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Centralizing informal work, complexifying inclusion, decolonizing labour law

Centralizar o trabalho informal, complexificar a inclusão, descolonizar o direito do trabalho

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Abstract

The article demonstrates how labour regulation is implicated in the process of coloniality, by complexifying the idea of inclusion of informal workers in Brazil. It draws a theoretical and empirical framework to informality, connected to dissident epistemological perspectives, and investigates inclusion from there. The outcome is a critique of the ambiguous ways labour law conceptualizes inclusion and a call for its decolonization.

Keywords: Informal work; Coloniality of labour regulation; Inclusion.

Resumo

O artigo demonstra como a regulação do trabalho está implicada no processo de colonialidade, complexificando a ideia de inclusão de trabalhadores informais no Brasil. Traça uma estrutura teórica e empírica para a informalidade, conectada a perspectivas epistemológicas dissidentes, e investiga a inclusão a partir daí. O resultado é uma crítica das maneiras ambíguas pelas quais o direito do trabalho conceitua a inclusão e um apelo à sua descolonização.

Palavras-chave: Trabalho informal; Colonialidade da regulação do trabalho, Inclusão.

Introduction

A fisherman, *ribeirinho*, on the edge of the Tapajós river. A *travesti*, sex worker, walking in the deep night of Avenida Nossa Senhora de Copacabana. A pharmacist, now app driver, in a traffic jam at the marginal Tietê in São Paulo. A domestic *diarista* worker in a middle-class household of Porto Alegre. An hourly language teacher in Belo Horizonte. An undocumented seamstress at a small production *clandestina* facility in Bom Retiro, part of a large network for an international brand. A clothes saleswoman, *sacoleira*, from door to door, in Aracaju. An outsourced transwomen operator, *terceirizada*, at a call center in Guarulhos. A consultant architect, formalized as an entrepreneur, *pejotizada*, in Recife. A housewife, *dona de casa*, in Manaus. Ways to work — and, with it, to be constituted, to be estranged, to be affirmed, to be denied, to survive and to mortify oneself — that are at the same time very different and strikingly similar. Forms of the enigma of work, as Alain Supiot (2011, p. 38) points out, that "does not cease to reappear in new forms, and to undermine the validity of the imagined answers to solve it". In the case of the legal regulation of informal work, the object of this essay, such an enigma is even stronger, since most of those answers have not even been properly affirmed. And the ones that are conquered in terms of social protections are in constant danger in face of economic and political pressures.

The modern world of work has always been marked by ambiguity. The relationship between necessity, production of oneself and of the world, expropriation, freedom, subordination and so many other elements makes the domain of labour relations always ambivalent. But in the sphere of informality, things are a lot more accentuated. Theoretical readings and empirical studies of the last four decades presented complex, and often contradictory, facets of the phenomenon of informality. Informal work has been pictured as a remnant to be swept away by modernization, in opposition to what is licit and formal. But it has also been pointed to be a structural element of the affirmation of a global capitalism. Or a repository of a reserve army of labour. It has been examined with lenses that vary from dualisms to structuralisms, and its "neo" forms, going through all ideological uses conceivable. It has as well been a space for romanticizing poverty, with workers portrayed as heroic. Faced with expectations of "creative" solutions in the face of the crisis of the structures of solidarity and redistribution of the West. Informality is a territory in constant dispute.

Something, however, never fully happened. Legal discussion around informality remained restricted to somehow traditional approaches. Informal workers have been legally evaluated with stable and predetermined categories. They are never seen as central. And in the end, they are placed in a position within the legal mechanisms of either protection or repression. But always in a residual way, always faced with what is typical, what is legally formalized, contrasted to what the core of regulated employment is and/or should be. As if the only relevant legal questions regarding their lives and their work were: are they employees? Should they be banned? Formalized? In this framework, the idea of inclusion becomes a flat one, reduced to an apparent binary process of legal formalization (turn what is informal into formal). An idea that, as so, should be contested.

The present essay intends to put all that in perspective, by enacting three basic gestures: to centralize, to complexify, to decolonize. Based on evidence from Brazil, it explores the debate on informality in a non-simplifying way in the field of labour law, by *centralizing informality*. A rough map of socioeconomic contours and of the supposedly inclusionary legal practices to address informality in the country will be outlined. And the drawing of the map is accompanied by the conception of a possible epistemological pattern, connected to dissident fields of knowledge that will *complexify inclusion*, by showing the ambiguities of this process in the lived lives of different informal workers. Critically debating the potentialities and limitations of legal mechanisms of inclusion, the essay ends with at least what is expected to be a more precise account of the force of coloniality of labour regulation. From then, the last gesture will point out to a need. A urgent need to engage on the hard process of *decolonizing labour law*.

1. Coloniality of labour regulation

"Typical" wage work, regulated under the regime of the standard employment relationship, has never expressed, and still does not express, the extent of the structure of productive relations in the world-system of modern capitalism (QUIJANO, 2013; GUTIERREZ-RODRIGUEZ, 2014). Wage work and with it, what is understood as labour and employment law, constitute a Eurocentric metonymy. It is an element of a "legal monoculture" (SANTOS, 2007, p. 22), articulated around capital and shaped in contrast to the multiple ways of working in the global south. Globally, the norms that regulate labour

in the capitalist model of production constitute a totalizing metanarrative, which circumscribes labour law to a relationship that allegedly is the basic legal relationship in the socio-economic scenario of modernity. There is a vocation at the basis of labour law to reach the most important part of work arrangements, with a strong inclination to universally valid legal solutions.

Even if this inclination is proclaimed to be one of protection of workers, one needs to look further to go beyond the surface of the limits of those legal guarantees. The point of departure of a more complex discussion on informality and law is precisely a simple account of the contradictions on which that relationship is based, starting from the fact that in the capitalist, patriarchal, Western, modern and colonialist world-system (GROSFOGUEL, 2008) the forms of work constituting the production model were never only restricted to wage work and, legally, to the form of standard employment relationships.

Since the beginning of the colonial enterprise in the fifteenth century, the capitalist world-system has systematically, in direct and indirect manners, combined an enormous variety of ways of working. Aníbal Quijano (2013, p. 154) emphasizes precisely that “wage work has always been a small minority in the whole of work in the capitalist world”.

It is not a question here of denying the strength of wage labour for the productive model, nor of its regulation for modern legal systems. This multiplicity of forms of work articulated in the production model, in one way or another, deeply communicates with wage labour. Or, as Quijano (2013, p. 154) will say again, “the relationship capital and wage labour was the axis around which, from the beginning of capitalism, all forms of work were articulated”.

But aside from this, it must be understood that unpaid work, unfree and forced labour, work performed in a regime of personal servitude, in various reciprocal, non-standard, “atypical” arrangements, have traditionally been located in the spatial and social peripheries of the world. And they are not exceptions. For this reason, a perception that such labour relations make up a separate world has been induced, both in social geography and in time. Criticism of this dualistic reason (OLIVEIRA, 2003) reveals the structural fusion of these multiple worlds, their dialectical integration into communicating circuits (SANTOS, 2004), exposing a fracture at the base of what legal regulation assumes as the definitive center of work in modernity. Criticism of the intrinsic integration of

hidden universes by the meta-narrative of wage labour also develops from the idea of the sexual division of labour (HIRATA, 1993), reproductive work (FEDERICI, 2017) and feminist considerations to regulatory models centered on a single way of working (FUDGE, 2011; VIEIRA, 2018).

In this context, certain historical, theoretical and empirical presuppositions constitute conditions for the emergence of the problems of this article. The approximations proposed here are strongly based on critique of the very idea of modernity, developed by a group of Latin American thinkers of decolonial theory. In the framework of this decolonial turn, one key concept will be important for my analysis. Power, in a world-system (WALLERSTEIN, 2004), is expressed in the logic of *coloniality*. That is our key: *coloniality of power* (QUIJANO, 1992). This idea reveals the founding means of domination of modernity, rooted in the concept of race and the many forms of subordination of the other, of the non-Western. The official end of the colonial enterprise did not put an end to the presence of this form of power, which shelters not only geopolitical relations, but distributed social power, from the formation of subjectivities (*coloniality of being*, MALDONADO-TORRES, 2007), expression of gender positions (*coloniality of gender*, LUGONES, 2014), to what is recognized or not as socially valued knowledge (*coloniality of knowledge*, LANDER, 2005; WALSH, 2007).

Work is also a fundamental element of this metabolism of power. There is, according to Quijano (2013), a *coloniality of the control of labour*, or *coloniality of labour*, from which certain central consequences flow. The global distribution and social geography of capitalism on the periphery, for instance, relate to the predominant modes of functioning in each specific space, and, within the spaces, by each socially classified body/person, considering markers of race, gender, sexuality, ethnicity and so on. These distinctions are so profound that, for Frantz Fanon (1968), very influential thinking among many critical lines of thought, one is confronted with a social distinction of “species”. And in the social conception of this extreme subjection, work occupies a place of great importance.

This conceptual centrality of work in the affirmation of the world-system and the hierarchies resulting from the expression of the coloniality of power are still very present today. The articulation I propose here is based on the permanence of the contemporary plurality of modes of work involved in the processes of production, circulation and consumption of goods in the world, organized in the light of hierarchical

principles. The International Labour Organization (ILO, 2014), for example, shows a massive prevalence of self-employment in its many forms in the global South. In addition, there is a systematic and widespread use of forced labour in the production model. Still according to the ILO (2017), contemporary capitalism employs the largest number of enslaved individuals in the history of humankind. In the field of domestic work, coloniality connects to gender in a feminized (GUTIERREZ-RODRIGUEZ, 2014) and racialized (BRITES, 2013) relationship which is expressed by a dual phenomenon: on the one hand, a strong presence of domestic workers in the global South (ILO, 2013), and on the other hand, the hierarchical distribution of domestic work, normally performed by migrant women of color around the globe. In parallel, the massive amount of unpaid care work performed by women is still at the core of the production model.

Faced with all this, the crisis of the perimeter of labour law is genetic and much larger than that stated in the legal reflection of the countries of the Global North (SUPIOT, 1999). Regulation has always had a timid scope, since the central categories do not necessarily conform to the extent of the variety of modes of work systematically incorporated in capitalism. And, legally, these categories are largely reproduced in regulation in countries of the Global South, which echoes Northern models. And so far the very attempts to extend the scope of regulation will only do what Leah Vosko (2010) calls "managing the margins". Maintaining an idea of "typicity" means that central, but not typical, forms of work are perceived legally as less important for the socio-economic order. The residual and Eurocentric concept of "atypical work" (PÉLISSIER, 1985) denounces the way in which labour law, by naming and categorizing, contributes to the maintenance of coloniality, prioritizing specific forms of work. And with that it contributes to prioritize certain social groups, because these subaltern ways of working manifest themselves in racialized, gendered and localized bodies.

There is, in other words, a specific legal dimension of coloniality, that I name *coloniality of labour regulation*, that puts law at the service of this colonial mode of power. By naming, classifying, dividing, attributing prerogatives, permitting, forbidding, fostering, understanding some forms of work as central, dignified, as a social and legal value in detriment of others, law is key for reinstituting and perpetuating coloniality. And informality is the social place where most of that happens. Law confirms that "it cannot be a coincidence or simply a historical accident" (QUIJANO, 2013, p. 156) that the overwhelming majority of precarious, poor, non-standard statuses at work are racially

defined and housed on the peripheries, former colonies or in their complex socio-spatial displacements.

2. Informality and a theoretical model of the margins of the world of work

The debates on informality in the economy and labour relations already have more than forty years. The first institutional references appear in documents of the International Labour Organization and studies on the economy of African countries in the 1970s (ILO, 1972; HART, 1973). At that moment, the ILO recognized the existence of an informal sector of the economy, which fell outside of the institutional and formal lines, yet took it as a productive, low-cost and opportunity-generating space. The ILO encouraged then a positive governmental stance in the face of this "separate" sector, rather than mere repression. It also outlined some conceptual elements, understanding informal sectors as the ones that "operate largely outside the system of government benefits and regulation, and thus have no access to the formal credit institutions" (ILO, 1972, p. 504) and technical support.

In these first years of informality studies, a first paradigm of analysis is established: the *dualistic approach* (ROUTH, 2011). In it, the informal sector is in fact portrayed as a separate sector, which coexists alongside formality, maintaining with it timely interactions, which are limited to transitions from one sector to another. The critique of this position emerged quickly (BREMAN, 1976) and, in the 1980s, a second analytical alternative is outlined, with a *structuralist approach*, which proposes an understanding of the permanent and inherent link between the formal and informal sectors.

Within the structuralist approach, Castells and Portes (1989) propose that informal economy has three pillars: (i) the systemic correlation with the formal economy, as an integral part of the national economy, and not as a marginal appendage; (ii) the characterization of work in informal activities, usually associated with vulnerability, and (iii) the position of government authorities in relation to the sector, which, despite being able to take repressive forms, is traditionally marked by tolerance. In this structural dynamic, the effects of the expansion of informality on labour regulation and protection are enormous. From direct impacts, by means of the escape of social security support

systems, to the dilution of the strength and legitimacy of classic unions and collective actors, and, finally, to the expansion of the discontinuities and heterogeneities of social and work situations.

Also in the 1980s, with the structuralist view of informality firmly established, one of the most influential (and controversial) studies is the one written by economist Hernando de Soto (1987), who in his *El otro sendero* ("The other path") analyzes the realities of the informal economy in its absolute centrality in the Peruvian economy. Informality would be transversal, coupling with everything, from housing to commerce and transportation, the high costs of formality being the basis of the movement of escape from institutions. De Soto (1987) takes a position of defense of the reduction of state intervention, with transfers to private individuals of the responsibilities concentrated in the hands of the State and of the very conception of well-being. He proposes, then, the construction of a new formality, simplified, decentralized, deregulated and even depoliticized of productive life.

If there is one merit of De Soto's proposition it is the understanding of the actual dimension of the "margins" of the formal system and the peremptory move away from artificial dualisms. However, his analysis of social protection is based on the assumption of a factual bankruptcy that disregards the processes of implementation of the so-called Social States in Latin America, while failing to critically understand the weight of the construction of labour regulation in the dynamics of social forces. While seeing all state intervention as costly and inefficient, he loses the dimension of the asymmetries that mark the market, embarking on the distorted solution of a "*total market*" (SUPIOT, 2010, p. 12) that would be in charge of welfare, a model whose historical failure is the very basis of social protection structures erected in the last century. His proposal of an informal revolution becomes, finally, a neoliberal libel, placing high hopes in a deregulated market and disregarding the global dynamics of the exploitation of human labour. In addition, in the end, it fetishizes poverty and heroizes the margins, in a narrative resource of evident dubiety.

However, as a result of this maturation of structuralism, a dynamic way of dealing with the issue emerges, with a focus on the *processes of informality* (CASTELLS; BENTON; PORTES, 1989; CACCIAMALI, 2000), or a *mode of informality* (ROY, 2005), especially in relation to the new world of work in urban space. Informality begins to be perceived as the transactions, the connections themselves. Productive restructuring,

economic globalization, financialization and deregulation (CACCIAMALI, 2000) also make informality a procedural mode of expression of contemporary capitalism.

With more caricatural dichotomies overcame, the realization of the intimate and dialectic relationship between the central economy and the peripheral forms of production, circulation and consumption no longer allows for reductive readings. The critique of the simplifying reason of informality (MALAGUTTI, 2001) inaugurates the era of holistic and more complex understandings. The positionalities in the processes of informality are permanently shifting. The readings, therefore, of simple or purely cartographic binaries give room to dialectical interpretations, which assume very complex forms.

This is where the theoretical elements outlined in the first section of this article can meet the contemporary debate of informality (even though the transposition of these epistemologies to the legal field is still incipient). When, for example, marginality in general is considered as a "particular mode of belonging and participation in the general structure of society" as proposed by Aníbal Quijano (1998, p. 43), a multidimensional sense of informality is definitely unveiled.

Decolonial thinking, in this sense, can requalify the discussion of informality in Latin America, especially in the perception of the coloniality of power and coloniality of labour in its complex, historicized and procedural structure. And from that encounter, and its epistemological transformations, a methodological platform could be conceived. Such a model should comprise the imbrications between center/periphery, formal/informal, modern/traditional, as well as its actors, structures and complex modes of production.

That complex approach to informality can be of extreme help in understanding the social, cultural and economic dimensions of the modes of informal work and, from there, provide elements for a deeper comprehension of the paradoxes of labour regulation, and to labour law's idea of inclusion. In this essay, the exercise will be made using structural data from informality in Brazil and the impacts of that in the way the country regulates (or tries to regulate) these forms of work.

3. Legally reading the concept and typology of informal work in Brazil

By evoking the concept and possible ways of framing informality, Brazil is one of the countries that most quickly comes to mind. There are many studies that use the country to analyze the multiple spheres of informality. They explore Brazilian cities and their peculiar forms of occupation. The dynamics of "*favela/asphalt*", its presences and absences in the modalities of work. The market economy, the implantation of peripheral capitalism, industrialization, urbanization and rurality, with all its presuppositions. The labour market and its apparent dualities. There are many instances in which Brazil seems to function as a "perfect" scenario for informality formulations.

Moreover, in labour relations, the image (or mirage?) of a half circle of formalized employment relations based on a well-structured and legislated labour law and another half in positions of precariousness and low institutional integration feeds the imaginary of structuralists, dualists and proceduralists. A symbolic platform for the broad understanding of the world of work and its contemporary forms emerges. German sociologist Ulrich Beck (2007, p. 9), for example, uses the example of the country to portray the rise of precariousness internationally, speaking of a "*Brazilianization*" of the West, with the irruption of the precarious and discontinuous. It is a process in which "the multiplicity, complexity and insecurity at work as well as the way of life of the South in general are extending to the nerve centers of the Western world".

Brazil indeed presents quite peculiar modes of informality. So much so that one of the first studies of the subject in labour relations, still back in the 1970s, was made in the Brazilian city of Belo Horizonte. The concept of the informal sector, in this research carried on by Thomas Merrick (1976), was typified in association with *precarious forms of hiring* (such as self-employment or temporary work), without social security and labour regulation. Informality was also characterized by the ease of entering the market, high turnover, smaller scale of business and great competitiveness around pay. It was also pointed out that the informal sector serves as a shield in the case of unemployment, the prevalence of work in informality for low-income families and the difficulties in the transition to the formal sector, due to the discrimination of certain activities prevalent in informality, such as domestic work.

The position that the law and institutions hold in the definition of informality in Brazil can be perceived very early. It should be noted, however, that despite this use of

the legal element for the sociological and economic characterization of the phenomenon, the concept of informality has very little repercussion in Brazilian law. It is, until the present, an element of low relevance to normative, jurisprudential and academic production in the country, especially in labour matters. This is due to the fact that Brazilian labour law, drawing back the first decades of the twentieth century, brought with it a universalizing vocation of the standard employment relationship (SER). Thus, for legal reflection, once the elements that characterize employment, especially subordination, are present, the relationship must be considered as formal employment. This reflection will be retaken and unfolded in the next point of the article.

For now, it is important to remark that such legal status finds a certain correlation in the absence of official definitions of informality. The Brazilian statistical agencies do not have definitive protocols on the subject, nor do they use the concept of informality for their main mappings. In spite of a certain conceptual inconsistency, one can notice the concentration of the analysis in Brazil around three main axes: (i) self-employment, (ii) domestic work and (iii) fraudulent employment relationships. Each of these realities conveys very specific dynamics and forms of work, in realities that deserve further specific investigations. The macro-comparison with formal labour relations, however, helps to provide a first approximation.

Before we go on with the reflection around those three axes, some general statistical context can be of help. In 2019, according to the Brazilian Institute of Geography and Statistics (IBGE, 2019), of the total employed population, 33.7% were formal waged employees, with a formal contract; 11.9% of informal waged employees, without a formal contract; 6.4% domestic workers (formal and informal, being 1.8% formal and 4.6% informal); 11.6% of public servants; 4.4% of employers; 24.6% self-employed workers and 2% auxiliary family workers. Among those, the three main axes of informality.

3.1. Self-employment

Amid the conceptual variations and disputes on the meaning of informality, the domain of the so-called self-employment appears as a constant, not only in Brazil. It is always one of the facets of informal work, being usually the largest in numbers. And it is so as a paradox. Despite being usually described as independent, autonomous or entrepreneurial, this modality of work keeps, from a structural point of view, an inversely

proportional relation with economic and human development. It is, to put simply, the most precarious form of work.

A quick look at the general picture, then, before analyzing Brazil: the more developed the country, the lower the incidence of self-employment. At the global level, the ILO points out that, in 2013, the rate of self-employed in advanced economies was 9%, while in developing countries it rose to 40.5%, reaching more than 50% in less developed countries and medium-sized economies (ILO, 2014). Similarly, in less developed countries, the poorer the individual is, the more likely he or she is to work on his or her own. The ILO (2014), still in 2013 and based on data from 39 developing countries, has shown that more than 80% of the extremely poor workers in these countries (living on less than USD 1.25 a day) were engaged in self-employment. In the higher strata (for example, of a middle class earning more than USD 13 per day), the rate falls to less than 20%, with a significant increase of employment relationships. In addition, factors of social vulnerability (such as gender and race) are often referred to as pushing individuals into self-employment, revealing, in all dimensions, what there is of elusive in the idea of "independence".

Brazil confirms the world trends. As seen, almost 25% of the Brazilian economically active population is self-employed. In general, it is an extremely heterogeneous group. At the top, so-called "liberal" professionals, with above-average pay. Overall, however, wages are below the national average (and, of course, formal employment), indicating an impoverished and vulnerable base.

Inequalities of gender and race also have a particularly prominent place in self-employment in Brazil. Data from the Institute for Applied Economic Research (IPEA, 2015) data show that the average monthly income of a self-employed worker is 17.6% lower than the average income of a formal wage earner. Considering race, black self-employed workers have a 41.8% lower average wage than white self-employed and 47.4% lower than white formal employees. Considering gender, self-employed women earn, on average, 27.9% less than men in the same position and 39.7% less than formal male employees. In the intertwining of gender and race as overlapping social markers, self-employed black women earn 60.5% less than self-employed white men and 64.5% less than white male formal employees.

In spite of these data, Brazilian sociological, economic and legal literature is very scarce in regard of self-employment. While more recent analysis are growing

(ROSENFIELD, 2015), in one of the few broad and systematic studies, José Reginaldo Prandi (1978), in the 1970s, evaluates experiences in São Paulo and Salvador, and draws attention to the functions of self-employment in the capitalist model. He identifies, in the first level, a general march of destruction of the autonomous forms of work by the universalization of the system of wages. But at the same time, it is possible to visualize essential functions for self-employment within the reproduction of social life in the productive model itself. This is because the volumes of self-employment, especially in the low-skilled strata, keep the reserve industrial army large enough to guarantee wage depression, allowing the survival and management of the extreme risks of conflicts associated with mass unemployment. Capitalism, then, tolerates self-employment as long as it does not oppose the market and is engaged in low-income goods and services.

3.2. Domestic work

Domestic work is also central to the debate on informality. The ILO (2020) estimates that there are around 67 million domestic workers in the world, of whom, as shown in a previous study (ILO, 2010), more than 80% are women (percentage that climbs to 92% in the regional measurement of Latin America and the Caribbean). In addition, domestic work accounts for 7.5% of the paid jobs occupied by women around the world, a figure that reaches 26% in Latin America and the Caribbean (ILO, 2010). That is, in Latin American countries, *one in four women engaged in paid work is a domestic worker*. Among men, still in Latin America, domestic jobs account for just over 1.5% of paid jobs. This is data, therefore, that prove that the issue of domestic work is, centrally, a matter of gender (and of coloniality of gender).

There are currently more than 6 million domestic workers in Brazil, almost 7% of the workforce. It is the country's largest professional category, with Brazil having the largest number of domestic workers in the world (ILO, 2013). The average monthly income in 2019 is BRL 904 (USD 180, at March 2020 rate), 60% lower than the average wage in the country. Informal domestic workers earn substantially less (BRL 763 or USD 152), 75% lower than the average worker in the country, formal and informal (all data from IBGE, 2019).

There is also a strong statistic confirmation of the gender and racial element (IPEA, 2015). More than 90% of domestic workers in Brazil are women, of whom more

than 65% are black. In 2015 (IPEA, 2015), domestic work accounted for 1% of male occupations and 14.3% of female occupations. Considering black women only, 18% are in domestic work. Black women also have lower rates of formalization of domestic employment relationships and lower rates of social security contributions. They earn at last 15% less than white domestic workers. It is also interesting to note that almost 45% of domestic workers are heads of households, level rising to 58% in the poorest sectors.

The history of legal invisibility of the issue of domestic work in Brazil is long-lasting. So is the articulation of resistances in what Louisa Acciari (2018) sees a subaltern politics process. In the original wording of the Consolidation of Labour Laws of 1943 (CLT), domestic work remained excluded from the protections accumulated until then. After decades of social struggles, it was only in 1972 that a few rights were extended to the category (such as paid holidays and the duty of contractual formalization). The 1988 Constitution extended the guarantees, including salary rights, rest, licenses and integration to social security, without, however, establishing full equality. Finally, Constitutional Amendment 72/2013 and the Complementary Law 150/2015 brought the country closer to equality, extending all the most important labour rights to domestic workers.

And yet, the approximation to equality is partial, in a case of coproduction of inclusion and exclusion by labour law. The new legal framework of domestic work in Brazil maintains the category of *diarista*, that was crystalized before 2015 by discriminatory legal interpretation of the temporal element of the general employment relationship when applied to domestic workers by Brazilian courts. These domestic day workers, working up to two days a week to the same person or family, are to be treated as non-continuous workers, without any right to labour protections in the strict sense. Even if the work is performed two times a week for the same employer, full time, for as long as it may last. There, Brazilian labour law have contributed to an exclusionary stabilization, by "deepening inequalities and naturalizing poverty" (SOARES, COSTA, 2013, p. 189) when eliminating poor workers from access to minimum social rights.

The processes of informality of domestic work in Brazil, therefore, will take three basic forms (without even discussing the central issue of reproductive and care unpaid work at home). The first of these is the broad discussion of informality, despite the legal assimilation of formal elements. The actual precariousness of the work, the discriminatory patterns, the high rate of violations, the partial access to rights and the difficulty of control

mean that, although formalized, domestic employment maintains material relations with an understanding of the mode of informality, within the broad conceptual framework presented here. The second form, as seen, comes from the permanence of the figure of the "*diarista*", domestic day worker supposedly non-continuous, expressly excluded from employment and with very low social security insertion. The third and last discussion comes from the high rate of absence of formalization of domestic employment relations. 72% of the domestic workers in the last quarter of 2019 did not have a formal contract (IBGE, 2019). That is, they should be in legally formalized and protected relationships, but they are simply not. It is the expression of frauds with the specificities seen for domestic relations. Overlays of subalternities that make the field of domestic work still a space of intense exclusion.

In addition to these three modes of informality in what one can see as commodified domestic work (FUDGE, 2014), the question of unpaid reproductive labour is central to the contemporary reflection. The colossal amount of work in care and activities related to the reproduction of social life has been pointed out by feminist scholarship for quite some time now (FEDERICI, 1975). But the institutional framework is far from presenting a proper response to the question, starting from the legal conceptualization of such kind of labour to the absence of adequate social protection for these unpaid family workers. Brazilian labour law, in this scenario, still follows the pattern of gendered foundations of regulation, refusing to address the question as its own. The field is being growingly interpellated by legal feminist scholarship in Brazil (VIEIRA, 2018; DUARTE, 2018), but is still not addressing the question of unpaid reproductive work as one of (also) informal work.

3.3. Employment relationships and frauds

In addition to self-employment and domestic work, straightforward frauds in face of the duty to formalize labour relations are very present in Brazilian modes of informality. Brazil, says Freire Pimenta (2004, p. 342), suffers from a "syndrome of non-compliance with labour legislation". According to the IGBE (2019), in employment relations in the private sector, there are around 26% of unregistered workers. That is, actual employees, with all the legal elements of the standard employment relationship,

that do not have formal contracts and the factual fruition of rights. The percentage is almost 22% in the public sector and striking 72% in domestic employment.

Here the bottom line is more clear. Informality, in the face of law, represents a simple failure to comply with applicable legal standards. Given the universal vocation of Brazilian labour law, this is a central modality of informality for the country. Undoubtedly subordinate relationships that are not formalized (or take on fraudulent legal forms), usually as a strategy to reduce production costs. And the practice is transversal. From small to large enterprises, many attempts are made to escape labour and social costs.

A very recurrent phenomenon among the frauds is the interposition of legal entities in the contract to mask the employment bond. In such models, the employer has a legally formal relationship with another entity, but continues to subordinate workers directly. The country has already experienced a boom of fraudulent labour cooperatives, illegal outsourcing and also the so-called "*pejotização*". The latter represents a neologism with the initials of "legal entity" (*pessoa jurídica*), describing the cases in which subordinate employees are hired by supposedly autonomous legal entities. The model is commonly associated with unipersonal or simplified business forms, subverting initiatives that are supposed to be dedicated to the inclusion of self-employed workers, as will be seen below. Faced with the principle of the primacy of reality over form, or contract-reality, to use Mario de la Cueva's (1969) expression, courts can dismiss the formal arrangement and materially acknowledge the existence of subordinate employment.

4. Understanding ambiguous inclusion through labour law in Brazil

The idea of including informal workers in some kind of formal arrangement, translated into a legal framework with social rights and work-related protections, seem like a straightforward one. But it is far from the case. Inclusionary practices in the face of informal work are the picture of the complexity of informality itself. These legal practices are always conceived in the disputed terrains of labour relations and its inherent social tensions. They may represent attempts to improve social insertion, but at the same time disguise policies of aversion to poverty and "sanitizing" urban spaces, like it often happens to street vendors. They may translate into a virtual expansion in social security, but be attached to the corrosion of more solid inclusion systems, like the ones around standard

employment. They can essentialize the myth of individual entrepreneurship in informality, romanticize poverty and contribute narratively to the dissolution of redistributive structures such as social security. They can aim to reduce extreme poverty, but end up including precariously and stigmatizing those who still remain at the margins. And, as Brazil proves, there are many legal initiatives of supposed inclusion situated in this realm of intense ambiguity.

Each of those initiatives, off course, should deserve a critical and interested further look. Within the constraints of this article, I will look at the question through the angle of labour law. To do so, I will briefly address two major institutional tendencies regarding the world of informality and labour regulation in Brazil, to understand its potentialities and ambiguities: the inclusion through labour law's own categories and new forms of regulation of self-employment. By presenting some elements of these major trends, I expect to demonstrate how the idea of inclusion needs to be complexified, if not fully contested, also in line with a process of decolonizing labour law.

First, a move that articulates a form of internal inclusion, through labour law itself. Given the force of its regulation of employment relationships, one of the main mechanisms in Brazil to think legally about informality explores the boundaries of labour law. The reflection and practices on the expansion of labour protection have been central in the world in general, but particularly in Latin America and in Brazil, for quite some time. The theme of the new faces of legal subordination (SUPIOT, 2000) has appeared in the analysis of labour relations for some decades. The mechanisms of direction and control of human labour in the context of present capitalism establish a relational complexity (D'ANTONA, 1998) that relativizes the dichotomy between self-employment and subordinate employment. All that gives an account of a crisis on the perimeter of work protection. Alain Supiot (2000, p. 131) points out that "the once so clear opposition between the subordinate worker and the independent professional appears today as being much more fluid".

The boundaries between subordinate work and self-employment automatically affect any legal discussion on informality (even if not named as such). And especially in the Brazilian case. The definition of the presence or absence of subordination to the classical molds can determine if a mode of working will be framed by the lines of social and labour protection. At a time when productive deconcentrating and corporate networks are appropriating the outcomes of human labour in increasingly indirect forms,

the conceptual dispute over legal subordination becomes an arena of inclusion or exclusion. This is because in the arrangements that engage the processes of informality, from local practices to the world-system, those who take advantage of the economic results of power may not be the one responsible for social rights purposes. A street vendor selling a home-made *pastel* (fritter made from flour, oil and filling coming probably from different multinational companies) is the living proof of that.

So, innovative readings of subordination, therefore, can serve to create new strategies of responsibility and inclusion by allowing the framing of indirect, reticular, masked or complex means of exercising power. In this sense goes the idea of *structural subordination*, addressed by Mauricio Godinho Delgado (2007, p. 37), focusing on "the structural insertion of the worker into the dynamics of the employer". Traditionally, in Brazil, subordination is associated with the direct presence of orders and the concrete expression of the power of the employer (as by the requirement of uniforms or standardized practices in the productive units). Such structural reconstruction overcomes the direct limits of subordination and presumes its existence by the simple incorporating of human labour into the structure of the activities of the one who benefits from the work, albeit indirectly.

Along the same lines is the idea of *structural-reticular subordination*, in the proposition of Barberino Mendes and Chaves Jr. (2007, p. 197), which includes the organizational insertion articulating it "with the reticular feature of the productive reorganization". Finally, *integrative subordination*, proposed by Lorena Porto (2008, p. 26), which is configured when "when the work performance integrates the activities carried out by the employer and the worker does not have a business organization of his or her own". They are all forms of expansion that maintain the centralization of standard employment, now reinterpreted in order to embrace other relationships and imply responsibilities more broadly, as in the changing forms of informal work.

The concepts begin to appear in certain decisions of regional courts and the superior labour court. Although in minority, these decisions have important effects on the academic reflection and the jurisdictional practice, helping to extend the conception of subordination. At the same time, the discussion of inclusion through the categories of labour regulation is currently interpellated by a process of heavy attacks to those categories themselves. Brazilian labour law, like in many other countries, underwent a series of major changes in the past years, the largest of them being the labour reform of

2017. The pillars of collective and individual protections around regulated employment were severely destabilized, thought setbacks in the collective and individual fields. Therefore, the idea of including through regulated and standard employment, at this point, is one that is fully inserted in the conflicts around labour law's own integrity. And might be instrumentalized in many ways to question the validity of those structures of social protection, particularly when it comes to self-employment.

Self-employment, as previously mentioned, is always at the heart of the discussion of informality, precariousness and (the lack of) social protections. Not only because of the numerical relevance, or because it is the social form of the most precarious work arrangements. But it is also due to the intimate relationship that the field has with the new strategies of the capitalist model of production, which at present aims to centralize seemingly autonomous forms of work, on routes of escape from traditional modes of responsibility and protection. And many self-employed modes of working that are part of the universe of informal relationships are presented in a very different way from traditional bilateral employment, even if one thinks of mechanisms of expansion of its core elements.

Faced with this, the reflection takes place in a minefield. As seen, many forms of self-employment have been key to the articulation of the coloniality of labour. And they are also expanding and increasingly approaching new elements of the productive relations, in the past undoubtfully covered by employment regulation. They can therefore function as spaces for evading social protection.

In Brazil, the substantial number of self-employed workers was historically faced by the legal order in a succession of fictions. Understood as autonomous, they are obligatory contributors to the security system, being supposedly mandatory the retentions on the services provided. The rates of these collections are high (they can exceed 30% of the amount invoiced, between social security charges and income tax). Considering that most informal self-employed are poor, such collections are rarely made.

In this scenario of economic vulnerability and high level of informality, especially in services with low professional qualifications, since 2009 Brazil started to implement a simplified and subsidized plan of social security contribution, with the supposed purpose of regularizing business activity in face of tax authorities. And also, as the program self-proclaims, promote inclusion. The so-called individual microentrepreneur ("MEI", in the Portuguese acronym) — instituted through Complementary Law n. 128, dated December

19, 2008, effective from 2009 — consists of a legal model designed fundamentally to expand the formalization of microenterprises and social security coverage among low-income self-employed workers. The registration process of the MEI is quick and the microentrepreneur will be framed in a simplified tax plan, given that the annual income is not higher than BRL 81,000 (approximately 16,000 USD, at March 2020 rate), being exempt from federal taxes that would correspond, in theory, to traditional self-employment or to companies in general. Thus, he or she will pay only the monthly fixed amount of around BRL 55 (approximately 11 USD, at March 2020 rate), which will be mostly destined to social security. With these contributions, the individual microentrepreneur has access to basic benefits such as maternity aid, sickness aid, retirement, among others, having minimum wage as its parameter.

The number of MEI registrations is extremely high, getting close to the 10 million mark in 2020 (PORTAL DO EMPREENDEDOR, 2020), with a substantial rise in the past two years. The program provides more than 450 activities that can fit as MEI. Some of the most common activities in the registries are the following (PORTAL DO EMPREENDEDOR, 2020): hairdressers, manicures and pedicures; sales of clothing articles and accessories; masonry works; retail trade of goods in general, with predominance of food products; supply of pre-prepared food for home consumption; electric installation and maintenance; street food services.

One can easily see a prevalence of activities related to commerce, especially in the food, clothing, hygiene and esthetics sectors, that are very often associated with informality. In addition, a wide variety of ways to provide food services, construction, finishing and repairs in buildings, automobiles and computers, as well as sales, publicity and event organization. Another important activity, marked historically by informality and exclusion, is domestic work. There are almost 150,000 domestic "*diaristas*" registered as MEI, overwhelmingly women (more than 95%).

From the data accumulated in ten years of experience of the micro enterprise model, many problems are revealed. The model has been used within escape routes of the standard employment relationship, with fraudulent hiring of legal entities. Here, an additional facilitation is added to the model of precariousness known as "*pejotização*", in fraud to the standard employment relationship that translates a perverse and disruptive insertion of informal work. Or even the opposite movement, of informalization of workers

inserted in the classic molds of labour law, displaced to the less protected arena o microentrepreneurship.

It is important here to understand the deeper meaning of this "formalization" process. The access to social rights is minimum in comparison with guarantees associated with formal employment. And as the model expands, it structuralizes more and more precarious forms of social protection. The mass media in Brazil, for instance, calls them "formal entrepreneurs", emphasizing the "advantages" of this condition in face of unemployment (ALVARENGA, 2019).

This form of regulation of self-employment and its social effects leaves the idea of inclusion at a crossroads. When a program formalizes extremely precarious workers with extremely precarious rights, what does that mean? And if that move plays a role in weakening more well-structured solidarity systems? Regulation of self-employment plays in the dynamics of inclusion-exclusion to show the poorness of the binary. It shows that the crystalized the idea of simple formalization as inclusion is not an accurate one. And all that becomes even more dramatic at times of austerity, neoliberalism and corrosion of social protection systems. The question that remains to be digested is: when inclusion mechanisms of informal workers "cannibalize" each other at the service of neoliberal reforms, is inclusion really in place?

5. Conclusion (or how the hard process of decolonizing labour law is far from being one)

This article had a double purpose and, from then, will express a need as its final gesture. First, the idea was to *centralize informality*, and show how coloniality is present in the structuring of what we (and legal orders) currently see as "typical" work. And also to show that the dimensions of informality are at once more complex than the traditional approaches portray and more relevant to the affirmation of the production model from the get go. None of that seem to be fully assimilated by legal reflection at this point, not even in labour law, leading us then to the second purpose. Based on the experience of Brazil, key country to the logics of informal work, the article maps the major domains of informality in the country and two trends of supposed legal inclusion of workers. It *complexifies inclusion* by showing the ambiguities of that process in Brazil.

The articulation of these two purposes led to the perception that the exclusion of workers is actually much larger than traditional legal categories, norms and reflections show. This account in itself could justify and close, for now, the reflection. But that does not seem enough. The reflection also brings up a broader need. This need, that maybe more of a hope, is presented formally here as a conclusion, with an underlying conviction that it actually the opposite of that.

Labour law needs to be decolonized. And also face the fact that its categories are strongly connected to gendered and racialized arrangements, to the concreteness of localized bodies within structures of oppression that are local and global. By centralizing the many ones that are not touched by traditional labour protections, this need, or this hope, is to force a radical expansion of the cognitive range of labour law (BUTLER, 2003; LERUSSI, 2014). From a theoretical perspective, a legal turn towards subalternity would necessarily be accomplished by engaging intellectually with dissident theoretical contributions, such as post-colonial and decolonial theories, feminisms, queer theory, indigenous knowledges, and afrocentric and racial thought. Although this might have been done in many senses, for example, by feminist labour law scholarship (FUDGE, 2014), there seems to be a lot to be done. The fundaments of labor regulation are still to be reimagined when faced with ways of producing and experiencing the world that can be derived from dissident fields. This path might shed light on some founding and renovated aporias of western labour law, such as: why is the majority of the workers of the world not covered by standard protections? What does it really mean to be a subject under a labour contract that is materially rooted in multiple forms of inequality and oppression? Why are some forms of work not even legally perceived as work? Which bodies are thriving and which bodies are being systematically harmed and eliminated by (un)regulated work? What is the role of law in implanting social precarity? Is it possible to organize and resist in face of the multiplicity of aspects implicated in the exploitation at work?

Within an anticolonial, antiracist, antisexist, queer and radically egalitarian framework to labour law one might come to fuller and more complex potential answers. Answers that will not operate in the simple logics of formal inclusion. That will understand the role law plays in coproducing exclusion. And the extent of the political struggles underneath the legal categories.

The paths of this hard process of combating coloniality, sexism, racism, LGBTfobia, intersecting forms of oppression on labour regulation is one of no easy answers. But somethings are sure at this point. Mechanisms of social protection need to be understood in their historicity and sociopolitical content. That is particularly important if one comes to term with the fact that labour protections, now seen as traditional and now also at severe risk, are also sociopolitical achievements coming from certain subaltern positions. So, if the category standard employment relationship is understood in its colonial, sexist and racist fundaments, it does not mean one needs to contribute to its destruction. At the present point of our production model, destroying labour law and social security systems would only represent and expansion of informality, a deepening of precariousness, that would, in the social geography of contemporary capitalism, be a crude form of neocolonialism. It would update, by distributing precariousness under the same logics, the perverse modes of coloniality of control and regulation of labour.

In a country like Brazil, every time protected standard employment relationship and social security structures are attacked, even if by means of supposed mechanisms of inclusion of informal workers, coloniality is very likely to be reinforced. So is sexism, racism and LGBTfobia. The bodies of the most marginalized workers are the ones to suffer the immediate effects of expansion of precariousness. The line between formal and informal is not a fixed one. In the complex processes of informality, dimensions of inclusion are always clashing, and the claim for better mechanisms of social protection in face of risks is permanent. That is precisely why this conclusion is a hope. A hope that the critique to labour law presented here, and the contestation to its modes of inclusion, adds up to a call for the ambiguities of the contemporary processes of labour regulation. An acknowledgment of this complexity in legal realities is an important step. It denounces the oversimplification of the language of inclusion. It reveals the risks of romanticized and heroic readings of informality. It fosters a defense of inclusion tools (such as labour law) as historical constructions, with permeabilities to local realities and forms of work. And it puts labour law in the permanent position of expansive reimagination and relentless resistance that is its social, political, historical place, now to be also decolonized.

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