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## Remarks on the Governance of Informality

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### A ) Informality - the double nature of social order?

The development of modern societies has often been discussed in the social sciences as a process of formalizing social relationships and as a loss of importance of informal relationships for the social order. Prominent examples of this are the sociologists Georg Simmel (2008) and Max Weber (1980). Depending on the perspective, this process appeared as a gain in rationality or as alienation and as a loss of qualitatively meaningful relationships. Money transactions and the dominance of the logic of capital over living social relationships were blamed for the loss of social meaning or the abstraction of social relationships. The relationship between formality and informality was conceived and presented as a relationship of subsumption (Schmiede 1981).

However, it became apparent very early on, especially in organizational sociology, that even highly formalized social systems depend on informal structures in order to be able to function at all. The formal organization obviously needs the „lubricant“ of the informal organization in order to be able to attain rational goals (Mayntz 1958; Tacke 2015). Marxist industrial sociology discovered the subjective factor as a resistant potential in capitalist organizations that cannot be completely eradicated by even the most sophisticated control and subjugation strategies. A closer look also showed that the control gaps in the formal system certainly have a productive function, insofar as they provide the organisation with the flexibility necessary for survival in an environment characterised by uncertainty. (Luhmann 1964; Bühle/Voss/Wachtler 2010, 415-512).

Informality was always both, a productive element of the organization and risk to its functioning. In this perspective, “Post-Weberian” organizational sociology has emphasized the importance of culture, continuous negotiation processes, struggles for autonomy, and the construction of organizational reality by the actors (Tacke 2015).

*The economy is largely organized informally.*

The European Union (EU) and the OECD estimate the share of the informal economy in gross domestic product at 18.4 percent, in Germany at 13.3 percent and in Italy at just under 22 percent. A particular focus is self-employment, which in some countries even takes place predominantly in the informal sector (EU 2015). In the case of dependent gainful employment, the share of informal work is between one and five percent in most EU countries, but also reaches peak values of over 18 percent in countries such as Greece and Ireland (EU 2015).

In the labor market, it is assumed that around a third of all jobs are filled informally without a public advertisement or involvement of the state employment service. Informal contacts are also considered an important recruitment channel for companies in labor market research (Klinger/Rebien 2016). Informal relationships outside the legally regulated areas also play a major role in housing markets, although there is little data on this. Product piracy and products traded untaxed are also economically relevant factors.

The areas of immigration and residence status also show large areas of informal arrangements. Illegal immigration or immigration with aspects of illegality (e.g. when entering the country with a tourist visa leads to participation in the labor market) play a major role worldwide. It is estimated that even the largest part of migration movements worldwide takes place outside of the forms provided for in the different countries (Collier 2013, Saunders 2011, Spencer / Triandafylidou 2022).

In the political assessment, these widespread phenomena of informality are generally viewed as undesirable and socially pathological, because they limit the scope of legal orders, deprive the state of tax sources and create social zones of ungovernability that can endanger the social order as a whole (Chamayou 2018 ). Political strategies are therefore aimed at suppressing or at least containing social zones of informality or at legalizing and formalizing economic activities (EU 2015).

In a critical perspective, however, informality is also viewed as a potential for resistance against formal orders that are viewed as unfair overall, such as the capitalist economic system or overly restrictive official immigration regimes. From this perspective, informality creates something like islands of humanity and can help to reduce the deficits in justice in society as a whole and keep alternative political options open. The English social historian E. P. Thompson (1968), for example, has shown very impressively how the capitalist economy established itself as the dominant social and economic order only after decades of struggle with the "moral economy", which had regulated previous, traditional system of exchange and work. According to Thompson, the working class emerged as a historical subject in this conflict between moral economy and capitalist market logic.

Research on economic development has shown with many examples that informal markets and informal relationships between economic actors, which are based on a shared culture can be success factors for economic development. The often surprising robustness and flexibility of the Italian economy, to give an example, has been explained by the country's large informal sector and informal networks between economic actors in the most successful regions to the north of Italy (Piore/Sabel 1985).

In many developing countries and emerging markets, the informal sector is a key growth driver. The International Labor Organization estimates that around two billion people work in the informal sector worldwide, which would correspond to 61 percent of the workforce (Webb et al. 2019, 23). For India, for example, it is even expected that 90 percent of the workforce will be in informal employment („Handelsblatt“ of April 15, 2023). Informal economy can cushion the macroeconomic impact of over-regulation. Conversely, the growth of the informal sector is viewed as a consequence of rigid market regulations. For the economy, too, it seems to make sense to start from arrangements of formality and informality, in which productive mixtures of both

modes of social relationships are more important than negating and suppressing informality.

On the other side it would not be sensible to expect too much of positive functions of informality in society, as has been done at times for the idea of “civil society” (Alexander 1998). Informality is not simply the positive opposition to rationalist domination and rigid capitalist order. Informal spheres of social reality are always also spheres of unregulated rule, a lack of protection for the individual and insecurity. Since its inception, the workers' movement in particular has always insisted on creating and enforcing formal regulations to guarantee social security, occupational safety and the settlement of conflicts. The modern welfare state has transformed social security into formal legal entitlements and by this replaced informal patriarchal relationships of domination of traditional orders. This too can be seen as a step towards emancipation and the realization of modern society's promises of equality.

So progress in society was always associated with juridification and thus with formalization. However, this had side effects that were also viewed critically. For example, the juridification of industrial relations (Erd 1981) was considered problematic insofar as it shifted social conflicts to the level of abstract procedures and thus alienated them from their original social substance. The juridification of social welfare and the associated development of social bureaucratic structures was discussed as a risk for the effectiveness and sustainability of support and as a potential threat to freedom (Evers/Nowotny 1985). Especially in social policy, since the 1980s, many reform proposals have been based on the motive of regaining a dimension of informality.

From a governmentality and governance perspective, this historical dialectic of informality and formality leads to the question of how arrangements of formality and informality can be designed in a democratic society that combine the advantages of both social modes, while at the same time avoiding their disadvantages. The advantages of formality can generally be seen as transparency, predictability and the security, which it provides to citizens. The advantages of informality lie in the flexibility, the “autonomy gains” of citizens and working people (Vobruba 2019, 105) and its specificity and sensitivity of context. Abstraction, the risk of overgeneralization, rigidity, the risk of bureaucratization and the alienation potential of formal social relations may be regarded as the downsides of formality. Disadvantages of informality are – no doubt – its lack of transparency, its arbitrary risk, its character of domination and, in some respects, its inefficiency.

## B ) Informality as an element of change

There is much to suggest that it would be in vain to seek an “optimal” relationship between formality and informality. But there is also much to be said for understanding the relationship between these two social modes as historical dialectics. In a certain form, there are necessary contrasts in the overall social process that drive the development process of society and create special opportunities in every historical situation that can be used by the social actors, but always point beyond themselves to the next step in development.

In recent times, large waves of migration in Europe have challenged the social institutions, some of which were not prepared for these waves. Migration has triggered ongoing social crises in many European countries, but at the same time it has given

impetus to reform and stimulated social innovation. Looking at dualism of formality and informality, one can see that sudden strong migration movements are connected with waves of informalization. Migrants often seek their way outside the legally prescribed paths. Informal networks and family networks play a major role in migration processes (Düvell/Preiss 2022; Faist 2022, 43-83). Immigrants often do not have (full) citizenship status and only have limited rights in the labor market and in business life.

In the housing market, too, they are often relegated to informal markets. In Germany, for example, this situation has often led to situations that are viewed as very problematic. For example, there has been an enormous increase in illegal employment without any social protection. Some employers and homeowners take advantage of the plight of immigrants in the labor and housing markets. Entire "industries" have emerged exploiting migrants with illegal or semi-legal housing offers. Precarious conditions of work as well as miserable and unfair housing conditions can both be described as extreme forms of exploitation, which are challenging welfare-state-regimes and it's underlying social consensus.

In this situation, the efforts of government agencies and local authorities were aimed at mitigating these phenomena as much as possible. They tried to reinstate the formal, legal regulations that had been suspended in some respect in the complex context of migration. This did not always work. Nevertheless, in this zone of social conflict we again encounter the historical dialectic of formality and informality.

The fate of the immigrants from Southeast Europe, namely Bulgaria and Romania, shows that the phase of informality in large areas did not necessarily lead to new fixed structures of inequality, but at least had a transitory character. After a surprisingly short time, many immigrants from south-eastern Europe were able to gain a foothold in the formal labor market and gradually normalize their housing situation. Unemployment and poverty rates of persons with Romanian citizenship are no longer higher than that of the autochthonous German population.

However, big differences remain. The poverty rate of Bulgarians, for example, is still well above the average for the population. And this group continues to experience major and serious disadvantages, for example with regard to education and professional qualifications, which pose a serious challenge to labor market and social policy.

Informality is part of the logic of migration (Treibel 2011, 115-172). Many migration researchers, such as Saunders (2011), have seen the existence of large, socially unregulated, informal areas of social life as an important factor in the success of migration and the integration of immigrants.

Informality creates flexible transitions between states and cultures and opens up economic and social niches where opportunities can arise. It also mobilizes resources for immigrants. Here, too, one should be warned against an overly harmonious picture of parallel cultures and segregated residential areas. However, informality can also be an important resource in the integration process.

## C ) Governability and the governance of informality

As pointed out, informality is always a challenge for institutions and state structures. In view of the double character of informality as a resource of social order and social development and at the same time as a potential threat to order and security, the question arises as to how governments and social institutions can deal productively and intelligently with the informality factor.

Smart governance operates on the borderline between rule and exception, routine and deviation. It chooses a procedural path that mediates between formality and informality. Smart governance temporarily suspends the self-evidence of formality. (Ortmann 2008) This is in line with the arguments that fixed-term employment can turn into permanent employment and that informal employment can be considered an entry point into formal employment. A temporary atypical employment status and informality *are supposed* to pave the way to formality.

However, these arguments stand and fall with the preservation of the transitory character of this approach. Experience shows that some entrepreneurs do not adhere to this and abuse the situation of suspended formality. Therefore, a procedure is needed to control the transition process. Self-responsibility of the enterprises is not sufficient.

The transitory process can be put into the form of a chain: *Formality - deviation from formality (informality) - formality*. One opens up the formal process to allow a controlled deviation from the law and norm. This form of informality opens up scope for experimentation. However, they must be limited in time, and this means returning to formality within a fixed time horizon. We call this approach smart because the partial suspension of formality at the beginning requires a temporary suspension of the administrative routine. The relationship between formality and informality is, so to speak, brought into a state of suspension.

In the case of labour market policy, the change in attitude on the part of both labour market administrations and enterprises should be emphasised. Both recognise an obvious problem and both suspend the validity of the previous pattern of interpretation and problematise their corresponding knowledge. (Habermas 1981, 124) We will explain this idea on the basis of the longstanding discussion about the role of civil society.

From the long-standing discussion about the role of civil society, we can learn that mediating structures between state and society, such as the "third sector" of a non-profit economy, are of great importance. Informality should not only be negated and curbed. In some respect it may be sensible to strive for something like the „civilization“ of informality. This would include moral regulations governing informality, the capacity to act reflectively in dealing with informal structures and socially designed transition zones between informality and formality.

With a view to the "ethnic economy" of migrants, for example, it can make sense to use informal practices bordering on legality in an early stage to accept the development of an independent existence or a company. But then, with public support, a learning process would have to be organized as to how the relevant business could be gradually integrated into the formal economy and achieve full legal status. This

can create an entrepreneurial dynamic that is particularly common among immigrants. However, it avoids undermining the market organization and economic institutions.

It is also possible, step by step, to find ways of legalizing gainful employment with people who work in the “shadow economy” and earn money illicitly in the informal sector. This seems wiser than stopping irregular work altogether and possibly causing unemployment. After all, irregular work also creates values and is therefore of social benefit. But it is important, not simply to accept the atypical or precarious status of employment, but to ensure the transitional character of informal arrangements in the labor market and in the employment system. Otherwise there would be a severe risk of a gradual erosion of the legal system. This requires a considered and sensitive policy by authorities, trade unions, associations and other directly or indirectly involved actors.

For the civilization of informality, there is no contradiction in combining this policy with a robust policy of enforcing norms – and this is always the case when informality is used to create power relations and to exploit people for profit. However, norm enforcement should be reflective and keep an eye on the spectrum of informality. It also includes the social logic of the diverse informal structures and the categories of differentiated control. It is about distinguishing productive elements of informality from unproductive and dangerous elements of informality.

#### *For a Governance of Informality - the Example of Regional Labour Market Policy*

For political practice, this raises the question of whether there can be such a thing as a governance of informality and what it should look like in order to secure and possibly productive informality and, if necessary, to expand it, and to contain or even prevent destructive informality.

This addresses many levels in society and the state, of which we want to examine the possibilities for action at the local level as an example. The local level is particularly suitable for this question because the productive and destructive potentials of informal structures become particularly visible here and local politics, in contrast to other levels, is particularly close to the living conditions and problems of the citizens. Here the focus of attention is on the interrelationships between local government or municipal administration, the local and regional economy, political actors such as trade unions and civil society actors.

As an example we present the experiences of the city of Offenbach, a city of about 140,000 inhabitants in the core of the Frankfurt/Rhine-Main metropolitan region, an agglomeration of over five million inhabitants. For decades, Offenbach has been the city with the highest proportion of migrants in its population, which in 2022 was over 40 percent in relation to citizens with foreign citizenship and 70 percent in relation to all immigrants, including naturalised immigrants with German citizenship.

As a result of the enlargement of the European Union to include Romania and Bulgaria in 2007, the number of immigrants from these countries of origin in Offenbach increased by a factor of 8 (Romania) and by a factor of 15 (Bulgaria) by 2022. There has thus been a veritable wave of immigration. Due to the special conditions of the two countries' accession to the EU, immigrants from these countries initially had only

limited opportunities to participate in the labour market until 2014. opportunities to participate in the labour market.

As expected, this led to the displacement of a large number of workers into informal employment under precarious conditions without any legal or social protection. In the city's neighbourhoods there was a strong increase in manifest poverty. Often the immigrant workers were also housed in very poor and overpriced housing. A veritable industry of exploitation of the situation of these people developed, in which employers, landlords and intermediaries made great profits from the situation of the immigrants' defenceless situation.

Many immigrants, in coordination with their employers, circumvented the temporary ban on employment and registered a self-employed as craftsmen, for example, which was legally possible from 2007 onwards. However, they did not really work as self-employed, but were completely dependent on orders from individual employers. In addition, as self-employed workers they could not claim the normal protection rights for employees, such as protection against dismissal, entitlement to pay according to collective agreements, payment of social security contributions, accident insurance, etc. The resulting employment relationships were to a large extent illegal. This was undoubtedly an example of precarious informality.

The city administration of Offenbach tried to curb these developments with a mix of regulatory and social measures. The city formed a network of locally responsible authorities, which, in addition to the municipal departments for aliens law, social welfare, public order administration and housing authority, the state financial administration, the labour administration and the police. The authorities in this network took action against illegal practices in the labour market and housing market, tightened their controls and called the "beneficiaries" of the situation, opportunistic employers and landlords, to account.

At the same time, however, the municipal job centre intensified its counselling of the immigrants concerned in order to inform them of their rights and to develop with them ways of legalising their working conditions. In doing so, the municipality worked with trade unions<sup>1</sup> as well as with civil society organisations, especially Romanian and Bulgarian migrant self-organisations together.

As a result, forms of self-help and, to a certain extent, productive informal structures developed between newcomers and already established immigrants from the respective countries of origin. Through these informal structures between different parts of the immigrant population, the social and economic integration process could be significantly promoted. Together, the local actors tried to educate the affected people about their rights, to eliminate blatant hardship and to develop a perspective of gradual transition into formal employment with the affected people.

This was in line with the policy approach of a cooperative and integrated immigration policy that the city of Offenbach had been developing for years (Schulze-Böing 2019). In retrospect, this strategy can be considered successful. Particularly blatant grievances could be curbed in the long term. The social climate in the city, which at

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<sup>1</sup> Here, the initiative of the German Trade Union Confederation "Fair Mobility", developed at national level but also implemented at regional level, is particularly worth mentioning ([www.faire-mobilitaet.de](http://www.faire-mobilitaet.de)).

times was heavily burdened due to the manifestations of poverty and irregular living conditions in public spaces, has eased significantly again.

For the group of Romanians, a very clear improvement in the employment situation and a reduction in unemployment and the number of recipients of public social benefits could be observed after the start of complete freedom of movement in 2014. The corresponding rates have converged with those of the population as a whole, so that it is no longer possible to speak of a particularly precarious situation for immigrants from Romania. can no longer be said to be particularly precarious.

The situation of Bulgarian immigrants developed somewhat less favourably. Here, unemployment and poverty rates are still well above average, which is due to a lower level of qualification and less success in social and cultural integration. Therefore, the city and its partners continue to work hard to improve the living situation of this group as well.

This example is intended to illustrate what is meant by *governance of informality*. It is a context-sensitive, cooperative approach of state administrations, civil society organisations, trade unions and other intermediaries. Through these cooperative structures, a more complete understanding of the social situation on the ground can emerge for the actors. At the same time, a new opportunity is created: to take better account of the perspective of those affected than would be the case with purely administrative action.

#### *Dealing with refugees as an example of governance of informality*

The practical experience of dealing with refugees is a second example we would like to use to describe the productive significance of controlled informality. In the everyday migration policy of municipalities, there are real opportunities to satisfy social and self-development needs beyond the basic and security needs of refugee migrants such as the provision of housing, food and money.

This complex process of communicative action begins with the perception of the people concerned. If society wants to reduce inequality in everyday life and prevent discrimination, it is beneficial to see them as part of the immigrant population of non-German origin and to recognise immigrants as a permanent part of the city's population. The immediate goal is an integration practice in the municipality that specifically includes refugee migrants in existing measures and projects for immigrants. To what extent could the labour administration also adapt more strongly to the target group of refugee migrants?

The migration researchers Kühne and Rüssler already presented a detailed enumeration of elements of a socially integrative practice at the municipal level 20 years ago. (Kühne/Rüssler 2000, 612). Socially inclusive practice is an important element of formal-informal governance. Practical experience has shown that the alimantation of refugee migrants in the form of cash benefits instead of benefits in kind and the relocation of refugee homes to rented flats at the latest after three years of residence, has a promoting effect on the integration of these people into society.

It should also be borne in mind that the policy instrument of quota access to certain districts or neighbourhoods of inclusion in cities and municipalities is *not always*



beneficial. Instead, in-depth counselling and assistance in finding suitable housing in the city as a whole could help to achieve this goal. Moreover, language acquisition for refugee migrants should not be a question of money. Therefore, the financing of free language learning offers by municipal educational institutions, welfare associations and socially-profitable educational institutions plays an important role.

Part of good governance at the interface of formality and informality is mutually agreed, employment-friendly residence and work permit periods. Coordination between municipal authorities with companies willing to train or employ, employment companies and inter-company training institutions seems to be helpful here. It would increase their effectiveness and efficiency if training and employment potentials for refugee migrants were explored in the area of foreign companies. Targeted counselling is offered to those enterprises that prove to be capable of providing training and employment.

Finally, governance of informality could expand the expertise of all competent bodies and actors and activate them. This is about contact, professional exchange and institutionalised networking. A comprehensive body of expert literature has emerged on this topic, ranging from municipal "refugee migrant round tables" to "development advisory councils".

This governance at the interface of formality and informality can be expected to have significant relief effects for the refugees and the host societies. Refugee migrants could actively seek opportunities for a self-determined lifestyle based on their own gainful employment. They would have the opportunity to develop and assert their own skills step by step with the development of linguistic articulation skills, but also to take on learning processes with regard to a new social environment and unfamiliar occupational fields.

The host society and municipalities would probably also benefit from the recognition and activation of refugees. Women and men in the prime of life, some of them with above-average education, would sooner or later stand on their own feet economically and thus relieve the burden on the municipal social budget. Finally, this could also contribute to reducing the administrative burden.

#### D) Perspectives

Our contribution is an attempt to outline a field of research that will become increasingly important in view of the crisis-ridden development of modern and capitalist societies. We are still far from a comprehensive theory of informality. We also have only incomplete knowledge about the manifestations and functioning of social informality.

This is all the more true if we consider not only the experiences of a Western European democracy such as the Federal Republic of Germany, but also the relationship to other member states of the EU and to the states of Latin America. In our opinion, there is a discernible need for discussion here.

At this point, we would like to make some cursory remarks on the European-Latin American comparison of informality with a view to further research. More than a decade ago, studies on informality in a few selected Latin American states appeared. (Jacob 2011)

In order to conceptualise the absence of formality and the existence of informality, the focus was placed on unskilled workers who were unable to work formally and were forced to work in a simple, low-paid, informal job. In times of economic fluctuations and crises, they were the ones most affected by dismissals and cuts in working hours and salaries, because they had no legal labour protection. If they were absent from work due to illness, they were often dismissed by their employers.

On the other hand, many atypical and precarious workers did not make use of the existing institutional arrangements of formality. A not insignificant number of informal workers refrained from formalised work because of the inadequate statutory old-age pension and the insufficient public health care on the part of the state in order to save the contributions for the public pension and health insurance. In return, they accepted the fact that they are neither insured by law nor have regulated protection against dismissal.

Certainly, there were significant variations and differences in the degree of informality in the labour markets of Latin American countries. In the studies mentioned above, Paraguay, Guatemala and Peru were considered the countries with the highest rates of informality. Chile, on the other hand, stood out as the country with the highest rate of formal employment. Is this still the case?

What strikes us about this analysis are the conclusions for the recommendations for action from that time, which were supposed to reduce and regulate informality in Latin America. They had a certain similarity with those recommendations that were *en vogue* in the Federal Republic at the time. Often, the consequence of formalisation was seen as more bureaucracy. The solutions proposed always went in the direction of simplifying procedures, reducing the costs of hiring formal employees and making labour laws more flexible.

We ask whether the spectrum of strategies for coping with problems and challenges cannot be broadened. We think it might be fruitful to continue our reflections on the interrelation between formality and informality at this point.

This brings us back to the challenges that arise from the interaction between formality and informality in our own country. We have tried to capture the variety of possibilities for action that arise from both forms of regulation with the concept of governance. In this way, we seek to avoid such contrary demands as the further "expansion of the welfare state", which would de facto amount to further bureaucratisation, and the simple "reduction of bureaucracy". We consider this opposition to be conceptually unfruitful.

Instead, we have proposed to give practical direction to smart governance with the discursive chain *formality - deviation from formality (informality) - formality*. It is a proposal for dealing with controlled informality in a parliamentary democracy with high levels of formality. Informality should open up scope for experimentation. The controlled partial suspension of formality brings the relationship between formality and informality into a productive suspension, so to speak.

Policy instruments for this are already available. We refer to the concept of "Regional and Local Labour Market Monitoring (RLMM)" (Larsen et al. 2019, 14-16), which was

developed on the basis of the ILO model. It contains three types of functions: the information function, which should lead to "suitable definitions" and take into account "regional specifics". For this purpose, data from different sources are to be combined and analysed. Secondly, the "communication function", which aims to develop a "common interpretation of the results" and to evaluate the "impact of policies and measures". And finally, the "action function". Here the goals are: "Developing goals for a co-ordinated strategy and specifying relevant measures" and "Securing the compatibility of different measures". The operationalisation of the general goal of smart governance and RLMM procedures seems to be promising.

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