



Revista Direito e Práxis

ISSN: 2179-8966

Universidade do Estado do Rio de Janeiro

Themudo, Tiago Seixas; Freitas, Ana Virgínia Porto de
Reflections on the organization of the Brazilian union in the age of the precariat
Revista Direito e Práxis, vol. 11, no. 4, 2020, October-December, pp. 2420-2439
Universidade do Estado do Rio de Janeiro

DOI: 10.1590/2179-8966/2020/44613

Available in: <http://www.redalyc.org/articulo.oa?id=350965016011>

- How to cite
- Complete issue
- More information about this article
- Journal's webpage in redalyc.org

UABM  redalyc.org

Scientific Information System Redalyc
Network of Scientific Journals from Latin America and the Caribbean, Spain and
Portugal

Project academic non-profit, developed under the open access initiative



Reflections on the organization of the Brazilian union in the age of the precariat

Reflexões sobre a organização sindical brasileira na era do precariado

Tiago Seixas Themudo¹

¹ Centro Universitário 7 de Setembro, Fortaleza, Ceará, Brasil. E-mail: tiago.themudo@uni7.edu.br. ORCID: <http://orcid.org/0000-0001-6272-2963>.

Ana Virgínia Porto de Freitas²

² Centro Universitário 7 de Setembro, Fortaleza, Ceará, Brasil. E-mail: virginiaportoadv@gmail.com. ORCID: <http://orcid.org/0000-0002-4841-6510>.

Article received on 16/08/2019 e accepted 05/01/2020.



This work is licensed under a Creative Commons Attribution 4.0 International License



Abstract

This study discusses the paradigmatic shift in the world of work triggered by globalization and the use of telematics and assesses the (in)adequacy of the Brazilian union model to represent the new class of precarious workers. We carried out an exploratory study using a systemic and deductive approach to review bibliographic sources and legislative texts. A perspective of redefinition of the union movement is proposed and we emphasize the importance of collective autonomy as an institute of Private Law for the reconstruction of pacts of collective organization against hegemonies.

Keywords: Labor union; Precarization; Private collective autonomy.

Resumo

Discute-se a alteração paradigmática do mundo do trabalho, a partir da globalização e da utilização da telemática, investigando-se a (in)adequação do modelo sindical brasileiro para representar a nova classe de trabalhadores precarizados. A pesquisa, de natureza exploratória, tem abordagem sistêmica e dedutiva, a partir da revisão de literatura e de textos legislativos. Propõe-se uma perspectiva de ressignificação do movimento sindical, destacando-se a importância da autonomia coletiva, enquanto instituto de direito privado, na reconstrução de pactos de organização coletiva contra hegemônicos.

Palavras-chave: Organização sindical; Precarização; Autonomia privada coletiva.



Introduction

The growing influence of globalization and technological innovations on all economic sectors has been subject to analysis in the various fields of economic, social and legal knowledge. Indeed, such phenomena span multiple dimensions and have had important repercussions for the world of work, such as the creation of new forms and structures of production, which consequently have an impact on the work of unions that, as private organizations, are destined to defend the fundamental rights of workers (ROMITA, 2005).

For more than three decades studies have shown views regarding the end of jobs and have pointed to the impossibility of re-establishing formal and long-term employment models (RIFKIN, 1995). The emergence of the “uberization” phenomenon proves all the predictions that signaled the subordinate labor crisis, once allegedly protected by the welfare state.

The provision of remotely activated services through the connection of employees to digital platforms – as in the case of Uber drivers – promotes an even more serious breach in the labor protection system when compared with outsourcing as it systematically leads to the precariousness of workers’ social rights (MANNRICH, 2017).

In fact, the so-called new forms of work organization are inevitable and consist of a general movement of capitalism worldwide in search of a new, more flexible and efficient productive model in terms of wealth accumulation (AGUIAR, 2018). This model of production, endorsed by neoliberal policies, tends to empty the institutional contents on workers’ protection, which points to the need for unions to act as social mechanisms to reestablish the equivalence of forces between capital and labor (CAVALCANTE, 2018).

In 2015, the city of Seattle, Ohio, in the United States, unprecedentedly passed a law allowing the unionization of drivers registered on digital service delivery platforms. Since then, several discussions about the representation of such workers have taken place (ASHER-SCHAPIRO, 2018).

A suit filed by Uber against the Seattle City Hall claims that the drivers have no direct employment relationship with the company. This claim has led to a Supreme Court ruling that it was not possible to form unions. Other United States government sectors act in a similar way by considering and guiding the impossibility of collective organization of application-driven service providers (ASHER-SCHAPIRO, 2018).



In Brazil, discussions about the labor framework applying to ride-sharing drivers began with the filing of individual lawsuits and there have been few cases concerning the formation of unions and associations by digital platform workers. Without peaceful jurisprudence nor specific laws regarding the subject, the phenomenon continues to consolidate itself as a mobility issue in large and small cities.

Work and income are reaffirmed in the consumer society and in liquid relationships (BAUMAN, 2005) as key factors for the centrality, structuring and maintenance of private life. “Uberized” work represents the consolidation of precarious employment, which spills over into precarious housing, family relations and protection by the welfare state (STANDING, 2014).

Therefore, tackling this precariousness requires reflecting on the forms of force correlation between capital and labor. The legal framework applying to the working class recognizes workers’ rights, including the right to collectively organize to tackle this problem, which has already been consolidated as a historical outcome of the struggle between capital and labor (PAÇO CUNHA, 2018).

Although it is assumed, as a presupposition of this reflection, that legal forms are forms conditioned by the economic power, “one cannot entirely abstain from existing forms, from the mediations given in one’s own society” (PAÇO CUNHA, 2018, pp. 692), which therefore leads us to delimit our investigation to the role of unions in Brazil in face of the growth of precarious work.

In doing so, we sought to identify to what extent the reconstitution of the Brazilian union model is necessary to defend the fundamental rights of digital platform workers?

The first part of this study addresses the structure of union organization in the current Brazilian Law. In the second part, we analyze the new forms of work arising from the use of telematics and their impact on the union model. The last part discusses the importance of readjusting union representation to tackle the social precariousness of work in Brazil.

We carried out an exploratory study using a deductive approach to review bibliographic sources and legislative texts. Given the complexity of the object of study, the findings were analyzed using a critical and sociological view of Law based on a systemic paradigm due to the various aspects relating to the subject. Dogmatic and



formalistic approaches have proven inadequate to solve complex conflicts in an equally complex and pluralistic society (ANDRADE, 2005).

It has been hypothesized, as described in the final considerations, that there is a need to redefine the organization of civil society so as to build a new union model to effectively guarantee the fundamental rights of workers in face of the paradigmatic transformations in the world of work.

1. Union organization model described in the Brazilian Law

The Brazilian union model is organized in a confederation system, i.e., in three levels, with the union at the bottom, the federation at the intermediate level and the confederation at the highest level (NASCIMENTO, 2015).

The federation consists of an entity that materializes the voluntary grouping of at least five unions representing a particular industry (art. 534, CLT). The confederation is formed by the grouping of at least three federations (art. 535, CLT). In political terms, the federation is formed to be the representative force of a particular union present in a given industry. The same applies to the confederation, which works as a national representation.

Freedom and autonomy of unions are constitutionally guaranteed, but there should be only one union per sector per municipality. Unions can be formed independent of State authorization and any interference or intervention from the Government is forbidden (NASCIMENTO, 2015).

The union unicity system, described in subparagraph II of article 8 of the Federal Constitution, consists, therefore, of three entities: a) Unions that represent the professional and economic sectors, with the municipality being the minimum territory; b) Federations that correspond to the branch of activity formed of five state or interstate unions; and c) Confederations that represent economic sectors and are therefore national entities formed of three federations.

The associative ties of these unions feature an objective element, which consists of a certain territorial base that should not be less than a municipality, and a subjective element that determines the extent of legal representation of employees or employers by their respective unions. Thus, the organization of employees or employers for the



creation and maintenance of a union starts from the concept of sector (SANTOS, 2009). In legal terms, there are economic sectors and labor sectors. Economic sectors group employers according to economic activity – either by industry or by business sector.

Labor sectors are divided into professional categories and differentiated categories. Professional categories are those linked to the employer's economic activity, which, under exceptional conditions, may group similar or related activities. The differentiated categories consist of professions regulated by their own statute as they are characterized as specialized activities that require specific technical knowledge (NASCIMENTO, 2015).

Another important constitutional provision refers to the recognition of Conventions and Collective Agreements as normative instruments capable of regulating employment relationships, which, in other words, means the recognition of collective bargaining as a productive process of legal norms. This shows the emergence of a pluralist system originating from the constitutional precepts that provide for the possibility of creation of norms by social groups based on the adoption of the principle of private collective autonomy (SANTOS, 2009).

The private collective autonomy consists of the legal power granted to certain social groups to create legal norms for the regulation of the interests of their collective based on the State's recognition of the legitimacy of the representation of these social groups and the self-organization and self-management freedom provided certain material conditions are met (LAIMER, 2003).

Thus, all legal requirements must be met for a union to be recognized as a legitimate social actor to represent a particular sector. Similarly, for a negotiation to be recognized as a legitimate legal process, all legal procedures must have been complied with (DELGADO, 2018).

By recognizing collective bargaining conventions and agreements as workers' rights and prescribing the mandatory participation of unions in their development process, the Federal Constitution, within the scope of Labor Law, has recognized the normative power of intermediate bodies formed from employment relationships, thereby consolidating the private collective autonomy (SANTOS, 2009).

The 1988 Federal Constitution did not expressly mention the Principle of Legal Pluralism among its precepts. However, it mentioned several specific models of pluralism, such as political, partisan, economic, cultural, and other forms of pluralism (SANTOS,



2009), and therefore introduced, only in private employment relationships, the collective autonomy for the production of norms with force of law without interference by the State. This constitutional option has a strong democratic nature as it directly provides those entitled to norms with the opportunity gestating them (GRAU, 2010).

In fact, Labor Law fits into the context of legal pluralism because the heterogeneity of subordinate employment relations prevents the State from centralizing and homogenizing the full regulation of all possible circumstances involved in the employment contract (SANTOS, 2009). Thus, the State is responsible for the production and maintenance of norms that establish a minimum standard of civilization and for assigning to social actors the production of norms adequately and specifically tailored to the reality of sectors organized in unions (DELGADO, 2018).

Seen from a broad perspective, private collective autonomy represents more than a normative principle for the creation of legal norms by individuals. Providing social groups with the possibility of producing legal norms applicable to their private context is, from the political point of view, a radical democratic option as it allows a norm to be produced directly by the holders of the rights and obligations contained therein. From the sociological point of view, it is an instrument of reproduction or alteration of the reality experienced by social groups involved in collective bargaining (LAIMER, 2003).

However, social groups represented by unions are influenced by the wider social context in which they operate. The participatory involvement of sector members depends, for example, on cultural practices that may differ in certain places and sectors (ANDRADE, 2005).

Similarly, the outcome of the negotiations and the norms produced by these groups also have an impact on the social context external to the group. Strike, herein understood as a mechanism of work stoppage and counterbalance inherent to collective bargaining, can have effects that extend beyond collective bargaining (LAIMER, 2003). For instance, addressing the expansion of occupational safety techniques in collective norms with the aim of reducing occupational accidents has a direct impact on the social body and the social security financial management.

There is constant dialog between and feedback from these social forces. Therefore, a merely positivist perspective is not appropriate to discuss collective autonomy in private employment relationships. Employment relationships are complex because they originate from, develop in and have an impact on the sociological, economic



and political levels. Its problems have an impact not only on the private individual spheres, but also, and likewise severely, on the fields of public health, social security, education, and economy (ANDRADE, 2005).

From this perspective, private collective autonomy theoretically instrumentalizes the creative and adaptive power inherent to the participation of organized civil society in employment relationships, notably when it enables mechanisms to defend and enforce the fundamental rights of workers (LAIMER, 2003).

This is the main difference between unions and ordinary civil associations: the ability to act upon social concertation through the mechanism of direct production of legal norms. In the process of social concertation, the individual political power is enhanced by the collective action of the union, which, in turn, manifests itself as a producer of legal norms neutralizing the existing imbalance in private employment relationships (ROMAR, 2014).

However, the instrumentalization of private collective autonomy in Brazil is affected by the institutionalization of the union model (LAIMER, 2013).

As in other parts of the world, the historical affirmation of the rights of Brazilian workers has undeniably been marked by movements organized by workers in the search for balance in employment relations. The experiences concerning this collective action resulted in the recognition of unions and social guarantees for workers by the State. (LAIMER, 2003).

It should be noted, however, that the stagnation of union struggles originated in the appropriation and delimitation of the spaces of power within the labor movement following the institutionalization of union action. The history of unions in Brazil points to a scenario maintained under the auspices of the State, which promoted the political isolation of the labor movement framed within a conservative normative framework (DELGADO, 2018).

This phenomenon marks the role of Law (and the State) as a reproducer of labor command practices and regulator of “practical modes already found by the proper dynamics of economic relationships” (PAÇO CUNHA, 2018, pp.669). Because of that, the resumption of the civil society organization for the reconstruction of a more distributive labor agenda that affirms the dignity of the worker is subjected to a critical look at the assumptions of the union organization (SANTOS, 1999).



2. The transformations in the world of work and their impact on the performance of unions.

The structure of the union organization described in the Brazilian law, based on the unicity of the representation of professional and differentiated categories, is the result of parameters built in modernity. The capitalist model of production, marked by the emergence of factories and social dependence relationships, has guided all the social transformations in the nineteenth century (ANDRADE, 2005).

From the emergence of cities and their urban conformations to the structuring of new relationships new interests and institutions were developed on the basis of the mode of production in the factories. While describing such social construction, Standing (2014, pp.178) stated that “the functioning of society and production was based on time blocks and ideas of steady employment and housing”.

The labor movement followed the identity of interests that corresponded to the economic structure of production established since the Industrial Revolution. Since their social genesis unions have used the categorization by economic activity as an organization criterion. This structure was firstly designed and tested in European countries and then replicated identically in Brazil (NASCIMENTO, 2015).

Idealized to the sound of the looms and molded by the heat of the boilers in the Industrial Age, Labor Law is a typical cultural product of capitalist society (production capitalism) and one of its institutional functions among the legal subsystems is to regulate the relationships between subordinate employees and employers. Its main objective is to ensure legal certainty in employment relationships and to provide a reasonable level of stability and social pacification necessary for economic development (DELGADO, 2018).

That is, there are workers linked to and aggregated in organizations in the various economic sectors, such as agriculture, industry, commerce or services. This rigid division sought to integrate the worker as an element of production in an organic way (ANDRADE, 2005).

This temporally distant reality is still crystallized in today’s legislation as article 511 of the Consolidation of Labor Laws states that “the solidarity of economic interests of those who undertake identical, similar or related activities constitutes the basic social



bond that is called economic sector”, i.e., it groups categories of employees and employers in the same sector of productive activity.

The general theory of Labor Law, which is still linked to that logic, presupposes the existence of subordinate and dependent labor in the field of individual relationships and corporate organizations divided by economic activity in the field of collective relationships. Andrade (2005, pp.92) explains that “the main theoretical and ideological currents of union doctrines were elaborated with a focus on workers and their conflicts in the factories – as privileged actors and scenarios – where the struggles for the humanization of work took place”.

This union structure, derived from the Fordist/Taylorist production schemes, operated by weighing pay levels linked to the jobs and the length of service completed by the represented employees. In addition, the main claims were related to the guarantee of healthier jobs and working conditions in the face of increasing numbers of occupational illness and accidents (ANDRADE, 2005).

Harvey (1998, pp.129) highlights that

Corporations unwillingly accepted union power, particularly when unions sought to control their members and collaborate with managers on productivity-enhancing plans in return for salary gains that stimulated effective demand in the way Ford originally conceived.

However, phenomena and relationships emerged and settled within the postindustrial society and they were as transformative as those which occurred in the industrial society. Contemporary society experiences a paradigmatic revolution. From the proletariat to the precariat (STANDING, 2014).

At first, the work in the so-called “postmodern” society was affected by the restructuring of production characterized by the flexibilization of the employment relationships, with great use of outsourced labor, maintenance of long working hours, and incorporation of technologies and automation. These changes had an organizational nature. What was once done inside the company is now done outside (DOWBOR, 2018).

With this fragmentation of work, union representativeness went into crisis due to the inability of the model to quickly implement the necessary changes. Production now requires more worker quality. Union claims are now answered by employers demanding more workers’ skills and greater performance through goal setting and continuous knowledge updating (ANTUNES, 2018).



Later, technological improvement enhanced the transformations of employment relationships so that subordinate employment has increasingly stopped being the main model in the world of work. The variety of forms and alternatives of work and income that exist today show that subordinate employment linked to a single service receiver no longer occupies the central position in postindustrial society (ANDRADE, 2009).

Formal jobs that disappear in this process are not replaced by others. This would be possible in the previous model of production, but “the financialization of economic processes has, for decades, fed on the appropriation of productivity gains, essentially made possible by the technological revolution, in a radically unbalanced way” (DOWBOR, 2018, pp. 29).

Structural unemployment, brought about by the flexible accumulation of capital and technology, leads the working-class population to adopt equally flexible forms of occupation, to subject themselves to the vicissitudes of deregulated labor, and to distance themselves from the State’s social protection (HARVEY, 1998).

A mass of precarious workers has now arisen. This precariat is characterized by its lack of guarantees from the formal labor market, guarantees of income and security, guarantees of reproduction of skills and knowledge, and guarantees from union representation (STANDING, 2014).

The use of digital platform services is one of the examples of precarious work as it generates an environment of presumed individual autonomy. Extreme flexibility in the use of labor and the transfer of risk from companies to the service provider through the use of the supposedly self-employed figure has become a reality for many workers. Without recognizing structural subordination to the company intermediating the service, the worker incorporates all market instability without financial backing (ANTUNES 2018).

The problem of excluding digital platform workers from the protection ensured by Labor Law and Social Security is certainly not unique to this new business model. However, the application of telematics has exponentially aggravated this social precariousness in the same proportion as it has been consolidated as the alternative of work and income for the precariat mass (ANTUNES, 2018).

The dismantling of social protection policies, wage flexibility and structural unemployment involves the new precariat class and are the main reasons for its numerical growth (STANDING, 2014). Easily co-opted to generate or supplement income,



these workers call themselves entrepreneurs and register themselves on extremely accessible digital platforms, thereby starting a remote dependency relationship that is not specifically subordinated and hence does not generate any guarantee. The worker's social vulnerability not only persists but is also increased by the structural instability inherent to this postmodern condition (HARVEY, 1998).

Faced with the global crises of capitalism and informal labor market and the growing mass of self-employed workers, the Brazilian union model, based solely on subordinate and categorized employment, is increasingly experiencing the inability to respond to the social demands of the world of work and is therefore being forced to keep stagnated or act using defensive strategies (ANDRADE, 2005).

Andrade (2005, pp. 103) warns that "unionism cannot survive without promoting the search for harmony with the new work society – with its fragmentation, heterogeneity and complexity –, which means horizontalizing its discourse and organizational strategies and practices".

In fact, there is a direct and proportional relationship between the crisis of unionism and the problems arising from the new precarious model undertaken by the "working class". Thus, unionism has been facing a structural crisis that resides in the disintegration of social bonds – which justified the identity of categories – resulting from the volatility of precarious forms of work (ANTUNES, 2018).

The various factors that were consolidated during the second half of the twentieth century – globalization, the supremacy of technology, the World Wide Web network – set the stage for the proliferation of new forms of work that cannot be represented by the current structure of unions described in the Brazilian Law. This institutionalized model disconnected from the social phenomenon cannot project a social movement of workers with a transformative aptitude (ANDRADE, 2005).

3. The necessary reconstruction of Brazilian unionism in view of its failure to face employment precariousness.

The social movement of workers that developed in Brazil was captured by the institutionalized union model, remained linked to the State during the periods of



authoritarian governments, and could not be redefined after the democratic opening in the late 1980s (NASCIMENTO, 2015).

Andrade (2005, pp. 80) stated that “this theoretical and practical model of union doctrine is completely disconnected from the aspirations and perspectives of the postindustrial work society”. The fragmentation of the way of doing and thinking the work nullifies the identity of the subjects. The precariousness of working conditions and social existence requires another form of workers’ collective organization compatible with this new model of work society.

The current definition of category in the Law nullifies unions’ capacity of representation and is not adequate to the contours of the new employment relationships. ANDRADE (2005) states that

unions are required to be more horizontal, that is, they should be committed to the work society as a whole (including short or long term and full-time or part-time workers submitted to other hiring modalities – outsourcing, informal employment, self-employment, the new and multiple forms of income and atypical societies not linked to traditional capitalist societies, and even the excluded workers).

Therefore, digital platform workers do not find, in the Brazilian Law, the necessary support for the structuring of a union capable of discussing their daily realities, developing projects of collective interests and engaging in the legal and political confrontation of employment precariousness (ANTUNES, 2018).

This is even one of the defining marks of the precariat: the lack of incentive and support for collective organization by the State (STANDING, 2014). In fact, there is a trend towards the increasing criminalization of social movements and the violent suppression of timely resistance (BAUMAN, 2005).

According to Bauman (2005, pp. 84), “the welfare state cannot eliminate or alleviate the uncertainty produced by globalization”. The precariat consists precisely of human excess arising from the technological revolution. Thus, if the institutional model provided by the Social State for the representation and protection of workers’ rights proves to be inadequate to achieve its objectives, the resumption of organized civil society resistance is necessary.

Harvey (1998, pp. 217) points out that “individual resistances can become social movements aimed at liberating space and time from their existing materialities and building an alternative type of society in which value, time and money are understood in



very different ways". Therefore, reflections on social movements increasingly point to the importance of defining legal instruments that enable the participation of citizens in the collectivity in actions against hegemonies. In other words, it is necessary to reinvent the social organization of workers.

The collective action of workers emerged as a social movement to reflect on the consequences of the installation of the capitalist mode of production and the emergence of new social demands. However, all the assumptions existing in the industrial age have been superseded by others. Exploitation of labor is being replaced in postindustrial society by peculiar forms of social precariousness, the manipulation of complex information systems, technological control, and the production of symbols that directly interfere with private employment relationships (ANDRADE, 2005).

The incompatibility of the union model with the new forms of precarious work demonstrates only one of the perspectives of the structural crisis installed in all social aspects (STANDING, 2014). Therefore, this crisis is not essentially a legal crisis and, therefore, cannot be answered only normatively. However, it is necessary to ask how Law can contribute to the reformulation of the model of social participation in the confrontation of precarious work (CAVALCANTE, 2018).

The Greek culture, in a certain historical period, managed to overcome a devastating social crisis based on concepts that exalted the isonomy among the citizens and the direct political participation. Attic law reformulated social life by regulating private life. The organization of social groups functioned as devices to contain State power. The relationship between society and the State abandoned the duality of "commanding and obeying; instead of being two absolute opposites, they became the two inseparable terms of the same reversible relationship" (VERNANT, 2002, pp. 107).

The social body was based on isonomy and society had the "form of a centered and circular cosmos in which each citizen was similar to all others and had to cover the entire circuit, successively occupying and surrendering, according to the order of time, each of the symmetrical positions that made up civic space" (VERNANT, 2002, pp. 107).

The individual autonomy valued and guaranteed by law led the Athenian democracy to flourish based on the exercise of freedom and the equality of citizens. Thus, "the law, which protects citizens from one another, also protects the rights of individuals from State power and the interests of the State from the excesses of individualism" (GLOTZ, 1980, pp.116). Therefore, for the Greeks, the law existed to contain the



unreasonable performance of individuals – in the sphere of private relations – and the State – in the sphere of social conduct.

Excessiveness is, today more than ever, a characteristic of capitalism that has spilled over into all spheres of the State. Dowbor (2018, pp. 22) explains the extreme concentration of income:

If we round the world GDP to 80 trillion dollars, we reach an average per capita product of 11 thousand dollars. This represents \$3,600 per month per family of four: about R\$11,000 per month. This is also the case in Brazil, which is exactly on the world average in terms of income. There is no objective reason for the gigantic misery in which billions of people live

Boaventura (1999, pp. 96) points out that “such excesses affect not only the way people work and produce, but also the way people rest and live”. The excesses of postmodernity take place as new forms of oppression that go beyond the world of production and that need to be problematized and discussed by social movements.

In this regard, Boaventura (2009) highlights a relevant aspect that must be faced in the process of reconstruction of the labor movement: the workers’ organization model still reproduces all forms of oppression produced in modernity.

A true redefinition of social participation in the struggle against precarious work and an effective democratic affirmation require a critical perception of action because such excesses or oppressions are not related to only one social class, but to society as a whole. Therefore (SANTOS, 1999, p. 258):

The denunciation of new forms of oppression implies the denunciation of the theories and emancipatory movements that have left them aside and neglected them even when they did not agree with them. It therefore implies criticism of Marxism and the traditional labor movement and criticism of the so-called “real socialism”.

The experience within the social movements’ scope of action rescues the political sphere in the exchange of knowledge, in the institutional articulation, in the development of production alternatives, and in the democratization of justice. It is therefore a way of providing a strong possibility of emancipation in the action and participation of the organized civil society (SANTOS, 2014).

Legal theory is, therefore, responsible for understanding and encouraging, through its mechanisms, more horizontal collective forms of action and organization that embrace the diversity of these new labor manifestations. Thus, the Law must guarantee the wide instrumentalization of private collective autonomy as an element of social



concertation and democratization of the production of the legal norm by increasingly representative social groups. Romar (2018, pp. 158) points out that

The reform of the union structure will make the field more fertile for the development of the practice of social concertation in Brazil, with the consequent adoption of a social pact capable of modifying the political, economic and social structures of our country and hence the attainment of the much needed social justice.

There is an urgent need to structure a union model most adequate to the reality of postindustrial society as a way of fostering social dialog about the tensions generated by precariousness. This could discourage authoritarian state ways of dealing with it and value spaces for the legitimate construction of conflict resolution (ROMAR, 2018).

This perception is built based on the idea that Law is a cultural product and that the ongoing social and economic transformations question various aspects of the conventional interpretation of the relationship between civil society and Law.

More specifically, they question the contribution of private law institutes to democratic affirmation because, despite the methodological division of the public and private jurisdictions of law, the legal system is a unambiguous and coherent construction based on constitutional principles that prohibit social retrogression through the protection of the essential core of fundamental rights and affirm the effectiveness of these fundamental rights in the context of private relationships (SARLET, 2011).

Final considerations

A significant metamorphosis in the structures of the world of work was triggered in postmodernity and has led to changes in the characteristics of traditional jobs that have had a direct impact on the workers' organization model.

The heterogeneity and complexity of new forms of work, such as digital platform workers, do not fit the model of union representation established in the Brazilian Law. The new unionism must be guided primarily by the return of its capacity to struggle and negotiate (ANDRADE, 2005).

In contemporary legal studies, the theoretical discussions seek to provoke reflections on the reinvention of the union model based on the assumption of freedom of association as the cornerstone to redefine workers' organization, collective labor relations



and new forms of performance, representation and political participation of the working class.

These theoretical questions are guided by the ideas that characterize the worker particularly considered within a collectivity understood as a social body that houses individual identities within the world of work.

However, the deconstruction of the concepts of identity, representation and category is increasingly necessary, notably in the face of economic, political, cultural and social transformations that challenge the notions of unity and similarity and the notions of connection of interests between the members of this collectivity.

This crisis allowed to understand that the adaptation or refoundation of unions are not enough as they have a reformist connotation. The possibility of redefining the workers' organization and providing room for the construction of new union models implies the complete abandonment of the model based on the assumption existing in the current structure.

The growing quantitative dimension of excluded workers similarly points to the potentiality of the insurgent power of the precariat (STANDING, 2014). Without the potential for political participation that enables the strengthening of a civil society with spaces for different understandings, there is no way to forge the legitimacy of the demands of socioeconomic development for the precariat.

This results in the indispensable exploitation of instruments of collective citizenship in their private legal aspects. Recognition of a broader private collective autonomy as a form of social concertation would allow the emergence of broader and more legitimate unions and the creation of legal norms produced through a more democratic process.

In that regard, the construction of new pacts for the collective organization of workers capable of refounding the democratic logics and the channels of political participation in face of the demands of a new posture to tackle precariousness constitutes one of the greatest current challenges to represent the direction of democracies in the world and to ensure workers' human rights.

All that would mean abandoning the perception of Union Law as a mere branch of Private Law and a mere normative set of principles and rules aimed at pacifying class conflicts and facilitating economic development and adopting the idea that it consists of a differentiated branch capable of enriching the ordering and that has a great potential



to transform the social sphere and be an instrument to confront the precariousness imposed by unproductive capital.

References

AGUIAR, Antônio Carlos. **Eu, o robô e o trabalho em mutação**: antes, agora e depois. In: _____. **Direito do trabalho 2.0**: digital e disruptivo. São Paulo, SP: LTr, 2018. p. 67-104

ANDRADE, Everaldo Gaspar Lopes de. **Direito do Trabalho e pós-modernidade: Fundamentos para uma teoria geral**. São Paulo: LTr, 2005.

ANTUNES, Ricardo. A explosão do novo proletariado de serviços. In: _____. **O privilégio da servidão: o novo proletariado de serviços na era digital**. 1. ed., 1. reimpr. São Paulo: Boitempo, 2018. 325 p.

ASHER-SCHAPIRO, Avi. Trump administration fights effort to unionize Uber drivers. **The Intercept**, Nova Iorque, 26 mar. 2018. Disponível em: <https://theintercept.com/2018/03/26/uber-drivers-union-seattle>. Acesso em: 22 jun. 2019.

BAUMAN, Zygmunt. **Vidas desperdiçadas**. Rio de Janeiro: Zahar. 2005.

BRASIL. Decreto-Lei n. 5.452, de 1º de maio de 1943. **Aprova a Consolidação das Leis do Trabalho**. Diário Oficial [dos] Estados Unidos do Brasil: seção 1, Rio de Janeiro, DF, ano 82, n. 184, p. 11937-11984, 9 ago. 1943. Disponível em: http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452compilado.htm. Acesso em: 13.jul.2019.

BRASIL. **Constituição da República Federativa do Brasil**, de 5 de outubro de 1988. Disponível em: http://www.planalto.gov.br/ccivil_03/Constituicao/ConstituicaoCompilado.htm. Acesso em: 13.jul.2019.

CAVALCANTE, Jouberto de Quadros Pessoa. O sistema de proteção jurídica do emprego frente às inovações tecnológicas: uma proposta de proteção sistêmica. In: _____. **Sociedade, tecnologia e a luta pelo emprego**. São Paulo, SP: LTr, 2018 p. 99-124.

DELGADO, Maurício Godinho. **Curso de Direito do Trabalho**. São Paulo: LTr, 2018.



DOWBOR, Ladislau. **A era do capital improdutivo**: Por que oito famílias tem mais riqueza do que a metade da população do mundo? 2 ed. São Paulo: Outras Palavras & Autonomia Literária, 2018.

GLOTZ, Gustave. **A cidade grega**. São Paulo/Rio de Janeiro: Difel, 1980.

GRAU, Eros Roberto. **A Ordem Econômica na Constituição de 1988**. 11 ed, São Paulo: Malheiros, 2006.

HARVEY, D. **Condição pós-moderna**: uma pesquisa sobre as origens da mudança cultural. São Paulo: Loyola, 1998.

LAIMER, Adriano. **O novo papel dos sindicatos**. São Paulo: LTr, 2003.

MANNRICH, Nelson. Futuro do direito do trabalho, no Brasil e no mundo. **Revista LTr**: legislação do trabalho, São Paulo, v. 81, n. 11, p. 1287-1300, nov. 2017.

NASCIMENTO, Amauri Mascaro. **Compêndio de Direito Sindical**. 8 ed, São Paulo: LTr, 2015.

PAÇO CUNHA, Elcemir. Direitos humanos do capital: reflexo jurídico e comando da força de trabalho / Human Rights of Capital: Law Reflection and Command of the Labour Force. **Revista Direito e Práxis**, [S.l.], v. 9, n. 2, p. 663-696, maio 2018. ISSN 2179-8966. Disponível em: <https://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/28349>. Acesso em: 30 jul. 2019.

RIFKIN, Jeremy. **O fim dos empregos**: o declínio inevitável dos níveis dos empregos e a redução da força global de trabalho. São Paulo: Makron Books, 1995.

ROMAR, Carla Teresa Martins. Concertação social: possibilidade ou utopia no cenário da estrutura sindical brasileira? **Revista de Direito do Trabalho**, São Paulo, SP, v. 40, n. 160, p. 155-177, nov. /dez. 2014.

ROMITA, Arion Sayão. **Direitos Fundamentais nas relações de trabalho**. São Paulo: LTr, 2005.

SANTOS, Boaventura de Sousa. **Para uma revolução democrática da justiça**. Coimbra: Almedina, 2014.

SANTOS, Boaventura de Sousa. **Pela mão de Alice**: o social e o político na pós modernidade. São Paulo: Cortez, 1999.

SANTOS, Ronaldo Lima dos. **Teoria das normas coletivas**. 2ª ed, São Paulo: LTr. 2009.



SARLET, Ingo Wolfgang. **A eficácia dos direitos fundamentais**: uma teoria geral dos direitos na perspectiva constitucional. 10 ed. rev. atual. e ampl. Porto Alegre: Livraria do Advogado Editora, 2011.

STANDING, Guy. **O Precariado**: a nova classe perigosa. São Paulo: Autêntica Editora, 2014.

VERNANT, Jean Pierre. **As origens do pensamento grego**. Trad. Ísis Borges B. da Fonseca. Rio de Janeiro: Difel, 2002.

Sobre os autores

Tiago Seixas Themudo

Doutor em sociologia. Professor do Programa de Mestrado em Direito Privado pelo Centro Universitário 7 de Setembro (UNI7). Coordenador do Grupo de Pesquisas em Teorias do Desenvolvimento e Direito Privado. E-mail: tiago.themudo@uni7.edu.br

Ana Virgínia Porto de Freitas

Doutor em sociologia. Professor do Programa de Mestrado em Direito Privado Advogada. Mestranda em Direito Privado pelo Centro Universitário 7 de Setembro (UNI7). E-mail: virginiaportoadv@gmail.com

Os autores contribuíram igualmente para a redação do artigo.

