

# Gig work at the base of the pyramid: considering dependence and control

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# Gig work at the base of the pyramid: considering dependence and control

Kate Roll\*

## Abstract

Firms engaged in 'base of the pyramid (BoP) development' programmes celebrate the benefits for 'micro-entrepreneurs,' who work at the edge of the firm performing last-mile distribution in hard to reach areas. However, the language of 'micro-entrepreneurship' obscures the actual employment relationship and the distribution of risk and rewards between the worker and the firm. I argue that a framework drawn from labour law, which is rooted in norms of exchange and non-exploitation, can help us analyse these relationships and thus locate the firm's responsibilities to these workers. Of particular importance are the ideas of *dependence* and *control*. This framework is applied to the case of a route-to-market programme in Kenya. The paper concludes that we see aspects of dependence and control in these relationships, and thus we can consider these workers to be similar to 'dependent contractors' — a category that has increasingly been explored in relation to gig work. This also opens broader questions about the obligations of firms to BoP workers who may be, almost definitionally, dependent upon this work.

**Keywords:** workers' rights, labour management formal and informal sectors, shadow economy, institutional arrangements, gig work, base of pyramid, corporate responsibility, development, micro-entrepreneurship

JEL codes: D63, J83, M54, O17

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## 1. Introduction

From the slums of Kibera to the streets of Ho Chi Min City, since the early 2000s large multi-nationals have been testing and growing programmes that engage low-income sellers to distribute their products poor and rural communities.<sup>1</sup> These programmes — whether understood as inclusive business (Mendoza and Thelen 2008, Márquez et al. 2010), social business (Seelos and Mair 2005, Yunus 2007), or ‘base of the pyramid (BoP) development’ (Prahalad and Hart, 2002) — engage the poor to advance dual business and development goals (Blowfield and Dolan, 2014). They share the perspective that businesses ‘can contribute to the long-term goal of poverty alleviation by embedding the neglected poor parts of the world population into efficient value chains and market structures’ (Hahn, 2012).

These BoP route-to-market programmes have sparked discussions on their benefits to companies (Vachani and Smith, 2008; Anderson and Billou 2007) and consumers, particularly as the products can range from hand soap to face-whitening cream (Karnani 2007a; Cross and Street 2009; Jaiswal 2008). However, there is surprisingly little attention to the *work* at the core of these programmes.<sup>2</sup> More specifically, the employment structure, not just whether a seller increases earnings, merits attention in the discussion of social impact and responsible business. The employment relationship ‘mediates the relationship between labour and capital in the system of production, at the same time as altering the distribution of risk and incomes within society’ (Adams and Deakin, 2014). This paper re-centres this relationship — and the operational choices of the firm in designing that relationship — in the analysis of BoP development. What should this relationship look like at the blurred, unstable boundary of the firm?

Current frameworks for examining distribution work at the BoP provide little help. In the celebratory discourse of micro-entrepreneurship, a firm provides an opportunity and the rest is up to the worker. This obscures the agency of the firm in structuring and benefiting from these devolved relationships and normalises a *minimal view* of firm obligations to sellers. A systemic view of poverty is absent (Chatterjee, 2014: 891). On the other end of the spectrum, the discourse of precarious work usefully draw attention to the broader context of global capital and the extent to which this work may entrench vulnerability, uncertainty, and extraction. However, as critics have noted, it takes a *maximalist view* and compares contracting work with images of secure, salaried work — indeed, ‘[p]recarity appears as an irregular phenomenon only when set against a Fordist or Keynesian norm’ (Neilson and Rossiter, 2013: 54). This leaves little room for nuance, which becomes evident when these models are confronted with the viewpoints, competencies, and concerns of the workers at the BoP themselves.

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<sup>1</sup> Prominent companies involved in such initiatives include Bel Group, Coca-Cola, Cemex, Danone, Hewlett Packer, Hindustan Unilever, Nestlé, Novartis, SC Johnson, Yakult, and many more (see Prahalad and Hammond, 2002; Simanis and Duke, 2014).

<sup>2</sup> Smith and Pezeshkan (2013) and Ramachandran et al. (2012) have usefully explored the impact of these programmes on the poor as producers, though not in distribution roles.

To address this gap, rather than focusing on the work of a particular ethicist, as has been usefully employed when debating corporate responsibilities to sweatshop workers, for example (Arnold and Bowie, 2003; Powell and Zwolinski, 2011), this paper seeks alternative ways to understand and categorise this work. It draws upon emergent labour laws in the global North that respond to informalisation<sup>3</sup> and the rise of the gig economy (Aloisi 2016; Cherry and Aloisi 2017; De Stefano 2015; Kuhn 2016). It specifically borrows from the conceptual category of *dependent contractor*, which charts a middle way between *employee* and *independent contractor*. The concept has emerged in response to the ‘fissuring’ of the workplace that has confounded dyadic views of the employee-employer relationship (Weil 2014: 22). Legal tests focus on to what extent workers are *dependent* on the firm and to what extent the firm exerts *control* over work. The proposed framework posits that the greater these two factors, either independently or in concert, the more ‘employee-like’ the employment relationship is.

This conceptual framework is both applicable to work at the BoP and useful for establishing insight into corporate responsibility. Firstly, micro-distribution work at the BoP shares many of the ambiguous features of gig work, including commission-based or piecework pay and self-management; both BoP sellers and gig workers generally do not have access to benefits such as insurance that would be available to salaried workers. Secondly, labour law codifies *norms* regarding the employment relationship. As Rogers usefully reminds us, at its core employment law engages with ‘a question of values and principles, not facts’ (2016 483). Legal scholarship provides a set of tools for classifying different types of work and the attendant duties for employers that reflect values; this opens the possibility of identifying greater or lesser responsibilities of firms to workers as flowing from the employment structure. By contrast, such worker classifications — and thus the responsibilities of the firm — are *prima facie* assumed in the language of micro-entrepreneurship programmes.

To probe the applicability and robustness of this framework, the paper uses it to examine data from 73 semi-structured and 16 photo-elicitation interviews (PEI) with participants in a corporate route-to-market programme in Kenya, Project Insansa.<sup>4</sup> Established in 2013 by a large multinational, Food Co., this programme works with low-income sellers to reach customers living in informal settlement and rural areas that were not served by formal distribution networks. As with many of its peer programmes, Project Insansa embraces the concept of micro-entrepreneurship and, reflecting the BoP proposition, takes the view that “given the right incentives, these ‘latent’ entrepreneurial traits could be harnessed for the betterment of the poorer communities” (Chatterjee, 2014: 900).

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<sup>3</sup> Arnold and Bongiovi (2013) usefully draw out the nuances between precarious, informalising and flexible work.

<sup>4</sup> To maintain the anonymity of the company, all names and identifying details have been removed.

This paper finds that the dependence-control framework, by focusing on the employment relationship, provides a useful means of considering the responsibilities of firms to BoP workers — responsibilities that are obscured in the dominant micro-entrepreneurship discourse. Secondly, by testing the framework through the use of a case, the paper finds that legal concepts of dependence and control, while applicable, must be contextualised, raising interesting questions about the exercise of corporate power in BoP settings. Finally, by highlighting dependence, the framework demands the difficult discussion of corporate responsibility in the context of systemic poverty and economic vulnerability. In examining how we think about the employment relationship at the BoP, this article contributes to the growing critical management and ethics literature on private sector approaches to poverty reduction.

The paper begins with a brief discussion of the theoretical foundations of this work and methodology. The following sections lay out scholarship on work at the BoP and introduce the dominant frameworks of micro-entrepreneurship and precarious work. Section three lays out the case for using the concept of dependent contracting and describes the framework. In section four, the paper uses the framework to examine the case of Project Insansa; the paper closes with a discussion and conclusion.

## 1.1 On categorisation and rationalities

From a theoretical perspective, this paper is rooted in work on ‘category politics’ and how the ‘purpose of concepts or categories is “to influence the evolution of ongoing practices” (Tanesini, 1994, in Bacchi, 2000). This interest in categorisation draws on feminist ethics and work on framing, discourse, and classification (Foucault 2012 [1977], Lemke 2001). This enables the paper to connect how our language — particularly how we describe and conceptualise these workers — results in the construction, legitimisation and reproduction of specific obligations (or not) for the firm.

This paper takes the framing of work at the BoP seriously, as these provide “action-guiding” models’ for companies (Hahn 2012, 51). As Lemke similarly emphasises, ideas structure ‘specific forms of intervention’ as a ‘rationality is not pure, neutral knowledge which simply “re-presents” the governing reality; instead, it itself constitutes the intellectual processing of the reality which political technologies can then tackle’ (2001: 191). The core insight shared by these authors is that categories that dictate perception and action or non-action. Put more simply, concepts like micro-entrepreneur are: ‘proposals about how we ought to proceed from here’ (Tanesini 1994). These models may play a particularly important role in guiding company action in areas where there are few or weakly enforced regulations.

This type of analysis is particularly useful for thinking about the ways that labour is managed and regulated. The grouping and classification of workers has been studied as an important component in how employers 'establish and maintain the institutional conditions that facilitate their appropriation of labour effort' (Hamman and Bertels 2017:6). This reminds us of the politics and significance of reclaiming terms like 'worker' when discussing 'users,' 'taskers' and 'sellers' on digital platforms (Kuhn and Maleki 2017, 192). Of critical concern, the segregation and categorising workers as 'other', creates status hierarchies (Lawrence and Suddaby, 2006: 222) and can be used to normalise the exploitation of these groups. Categorisation provides an 'important [element] of the institutional work of establishing exploitative labour arrangements' (Hamman and Bertels 2017: 6). Categories such as 'micro-entrepreneur' may be used strategically to extend or deny protections.

Finally, categorisation is at the heart of labour law: What are the right criteria? And who fits? As Cherry and Aloisi, describe:

Classification as an employee is a "gateway" to determine who deserves the protections of labor and employment laws, including the right to organize, minimum wage, and unemployment compensation, to name just a few of the benefits that are part and parcel of employee status. As such, classification as an employee is "an important instrument for the delivery of workers' rights." (2017: 638)

Indeed, as will be discussed at length, classification as an 'employee' is at the heart of on-going discussions of the gig economy, new labour practices and the informalisation of work, and it will have far-reaching consequences for those workers.

## 1.2 Methodology and data collection

This paper joins a broader effort to bring new voices into the analysis of social impact programmes, as well as responds take into consideration more types of work and workers in management scholarship. As Kuhn and Maleki argue: 'Our ability to refine and extend management theory beyond full-time traditional employment requires acknowledging the heterogeneity of non-standard work' (see also Connelly and Gallager, 2004). As such, this paper is uniquely grounded in interviews with BoP workers and upon 89 interviews with Project Insansa participants, conducted between 2014 and 2015. In addition, seven site visits were made between 2015 and 2018 to observe the programme. Both sets of interviews were designed to gain a broader sense of Project Insansa from the participants' perspectives.

Of the 89 interviews, 16 used auto-driven PEIs. In this case, the participants were given digital cameras and the instructions to take photographs that illustrated what they liked about their work, disliked about their work, and one that represented the future. After three days, the researcher and research assistant returned and displayed the photos on a laptop screen, inviting the participant to tell the story of the picture. At the end of the interview, the participant was given the camera and the researcher downloaded a copy of the photos that were discussed.

Used since the 1950s, PEI techniques provide a means of making research more subject-led and they have gained attention for its suitability with vulnerable populations (Bugos et al. 2014). By putting the respondent in the driver's seat — both in capturing and interpreting the image — the researcher hears the story that the respondent is seeking to tell. I was surprised and humbled when the narratives differed from what I would have surmised looking at the same image. The photographs were also an invitation for respondents to tell more personal stories than perhaps would have arisen in a single interview conversation. Respondents used the photographs, often self-portraits, to describe a complex world of work that brought together pride in their efforts and successes with the realities of the risks and physical burdens they carried each day. These data and personal perspectives bring new texture and intimacy to the discussion of corporate responsibility to the poor.

Following Glaser and Strauss (1967), interviews were conducted up to the point of saturation; this is a pragmatic approach to grounded research that ceases data collection when similarities across the interviews become evident and subsequent interviews are unlikely to generate new patterns. The interviews with the workers were conducted in Kiswahili or a local language and then transcribed by an independent social science research company. All transcriptions were imported into NVIVO, enabling coding the texts' categories and themes.

Data analysis took place in three main stages. In the first stage, the author inductively coded the data to identify comments broadly relating to the experience of work; these were gathered into second order themes around autonomy, risk, and aspirations (see Gioia et al. 2012). In the second stage, the author coded the data in relation to dominant discourse of micro-entrepreneurship (namely *flexibility, autonomy, and self-actualisation*) and precarity (*uncertainty, risk and insecurity* — both financial and physical). This initial analysis suggested that neither single framework adequately captured the varied experiences of the workers. This led to theory-building focused on establishing a framework for connecting these experiences and firm responsibility. In the third stage, the author again re-coded the data to identify issues related to the framework, namely independence-dependence and autonomy-control, which captured a broad spectrum of experiences; these codes were checked with key-word searches.

Using a combination of both open and closed coding allows for both openness to inductive insights — in this case the inadequacy of current frameworks to capture the experiences of these workers — as well as a targeted approach to probing the proposed framework. As argued by Shepherd and Suddaby (2017: 80):

...data does not have to follow theory. Indeed, to the extent that data highlights an unmet expectation (i.e., of an explanation for an empirical phenomenon), an abductive process can be triggered that “works backward to invent a ... theory that would make the surprise meaningful...[Abduction] assigns primacy to the empirical world, but in the service of theorizing” (Van Maanen et al. 2007)

Abduction involves an iterated and sense-making approach, and it ‘means connecting what you see in the empirical world with theoretical ideas, which are also out there and can be further developed’ (in Gehman, et al. 2017: 39). This pragmatic, iterative approach informs this paper.



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## 2. Conceptualising work at the base of the pyramid

While BoP development programmes<sup>5</sup> take multiple forms, of particular interest to this work is the engagement of low-income sellers as micro-distributors. As emphasised in the strategy literature, these sellers connect the company to low-income buyers that would otherwise be 'very costly to reach' (Gollakota et al. 2010: 362; Varchani and Smith, 2008; see examples of employment in Altman et al., 2009: 50). One example is the Bel Group's Sharing Cities programme through which street vendors in Vietnam sell Laughing Cow cheese. As the programme leader describes, the business model:

...merges growth with solidarity...We help street vendors grow their business and sales, while facilitating access to health coverage, banking services and professional training.<sup>6</sup>

Here the social impact claims are focused on the workers; this is often seen in 'BoP 2.0' cases where the focus is on the poor in the supply chain rather than as consumers as well as where the product does not have clear health or social benefits (see Karnani, 2007a on merit and demerit goods; Garrette and Karnani 2010).

Critics have argued that the BoP development proposition of 'doing well by doing good' is not entirely straightforward from a consumer or seller's point of view.<sup>7</sup> As Kuriyan et al. underscore: 'the path from affordable products and services to social development is neither short nor direct' (2008: 73). Defence of the programmes often take a contractual, economic view and root claims for individual benefits in 'the mutuality of advantage from voluntary exchange' (Buchanan, 2001). This suggests the overriding importance of individual income, justifying a 'something is better than nothing' approach. This view of marginal benefits recalls Robinson's caustic quip: 'The misery of being exploited by capitalists is nothing compared to the misery of not being exploited at all' (1962: 46).

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<sup>5</sup> 'Base of the pyramid' or 'bottom of the pyramid' (BoP) development programmes were popularised through Prahalad's book *The Fortune at the Base of the Pyramid* (2005). These programmes signal corporate values and speak to a new role for business in society and poverty alleviation. Simultaneously, they enable these companies to enter new markets and seek new sources of growth. In the words of Prahalad and Hammond in the *Harvard Business Review*, it is about 'serving the poor, profitably' (2002). For a review of the scholarly literature on BoP development, see Kolk et al. (2014) and Dembek and Sivasubramaniam (2016).

<sup>6</sup> Available online: <https://www.groupe-bel.com/en/newsroom/news/bel-partners-with-the-international-finance-corporation-a-member-of-the-world-bank-group-to-boost-the-social-impact-of-its-unique-inclusive-business-program-sharing-cities/>

<sup>7</sup> Looking beyond the employment relationship, scholars have raised the concern that BoP programmes may further marginalise or exploit the vulnerabilities those who already find themselves at the 'bottom' of the pyramid (Karnani 2007b, 2012; Davidson 2009) and that infrastructures of the poor are being harnessed for the benefit multinationals (Elyacher 2012). Dolan and Roll (2013) argue that the problem of poverty is described in the technical terms of market exclusion, leading to market integration as a logical solution, despite poverty not being a 'technical' problem. This strips the political context from the problem of poverty and reflects the interests and options available to those designing the intervention (Arora and Romijn 2012). In the context of work at the 'BoP', the subject of intervention is necessarily 'the poor' (see discussion in Arora and Romijn, 2012).

In looking at work on BoP development, two core discourses or models emerge for describing the labour relationship: micro-entrepreneurship and precarity. As questions of models, and the sets of obligations and practices that flow from them are of core concern to this paper, the next two sub-sections examine these discourses and ways in which they frame work at the BoP. The paper also includes a brief discussion of co-creation (Nahi 2016), as this has been presented as the successor of BoP 1.0 approaches.

## 2.1 The rationality of micro-entrepreneurship

Micro-entrepreneurship has been the dominant language used by companies to describe workers in their BoP development route to market programmes. This choice underscores strategically important ideas of independence<sup>8</sup> and improvisation: the seller runs her business as she sees fits, leveraging her own knowledge and networks to bring the MNC's products to market. The firm is understood as catalysing latent potential and ability; in the words of Mars Incorporated, their BoP route-to-market programmes 'unleash the benefits of entrepreneurship in challenging business contexts.'<sup>9</sup>

In response to concerns with BoP 1.0 development programmes, advocates focused on BoP 2.0 as a co-creation approach, envisioning the substantive involvement of micro-entrepreneurs, local NGOs, and consumers in everything from the design to the governance and operation of these programmes (Simanis et al. 2008). Advocates argue that the distinctive concern with inclusion and the governance aspects of the programme, not just the economic and consumer benefits, enables observers to distinguish between a BoP development programme and just another route-to-market programme. Core to this approach are values such as representation, inclusion, and voice.

These micro-entrepreneurship perspectives share what Arnold and Bongiovi call an orthodox view of the informal sector. The informal sector is seen as a "vital and necessary part of the economy. It is a site of entrepreneurial activity, in some cases a reaction to stifling bureaucracy and/or the growing power of organized labor" (2013: 291-294). The very informality of the sector makes it a site of possibility, growth, and experimentation. This focus on micro-entrepreneurship and the individual similarly engages the core idea of neo-classical economics: the pursuit of self-interest in competitive markets maximises welfare.

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<sup>8</sup> Kuhn and Maleki describe this parallel practice in digital platform work; they note the strategic importance of companies emphasising independence and calling workers 'entrepreneurs' in the face of legal challenges (2017, 185).

<sup>9</sup> <https://economicsofmaturity.com/maua>

Critics have raised concerns with how the micro-entrepreneurship discourse obscures structural factors and the problems associated institutional voids, whereby institutions are understood to protect workers and enable markets rather than stifle them.<sup>10</sup> As Karnani argues: 'portraying [workers] as resilient entrepreneurs could result in insufficient emphasis upon the legal, regulatory and social mechanisms that protect them, and overemphasise microcredit instead of focusing on providing lasting employment opportunities' (2006, 99). Ferguson locates this move within neoliberal approaches to development; he writes: 'Neoliberal motifs of "empowerment" restyle the unemployed as "micro-entrepreneurs," who, perhaps with the aid of a little "micro-credit," might use their inventive creativity to power a new kind of economic development strategy' (2007:74). As Dolan and Rajak caution, 'While the entrepreneurial spirit may reside in all, liberating the inner entrepreneur is not a matter of simply removing the constraints on market access' (2016, 515). Finally, Ilahiane and Sherry are worth quoting at length on the relationship between the firm and the seller that is normalised in the micro-entrepreneurial model:

Few of the technologies, programs, or institutions examined in the BoP literature represent resources that local entrepreneurs are able to own, appropriate, and master in ways that suit their level of skill and recognition of local opportunities. Rather, initiatives such as the Grameen Bank and Unilever's soap marketing tend to focus the entrepreneurial urge, structure activities, and even appropriate local resources (such as local coping mechanisms and funds of social capital) to deepen the reach of nonlocal interests (2012:17).

Of importance for this paper, these authors emphasise the firm's lack of obligations or responsibilities to the worker outside the provision of an 'economic opportunity'.

## 2.2 Precarity and labour informalisation

How, then, should we understand these workers if not as 'micro-entrepreneurs'? An alternative to the micro-entrepreneurship discourse is scholarship and activism around labour conditions under globalisation and neoliberalism. This has focused on understanding precarious work and introduced the language of "precarity, informalization, casualization, contractualization, flexibilization, nonstandard, irregular, and contingent employment" (Arnold and Bongiovi 2013). In describing this work as contingent or precarious, these scholars draw attention to the risks involved and lack of certainty in these emergent labour arrangements (Dolan and Rajak 2016), while also recognising the heterogeneity in these experiences based on social factors, labour protections, and individual characteristics.

The idea of labour informalisation is particularly useful when thinking about labourers in route-to-market programmes like Project Insansa. Chang (2009) and Standing (2008) draw attention to shifts towards informalisation in global labour, whereby firms increasingly turn to the 'self-employed' to carry out functions that had previously or would otherwise have been carried out by

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<sup>10</sup> This is exemplified by discussions of the success of micro-entrepreneurial efforts: "Micro-entrepreneurship could be a successful income generation strategy if there is a good business project idea, the abilities necessary to develop it, and capital to finance it" (Martinez et al. 2013: 1). These conditions are far from given.

the firm, such as distribution. This can be connected to a wider view of precarious work, defined by Vosko (2010, 2) as:

...work for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements. Precarious employment is shaped by the relationship between employment status (i.e. self- or paid employment), form of employment (e.g. temporary or permanent, part-time or full-time), and dimensions of labor market insecurity, as well as social context (e.g. occupation, industry, and geography) and social location (or the interaction between social relations, such as gender, and legal and political categories, such as citizenship).

This definition usefully draws together not only contractual arrangements, but also the labour market and social factors.

Of particular value, the discourse of precarity connects these labour conditions to larger political economy of development and globalisation, something absent in discussions of micro-entrepreneurship. As Munck argues: 'The Southern experience of precarity is marked by the nature of the postcolonial state and, later, by the developmental state where this has emerged' (Munck, 2013: 752). More bluntly, Peck and Theodore argue the rise of precarious or informalized work is a cost saving strategy and is part of firms' efforts 'to reduce labor costs, to evade the legal liabilities (not to mention the ethical responsibilities) associated with employing "regular" workers, and to undermine the foundations of collective action in the workplace' (2012: 743).

The first challenge, however, for scholars and advocates focused on precarious work is that the point of reference — 'regular' work or the standard employment relationship, which is contractual, standardised and continuous — may not be 'regular' at all. As Neilson and Rossiter put it, precarity is the 'norm of capitalism rather than the exception' (2013: 57). Indeed, '[p]recarity appears as an irregular phenomenon only when set against a Fordist or Keynesian norm' (ibid: 54). In taking the macro-level view, which looks at the power relationships that have shaped post-colonial economic life, the precarious work critique may have, indeed, cast too wide a net for the purposes of this paper. Furthermore, while the critique of informalisation and concern with precarity has inescapably normative elements, precarious work is intended to describe a set of relations; it is not explicitly a framework for discerning firm obligations beyond non-exploitation.

Secondly, in bringing attention to the political economies of labour and considering exploitation at a more global level, some of the nuance in the actual experiences of the workers can be lost. Whilst the discourse on micro-entrepreneurship can highlight and celebrate risk taking with too little consideration of vulnerability and context, for example, the discourse of precarity can fail to engage with of positive appraisals and agency in this work, a faint echo, perhaps, of Marxist concerns with false consciousness. Indeed, as will be discussed below, workers had diverse views on the benefits of low-waged salaried employment, finding that the work provided some security but, in providing little room for advancement or for increasing earnings, that selling work was preferred. As such, analysis grounded in ideas of precarity are useful, but not adequate for the question at hand.

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### 3. An alternative? Re-thinking sellers as dependent contractors

This paper argues that emergent labour law and the concept of dependent contractors provides an alternative framework for locating and conceptualising corporate responsibility to workers at the BoP. The legal category of dependent contractor provides a third or middle path between the conventional employee and independent contractor types. Accordingly, dependent contractors establish a claim to support and benefits above that available to independent contractors based on the nature of the employment relationship. Such categories have been part of labour law and jurisprudence in Europe and North America since the 1930s, and in 1944 a US court found newspaper boys eligible for collective bargaining benefits, despite their contracts, due to the 'economic facts' of the relationship (Arthurs 1965, 91). The concept has recently received greater attention in relation to gig economy workers that now provide the mobility, skills and muscle behind monster platform companies such as Uber, Taskrabbit, and Instacart.

In determining the status of a worker, the law is interested in dependence — the degree to which the worker is reliant on the employer — and control — the degree to which the employer directs the worker. This framework is rooted in norms around employer responsibility, in which the responsibility of the firm to its workers is inversely proportional to the independence and security of the worker; Rogers calls this the 'anti-domination principle' (2016: 479). As Davidov points out (2005: 57), one characteristic of an employee is the lack of autonomy and the subordination to the will and power of the employer; this subordination, which raises concerns for exploitation, is balanced through the provision of additional benefits, rights and protections. The principle of preventing exploitation by a more powerful employer is the core ethical concern and drive within these laws (Weil, 2014).

The first element, control, speaks to the question: *Whose business is it?* In the control test, arbiters may look to whether the employer 'may direct the way in which the work is performed, determine the hours involved, and provide the employee with direction' (Cherry and Aloisi 2017, 643). When companies' direct assignments, compensation, working conditions, and client interactions they are exerting control (Kuhn and Maleki 2017, 185); this is related to the master-servant test found in common law (Stone 2006, 257). By contrast, 'elements that lean toward independent contractor classification include high-skilled work, workers providing their own equipment, workers setting their own schedules, and workers getting paid per project, not per hour (Cherry and Aloisi, 2017: 643). Control has been important in court cases such as that brought by Uber drivers in London. These drivers emphasised that while they nominally were autonomous and able to work flexibility, they were, in fact, highly incentivised, directed and monitored by the firm — to the extent that they argued constituted substantive control and managerial power (even if by algorithm).

A second or alternative test is focused on dependence and is also known as the 'economic reality test' (Stone 2006, 257). As Kuhn and Maleki summarise: 'The extent to which workers are dependent... derives from their investment in the relationship and their (lack of) perceived alternatives' (2017: 190). Here the question focuses not on the degree to which the company directs work, but on the degree to which the worker is economically dependent upon the on-going engagement with the company. A wide range of factors may be considered in legal tests, including how payments are structured, the degree of skill to perform the work, and whether the worker has invested in the business (Stone 2007, 258). In this case, if a worker depends substantially on the work, and has few other options,<sup>11</sup> the employer has an obligation to treat the contractor in a way more resembling an employee who shares a relationship of near exclusivity, sub-ordination, and dependence with the contracting company (Cherry and Aloisi 2017, 654).

Because of the focus on the economic reality and socioeconomic relations, tests focused on contractual factors have their limitations. As Cherry and Aloisi describe, in a case of a courier, the Italian courts determined that he should be treated as an employee rather than an independent contractor based on the fact that the courier was part of the 'economic and business organisation of the principal' rather than on the nature of the work performed (2017, 659). The court's focus was on the lived experience of the courier and the economic context, not his contract.

Finally, dependence matters because of ideas of dignity in work. Indeed, independent contractor may be understood to work in conditions that *do not* involve subordination — the meeting of equals in a marketplace. Here Sen's (2001) work on freedoms, including the freedom to pursue a livelihood of one's choice, usefully deepens our appreciation of concerns with dependence. Sen's work highlights the importance of substantive freedoms or capabilities above and beyond the negative liberties of non-exploitation, for example. Just as the discussion of micro-entrepreneurship now usefully considers the distinction between 'choice' and 'necessity' entrepreneurship, the idea of dependent contractors similarly makes a distinction based on the reliance of the contractor on the work and the lack of viable alternatives for the worker, although not, crucially, for the contracting company.

These categories are not without their complexity and contradictions. Tests fundamentally look to whether the relationship is employment-like; in examining risk, for example, a relationship can appear more employment-like if the company shoulders the liability for loss. However, in examining dependence, the vulnerability of the worker comes into play. As Aloisi nicely summarises in relation to the appeal of using contract worker by firms (2016; 653):

Uncertainty and insecurity are the price for extreme flexibility. A bulk of business risk is shifted to workers, and the potential costs such as benefits or unemployment insurance are avoided. Minimum wages are often far from being reached.

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<sup>11</sup> Another approach to understanding dependence has been to focus on collective bargaining. As Arthurs writes: 'Where his economic fate is controlled by his employer, experience has shown that the employee can improve his lot only through collective bargaining. Where, on the other hand, there are gains to be made by the investment of capital and the assertion of independent business judgment and initiative, collective bargaining recedes in importance' (1965: 95).

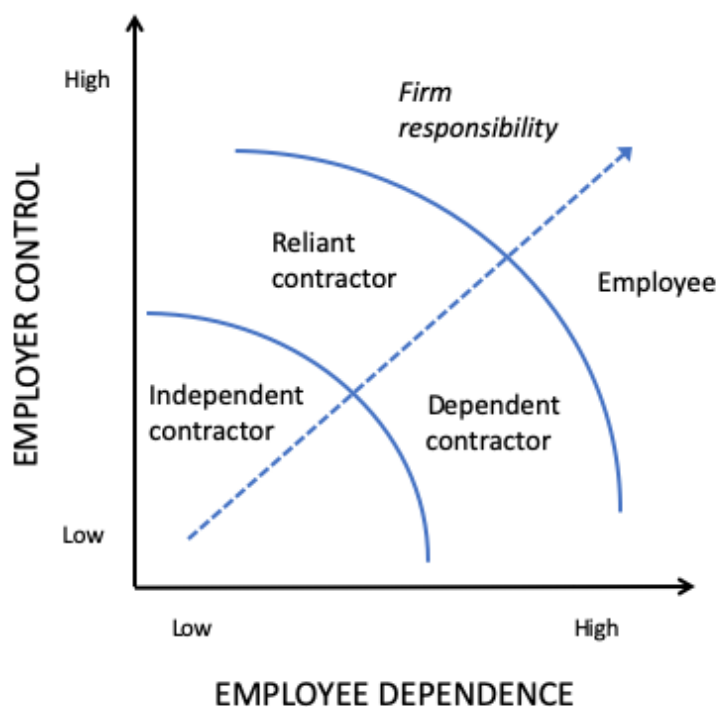
In this case, risk imposition — a form of subordination — may be understood as a reason to consider the worker as a dependent contractor and avoid labour arbitrage.

These tensions are further amplified in the case of work at the BoP, where hugely unequal economic relationships raise questions about the extent to which contract work can ever be free from subordination. That attention to dependence broadens of our field of view to socio-economic relations is important. Of note, it demands consideration of labour availability and labour markets. This echoes the work of Hamann and Bertels (2017) on modalities of labour exploitation. They view labour availability as a key variable in determining whether employers engage in forcing (conscripting, controlling) or freeing (liberalising, outsourcing) behaviours. If strategies that exert more control are related to low labour availability, are tools that examine dependence sufficient for capturing exploitation rooted in ‘freeing’ and ‘outsourcing’? As Vachani and Smith note, human resources are at the BoP are ‘abundantly available’ (2008:76).

### 3.1 Creating a framework

Moving from a broad discussion of dependent contract status, this paper puts forward a simple framework for situating workers’ relationships a firm and establishing firm obligations. The greater the degree of worker dependence on the firm and/or the firm’s control over the work, the greater the positive obligation of the firm to provide the protections and benefits associated with a standard employment relationship. This framework (Figure I) modifies that put forward by Kuhn and Maleki (2017, 102) for classifying gig work, and, in the context of this article, is explicitly interested in linking degrees of control and dependence to firm responsibility.

Figure I: Situating firm responsibility



The framework also seeks to improve upon a simple spectrum view of the employment relationship, stretching from independent contractor on one pole to employee on the other, with dependent contractor in between. Rather, it presents a graph with two axes, and suggests that the broader dependent contractor category may usefully be understood to include both directed contractors, which experience higher control, and reliant contractors, which experience higher dependence.

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## 4. Case: Project Insansa

The Italian couriers and New York newsboys of key employment cases were involved in the distribution chains of their firms, doing the important work of gathering a product and either delivering to its destination or selling it to a customer. These cases helped to establish the meaning of employment as the work of these distributors sits at the edge of the firm and at the boundary line between employee and independent contractors.

In Kenya, low-income sellers are performing similar boundary-spanning work. As part of Project Insansa, these sellers distribute Food Co. products to rural areas and informal urban settlements — places deemed too difficult or costly to reach through conventional distribution practices. Founded in 2013, Project Insansa has a dual, integrated goal of benefiting BoP workers whilst also expanding the Food Co. business through new routes to market and enabling it to reach more low-income consumers. The programme has been celebrated within the firm as a new way of embodying the company's values and demonstrating the power of seeking mutual benefits; the firm has experimented with using the same model in other geographies and with other products. The programme currently has approximately 450 active participants, and since its inception almost 2,000 people have taken part. Average participant income in Nairobi ranges from approximately 50-80 USD per month; outside the capital average monthly income ranges from 10-30 USD per month (2019, measured over quarter).

By taking part in the programme, these sellers gain access to desirable product to add to their basket of goods, as well as receive training and managerial support. As is the typical payment model for such selling work, which is found across a range of BoP route-to-market programmes, the project compensates sellers on a per sale basis; the sellers are not incorporating the sellers into the company through fixed employment, they do not have formal contracts (although they do have signed codes of conduct), and they do not have access to associated benefits such as insurance, sick leave, or a minimum salary. As such, some core aspects of the work may be understood as informal<sup>12</sup> (see Portes and Sassen-Koob, 1987: 31). However, as will be discussed below, other aspects of the programme are more akin to employment, including trainings, mechanisms for creating sustained relationships, and firm efforts to control pricing.

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<sup>12</sup> As another indication of informality, at the inception of the programme Nairobi sellers worked in a legal grey area without licensing from the City Council. Some scholars view this as a form of regulatory arbitrage that confers an advantage; Portes and Sassen-Koob argue that informal work 'occurs at the margin of the law precisely because it is the savings from tax and social security obligations that gives these enterprises their principal competitive advantage' (1987: 32).



## 4.1 Control

As with boundary-spanning cases, locating control in Project Insansa is not straightforward. As discussed above, test of control ask 'whose business is this?' and, as such, test focus on who directs the work — for example who chooses hours or determines routes, who sets prices, who carries risk, who invests in tools and equipment, and if training is involved (Connelly and Gallagher 2006: 97). This section will examine each of these factors in turn. While the programme appears to exert very little control over workers at first glance, a deeper look at the programme suggests that control is not absent; it instead operates informally or indirectly through the establishment of organisational commitment. This comes forth most clearly in instances in which workers make choices that a fully independent seller would not due to their affinity and identification with Project Insansa.

### Directing work

The field officers who oversee the workers are not explicitly involved in managing their day-to-day work. The workers do not have fixed hours, set routes, or sales targets. And the workers accordingly reported high levels of autonomy. As one described:

You know like this one, it is me who is controlling myself. I also realized that... you know when you are employed you do not think ahead, you just think around your work place. But when you have employed yourself you can know what is not working and change it. If this is working but needs improvement I can improve it. (IN4)

The worker emphasises the responsibility he feels for the work, contrasting it to fixed employment where he was not required to 'think ahead.' Another explains her experience more bluntly: "It has a lot of freedom, because there is no supervision, there is no follow ups, you go your own routes." As discussed, the programme similarly emphasises the workers' roles as micro-entrepreneurs and as in charge of running their micro-businesses. These both suggest low levels of direction and explicit control.

However, amidst this laissez faire approach, there are guidelines. For example, although Project Insansa does not seek to limit the number or type of products that the worker sells, it does prohibit the sale of competitors' goods in the same category. As a manager described: "He's free to do any other thing in the basket of goods, like twenty to thirty, thirty percent, as long as it's not a competitor's product." It appears that the sellers largely respect this. As one described:

There are some who are still asking for the [rival brand] when I go there in the market. But I normally tell them that right now I am a stockiest of [Food Co.'s] product. I am not mixing those things; you can get it from someone else but not me. That's what I normally tell them.

Here, despite explicit demand, the worker chooses against carrying the rival brand. His choice not to sell a rival brand less to do with coercive power or control as with his identification with the programme and the brand ('I am a stockist of Food Co.'). Mechanisms of control through organisational commitment or, more broadly, the exercise of social power (see French and Raven,

1959; Jain et al. 2011) are not easily located in legal tests, although they may be more consonant with ideas of dependence and mutual obligation.

## Pricing and remuneration

A second area of interest is in regards to remuneration rates and pay structure. In Project Insansa, participating workers buy stock from participating stockists at a discounted rate. Selling the product at a set market price ensures each worker earns the same amount per sale; as such, pricing structure is directly related to remuneration. From Food Co.'s perspective, having workers sell at that price and not offer discounts is also important to prevent competition between its own distribution channels and maintain the market price. However, this practice also constrains the ability of the worker to offer the type of incentives often seen in marketing (e.g. loss leading, bulk discounts, special offers) and thus direct her business as she sees fit.

During site visits workers frequently confronted managers about pricing issues, particularly after Food Co. increased the price of one of the main products sold through Project Insansa. Remaining competitive was also a concern; as one worker explained:

There have some market guys who normally go round in [Food Co.] motorbikes. ... They are selling the products below the recommended prices. We have been giving those complain to the sales people whom you have come with but they say they will talk to them then sort out the issues.

Another worker explained a similar experience:

Yesterday there is a place I went to and I went to a customer who normally buys from me. But there is somewhere else he had gone to and bought stock at a lower price than I normally sell to him. It became a challenge to me because I had to explain that this is the standard price that has been set by the company. But then he also insists the person who sold to him also gets the products from the company. So he puts me in a fix to explain why we have different prices yet we are all selling products from the same company.

Both sellers express anger that despite following the pricing schedule, they were undercut by other distributors from Food Co. The 'fix' that the second respondent describes reflects work that she is representing the company in reinforcing and upholding their pricing structure. Here both workers appear as agents of the business, playing by the set rules even in the cases that his own sales are reduced.

Regarding remuneration, payment structures are also used to build bonds between the workers and the programme. In Project Insansa, workers receive an initial margin when they sell a unit, worth approximately .05 USD. At the end of the month, they receive an additional .05 USD per unit. This payment structure firstly allows for the price that participating stockist sell to Project Insansa workers to be closer to the price the sell to non-participants, reducing potential side-selling issues. Secondly, and more importantly, the 'bonus' is used to motivate workers to interact with the project and each other, building greater organisational commitment. During these sessions that training is delivered, along with motivational guests. Both managers and participants emphasised the importance of peer motivation and learning for driving greater sales and

involvement. At the onset of the programme, the 'bonuses' were paid in cash, making attendance at these sessions necessary for receiving full payment.

## Risk sharing

The question of who carries risk — as well as who captures rewards — is another important test of employment status (Cherry and Aloisi, 2017: 651). Selling work is rife with physical and financial risks, ranging from theft, spoilage, and credit risk to bad weather and injury. The coincidence of selling work and contracting reflects this complexity; as emphasised by Aloisi, part of the appeal of using contract workers can be the shifting of risk from the firm to the worker (2016, 653). Indeed, when examining control, the less risk-sharing there is, the less employee-like the relationship. Overall, workers in Project Insansa bear the vast majority of these risks although managers remain aware of the ways in which the work itself can cause harm.

Respondents vividly described the physical or safety risks of the programme, often illustrating them with photographs of overloaded motorbikes and rutted roads. One man narrated his photograph of a road, he describes the risks of using that route:

[the picture] shows how risky the roads get where we go to sell the products because like you cannot see what is at the end of the corner. There are very small paths that look risky to go through but you will still pass through them because that is where most of the customers are yet they are very risky in terms of security. You can imagine it is very bad to get on the road like that on with a motorbike for people like me who use motorbikes. (INT06)

Another respondent captured his experience in a picture of a dirt road, disappearing around a curve into a set of tall green trees and vines — a shortcut:

You know sometimes you don't have to go all along the road to go to the next shop, so you have to use shortcuts. You have some little money in the pocket and you have to pass through there. It is risky because some people might come and rob you off your money or the goods... So because you do not have to pay for transport from one point to another sometimes you need to get short cuts to get from one shopping centre to another and to get to a shop that is inside. So you have to take risk.

...The main road is just somewhere there [*gesturing to picture*], you just have to go round a little bit further. And then it comes back to where the shop is. So because you are on foot you just go round the whole place. You have to spend a lot of time and then you are getting tired, you want to try to go to several shops on time before darkness. So sometimes it is very, very risky. You are fearing you have the money in the pocket, you are fearing your goods might be stolen, but what do you do? You have to risk. There is no other way.

In his interview, he describes the daily decision of balancing speed and danger. In the end, his circumstances dictate that he takes the risk; as he states, 'there is no other way.'

Respondents also raised concerns about the health tolls of the work. One middle-aged woman, presented a self-portrait depicting her sitting on a chair in the cool morning light dressed in a purple fleece jacket with a brown shawl wrapped around her neck and shoulders. She explained that the picture showed the shawls and sweaters she was wearing against the cold and to get ready to go out and sell despite her ill health. Another respondent described the physical strains: “when we are working, when we are moving my foot, you find that sometimes because of carrying many luggage, you find that you wake up in the morning and you find that your leg is paining and because of that you cannot be able to go to work” (INT14). Here the work causes harm that further impedes his ability to sell.

Outside of physical and health risk, credit risk is a major feature of the programme, and the most common type of risk to be raised by respondents. Workers may both take and receive credit, meaning that if their customers do not pay, they will be unable to reimburse the stockist for the products sold. In a photo elicitation interview, a participant specifically illustrated this phenomenon with an image of his sister, appearing distraught. As he describes: “Most customers take goods on credit and they give us stress because when you go to collect the money they refuse to pay. When they don’t pay then there is no money we can’t ask for more stock.” This issue was echoed by another seller, specifically referencing risk:

I wouldn't say there is a way you manage risk because like if for example you gave a customer products on credit and the following day when you go to collect the money and find the shop is closed you are the one who will bear the loss. I am the one who will go at a loss. Especially if someone will never pay. (INT04)

The concern with credit was also felt by the managers, and posed an explicit risk to the programme functioning smoothly. Control is a central concern:

...to me that's the biggest, one of the biggest challenges. Particularly the growth of the entrepreneurs, how do you control their credit, how do you control how they deal with this, and how do we deal with people who don't pay.

These quotes illustrate the centrality of these relationships between the seller, the stockist, and the customer and the firm.

While the workers describe their exposure to risk, Project Insansa has at times sought to help manage or mitigate risk. Particularly at the beginning of the project, Project Insansa took steps to decrease the financial risk of participants and partners. Managers describe reimbursing workers for stolen goods. A field officer paid to release a participant who had been detained by the Nairobi City Council for selling without a license. In a third case, a field officer described providing the capital necessary for the worker to buy his first set of stock. Such practices raise questions about who carries risk. As the programme matured and formalised, these instances of bailing out workers in distress appear to have decreased; however, the programme plays an important role are in vouching and reputation. Both participants and managers described the core role of the programme in vouching for the workers, enabling them to be matched with a participating stockist and receive credit.

The role of the programme in managing these relationships recalls work by Kuhn and Maleki on the platform workers. They identify the platforms as playing a key role in ensuring institutional trust and mitigating client risk, for example through practices such as screening and training. The authors then argue that the greater the need for institutional trust the more control that the platform will exert (2017: 186). While in Project Insansa we see limited instances of direct, formal and coercive control, the connection between knowledge and surveillance of the worker and a willingness to vouch for the worker appears relevant. As one manager describes, field officers are encouraged to track issues such as illness: “Yes, if they're sick, can we know, can everybody know that our entrepreneur is sick, we might not give them money but even giving them a call and telling them you'll get well soon is, is quite enough to keep them going.” The platform metaphor is thus apt, and has even been embraced; one Food Co. employee described the programme as a ‘platform for people to raise up their lives to a different level.’

## Tools and equipment

Who owns the tools and equipment to carry out work is a concern in labour law, as ownership captures the question of whether or not the workers controls her own means of production. Project Insansa has gifted equipment to the workers, namely large, unbranded backpacks in which to carry the products and some promotional materials; the bags in particular are essential equipment for those selling on foot, although they are less important to those who get around by car, motorbike, or bicycle. Responding to a survey of workers that found dissatisfaction with materials and equipment, Food Co. has supported a joint research programme with a UK university that has enabled workers to access micro-finance and purchase a bicycle. Here the firm does not own the asset, but it does mediate access to finance.

## Training

Finally, over the course of the project, Project Insansa has engaged in a range of training activities. While some of these are focused on skills related to running a business (e.g. marketing, bookkeeping), others have been more broadly focused on wellbeing. As one of the Food Co. members who helped set up the first training programme explained: “So I simplified and actually changed the curriculum, so I made it more about life skills. Basically about representation as a person, wellbeing as a person, how do you take your money, how do you do your savings, that kind of thing.” Later training efforts similarly engaged with topics such as goal setting. This approach reflects a view of the worker as micro-entrepreneur, emphasising self-realisation and entrepreneurial drive — what Dolan identifies as ‘entrepreneurial subjectivities.’ This approach was also reinforced by research finding psychological interventions more effective than skills-based interventions amongst small business owners.<sup>13</sup> Trainings have now been completed with the majority of participants.

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<sup>13</sup> <https://www.economist.com/news/business/21729454-among-small-business-owners-togo-least-psychology-beats-business-training-when-it-comes>

For the purposes of this paper, we must examine the function of the training in the programme. As participants may enter the programme and begin working without the training, it appears that it is not integral to their ability to do the work. However, it does play an important function in creating non-financial benefits for the worker, which range from certificates to a sense of pride or accomplishment. Trainings also may help to deepen identification with the programme and Food Co.'s values. As a Food Co. member involved in the design of the trainings describes: 'One [session] was about introducing [Food Co.] and understanding the principles that are associated with [Food Co.] and how they can influence you.' The story of entrepreneurialism in the founding of the company becomes a parable of grit and self-reliance for the workers: '...when [the founder] became an adult he started his own company. It failed and then he went, he started a second company, it failed, then he started a third company, it failed, and then he built the fourth company that became [Food Co.].' This storytelling creates another way of building ties that may encourage greater engagement, effort and compliance in the absence of a formal employment relationship.

## 4.2 Dependence

While control looks to the question of *whose business is it?*, dependence draws attention to the broader economic context in which the work is performed and particularly how that context shapes the power relations and inter-dependence of the firm and the worker. As Rogers notes, dependence 'may signal significant economic inequalities even in the absence of classic control over the performance of work' (2016: 494). In examining the employment relationship, questions of income vulnerability as well as mutual investment in the relationship come to the fore (Connelly and Gallagher 2006:98). Placing emphasis on risk, as Davidov explains:

[T]he main focus should fall on the degree of dependence, in the sense of inability to spread risks. The additional requirements of the legislated definition — personal service and mutuality of obligations — can also be useful in identifying dependency (2005: 56).

Davidov's reference to the creation of a 'mutuality of obligations' is particularly important in this analysis. He sets an expansive and 'thick' view of dependence in contrast to approaches that focus on the percentage of earnings derived from the single employer, as with the 50 percent threshold in German law and 75 percent threshold in Spanish law (Cherry and Aloisi 2017: 672). Such threshold approaches also make strong assumptions linking dependence and exclusivity, which do not track with experiences of work at the BoP.

### Income and risk

Starting with the idea of economic dependence and vulnerability (e.g. exposure to risk), the programme does not track what percentage of the worker's overall incomes comes from these sales. However, when asked, managers estimated between 40-60 percent of workers' incomes were derived from Project Insansa. While this average figure for share of overall income may be accurate, interviews and selling data suggest that there is a wide spread in average monthly sales that may be skewed right (lots of low sellers) or non-symmetric (clusters of high and low sellers);

this indicates that there may be considerable variation in both workers' overall incomes and the percentage of their incomes derived from Project Insansa.<sup>14</sup> While some sellers report that the project is their only source of income (for example a mother with small children), others have highly diversified selling businesses; one respondent proudly showed researchers his vehicle, filled so full that the rear window was obscured with boxes containing everything from shampoo sachets and hard sweets to spools of sewing thread and plastic bags.

Excellent work on the economic lives of the poor suggests that project income is unlikely to be a worker's exclusive source of earnings, calling into question the appropriateness of looking at share of income as a measure of dependence. Economic life under conditions of uncertainty is typified by seeking many different ways of earning a living — what Thieme has memorably calls the 'hustle economy, which she argues 'both normalises and affirms experiences of uncertainty' and views as a useful challenge to the discourse of precarity (2018: 530). Indeed, this 'hustle' has also been explored by economists; Banerjee and Duflo (2012) describe the poor as 'barefoot hedge-fund managers' due to their need to manage profound risk on a daily basis. This sophisticated response of the financially vulnerable to risk — diversification of income streams, hustling — is also found among platform workers globally; for example, 68 percent of on-demand drivers drive for more than one service (Campbell, 2017). As such, labour activist in the global north have raised the concern that a legal test focused on dependence may not adequately protect these workers (Sachs, 2015).

What, then, if we think about dependence in terms of vulnerability rather than diversification? Indeed, the core concern with having too much income coming from one source, and without employment protections, is vulnerability to the loss of that work and vulnerability to exploitation when in fear of losing that work or income. Reframed this way, we may first ask what percentage of an income for someone who is living in poverty, if disrupted, would make him or her vulnerable? When living in a position of precarity, whereby vulnerability is normal, a threshold amount must be lowered. This is reinforced by interviews; respondents suggested that earnings from the programme support daily necessities — helping participants to keep their heads above water. As one explained: "The challenges I get is that I get my profit at the end of the day but I use all of it so I can't save because of other expense such as food. To start the following day I start like it is new day." For this worker, the earnings allowed her to subsist; in the absence of these sales, she would need to find a new source of income to cover basic expenses such as food.

Secondly, we can examine the extent to which dependence on work makes an individual vulnerable to exploitation and ask: *what level of risk constitutes exploitation?* Laws that prohibit the sale of organs, for example, are designed in part to remove the market incentive for the very poor to put themselves in harm. Similarly, firms working at the BoP need to consider the ethics of risk imposition (Hayenhjelm and Wolff, 2011), namely knowingly engaging workers who engage in the physical, health, and financial risks described in the above section. While workers make choices about their practices, including to whom they offer credit or whether or not to take a shortcut, they

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<sup>14</sup> These patterns would reflect the types of worker for whom the project is most appealing: low-volume sellers who appreciate the lack of targeting and flexibility, and high-volume, professionalised sellers for whom the product is just one in a much larger basket of goods. Managers noted that approximately 10 percent of workers drive over half of the sales.

may feel like there actually is very little freedom to choose; as the respondent stated: "You have to risk. There is no other way." This connects back to the concerns of Sen (2001) and his view of the poverty as expressed in a lack of freedoms.

Returning to Davidov's understanding of dependence as the inability to spread risk, we may extend this to include the inability to *manage* risk. Just as a worker may be understood to be dependent on a firm if she cannot spread her income risk, a worker, I argue, may also be understood to be dependent on a firm if she cannot spread or mitigate her assumption of physical and financial risk. Here a firm's intervention, for example the provision of insurance or equipment, would enable greater risk sharing; such intervention would also make the relationship more employee-like.

### Mutual obligation

Moving beyond vulnerability, Davidov also emphasise the importance of mutual obligation and the intertwining of the relationship in establishing dependence. Shore and Barksdale (1998: 773) emphasise the positive relationship between mutual obligation, social exchange, and long-termism:

The greater the degree of mutual obligation, the stronger the social exchange relationship, and the greater the likelihood that both the employee and organization will benefit from the exchange relationship because each party to the exchange is likely to continue the mutually beneficial relationship.

In locating dependence, mutual obligations suggest iterated and reciprocal relationships that may be long-lasting. This helps to distinguish, in Davidov's example, a freelance writer who submits a single article, to one who writes frequently and has built up expectations of mutual engagement with a publisher.

In the case of Project Insansa, this can be observed in the extent to which the programme supports and facilitates the work, above and beyond what would be done in a conventional contractual relationship. These are seen as mutual or reciprocal obligations, as managers understand that the programme may cause harm and accordingly seek to provide support or repair:

...sometimes we get some of them are mugged, their products are stolen, some fall sick for months on end because their bag is heavy, they are being rained on, there are terrible weather conditions. So I mean I try to do many more and I try to push, I will visit them at home, I've just gone to see if they're at home, rather than if someone just falls sick and they're not coming to work, they just get, it's easy to forget people.

Her comment speaks to an idea of reciprocity and mutual obligation, however informal or asymmetrical. More broadly, as a Food Co. employee who went to Kenya to help establish the programme explained:



I tell them [Food Co.] alone cannot make it, but if we join hands with them and everyone else is joining hands and walking the journey together, we can be able to reach far. Them as independent entrepreneurs, they wouldn't have the extra connections and tools and training, but if they join hands with us they get that and they walk a long way.

Here the respondent specifically notes that the relationship with the programme is what makes the work possible, contrasting the programme's workers with 'independent entrepreneurs.' Holistic support came up repeatedly amongst project managers: 'Yes, so that they understand it's not that we are just extending a direct discount, but we are supporting lives.' Another emphasised the inclusion of even low-performing sellers: 'whether they are selling ten bags in a month or twenty bags, we still fully support them.' The programme felt distinctive to managers in having different goals and practices (though often unspecified), and managers made clear that they were not simply managed 'as another vehicle to deliver to an outlet.'

However, this approach of creating greater interdependence and providing support created confusion for some managers. It requires switching behaviour between treating the workers as part of the company at times and outside the company at others; as one Project Insansa employee notes:

...when you come in as, as both one foot in, one foot out, you would see how they're supportive to some extent, not fully, sometimes it's discouraging. It's, yes, it gives them, like they want to step in where they can and support, for example, the entrepreneurs, some entrepreneurs have gone through, maybe they've been mugged and it's a genuine case, sometimes we step in and support. We can't fully support them because they'd make it a habit, but the ones who it's a genuine case, [Food Co.] steps in in some cases.

Here she captures the difficulty of working at that border area, providing risk coverage, in some cases but not in others. As will be explored in the discussion, a key observation is that the aspects that defined the programme as more mutually beneficial may also be understood as the practices that create an employment relationship that demands the firm to assume greater responsibility.

### **Organisational commitment**

The above discussion of mutual obligation focused on the extent to which members of Food Co. felt obligations to the Project Insansa workers. We can also look to the extent to which the workers felt obligations towards Food Co., as was noted above in the section on control. Here the concept of organisational commitment becomes useful, both for understanding control and compliance, as well as for thinking about interdependencies. Through its practices the programme builds organisational commitment, whereby the workers come to relate to Food Co. in a way similar to full employees (Connelly and Gallagher, 2006: 104). A sales manager overseeing the programme expanded on this:

So [the project] has improved the sales in that area, it has improved the livelihood of these people, they are more happy and looking cleaner because we also give them some uniforms<sup>15</sup> and, you know, they're also feeling very, very attached to the company because they feel they belong as part of the project, yes.

Here, building organisational commitment and identification between the brand and the sellers, which is reinforced through gifts of promotional goods and branded t-shirts, becomes a means of increasing ties, loyalty and compliance.

Project managers recognise the power of increasing identification with and access to Food Co. As one field officer explained:

So I think the entrepreneurs would want to see the people who are behind the curtain. So if we cut that curtain as well, we can have a direct interaction with the entrepreneurs, and I think that is like a monetary motivation for them as they'll be, you know, they'll be good ambassadors of our brand, yes.

The field officer suggests that increasing these ties has a similar impact as financial motivation, and, simultaneously, the practice makes the sellers better representatives of the brand. Other practices that seek to generate organisational commitment include monthly group sessions, as noted above in the section on remuneration, which combine a shared meal with motivational speakers and peer learning. While beyond the scope of this article, this observation is well grounded in work on identification, organisational commitment, and positive organisational citizenship behaviours (see Connelly and Gallagher, 2006).

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## 5. Discussion

Examining Project Insansa through the lens of employment law suggests that the workers neither fit cleanly into the category of independent contractor nor employee. In confounding these categories, this work also leaves open questions of corporate responsibilities to workers. As Rogers reminds us, recognising such duties is important from a normative perspective, as their realisation may “deter economic and social practices that undermine workers’ individual dignity and equal social standing; such duties also prohibit excessive concentrations of wealth or power, encouraging a more egalitarian and democratic political economy” (2016: 483). Dignity and equality provide the ethical lodestars for this discussion and give weight to the question of classification. While employing independent contractors can reasonably be understood to not impose few duties on the firm, working with dependent contractors does.

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<sup>15</sup> The use of uniforms is also considered an indication of an employee-like employment relationship. In Project Insansa, workers are given branded shirts and, in some cases, equipment. They are not, however, required to use them.

This finding has three main implications. Firstly, it suggests framing of workers in Project Insansa as micro-entrepreneurs/independent contractors is inappropriate and that a duty exists for the firm to extend greater protections. Secondly, it raises the broader question of whether 'micro-entrepreneurs' across similarly celebrated route-to-market programmes are similarly misclassified, necessitating a more holistic review of claims for social benefit in light of the employment relationships. Finally, this finding and the application of the dependent contractor framework to work at the BoP suggests the need to deepen and problematise concepts these core concepts to both consider ideas of control that go beyond explicit direction and ideas of dependence that take a wider view of risk and reflect 'hustling' strategies. These have the potential to add richness to debates both regarding dependent contracting in both low- and high-income countries.

Regarding the first finding, this paper suggests that the workers in Project Insansa may best be understood as dependent contractors. While the programme did not exert explicit control over day-to-day selling, it does keenly shape pricing structures and marketing practices. Similarly, while the majority of sellers derive over half their income from the programme and depend on it to establish the relationships that enable credit to function, many work without the provision of specialist training or company-owned equipment. As such, these workers can be understood to experience intermediate levels of dependence and control, consonant with the status of dependent contractors.<sup>16</sup> Accordingly, this status entails a duty by the corporation to extend protections and benefits more akin to those granted to employees, such as insurance. As the mutuality of obligations deepens in the employment relationship, so too do reciprocal duties.

A second implication of this research is the utility of this analysis for locating firm responsibility in relation to the employment relationship. Numerous programmes share this 'micro-entrepreneurship' model and discourse, which obscures nuances in regards to practices of control and realities of dependence. The framework highlights heterogeneity amongst such programmes, encourages comparative analysis — a natural extension of this research — and provides an alternative to a focus on precarity. For example, the Bel Access Sharing Cities programme in Vietnam explicitly caps the percentage of a seller's income derived from the programme at 20 percent so that sellers "do not become dependent on the availability and demand of Bel's products" (Radvan et al. 2017). This decision, whether or not made with explicit understanding of ideas of mutual obligation and risk spreading, takes a clear step to limit dependence and the creation of commensurate duties following an 'economic reality' test.

Thirdly, the application of the framework in the case is useful for interrogating the concepts of control and dependence, which underscores the benefits of grounded research. The case suggests that more complex concepts of control are necessary and perhaps under-explored in legal scholarship. This could include ideas such as organisational commitment and psychological ownership. Another avenue would be to consider Foucaultian (1977) concepts of control and disciplinary power, which encourage the "search for techniques — 'often minute' — that categorised, monitored and controlled 'docile bodies'" (McKinlay and Wilson 2012: 49).

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<sup>16</sup> These findings do not suggest the preponderance of dependence or control in the employment relationship, which would locate the workers as directed or reliant contractors in the framework. However, these categories may be highly relevant in other cases.

As BoP route-to-market programmes begin to employ more technological tools of surveillance — as with the panopticon ensconced in Uber drivers' mobile apps — these tools gain importance. Finally, with the prominence of 'gig work' and 'hustling' globally, how can we still capture the core concern of dependence with risk? I suggest attention to vulnerability and looking beyond financial risk to include risk imposition.

In taking on these questions, this work joins scholars focused on the gig economy in the global north and extends their efforts to link these emergent forms of the employment relationship to legal frameworks and norms (see Kuhn and Maleki 2017; Rogers 2016; Cherry and Aloisi 2016). Yet this is but one approach to exploring and locating corporate responsibility to BoP workers. A prominent example is the work of Hahn, who looks to the work of Rawls to understand the obligations that may exist for firms to work with the poor. As he argues: "According to Rawls, well-ordered peoples owe a duty of assistance to such 'burdened societies'... A corporate responsibility to uphold and enhance positive rights can thus be derived from the fact that most nation states do not supply the required assistance, so far" (2009, 319). This approach usefully reminds us of the existence of obligation outside of legal regimes — or even *particularly* because of the lack thereof. Another extension of this work would be to further explore the basis of concepts of control and dependence in relation to the work of philosophers and normative theorists like Rawls and Sen and in relation to excellent work on business and human rights obligations (see Ruggie 2007).

However, I suggest such a route with some caution. This paper began with a discussion of framing, and the ways in which categories create modes of action. These categories carry sets of norms and assumptions, including about what matters in an employment relationship and what 'standard' work is. Just as critics of precarious work suggest that the concept of 'precarity' can only be understood in relation to an imagined standard employment relationship in an industrialised economy, so too can tools derived from northern legal thinking be interrogated for their focus on individual dignity in work and democratic concerns with the protection and thriving of citizens (see Rogers 2016). This article has thus sought to clarify the normative foundations of the legal framework. These norms reflect the corporate managerial culture of Food Co. and its socio-political origins; however, important questions about distinctly Kenya ideas of good work and exploitation remain un-answered.

Despite making a case for the consideration of Project Insansa workers as dependent contractors, and thus due greater benefits, this paper does not seek to address questions of the economic consequences of changing the cost of labour. As has been widely documented, the use of informal distribution networks 'eliminate[s] the substantial costs of maintaining a permanent sales force' (Portes and Sassen-Koob, 1987: 38). Indeed, the relatively low cost of the programme has helped its champions to overcome skeptics within the organisation; would the programme continue were it more costly? This discussion has been at the heart of debates over sweatshops, for example (see Powell and Zwolinski 2012), and the possibility that the end to sweatshop labour, however abhorrent, would leave the poor worse off. Could recognising greater duties to workers at the BoP result in even greater vulnerability?

Even without addressing the question of net outcomes, for firms, greater awareness of dependence and control in the employment relationship supports clearer strategic and ethical decision-making. Firstly, managers may choose to continue with a programme and invest in workers; indeed, as such programmes create multiple forms of value for a company, such costs may be acceptable. Corporate practice reflects corporate culture, norms, and values, not just profit maximisation. Furthermore, taking seriously the employment relationship could lead to more robust social impact. As summarised by Karnani (2011): ‘Creating opportunities for steady employment at reasonable wages is the best way to take people out of poverty.’ Alternately, greater awareness of dependence and control could encourage the firm, as with Bel Access, to take deliberate steps to limit dependence and release control. Somewhat ironically, it is well intentioned and ad hoc efforts to increase the web of mutual obligations and provide support that strengthen arguments for the formalisation and expansion of duties, rather than efforts towards their diminution.

Finally, this approach to locating responsibility brings attention to firms’ deliberate choices about the structure the employment relationship, reducing the focus on choices of workers (e.g. what work to do) and regulators (e.g. what standards to set). This is a direct response to Hamman and Bertel’s call to explore ‘the agency of employers in establishing and maintaining’ — or disrupting — exploitative labour institutions (2017: 1). Particularly when operating in areas with limited employment protections, large multi-national corporations like Food Co. have the opportunity to encourage “a more egalitarian and democratic political economy” (Rogers, 2016: 483) through their employment practices and the duties that they decide to shoulder. As Khanna et al. put succinctly: “Many multinationals are powerful enough to alter the contexts in which they operate” (2005, 74).

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## 6. Conclusion: The gig worker at the base of the pyramid

In taking on these issues around corporate responsibility to workers at the 'BoP', this article connects to broader work on how employer-employee relationships affect inequality and how these relationships are shaped by local labour markets (Hamman and Bertels 2017). Decisions about how to structure the employment relationship are important if programmes seek to make a substantive impact in the lives of workers. The International Labor Organization (ILO) states: "Without rights and empowerment, the poor will not get out of poverty... Poor people are unprotected people" (2003, 7). The ILO argues vigorously for "decent employment" — work that offers people a good income, security, flexibility, protection, and a voice on the job" (in Karnani 2011). Put simply, if we care about poverty reduction we should care about the quality of work. This paper argues that improving the quality of work begins with re-classifying the worker (see Cherry and Aloisi 2017).

The dependent contractor category may never catch on within these corporations or polities; there may never be legal obligations for Food Co. to rethink these relationships in Kenya. However, by creating a framework focused on control and dependence, this article surfaces the commanding role that classification and discursive labelling has on the action of firms at the 'base of the pyramid.' By applying the framework to the case of Project Insansa, a route-to-market programme engaging low-income sellers in Kenya, the paper finds both that the workers do not clearly fall in the category of either independent contractor or employee, and thus the corporation may be responsible for extending greater rights and benefits as part of its mutual obligations. This framework may be similarly useful for analysis of other similar programmes, and provide a more nuanced alternative to the celebratory discourse of micro-entrepreneurship. Finally, in the analysis of the case opened up important questions regarding control and dependence, calling for greater engagement with ideas of vulnerability and power.

By linking the structure of work, economic conditions, and firm obligations, the institutionalisation of non-responsibility through the treatment of workers as 'micro-entrepreneurs' emerges. This article thus plays both with a normative question — how should this labour be classified? — as well as the empirical question of how current labour relations at the BoP are justified, institutionalised and even celebrated. By proposing the application of a different classification, dependent contractor, and a framework for locating responsibility, this work seeks to provide a robust, alternative way of seeing these workers and understanding their rights. This article also brings attention to a workforce that have been chronically understudied in the management literature (Bamberger and Pratt 2010: 665); using photo-elicitation interviews offers an unconventional and rich approach to capturing their voices.

Who these workers are and, consequently, what are the responsibilities of the firm to them are not simple questions. As Arthurs writes, determining the rights that workers should have in relation to corporations 'is in miniature the dilemma of a pluralist society which encourages both group power and economic individualism' (1975: 90). However, the 'dilemma' of this imbalance is largely ignored in discussions of work at the BoP. By borrowing the question of dependence from European labour law and putting the relationship between the worker and the corporation at the centre of the discussion, we open up a new area of ethical complexity and discomfiture.

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