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Theme addressed: 3. Labour Regulation

Title of the paper: “So easy and so difficult: labour regulation on the so-called new forms of work”

The world of work is facing huge challenges to provide basic working and living conditions for an increasing share of the population. Labour regulation in most countries has got more fragile and incapable to impose labour law. Consequently, labour rights seem far away for a great amount of people. Many institutions and movements have pointed out this issue and tried to problematize it, as it is a harmful trend in labour markets around the world.

For many analysts, technology has created new forms of work that make it really difficult or even impossible to regulate labour as it used to be done. For instance, with the growth of online platforms, it would be possible to carry out any kind of trade or business in a way that many consider untraceable. Also, these new forms of work are considered too volatile, and it would be impossible to identify employers and employees in a labour process featured by on-line crowds or clouds.

The aim of this paper is to show that, while on one hand, technically it has never been so easy to regulate labour through labour rights as it is today, on the other, politically it might have never been so difficult to impose labour rights as it is in the current context.

The facility to regulate labour applies both to the identification of noncompliance with the law by companies and to impose labour rights. Prior to the current technologic advances, it was much harder to detect illegal acts and regulate work relations (both issues regarding contracts and working conditions), because one (such as labour inspector, judges, prosecutors, etc.) needed to witness the illegal behaviour or to get some kind of document (such as a payroll) as proof to detect the breaches in the law. Now, with the use of informational technology, every transaction and every work relation, short as they may be, leave a permanent record that can be used to identify the details of how that relation was carried out. Also, to guarantee compliance to labour rights (such as overtime payment, wages, etc.), the institutions do not depend on the difficult task of finding employers' assets, as they can just intercept digital bank transactions used by platforms.

However, politically it might never have been so difficult to protect workers through labour rights, mostly because of the increasing spread of neoliberal governments, policies and the power that companies hold over them. In this picture, technology has been used as a tool to strengthen a trend already seen in labour markets around the world, particularly the use of new strategies of hiring and managing the workforce. These strategies enable companies to deny their condition of employers, many times pretending to be mere intermediaries (labour brokers), hiring workers as “self-employed”, thus, refusing to comply with labour rights. Rhetoric and narratives play a huge role in this process. The new “farewell to the working class” - as we have called it - assumes the decline of wage labour and the rise of new forms of work (based on gig and platform economy), stating the anachronism of labour law. Despite having no empirical basis, this idea has produced very real political consequences.

The wider picture does not look good. Even though there are some signs of resistance, as drivers and couriers (hired via platforms) in some countries have showed, there is no substantial improvement in their conditions. These so called new forms of work have spread and new regulation tends to legitimise them. For instance, labour reform in Brazil stimulates companies to hire workers as “self-employed” and use intermediaries to outsource.

To confront this cloudy context, it is important to realize that labour regulation is a political matter and technology, not only is not an inevitable obstacle, as some may say, but it is actually a tool that can be used to make regulating and guaranteeing labour rights a lot easier.

This paper is an outcome of a research carried out in the Federal University of Bahia (UFBA, Salvador, Brazil). Beyond the current literature, the methodological approach combines analysis of official data, statistics, documents and reports from different countries, ethnographic activities; interviews with stakeholders (including workers, prosecutors, judges and labour inspectors).