece at 40.8 per cent (Estonia 42.5 per cent, Latvia 52.5 per cent and Lithuania 38.6 per cent, as against an EU27 average of 25 per cent) (European Foundation for the Improvement of Living and Working Conditions, 2010). When asked to indicate if "very satisfied" with working conditions in their main job (q76), the *lowest* percentages of respondents are to be found here (Estonia 16.2 per cent, Latvia 11.2 per cent and Lithuania 11.9 per cent, as against an EU27 average of 25 per cent). Quantitative evidence, albeit statistically imperfect, is also useful in suggesting a deteriorating work environment. For example, in Estonia, the rate of major injuries is among the highest in the EU. In neighbouring Lithuania today the rate of workplace fatalities is twice the European Union average (four times the rate for France) and has remained highest in the EU over a number of years, although showing signs of recent improvement. In Latvia, where the rate of fatalities at work is also high, the official statistics do not record those incidents among the "self-employed", despite the fact that many workers in this category are in real terms employees, and engaged in sometimes highly hazardous occupations such as forestry work and construction.

Latvia had previously adopted a Labour Protection Law, inspired by the requirements of EU *acquis* conformity. Ironically, it has been one of the few recent pieces of legislation which has not caused intense discussion and protests either at the time of adoption, or later on implementation. There are several reasons for this lack of controversy. As an authoritative report from the European Foundation notes, employers regard an "ideal" health and safety system which complies fully with all the relevant legislation as expensive, and therefore "impossible to provide" by almost all companies in Latvia. The report adds: "Many employers thus implement the law only incompletely, in order not to damage the operation of the company. Their employees, in whose interests the health and safety system operates, agree to their rights being violated in order to maintain their jobs" (European Foundation 2004). This was the situation in the working environment, be it noted, *before* the onset of crisis and economic recession.

3. The crisis in the Baltic States

The scale of the crisis should be acknowledged. At a European level GDP fell by 4 per cent in 2009, industrial production dropped back to the levels of the 1990s and 23 million people – or 10 per cent of the labour force – became unemployed. As the European Commission has put it: "The crisis has been a huge shock for millions of citizens and it has exposed some fundamental weaknesses of our economy" (*ibid.,* p.5). However, nowhere has the shock of the recent global crisis been more intense than in Eastern Europe. Fundamental weaknesses of the neo-liberal economic development adopted for the last two decades in Eastern Europe have been exposed in recession, while in relative if not absolute terms, Latvia and Lithuania have experienced the impact of the crisis in probably the most drastic form in the entire globe. Let us recall that the so-called Baltic 'tiger economies' during 2000 – 2007 produced average yearly growth of GDP exceeding 8 per cent in Estonia and Latvia, and in Lithuania it reached around 7.5 per cent, at a time when EU27 average was less than 2.5 per cent. The unwelcome corollary of high GDP growth rates was that it was largely based on the unsustainable development of economic sectors such as speculative property development, rather than investment in productive manufacture.

The predictable "hard landing" finally came in the second half of 2008 when the asset bubble burst. From their previous elevated title of "Baltic tigers", almost within a matter of months, they experienced the shock of near catastrophic economic downturn. By the spring of 2009 the European Commission economic forecast for the Baltic States was gloomy, with the economic downturn predicted to be "deeper and more protracted than previously assumed" (CEC 2009a: 80). Already in 2008 compared to 2007, Estonia and Latvia had witnessed decreasing GDP. By the 4th quarter of 2009 compared to the previous year, GDP had decreased 17.9 per cent in Latvia, 13.2 per cent in Lithuania and 9.4 per cent in Estonia (the three most significant declines in the EU, with the only other countries in Eastern Europe, Bulgaria at 6.2 per cent and Romania at 6.9 per cent, approaching these figures. The EU27 average GDP decline for this same period was 2.7 per cent (Eurostat 2010a).

An economic shock on the scale of the current crisis has had immediate and massive impacts on labour market. In 2009, official unemployment rates in Baltic countries equalled the highest in the EU after Spain, reaching 17.6 per cent in Latvia, and 14 per cent in Lithuania and Estonia according to Eurostat (2009a). Youth unemployment reached over 30 per cent in Latvia and Lithuania, and 28.5 per cent in Estonia (Eurostat 2009b). Currently, unemployment has increased more than two times since the onset of the crisis in all three Baltic States. But the impacts of the crisis go well beyond the appearance of perhaps the highest mass unemployment since independence from the USSR, with the possible exception of the years immediately following the collapse of communism.

Among significant changes in the labour market has been acceleration in the use of part-time and temporary contracts and informal payments systems. In Estonia for

example there has been a doubling of the number of part-time contracts in the labour force within the space of a year. However, a rapid heightening of precarity in the Baltic States needs to be seen against a background of already existing deteriorated working conditions and employee disempowerment in which a substantial measure of informalisation has previously been the norm (Woolfson et al 2008). According to the Eurobarometer survey on undeclared work of 2007 (that is, well before the onset of the crisis), Latvia at 15 per cent of the labour force ranked the highest among the Central and East European new EU member states for so-called "undeclared work", perhaps the most telling proxy for informal or precarious employment (CEC 2007a; Hazans 2009). Some estimates suggest as much as 25 to 40 per cent of GDP is generated in the "shadow economy" (Schneider 2002).

Many pathways to such forms of regulatory avoidance exist. For example, employers can claim that they only recruited and employed workers that very day and they will comply with the law by recording their employment at the State Revenue Service local office by the fifth day of the following month. As a result, such employers can employ staff without an employment contract and avoid fiscal obligations. Curiously, one of the Latvian government's crisis response measures was to place the State Revenue Service engaged in combating tax evasion and fraud and the front-line agency in fiscal compliance, at least temporarily, on a reduced working week. At the same time, a 2009 survey of Latvian employees during the crisis suggested that more than half of the workforce would now accept "envelope wages" in the form of unofficial payments comprising a greater or lesser proportion of their income (*The Baltic Course* 2009).

This kind of payment system also has important negative effects on employee rights to social security, sickness benefits and pension entitlements. Paradoxically, during recent years in the Baltic States, the prevalence and social acceptability of envelope wages was beginning to be challenged by workers who recognised the negative impacts on their rights and labour standards (Woolfson 2007). The national labour inspectorate of Lithuania had introduced a telephone hot-line for workers to complain about employers seeking to impose such envelope payment systems. The Latvian labour inspectorate even had a policy of "naming and shaming" errant employers. Anecdotal evidence suggests however that, with the advent of crisis, there has been a resurgence of forms of unofficial wage payment, as workers fear for their employment and employers seek to intensify utilisation of labour resources at the lowest cost and avoid social insurance obligations. Indeed, a recurrent demand of the trade unions in their campaigns against government austerity measures has been – 'Prevent illegal working and the informal economy' (LPSK 2010).

The "fight against undeclared work" or, as it is termed in the Baltic States, "illegal work", is now a policy priority at both ILO and EU levels (CEC 2007b; European Parliament Committee on Employment and Social Affairs 2008; ILO 2009, 2010a; Williams and Renooy 2009). At the level of individual member states, especially in conditions of constrained fiscal revenues, the issue of the balance between traditional occupational health and safety enforcement and the search for illegal forms of work

and illegal workers has become a central one. The Latvian Labour Inspectorate, in collaboration with the Ministry of Welfare, was developing a plan for 2010–2013 to improve the inspectorate's capacity to reduce the incidence of illegal employment (Vega 2009:10). Thus, perhaps the most concerning aspect of the impact of the crisis on the role of labour inspection has been a tendency towards diversion from enforcement of safety and health regulation.

At one level this shift in priorities is perhaps predictable, if regrettable. The impact of the crisis on the operational capacities of the labour inspectorates in the Baltic states has been significant. As part of the huge cuts in public spending, the budget of the State Labour Inspectorate (SLI) has been reduced in Latvia by over 50 per cent and in Lithuania by 34 per cent from 2008 to 2010, or from 18.6m Litas (5.3m Euros) to12.3m Litas (3.5m Euros). In Lithuania, the SLI had government permission for an establishment of 199 inspectors, but the budget now only allows for a staff of 180. Higher-level employees have lost some 30 per cent of their salaries while inspectors are paid some 10–20 per cent less. Some inspectors have left for jobs in the private sector or gone abroad. Supporting resources have also been reduced. Inspectors are no longer reimbursed for the use of personal cars to make inspection visits, and many SLI cars have been sold. In Vilnius for example there is a pool of only 4–5 cars to share between 50 inspectors. Only inspectors whom the SLI deem to require their use have been allowed to keep their laptops and mobile phones. During 2006 to 2008 companies could apply for some subsidies for occupational health and safety improvements from the State's social insurance fund, but these have been deleted from the budget. The level of inspection has also been reduced. The SLI inspected health and safety conditions of some 16,000–or 6 per cent–of the workplaces in 2008 and 2009. In 2010, the total will be more like 10,000 because of staff reductions and of lack of transport. Cuts on a similar or even more extensive scale have been introduced in the other Baltic states.[2] In this manner, the inspection and enforcement capacities of the regulatory agency have been undermined by financial constraints.

In the case of Latvia, a new labour inspection regime (Law of 19 June 2008 on State Labour Inspection) had recently been adopted in response to a critical audit of the national inspectorate by the International Labour Organisation (Albracht and Campbell 2006). The new legislation, *inter alia*, provided for more rights for the State Labour Inspectorate to act and suspend the operation of an enterprise that is in breach of occupational safety and health rules and standards and general labour legislation. It also provided for more rights for the inspectorate to supervise labour law compliance on private construction sites (Vega 2009). While formal response to external criticism had been initiated, in the heat of crisis, the governing party has now admonished state regulators to "suspend" occupational health and safety regulation.

2 I am grateful to Kaj Frick for this information based on interviews conducted with the State Labour Inspectorate of Lithuania in 2010.

Elsewhere, similar pressures are being applied by governments, and not just in the newer EU member states. This suggests a longer-term trend towards the erosion of regulatory regimes *intensified by* and not just in response to economic recession. The impact of the global economic and financial "downturn" has encouraged pressures towards what in the new regulatory discourse is termed a "lighter" regulatory touch. The European Commission, for example, has argued: "The importance of reducing unnecessary administrative burdens increased with the economic crisis", since small and medium sized enterprises in particular 'need quick relief'" (CEC 2009b: 4). The crisis of 2008 onwards therefore has provided the perfect pretext to intensify an assault on regulated labour standards within the European Union, both by national governments and by the Commission itself. Under the banner of reviving European economies and stimulating further flexibility in labour markets, the Commission has proposed a "strategy for smart, sustainable and inclusive growth" which involves extensive regulatory review (Communication from the Commission 2010).

Thus, the Commission has pursued its wider ongoing agenda of lifting the "burden" of regulation from business. In a Communication from the Commission in October 2009, working environment is identified as one of thirteen "priority areas" for action. The Commission has proposed to exempt small firms from risk assessment requirements (the most difficult sector in which to ensure effective occupational health and safety). This proposed exemption is complemented by a further proposal to "facilitate lighter transpositions by Member States of the Health and Safety of Workers Framework Directive" (CEC 2009b: 102). The compliance thrust of the Commission's proposals is revealed in the following suggestion to modify the enforcement practices of national labour inspection authorities: "While inspections are essential to achieve safety and health at work, they should be made less time-consuming for businesses and compliant employers (e.g. in low risks enterprises) [and] should be rewarded by fewer inspection visits" (CEC 2009b: 103). The full implications for labour inspection and enforcement have still to be assessed, but the commentary above does not bode well for more effective labour protection and the preservation of decent standards in the European workplace.

Thus, the ILO's watchdog committee, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), has recently expressed concerns over ongoing trends in various member states, not just in Eastern Europe which have skewed the primary regulatory objectives of labour inspection. In particular, ILO has expressed its unease over "the compatibility of additional functions which may entrusted to inspectors", specifically in the pursuit of undeclared work and relatedly, "illegal immigration". With regard to the former, (CEACR) has reminded the (Belgian) Government in its application of the convention on labour inspection in agriculture:

> ...that the primary function of the labour inspection system in agriculture should be...to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. The monitoring of illegal employment and undeclared work would therefore appear to be *an additional*

> *function* and, as such, it should ...not ...interfere with the effective discharge of the primary duties (emphasis added) (ILO CEACR, 2010b).

In regard to so-called "illegal migration" in the sphere of agricultural work, CEACR has requested that the Italian government respond to its concerns regarding "initiatives to combat clandestine and illegal labour':

> even though there may be no doubt that measures are necessary to put a stop to the phenomenon of illegal migration, the role assigned to labour inspectors in this regard at the workplace *can severely jeopardize the realization of the prime objective of the Convention, namely, to ensure the protection of workers* against the imposition of conditions of work which are contrary to the relevant legal provisions. The Committee therefore requests the Italian Government...to ensure that labour inspectors working in the agricultural sector *refocus their action on the duties defined by the Convention* and to limit their collaboration with services responsible for monitoring immigration (emphasis added) (ILO CEACR, 2010c).

A recent ILO review of labour inspection activities again suggests that specific pressures on national governments during the crisis may have created a further "imbalance" in the priorities of labour inspection:

> ...the urgency of the crisis has in many respects limited the labour inspectorates' scope of action. Inspectors have understandably focused their efforts on certain aspects related to the crisis (e.g. mass redundancies) with the result that inspection visits have not conducted in the normally comprehensive or balance way. The impact of this imbalance should be evaluated carefully because it could have a negative effect on other elements of working conditions (e.g. the impact of stress at work), which may be neglected at the expense of crisis-specific issues (Vega 2009: 16).

ILO expressed concerns would seem to be well-founded, or at least worthy of further research. Yet, the basic issue of the need for to interrogate effective forms of labour protection remains, precisely because the crisis has undermined many previously seemingly assured labour standards and enforcement procedures. The following **discussion** of "unequal burden-sharing" allows us to view the more profound consequences of the crisis for working environment in a wider theoretical perspective.

4. Unequal risk-burdening

With the arrival of economic recession has come renewed impetus and further inventiveness in regulatory discourses. While errant capital and "excessive" spending on social services by profligate governments is to be carefully monitored in a new regime of austerity controls, the exact opposite would appear to be the case in respect of the elaboration of socially protective regulation. Financial and economic turmoil and its attendant harms to global capitalism resulting from systemic regulatory failure

to control excessive risk-taking, can be contrasted to hesitant regulatory response to ongoing excessive "*risk-burdening*", resulting in real harms to workers in the extended supply chains of the global economy (Woolfson and Likic-Brboric 2009). Yet, underlying most forms of "risk assessment" are calculations of the "costs" and "benefits" of regulation and control. These imply certain assumptions which are highly questionable and go beyond a simple critique of the technical accuracy of the criteria of quantitative risk assessment or of the Standard Cost Model when applied to the financial impact of regulation (Vogel 2010). The costs of the "burden" of regulation on business can be counter-posed to those real risk burdens *imposed* upon workers who are ultimately held responsible ("*responsibilized"*) for their own misfortunes (Gray 2009). Not only are workers to be *un*protected, they are themselves to blame for the consequences in terms of injury and harm. At issue is the notion of accountability, in the form of a realistic structure of penalties for managerial failure, in this case, failure to prevent harm to employees in the workplace. In the context of crisis the absence of accountability presents an opportunity to employers to intensify work demands upon their employees regardless of the outcomes. "Accidents" just happen, but in the end, it is the employee who is responsible and questions of managerial accountability remain obscured.

The hidden dimension of much that passes for "impartial regulation" and a balanced jurisprudence draws our attention to the fact that behind the measures and formal standards of legal appraisal stand real human beings, who are socially *sub*ordinated or *super*ordinated in ongoing structures of embedded inequalities and social *injustice*. There are "winners" and "losers", where the sense of natural justice collides with "naturalised" inequality, or more precisely, with *structures of legally enforced* inequality and *unequal and excessive risk-burdening*. In real world terms, the global supply chains of multinational capital, exploiting the advantages of differential regulatory stringency and the capacity to indulge in "regime shopping", offer vivid proof of the displacement mechanisms of unequal risk-burdening from North to South and from West to East. The "paradox" of law (and of politics) is to reconcile these uncomfortable real-world facts of social differentiation as competing claims to legitimacy are advanced, while at the same time, appearing to remain neutral and *above* class interests.

We have seen this most recently in the "impartial" rulings of the European Court of Justice in favour of market "freedoms" in the *Laval* and *Viking* cases, occasioned by the unscrupulous use of workers from the Baltic States to undermine labour standards in the older member states. These judgments together with others have effectively re-instated the "country of origin" principle of the original "Bolkenstein" services directive. There are profound implications, not least in Sweden for its largely voluntaristic labour market model, concerning the capacity of trade unions to preserve existing labour standards in the face of the threat of "wage dumping" from lower cost East European labour (Woolfson, Thörnqvist and Sommers 2010). Meanwhile, the state regulatory authorities in the form of *Skatteverket* tax agency or the Swedish Working Environment Authority do not have the institutional resources to secure compliance, while the Swedish trade unions have reduced collective bargaining resources with which to enforce

at workplace level the appropriate labour standards that conform to those previously achieved in the context of Sweden's advanced social democracy.

This clash of labour standards between the "new" Europe and the "old", realised in differentiated labour standards is precisely that – socially reproduced advantage and disadvantage – configured on a transnational basis. At the same time, it is legally entrenched in the formations and practices of *class* society, not least in those institutions of its jurisprudence, organised both on a national and increasingly, on a European-wide basis. One conclusion is that the posted workers directive should be seen to all intents and purposes, as an archaic survival of a previous Delors-era of EU cohesion-building labour policy that now has little to offer workers, either from abroad or for that matter in Sweden, by way of enforceable labour standards. *Both* Swedish workers and those migrants who arrive to work there on either a short or long-term basis whether documented or not, have become significantly more "*un*protected".

Thus, even where intra-EU migration is "documented", in reality "documented" migration has important homologies (similar characteristics due to relatedness) to that of the "undocumented", at least so far real access to employment rights, social insurance and labour markets are concerned. In other words, legal documentation of migrant workers, strictly defined, may not provide adequate pointers as to where the impetus towards more gross forms of exploitation, social inequities and deleterious impacts on labour standards are in fact occurring. So-called "documented" migrants may be becoming more similar to the "undocumented" than previously considered. This poses the reverse question, of how to make the "documented" less "undocumented", and raises important public policy concerns which have so far hardly been addressed by social and political actors. Paradoxically, it may be that labour migration is becoming the stalking horse of the *re*-informalisation of the European work space rather than its renewal.

Nor is this challenge to labour standards simply a theoretical possibility or an abstract academic conjecture. Faced with the sudden "end of the post-communist dream", Baltic Latvia and Lithuania in particular, have seen both violent social unrest (the first instances in the new EU member states) and now emigration on an unprecedented scale, at least since independence from the Soviet Union in the early 1990s. The emigration, in the case of Lithuania for instance, can be described as symptomatic of massive social disillusion. It has brought social disaffection to a critical level. With 8,000 – 10,000 Lithuanians leaving each month, including significant numbers of those still in employment joining the outward migration, the issue has risen to the top of the political agenda. The total forecast for 2010, following record figures in 2009, is in the region of 78,000 – 80,000 emigrants out of a population of 3.4 million. It may be that as many as 150,000 have left in the last two years alone (somewhere in the region of 5 per cent of the population or 10 per cent of the labour force).

This haemorrhage of population – migration as a societal *dis*-location – raises key issues for future sustainable development of the country, against a background of serious demographic decline and a prognosis for eventual economic recovery that is at best

uncertain. Yet, the most profound cost is not quantifiable. It is levied in the "desolidarisation" of society, the loss of a social dimension to human existence in a raw free-for-all world of new capital accumulation (Reiter 2007). Post-communism exemplifies marketisation "without limits" in which precarity becomes the existential norm. The new member states therefore provide a rather problematical context for the eventual harmonization of European labour standards, even as those standards are themselves being reconfigured in the backwash of crisis. The implication of a lack of harmonisation is the creation of a reservoir of low-cost/high-hazard cheap labour in the East, to be drawn upon or discarded as the economic cycles of European capital require. In terms of precarity in the working environment, the effects of the crisis may produce the paradoxical outcome of a short-term improvement in accident rates, as the number of employees in the labour force declines, and hence also aggregate risk exposure. In the longer-term however, there is likely to be an accelerated trend of injuries as the economy revives in a working environment of heightened risks and eroded regulatory regimes.

5. Conclusion

Today, an ailing capitalism having patently failed to self-regulate, is supported by state and supranational interventions of unprecedented magnitudes with scant regard to the question of accountability for manifest failure. It is legitimate to ask therefore, whether the present conjuncture has opened a window of opportunity for new regulatory momentum to reinforce labour standards and protect the most vulnerable sections of labour, however defined. Is there renewed legitimacy in the call for a regional or global governance regime of effective social rights and labour standards, or in the aftermath of crisis, will it simply be "business as usual"?

Thus, the debate over precarious labour requires urgent re-framing in the context of the crisis and indeed of the "post-crisis": How do we address the socially imperative task of "re-protecting" the "un-protected" and devising effective regulatory strategies to *counter* precarity? The call for "decent work" now advanced by the ILO and by the EU, and endorsed by the international trade union movement, must be tested against the realities of the faltering political project of wider European integration. Symbolic declarations alone will be insufficient in the face of absent national, regional, supranational, or far less global governance and the effective regulation of labour standards. It is necessary to prevent regularised migration, transmuting into the irregularisation of the shadow economy in a post-crisis context where there are powerful economic drivers to informalisation and intensified precarity. The search for values and practices of social solidarity, inclusion and the (*re*)protection of workers from market forces implies the reinstatement of a regulatory discourse with the purposive enforcement of labour standards as its core assumption.

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