

# Reform in Small Steps: The Case of The Dependent Contractor

Guy Davidov  
*Hebrew University of Jerusalem, Israel*

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## 1. INTRODUCTION

Should labour law scholarship engage with suggesting incremental improvements to the law? Harry Arthurs would probably answer that there is not much point in doing so, because the law does not matter much. Harry has been consistently sceptical about the impact of legislation and case-law; arguing that much more important in real life are the rules created in workplaces by the parties themselves, often through power struggles, sometimes unilaterally by the employer, and often informally. Such rules are also shaped by external factors, of course, but it is the political economy that determines the actual rights and benefits of workers much more than legislatures and judges.<sup>1</sup>

Harry is surely right to be sceptical about the law. At the same time, however, experience (especially from other countries) shows that labour law *does* matter.<sup>2</sup> The impact may be limited, but it can still make a difference to the lives of many workers. And one of the clear examples for the ability of academics to influence the law, and the ability of law to influence the lives of workers, stems from Harry's own contribution concerning dependent contractors – an intermediate category between “employees” and independent contractors.

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<sup>1</sup> See, for example, Harry W. Arthurs, “Labour Law without the State”, (1996) 46 *University of Toronto Law Journal*, 1, 2-3, 40-1; idem, “National Traditions in Labor Law Scholarship: The Canadian Case”, (2002) 23 *Comparative Labor Law and Policy Journal*, 645, at 676; idem, “Extraterritoriality by Other Means: How Labor Law Sneaks across Borders, Conquers Minds, and Controls Workplaces Abroad”, (2010) 21 *Stanford Law & Policy Review*, 101, at 102-3; idem, “Charting the Boundaries of Labour Law: Innis Christie and the Search for an Integrates Law of Labour Market Regulation”, (2011) 34 *Dalhousie Law Journal*, 1.

<sup>2</sup> For judicial and legislative developments in my home country which I believe have made a difference, see, for example, Guy Davidov, “Unbound: Some Comments on Israel’s Judicially-Developed Labor Law”, (2009) 30 *Comparative Labor Law and Policy Journal*, 283; idem, “Judicial Development of Collective Labour Rights – Contextually”, (2010) 15 *Canadian Labour & Employment Law Journal*, 235; idem, “The Principle of Proportionality in Labor Law and its Impact on Precarious Workers”, (2012) 34 *Comparative Labor Law and Policy Journal*, 63; idem, “Special Protection for Cleaners: A Case of Justified Selectivity?”, (2015) 36 *Comparative Labor Law and Policy Journal*, 219. For a fuller account of Israeli labour law, see Guy Mundlak, *Fading Corporatism: Israel’s Labor Law and Industrial Relations in Transition*, (Ithaca NY: Cornell University Press, 2007).

The binary divide between the two traditional categories has crucial importance for people who work for others: either they enjoy the protection of numerous regulations (if they fall into the scope of “employees”), or they fall completely out of labour law’s sight. Yet, in real life, the distinctions between different workers are hardly binary. So, the need for a more nuanced regulatory apparatus becomes clear.

The goal of this chapter is to assess briefly two concrete proposals made by Harry for the adoption of an intermediate category between “employees” and independent contractors. I start by describing the original proposal, then move to explain the logic behind intermediate categories in this area, before assessing the Canadian legislated definition (which adopted Harry’s proposal to some extent), explaining its deficiencies. I then move to analyze a more recent proposal made by Harry for the adoption of an intermediate category (along the same lines), suggesting some amendments that could further improve it.

## 2. FROM LAW REVIEW TO LAW

In 1965, exactly half a century ago, Harry published an article analysing the situation of those who were legally considered “independent contractors”, but who, in practice, were economically vulnerable, just like employees.<sup>3</sup> He called this group of workers “dependent contractors” (following Swedish legislation and literature), and showed how competition laws that prevent them from bargaining collectively are problematical. He argued that the law should be changed to conform better to economic reality and thereby redress the unequal distribution of private power, a problem which impacted the dependent contractors alongside employees. This was a relatively rare incident; Harry’s insightful articles usually offer a critical analysis of the law, rather than making concrete reform proposals – as can be expected from his scepticism.<sup>4</sup> Nonetheless, this particular call for reform was exceptionally successful.

Very few academics can claim to have led directly to significant changes in legislation. Harry’s article had this remarkable impact. Between 1972 and 1977, seven Canadian jurisdictions adopted provisions allowing dependent contractors to bargain

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<sup>3</sup> Harry Arthurs, “The Dependent Contractor: A Study of the Legal Problems of Countervailing Power”, (1965) 16 *University of Toronto Law Journal*, 89.

<sup>4</sup> Harry did, of course, make concrete reform proposals as a commissioner appointed by the Government; see, most notably, Harry Arthurs, *Fairness at Work: Federal Labour Standards for the 21st Century*, (2006), available at: [http://www.labour.gc.ca/eng/standards\\_equity/st/pubs\\_st/fls/pdf/final\\_report.pdf](http://www.labour.gc.ca/eng/standards_equity/st/pubs_st/fls/pdf/final_report.pdf).

collectively.<sup>5</sup> The direct result was to bring some people who would otherwise be considered independent contractors partially into the scope of labour law. For example, truck owner-operators working for one major client could now join forces with others in their situation, bargain collectively and (if need be) strike – all methods that are illegal for independent contractors.

How much difference did it make? It is difficult to measure it empirically. It has been argued that adding the new category was not necessary, because, by the mid-1970s, there was a growing tendency to interpret the term “employee” in a broader and more purposive fashion anyway (in some part, thanks to Harry’s article).<sup>6</sup> However, it is doubted that these developments were so sweeping,<sup>7</sup> and, in any case, the new category has opened the way for further broadening. Thus, for example, at least in some jurisdictions, even those who have their own employees can be dependent contractors,<sup>8</sup> which was surely not possible within the concept of “employee” as interpreted by Canadian courts. Further evidence that the new category makes a difference can be learned from the fact that commissions reviewing employment laws in British Columbia and at federal level have recommended using similar categories to extend the coverage of employment standards as well.<sup>9</sup> Such recommendations, which were based upon in-depth reviews of problems encountered by workers in practice, suggest that the scope of the “employee” category is far from satisfactory.

### 3. WHY ANOTHER LEGAL CATEGORY?

In recent years, a growing number of countries have adopted an intermediate category similar to dependent contractors.<sup>10</sup> In some cases, this was introduced as a “solution” to the failure of

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<sup>5</sup> Michael Bendel, “The Dependent Contractor: An Unnecessary and Flawed Development in Canadian Labour Law”, (1982) 32 *University of Toronto Law Journal*, 374, at 376-8.

<sup>6</sup> Ibid.

<sup>7</sup> See, generally, Brian A. Langille and Guy Davidov, “Beyond Employees and Independent Contractors: A View From Canada”, (1999) 21 *Comparative Labor Law and Policy Journal*, 7; Judy Fudge, Eric Tucker and Leah Vosko, *The Legal Concept of Employment: Marginalizing Workers*, (Report for the Law Commission of Canada, 2002).

<sup>8</sup> See, for example, *Fownes Construction Co. Ltd. v Teamsters*, [1974] 1 CLRBR 510 (B.C. Labour Relations Board); *Chauffeurs, Teamsters and Helpers, Local Union 395 v Northern Resource Trucking Ltd.* (judgment of 23 October 2002, Canada Industrial Relations Board); *Canadian Union of Postal Workers v Colispro Inc.* (judgment of 8 April 2013, Canada Industrial Relations Board).

<sup>9</sup> Mark Thompson, *Rights and Responsibilities in a Changing Workplace, A Review of Employment Standards in British Columbia* (1994), available at: <http://www.qp.gov.bc.ca/govtinfo/thompson.pdf>; Arthurs, n. 4 above, Chapter 4. This was also one of the recommendations of Fudge, Tucker and Vosko in their report to the Law Commission of Canada, n. 7 above.

<sup>10</sup> See Guy Davidov, Mark Freedland and Nicola Kountouris, “The Subjects of Labor Law: ‘Employees’ and

courts to interpret the term “employee” in a way that would not exclude numerous workers in atypical arrangements. In such cases, the more appropriate solution would have been to correct the failure directly and thereby broaden the “employee” category. In other legal systems, however, legislatures have recognized the need for an intermediate category, unrelated to any broadening (or lack thereof) of the “employee” group.

Generally, an intermediate category only makes sense when looking “from above” at a spectrum of regulations.<sup>11</sup> When one considers a specific arrangement (say, a right to overtime payments, or vacations, or a minimum wage) then either it applies, or it does not. For the purpose of this specific regulation, there must be a binary divide (does it apply in a given case? Yes or no). This binary divide is customarily described by using the terms “employee” (for “yes”) and independent contractor (for “no”). However, assume that there are 10 different regulations related to work, and three different groups of workers: one that, based upon its characteristics and the purpose of these regulations, should be granted access to all 10 regulations; another that, for the same reasons, should be excluded from coverage of all 10 regulations; and a third group that should enjoy only *some* of the regulations (say, five of them), but not others. If this scenario is realistic, then it makes perfect sense to create a separate category for the third group, and to allow people in this group to know that they are entitled to certain work-related rights, but not others.<sup>12</sup>

An intermediate category is, therefore, justified – and indeed required – if (a) labour and employment laws can be separated into groups of regulations with different purposes; (b) workers can be separated into groups with different characteristics; and (c) the distinguishing characteristics of the workers’ groups are directly connected with the distinguishing purposes of the regulations’ groups. Taking second-order concerns of efficiency and maximizing compliance into consideration, I would also add that (d) a good balance must be struck between universalism and selectivity, based upon the understanding that a system with the same rights to all (universalism) makes it easiest for people to know their rights and

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Other Workers”, in: Matthew Finkin and Guy Mundlak (eds), *Research Handbook in Comparative Labor Law*, (forthcoming).

<sup>11</sup> Guy Davidov, “Freelancers: An Intermediate Group in Labour Law?”, in: Judy Fudge, Shae McCrystal and Kamala Sankaran (eds), *Challenging the Legal Boundaries of Work Regulation*, (Oxford-Portland OR: Hart Publishing, 2012), 171.

<sup>12</sup> The same logic can be used in the context of a specific piece of legislation, to distinguish between people who are *fully* covered by the legislation, and those covered only *partially*. This was actually the way it was used by Harry (n. 3 above): In the context of labour relations acts, “employees” are granted *full* rights to bargain collectively, while “dependent contractor”, he argued, should be granted such rights only in so far as “they share a particular labour market with employees” (at 114).

obligations, whereas, in contrast, a more nuanced system (with selected laws applied only to selected groups) ensures better targeting of laws to the people who really need them, and prevents the exclusion of people (such as dependent contractors) who need only *partial* protection.<sup>13</sup>

Sounds complex, perhaps, but, in fact, the first two conditions (a and b) are quite obvious. Different laws have different purposes. To be sure, labour and employment laws have an overarching common purpose (whether to address the inequality of bargaining power, or to confront the vulnerability of employees, or to correct market failures, or to enhance capabilities, and so on).<sup>14</sup> But they also have *specific* purposes; the justifications for unjust dismissal laws are not exactly the same as the justifications for working hour regulations, for example. They can be grouped together in several different ways based upon shared goals. Workers also have many different characteristics, depending on their arrangements with their employers, and can be separated into groups in various ways. The second-order condition (d) is also relatively easy to meet in this case. Too many different categories would not achieve a good balance between universalism and selectivity (creating too much indeterminacy); but adding only one intermediate category is very reasonable in this regard. The main question remaining, therefore, is (condition c above) whether there is a connection between a specific intermediate group (in terms of its characteristics) and the goals of *some* labour laws.

Dependency appears to offer this connection. It is not only one of the major characteristics of employment relationships, it also characterizes other work relations. There is a significant group of people that are dependent on one single (or one major) “client”, but do not share the other major characteristic of “employees” – subordination (or more broadly, being subject to a structure of governance with democratic deficits).<sup>15</sup> At the same time, dependency is a vulnerability that explains and justifies many work-related regulations, but not all (others can be explained by reference to subordination). There is, therefore, a clear connection between the characteristic and the purpose: workers who are dependent on one single (or one major) client should be included within the coverage of laws that are designed

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<sup>13</sup> Guy Davidov, “Setting Labour Law’s Coverage: Between Universalism and Selectivity”, (2014) 34 *Oxford Journal of Legal Studies*, 543.

<sup>14</sup> Guy Davidov, “The Goals of Regulating Work: Between Universalism and Selectivity”, (2014) 64 *University of Toronto Law Journal*, 1.

<sup>15</sup> Guy Davidov, “The Three Axes of Employment Relationships: A Characterization of Workers in Need of Protection”, (2002) 52 *University of Toronto Law Journal*, 357.

to respond to such dependency. It does not have to be the *only* purpose of these regulations, but at least one of the purposes.<sup>16</sup>

Consider the minimum wage, for example. There are several justifications for mandating the payment of a minimum wage, but, at least to some extent, it seems connected to the problem of dependency. If you are dependent on a single employer, this vulnerability means that you have little or no bargaining power, and no ability to spread risks. If you have several clients, you are much more likely to be able to secure a decent wage, or at least you can minimize the risk of non-decent wages by contracting with several different clients. In contrast, subordination is not necessarily relevant. The need for minimum-wage protection is the same whether or not you are subject to daily control or bureaucratic rules of the organization. Consider similarly collective-bargaining laws. The idea behind a law which both allows and encourages collective-bargaining is to allow workers who are dependent on one employer to join forces and attempt to equalize their bargaining power. This seems relevant and justified for all workers in a position of dependency, whether they are also subject to subordination or not. Consider, in contrast, maximum hours regulations, or privacy regulations. These seem justified for workers in a condition of subordination. If you control your own time and are not integrated in the employer's organization, such regulations should not apply; whether there is dependency or not is immaterial.

Seen in this light, it is probably the case that *most* labour and employment laws should cover not only employees but also dependent contractors. But not all; so there is reason to keep the distinction. People who have their own small business – with a significant degree of independence concerning the running of this business – are not “employees”, because they are not in a condition of subordination, but, if they are dependent for most of their income on a single client, they need the protection of some (indeed many) labour and employment laws.

#### 4. ASSESSING THE CANADIAN DEFINITION

If the analysis above is accepted, Canadian “dependent contractor” laws are deficient in two important respects.<sup>17</sup> First, they are all limited to collective-bargaining regulations. It is

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<sup>16</sup> Michael Bendel, n. 5 above, has argued that the “organization test” makes the dependent contractor category redundant, because, if people are an integral part of the organization, they are also dependent on it: “integration into another person’s business, the key feature of the test, is a very useful indicator of economic dependence” (at 382). This is usually the case, although not always. But, more importantly, the connection does not exist the other way around. Being part of the organization may usually suggest dependency, but dependency does not mean that one is part of the organization. This is exactly where the intermediate category is needed: to extend protection to people who are dependent even though they are *not* part of the organization.

difficult to explain why people who are in a position of dependency and need the protection of a union, do not simultaneously need the protection of minimum-wage regulations, or wage-protection provisions (for example) – for the very same reasons. Second, for some reason, all Canadian jurisdictions with “dependent contractor” provisions appear to require a degree of subordination as well. In Ontario, for example, a dependent contractor is someone who “performs work or services for another person... in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor”.<sup>18</sup> Such definitions do not settle for dependency, but also require “an obligation to perform duties” that resembles an employment relationship. This was (not surprisingly) interpreted by labour boards, in some jurisdictions at least, as a degree of subordination<sup>19</sup> – a requirement which is difficult to justify in my view. If the impact of the category was minimal, as argued by Michael Bendel,<sup>20</sup> this is probably the main reason.

Harry’s proposal did not include the last limitation. He suggested the adoption of the Swedish definition, which expanded collective-bargaining rights to every person “that performs work for another person and thereby occupies in relation to that person a position of dependence essentially similar to that occupied by an employee in relation to his employer”.<sup>21</sup> Extending protection to those in a position of dependency – even without subordination – would go a long way not only to connecting the scope of labour and employment laws with their purpose, but also to curbing evasion attempts by employers. It is relatively easy to change a relationship in a way that minimizes subordination, but much less easy to hide dependency where it exists.

As for the first limitation mentioned above – the inclusion of “dependent contractor” provisions only in collective-bargaining laws – it was in line with Harry’s proposal at the time. However, in his 2006 report to the Federal Government (“the Arthurs Report”), Harry

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<sup>17</sup> A third deficiency – limiting the category only to specific sectors (trucking and fishing) – originally existed in the Federal legislation but has later been corrected.

<sup>18</sup> Ontario Labour Relations Act 1995, s. 1.

<sup>19</sup> See references in Langille and Davidov, note 7 above; for a more recent example see *Carpenters Union v Contant Construction Inc.* (judgment of Oct. 23, 2009, Ontario Labour Relations Board).

<sup>20</sup> Bendel, note 5 above.

<sup>21</sup> Arthurs, note 3 above, 114-5. Interestingly, in Sweden, the definition was later changed and the reference to dependency dropped – the only question now is whether the contractor performs the work “in a position essentially similar to that occupied by an employee” (Axel Adlercreutz and Birgitta Nyström, *Labour Law in Sweden*, (Alphen a/d Rijn: Kluwer International, 2010), 32). However, the new definition, as interpreted by the courts, did not lead to any change in the composition of the categories (ibid.).

recommended an extension of the same idea to employment standards. Interestingly, he preferred not to use the same concept, but a different one: that of “autonomous workers”, although he admitted that the categories were very similar.<sup>22</sup>

## 5. THE ‘AUTONOMOUS WORKER’ PROPOSAL

The Arthurs Report does not include many details about the proposed new category. This is understandable, given that it covers a broad range of issues and that this is just a small part of them. However, Harry’s newest proposal does have several interesting components. First, it avoids the difficult question of how to place the line between the new group and the other legal categories (“employees”, on one side, and independent contractors, on the other) by suggesting to define the group based upon *similarity* to employees:

“‘Autonomous workers’ should be defined... as including persons who perform services comparable to those provided by employees and under similar conditions, but whose contractual arrangements with the employer distinguish them from ‘employees’.”<sup>23</sup>

Second, although it is made clear that people in this intermediate group will only be eligible for *limited* coverage, the Report avoids the question of which regulations should apply, instead proposing that this will be left for Ministerial decision. Third, it is clarified that “autonomous workers” should not be treated as one group; rather, the Minister should make sector-specific determinations about which regulations should be extended for each subgroup. Fourth and finally, the Report notes that some “autonomous workers” prefer to be left outside the scope of employment law altogether – for various reasons – and such preferences should be taken into consideration (although they are not in themselves determinative).<sup>24</sup>

I agree entirely with Harry that employment standards should be extended, in the sense that *some* of them should apply also to workers who are not employees. And I agree that the best technique to achieve that is through an intermediate category. However, I find the four specific propositions described above problematical.

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<sup>22</sup> Arthurs, note 4 above, 64.

<sup>23</sup> Ibid. This is actually reminiscent of Harry’s proposal for a “dependent contractor” definition (see, above, next to note 21).

<sup>24</sup> Ibid., 63-4.

First, regarding the distinction between the categories (or how to define the intermediate category): the reliance on “similarity” to employees is likely to lead to narrowing this category without justification, by requiring similarity in terms of subordination as well. Admittedly, the term “autonomous” seems to refer to a lack of subordination (not being part of the organization and not being subject to the control of an employer). But, if the idea is to base the category upon dependency and not require subordination, why not say so explicitly?

Second, concerning the choice of the specific regulations that will apply: I can see the advantage in giving the Minister some flexibility to make corrections on the margins; but giving the Minister the authority to make these determinations in the first place, especially without any guidance, leaves too much to chance.<sup>25</sup> A list of regulations/provisions tied to dependency should be attached to the new category, at least as a default starting-point.

Third, the idea of ensuring sensitivity to context and to unique circumstances and needs, and accordingly creating sector-specific regimes, is logical and understandable in principle. However, bearing in mind also the need to ensure determinacy, to allow people to know their rights and obligations, and to minimize problems of non-compliance, a balance must be struck between universalism and selectivity (as noted above). Some degree of selectivity in terms of sector-specific regulations could be justified,<sup>26</sup> but breaking the intermediate group into numerous sub-groups takes this too far.

Finally, why should we give any weight to a worker’s preference not to be covered by employment standards? The Report gives several explanations for the preference of some self-employed workers not to enjoy such protection. One is that they see themselves as entrepreneurs “and want to be free to hire more employees, expand their operations and increase their profits”.<sup>27</sup> Others “value the freedom to work on their own, where and for whom they choose”.<sup>28</sup> It is not clear, however, why this is relevant. Surely, there is no intention to limit the ability of small businesses to expand, or to engage with any number of

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<sup>25</sup> For further discussion, see Judy Fudge, “A Canadian Perspective on the Scope of Employment Standards, Labor Rights, and Social Protection: The Good, the Bad, and the Ugly”, (2010) 31 *Comparative Labor Law and Policy Journal*, 253.

<sup>26</sup> See, for example, Einat Albin, “Sectoral Disadvantage: The Case of Workers in the British Hospitality Sector” (Unpublished Ph.D dissertation, University of Oxford, 2010); Guy Davidov, “Special Protection for Cleaners: A Case of Justified Selectivity?”, (2015) 36 *Comparative Labor Law and Policy Journal*, 219.

<sup>27</sup> Arthurs, note 4 above, 62.

<sup>28</sup> Ibid.

clients as they like. If the law stipulates that people in a certain arrangement (for example, dependency on one client) are covered by some employment laws, it does not mean that they are prevented from changing their arrangements. If you are *not* dependent on one client anymore, you will not be covered. If you *are* dependent, you will enjoy some protection, and it does not limit your ability to change your work arrangements.

Another reason mentioned in the Report for the lack of enthusiasm among some of the self-employed (specifically, truck owner-operators) is the fact that, as independent contractors, they enjoy the ability to deduct expenses, *i.e.*, they enjoy some tax advantages not available to employees.<sup>29</sup> However, from a purposive point of view (which the Report certainly adopts in other parts), there is no necessary connection between the tax regime and employment standards. One could be an “employee” for the purposes of employment standards and simultaneously an independent contractor for tax purposes. And, in any case, we do not usually allow people to choose the tax regime to which they are subject. In tax law just as in employment law, you can choose the work arrangements (or other economic arrangements) as you wish, but the legal implications are determined by law and not by choice.

The Report indeed concludes that “autonomous workers” should be covered (to some extent) by employment standards, whether they want it or not – to protect their basic right to decent working conditions, and also to protect employees from unfair competition.<sup>30</sup> It is therefore surprising that the Report goes on to say that:

“although some autonomous workers in the trucking sector are apparently anxious not to be covered... other autonomous workers in other sectors may have different needs or views. It should be possible to treat the two groups differently.”<sup>31</sup>

I would argue that one’s preferences about the legal rules that shall apply to him or her are entirely irrelevant to the normative discussion in this context.

## 6. CONCLUSION

Harry spent some of his celebrated career arguing, convincingly, that legislation and judicial decisions do not matter much. However, for me, some optimism about the power of the law

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<sup>29</sup> Ibid., 63.

<sup>30</sup> Ibid., 63-4.

<sup>31</sup> Ibid., 64.

keeps creeping in. The “dependent contractor” category is one example for law’s impact which I could not resist invoking because it involves Harry’s own impact on the development of the law.

Canadian laws which implemented Harry’s proposal to add an intermediate category of “dependent contractors” undoubtedly made *some* difference. I have argued, however, that they were limited by the legislatures in several respects, which significantly muted their potential. I then moved to consider Harry’s more recent proposal for an intermediate category, and suggested several ways in which it could, in my view, be improved. Notwithstanding these concrete comments, Harry’s contribution to this topic – with his 1965 article and then the 2006 Report – has been fantastic, as in so many other labour law areas.

In a recent article, Harry suggested as a “thought experiment” to re-conceptualise labour law as a broader legal field, integrated with other areas of law that share a single basic idea – addressing the problem of economic subordination.<sup>32</sup> In this vision, tenants, consumers, farmers and small investors all share similar difficulties/vulnerabilities in a capitalistic society, which the law can redress in one integrated form, encouraging new alliances. Translated into legal language, this would lead to the breaking of legal distinctions. The category of “dependent contractors” which Harry championed half a century earlier can thus be seen as a first step in a much bigger project.

In recent years, others have suggested more specifically to extend labour laws to independent contractors, as well as other people who work for others – such as small vendors. Elsewhere, I have argued that such proposals will end up diluting the protections currently enjoyed by employees – because the differences from other groups will necessitate lowering the legal obligations to the lowest common denominator.<sup>33</sup> But while I do not support the wholesale dissolving of legal distinctions in this area, I wholeheartedly agree that *some* labour and employment laws should be extended to non-employees. This first step, which Harry has so capably advanced in Canada, has been gaining increased acceptance in various countries. The adoption of intermediate categories – designed specifically to extend labour and employment protections to broader groups – is becoming more crucial because of the

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<sup>32</sup> Harry Arthurs, “Labor Law as the Law of Economic Subordination and Resistance: A Thought Experiment”, (2013) 34 *Comparative Labor Law and Policy Journal*, 585.

<sup>33</sup> Davidov, note 13 above.

proliferation of non-standard employment relations.<sup>34</sup> Several decades ago, most workers had a “standard” relationship with an employer, characterized by both subordination and dependency. Now, there are many varieties, so it becomes more pertinent to identify which characteristics justify different regulations, and re-structure the legal categories accordingly. The “dependent contractor” category is a step in the right direction. There is still a long way to go, however, both in Canada and elsewhere, to make it sufficiently effective.

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<sup>34</sup> See, recently, Katherine V.W. Stone and Harry Arthurs (eds), *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment*, (New York: Russell Sage Foundation, 2013).