

Working on Digital Platforms

Tricia Bogossian

Specialist, Santa Úrsula University in Rio de Janeiro-RJ, Brazil

ABSTRACT

This study aims to discuss work on digital platforms. Therefore, it addresses labor relations in the information society; explains the “new” figures that emerged with parasubordination; and it explains what is conventionally called uberization, emphasizing the uncertainty and instability to which workers are exposed. For the development of this research, as a methodology, we opted for bibliographical research carried out on legislation, doctrines, articles and other academic research that could add knowledge to the subject under analysis, allowing us to conclude that the flexibility observed in work developed on digital platforms almost always implies in precariousness of work relations. There are no guarantees and no right guaranteed to the worker who starts to receive for what he produces, which creates insecurity and discouragement. However, it is believed that this is a trend that is here to stay. Maybe it’s a way to alleviate unemployment, but there is no doubt, in terms of rights, it implies serious setbacks.

*Corresponding author

Tricia Bogossian, Specialist, Santa Úrsula University in Rio de Janeiro-RJ, Brazil. E-mail: tricia.bogossian@hotmail.com

Received: July 02, 2021; **Accepted:** July 07, 2021; **Published:** July 14, 2021

Keywords: Work. Digital platforms. Flexibilization. Uberization

Introduction

Previous to the problems of the notion of legal subordination, there is the current scenario of crisis in Labor Law. The last thirty years were troubled for labor law, especially due to the robust return of the old liberalism and the symbolic force of the new forms of work and their dynamics of autonomy. The then indisputably protectionist Labor Law had to assimilate flexibility, whether by complying with the labor reform or by observing the current doctrine, or by accepting more flexible practices by jurisprudence.

These changes in production systems have given rise to a context of discussions in law, mainly from what is called new forms of work. The new forms of work are rightly labeled as “new” because of their mismatch with the “old” form of work – the classic Fordist employee under intense supervision and supervision – once well standardized by the old Labor Law. It takes care of a legal reengineering arising from the productive reengineering that interferes in the Brazilian labor market, which was already characterized by informality, illegality and unemployment.

Changes in the world of work, summarized in the idea of post-Fordism, entail profound changes in employment contracts, as they intend to demean labor relations and social achievements obtained in the context of strong unionism and the Welfare State [1]. To do so, they forge an attack on the employment contract. There is no employment relationship. Having made these initial clarifications, this study aims to discuss the work on digital platforms [2].

This is a relevant, current topic of interest to society, as, nowadays, flexibility is increasingly imposed, giving rise to new formats of work posts. The theme is widely discussed and although some scholars defend flexibilization as an alternative to unemployment,

the vast majority foresee a growing precariousness of labor relations and rights.

For the development of this research, as a methodology, we opted for the bibliographical research carried out on legislation, doctrines, articles and other academic research that add knowledge to the subject under analysis.

Labor Relations in the Information Society

Work is at the base of the social structure, being a determining factor for various issues in human life. For this reason, the impacts resulting from the transformations imposed by the technological paradigm substantially reflect on the way work is performed, as well as on its organization, which remains in constant transformation.

Zygmunt Bauman refers to the contemporary period of the Information Society as “liquid-modernity”. This period resulted from the transition from a “solid-society” to a “liquid-society”, or fluid[3]. The term “liquid”, for the author, refers to the idea of fluidity, that is, the liquid-society, as well as the various aspects of liquid-modernity, cannot remain in stable forms for a long time, remaining in continuous mutation. . In this way, we have an extremely fluid and flexible society.

Characterized by unstable desires and insatiable needs, the liquid society is not compatible with long-term planning and storage. Goods tend to lose their value with greater speed, becoming obsolete, and consumer desires tend to change continuously [4]. In the context of the trends of this liquid society, there was a “recommodification” of work, to adapt to the trends of the new society. Companies started to look for “floating” or flexible employees, without emotional bonds and capable of adapting their inclinations, readjusting themselves to new priorities [5].

Added to the factor of the companies' interest in a more flexible category of workers, the insertion of technologies in labor relations reconfigured the exercise of work, enabling a faster and easier execution of tasks and being a determinant in the companies' capacity for innovation and competitiveness. In addition, technologies provide the structure capable of enabling the flexibilization and decentralization of the workforce, as well as adaptability throughout the production process, elements that have greater relevance in contemporary times [6].

The labor market, over time, was divided into three main sectors: agriculture, industry and services. It is observed that, until the mid-1800s, there was a preponderance of agriculture. After the Industrial Revolution, there was an increase, in particular, in the industrial sector. In recent decades, the increase has been registered in the service sector [7].

Service, in this context, is "all work that a person needs and that he cannot, does not know or does not want to do himself", that is, it encompasses a vast category of professionals, from hairdressers, waiters, to lawyers, teachers, etc. The increase in the respective sector refers both to the number of people who started working in the activities designated by this sector, as well as to the increase in income. For this reason, the service sector, which has existed since the first civilizations, has gained a notable prominence in the Information Society, surpassing the sector of agriculture and industry [8].

Furthermore, it is possible to observe profound changes in the classification of labor relations. In this context, Carla Jardim identifies the consolidation of three categories of salaried work [9]. The first, of the "stable wage earners", houses specialized workers, whose activities are related to the creative and strategic sectors. The second category also covers specialized activities, however, the workers would be non-specialized manuals, whose employment contracts are covered with atypical nature, as in the case of temporary and fixed-term work. Finally, the third category refers to "single" workers, embodied in service providers or collaborators, self-employed and hired to perform non-strategic activities.

Vera Winter also refers to a division of workers, resulting from the increase in planned production, characteristic of this period [10]. Therefore, workers would be divided into sectors, based on who is in charge of directing the activity and who is in charge of executing it. Depending on the category in which they belong, the worker will perform their activities according to specific conditions and form of organization.

The Self-Employed

As an antagonistic concept of the employee, autonomous work makes up the other facet of the possibilities of personal work in capitalist society [11]. Paulo Emílio Vilhena conceptualizes the self-employed as "the worker who develops his activity with his own organization, initiative and discretion, in addition to the choice of place, mode, time and form of execution". In this concept, two characters are striking: property and organization. Being the holder of the means necessary for his activity, this worker, as a condition of action, must organize and direct his activity. It is a simple, albeit enlightening, concept of self-employment, even adopted in the social security legislation [12].

The tradesman, professional fisherman (defined in article 1 of Law 10.779/2003) and auctioneer (Decree 21,981/1932) are a priori

examples of self-employment situations. In all these situations, the worker organizes his activity, holding a property – even if it is very small – to carry out the professional activity. When you hire a self-employed worker, you buy a good/service and not their workforce.

The paradigmatic situation of autonomous vehicle drivers should be highlighted. Law 6.094/1974 created the figure of the auxiliary self-employed driver, stipulating that, in relation to the owner-driver, there is no employment relationship. In this case, there is a situation of partial lease of the property in favor of the assistant, in the period in which the owner-driver is not driving his vehicle. However, this partnership between a worker-owner with another worker-non-owner tends, naturally, to the formation of a relationship of dependence.

The remuneration criteria (percentages on production) or costing (percentage rates, mileage, fuel and other costs) are normally set by the owner, precisely because the distinctive note (ownership) allows him to establish the working conditions, while another, non-owner and driven to work to survive, will have to accept these conditions. Thus, dependence occurs regardless of the manifestation of orders or the exercise of punitive power, even if the legal formula is that of lease [13].

So that there is no such dependence, the partnership between the driver and his assistant could not allow the other's appropriation of the assistant's work, by establishing limits to the values of the vehicle lease and eliminating the other unfair clauses, and both partners must act as workers. However, the vehicle owner, realizing the notorious possibility of accumulating, tends to cease his activity of driving the vehicle to, now full-time, lease it to other assistants, as he will earn more by doing less, only in the name of his property.

This is the common situation for taxis and their systems for renting per day by the owner of the vehicle and the license. License ownership is so expensive that there is always a dissociated relationship between the vehicle holder (who normally does not drive) and the driver. The patrimony of the first gives rise to a "partnership" with the second: one hands over the property; the other, work. Thus, there is the rent/lease of the vehicle by the owner - who does not drive - to the assistant driver, who delivers only his work in favor of the owner of the means of production (vehicle). It is in a real employment relationship, that is, it is the classic wage employment relationship.

In these taxi cases, the inquiry into classical subordination is irrelevant to the verification of the salary status. Although it is possible to residually identify manifestations of service management or punitive power, the concrete situation bypasses the notion of hierarchical subordination. The driver has technical autonomy, being able to perform his services (driving the vehicle) without hetero-direction, as well as eliminating the need for time inspection. If you do not perform your duty (not drive), you will receive the greatest possible punishment: you will have to pay the daily rate from your own pocket, even if you did not get clients that day. Therefore, legal subordination in this case is non-existent, although dependency is present [14].

It appears that the formal insinuation or the appearance of autonomy in the provision of services has served as a mechanism for withdrawing from the recognition of the employment relationship. Therefore, technical autonomy or the inexistence

of a rigid hierarchy are no longer constitutive features of current wage earning. The occurrence of these symptoms does not remove the characterization of work “under dependency”, however, it does not allow the typical relationship of salaried work to be subsumed under the hegemonic doctrinal concept of subordination.

It is noticed that the plurality of borrowers is inherent to autonomous work, precisely because, when directing its activity, it must seek the largest number of contractors to, increasingly, expand its production and its resulting economic benefit. However, the inverse thinking is not correct, as the employee is not necessarily characterized by monism in the borrower pole. Thus, the exclusivity of a personal job only serves to deny the autonomous character of this service, given that autonomy took place in the plurality of borrowers. Exclusivity is a consequence of subordination, so its manifestation implies the existence of an employment relationship. “The exclusivity of the provision of work is not exactly a condition for the existence of the employment contract, but rather a normal result of the subordination state that this contract creates for the employee” [15].

Thus, the self-employed can be thought of as one who, working personally, has technical domain combined with ownership of the means of production (ownership). If you only have the technical domain (specialization, skill, profession), you can be absorbed by a company when you work only for this one. The economic issue, then, is the distinction between autonomy and dependence, since technical mastery alone does not guarantee autonomy.

“New” Figures: Telework and Para-Subordination

Nowadays, the aforementioned technology has dispensed, for a considerable number of workers, from having to travel to the establishment of the borrower of their services. Displacement, in contemporary times, is carried out by the information produced by the worker, via telecommunication. Thus, telework rises in the scenario of new forms of work, without, however, implying social advances for teleworkers.

In this externalizing context, work outside the business establishment reappears as a form of work on behalf of others. Contemporary society, articulated by Virtual global interaction physically suffers numerous displacement problems, notably in large metropolitan regions, in addition to the complexity of demands and their diversities of origins demand great mobility and agility in the ways of producing. Thus, there is a great tendency to use work outside the company, including the recovery of work at home [16].

In this step, telework can be understood as that performed outside the establishment of the service taker by transmitting production (information) through technological means. In its various concepts, telework presupposes that the way of transmitting the result of the work is technological communication. It is noticed that the employee’s physical displacement from the workplace to the company is replaced by the displacement of information/production, via communication technology. In this sense, not all distance work will be considered teleworking, but only when using communication technology for its operation. For this reason, the large communication, insurance and financial sector companies were the first to handle telework [17].

Finally, teleworking can take place in the worker’s home, as part of homework [18]. The distinction between teleworking and homeworking is complex, as there may be teleworking at home or in telecentres. The characterizing element of telework

is not the workplace, as is the case with work at home, which necessarily requires that it take place at the worker’s residence. In telework there is connectivity through technology that provides the physical connection between the workplace and the employer’s establishment.

In other words, the figures of homeworking and teleworking are distinct, although they can be confused when teleworkers develop their craft at home. It should be noted that telework is a way of structuring the company or part of the production process, an expression of the directive power, not defining, by itself, the existence or non-existence of an employment relationship. Therefore, telework can be legally identified as a common employment contract (in tele-centres), home employment contract (when performed at the worker’s residence) and a contract for the provision of services by a self-employed worker [19].

In this perspective, the big issue in this way of organizing work is to recognize that its foundation clashes with the classic form of subordination, that is, its way of organizing work has suppressed the common way of manifesting legal subordination, namely: the emanation of orders directly, in person and in person by the hierarchical superior. There is a “depersonalized” and automated subordination, since “[...] the instructions and orders no longer come directly from the people who have the power of direction and control, but from programs” [20].

However, there is technical possibility of control in telework, including offline periods, through appropriate software for this purpose. Such symptoms of telecommuting allow the questioning of the distinction between the obligation of means and the end for the identification of subordination. “It is perfectly possible that in subordinate work – and telework is a good example – employer control is not exercised during the provision of the activity, but rather over the results” [21]. In any case, this control is also different from the classic control of personal subjection.

On a similar level of innovation, we are faced with the figure of parasubordination. The idea of parasubordination presupposes the inconsistency of the Labor Law application criterion, given that the processes of externalization of the organization of production tend to constitute a periphery of workers (legally regarded as autonomous), although encompassed and linked, as to the result and other obligations, to the business enterprise [22].

The characters of parasubordination are continuity, personality and coordination. The characteristic of continuity is similar to the national doctrinal conception of non-eventuality. In this sense, the personal provision must occur with a certain frequency and habit. Moreover, the coordination relationship would only be revealed by repeated benefits (continuity), excluding from the parasubordination relationships those single autonomous personal benefits, as they are occasional and sporadic.

The functional link is the measure of the coordination or collaboration relationship. In this case, there is no situation of clear and manifest hierarchy between the collaborator and the borrower. It is up to the employee to provide their services with some autonomy regarding the *modus facere* (time, place of work and help from third parties), however, they are subject to delivering the result according to the standards defined by the borrower (object, quality, quantity, raw material and accessories). In comparison, the parasubordinate is more subordinate in result than the autonomous and more autonomous in the way of doing than the subordinate worker [23].

The small portion of autonomy of the parasubordinate worker comes from the power to organize their collaborative work, apparently removing the possibility of configuring the employment relationship due to the absence of directive power. There is little autonomy, because this organizational power is limited to executing the productive pattern of the one who effectively controls the entire production process: the service taker. It is the borrower who necessarily predetermines parts of the productive stage delegated to the employee. This demonstrates the pseudo or limited autonomy of the parasubordinate worker.

Based on the majority concept of subordination, it appears that the formerly broad concept of subordination had already been reduced to a reduced version, linked to “strong heterodirection”, long before the consideration of the figure of parasubordination. Therefore, one cannot agree with Lorena Porto, who asserts that parasubordination resulted in the reduction of the concept of subordination [24]. Unlike being a theoretical obstacle, parasubordination does not limit the Labor Law, but demonstrates the insufficiency of subordination and shows the rescue of economic dependence [25].

Unlike these readings that blame this new figure, parasubordination in Brazil only came to confirm the already existing insufficiency of the concept of subordination. This is because the objective concept of subordination has always been incipient in jurisprudence and minority in doctrine, not losing ground when parasubordination arrived. Conversely, the figure demonstrates that it is necessary to return to broader conceptions of subordination, precisely because there is, once again, dependent work under the prism of pseudo autonomy. Note that it is the externalization practices in the context of post-Fordism that justify the creation of autonomous forms of work excluded from the employment framework.

It turns out that the degree of economic dependence of these parasubordinates, in some cases, is such that the labor legal system itself was quite affected, as it did not affect a considerable contingent of workers already considered as self-employed - behold, the concept of subordination of power-punishment already it was hegemonic – although these workers were ontologically in the same situation of hypo-sufficiency that legitimized the creation of the Labor Law. In other words: the attempt to protect the parasubordinates is symptomatic of the teleological crisis of the tutelary Law which, until then, had not been able to fulfill its purpose [26].

The distorted use of parasubordination in Italy does not prejudice the observation that the regulation of parasubordination means the recognition of the insufficiency of the predominant concept of subordination. On the contrary, it only confirms that the previous concept was so insufficient that it was necessary to think of a new regulatory framework, a new *fattispecie* [27].

The figures of telework and parasubordination denote the new realities of the world of work. However, they bring in their history a direction of escape from labor protection, precisely because they do not fit into the prevailing definition in the dogmatics of legal subordination. Unfortunately, they have served to circumvent the fundamental rights of work, in total disagreement with the contemporary defenses of the dignity of the human being and of the worker being [28].

Work On Digital Platforms: Uncertainty, Instability and Uberization
The scenario of the Brazilian labor market, despite the growth of formal wages in the first decade of the 21st century and the return to the crisis as of 2015, remains heterogeneous, even flirting with

the precariousness of unregistered wages. Even in the period of economic growth and creation of new jobs (2006-2014), the regulatory framework for the sale of the workforce still did not apply in a hegemonic way to all workers. In this respect, the post-Fordist pattern is very similar to the past: instability and uncertainty persist, depending on capital [29].

In its beginnings, capitalist industrialization produced a miserable condition of life, even worse than indigence, because it affected a much larger number of people. “This indigence that is not due to the absence of work but to the new organization of work, that is, to ‘liberated’ work. It is the daughter of industrialization”. It was about the first pauperism, which forged the context of the social question [30].

Precisely that initial context of industrialization is demarcated by the instability of work. “The instability of work, the lack of qualification, the alternation of employment and non-employment, unemployment characterize the general condition of the nascent working class [31]. The practices of the present can then be easily recognized as a return to the initial pauperism of capitalism, in which the intense exploitation of human labor prevailed, with few or even no limits by the legal system.

The current scenario, which justifies the 2017 labor reform, has ideologically built a social issue in reverse, as the artificial social clamor is one of autonomy, flexibility and collaboration. In the name of protecting the company and promoting competitiveness, the most extensive amendment to the national labor legislation was carried out, with more than one hundred amendments carried out by Laws 13,429/2017, 13,467/2017 and by the expired MP 808/2017.

The rules and institutes incorporated the precariousness within the legality, in addition to making flexible or even eliminating several protective rules. With Law 13.467/2017, teleworkers are removed, a priori, from the working day regime (art. 62, III, of the CLT) and assume the costs of equipment and other expenses for work (art. 75-D of the CLT). Certain employees, with reasonable wages, are authorized to negotiate the rights provided for by law (art. 444, sole paragraph, of the CLT) as if they were equivalent to unions. An attempt is made to validate self-employment only through the formal provision of a self-employed contract (art. 442-B of the CLT). The intermittent figure is created who is not entitled to a monthly minimum wage and who bears the business risks of lack of demand, but who, if he fails to call, will pay a fine to his employer (arts. 452-A and its §§).

In parallel, the labor reform extends outsourcing to all activities, including providing for the hiring of workers via legal entity (art. 5-C of Law 6.019/1974). The new legislation reveals that quarterization would be lawful, since §1 of art. 4-A of Law 6.019, with the wording given by Law 13,429/2017, indicates that the provider company could subcontract. This expansion of outsourcing is a typical example that one wants to regain the experience of labor intermediation via “cat” that still inspires current outsourcing [32].

The consequences of this intermediation of labor are all too well known: low wages, risk of default by the intermediary, difficulties in holding the borrower responsible. There is an intense exploitation of labor by the borrower from an indirect relationship [33].

In fact, such past, present and probably future situations signal that capital has never irresignably accepted the social limits

imposed by the State. Karl Marx narrated several practices of fraud against the law as early as 1845. Currently, work continues without registration, with unpaid overtime and other series of evasion of the Labor Law. Despite being a legal obligation, the Labor Law, whenever possible, tends to be evaded by capital, as it is an obstacle to the extraction of wealth at work, as it acts as a cost in capitalist production. Precisely because it partially contests the rationality of maximum profit extraction, labor legislation is prone, depending on the circumstances of the concrete situation, to be breached [34].

With the advent of communication platforms, the pattern of precarious work is reproduced now articulated with technology, in particular with the algorithm, wrapped in the (false) discourse of sharing economy. Despite the connection advertisements, involvement with the local community, and shared use (“what’s yours, mine”), platform company models such as Uber and Airbnb have been business and economic success stories precisely because it is located in a field of unregulated activity. Tom Sleep synthesizes: Start with informal exchanges (giving a friend a ride, borrowing a drill, running errands for the neighbor) and use the connecting power of the internet to scale it up so that we as individuals can rely more and more on each other. and less with distant, faceless corporations. Each exchange helps someone to make a little money and helps someone to save a little time: how not to like it? By participating in this movement, we help build our community, instead of being passive and materialistic consumers [35].

The Uber platform is perhaps the best known in Brazil among the existing digital platforms. One this is an application that involves the individual transport services of people. Thus, Ferrer and Mollica define: UBER is an application that can be downloaded onto smartphones by downloading and consists of a digital platform that allows users –consumers–to contract individual transport services for people directly with providers, which would be drivers [36].

It is part of a model called two-sided-markets or multi-sided platforms, in which it allows for the interaction of two distinct groups that seek to carry out negotiations. “Without the platform, which aims to link the two sides, this market would possibly not exist. In traditional models, the consumer-supplier relationship is established directly without the need for an intermediary” [37].

Among many controversies about its object, the legal qualification and regulation to which it is subject, the company positions itself as a technology company, which only facilitates contact between drivers and users, while some authorities qualify it as a transport company.

It was through the idea of sharing information that UBER’s business was developed. The company does not have its own vehicle fleet. It manages, through the technology, the contact between drivers and users, both registered in the application. The driver owns the vehicle that will be used for the displacements, not the company. The workers of these platforms are placed, in the formal-contractual prism, in the legal position of autonomous partners. They are considered free to activate or deactivate at the time of their choice, however, because they earn so little, they are always impelled to work as much of the journey as physically possible. Curious that, as self-employed, they do not have autonomy to set the price of their work, refuse clients or even evaluate their partner, the electronic platform.

The factual circumstances of electronic platform workers move away from the classic situation of legal subordination, although it is relatively easy to visualize a supervisory and disciplinary power, in an algorithmic subordination, and reveal a clear condition of hypo-sufficiency, well expressed in low wages and long hours [38].

This precarious situation is further aggravated by the transfer of the risks of the activity to the workers, who are responsible for, in the case of delivery applications, acquisition and maintenance of vehicles, fuel expenses, vehicle taxes, accident insurance, in addition to others, still suffering the risks and economic cost of idleness, as they are available to work and not pay for the time available.

The work by application, in this context of deregulation, is the intensification associated with the technology of precariousness and the evident low-sufficiency of the worker [39]. Therefore, the entire process of precariousness is nothing more than a strategy of capitalism that, without political or legal restraints, returns to the practices of extracting value from human labor, that is, a rescue of absolute surplus value. New forms and renewed discourses for what has always been done, such as the precarious forms of work of pre-capitalism.

It should be reiterated that, in the case of peripheral countries, the issue is aggravated by the precariousness of a historically fragile labor market. In these nations, the wage society was not completed, in order to make the formal wage pattern hegemonic. However, precarious practices of a job market that was already precarious are resumed. In the context of flexibility, informal work presents itself as a functional strategy, together with formal wage earning, to generate value, precisely because it is inserted and coordinated in decentralized production systems [40].

Despite the contemporary legal and symbolic clothing, society remains divided, sociologically, between owners and non-owners of means of production, which does not prevent the identification of an intermediate class. This is because this division is fundamental to the conformation of the labor market and its hidden dependency ties. Now, the worker - that non-owner - continues to sell work and not merchandise, even if he works outside the company’s physical location through telecommuting resources or even if he no longer needs to report daily to a manager or foreman. The degree of determination of the result established by productive decentralization is so intense that at the time it requires a certain product (work) it also implicitly establishes its way of doing it, relegating to the provider some flexibility only in the time of service execution [41].

However, the same flexibility of hours, to a large extent, plays against the worker, since the demand for the quantity of the product/service, normally high, always requires more work, now without having the maximum legal limit of working hours, that is. that the worker himself is his foreman and remuneration for production plays the role of performance inspector. The tonic of economic efficiency orchestrated in flexible accumulation rearranges the forms of service provision in an attempt to reduce the field of formal employment within the main company.

In this precarious agenda, capitalism and its proposal for a minimum Labor Law lose their civilizing effect. By imposing the greatest extraction of wealth without a correspondence of rights and social protection or even minimal protection, classical liberalism removes the worker from the condition of citizen and

subject of rights, including evident damages to the consumer market, which, increasingly, will have less purchasing power [42].

In these terms, Brazilian capitalism has never universalized the wage condition, whether due to the recurring practice of illegal (unregistered) work, the concealment of salaried work (precariousness) or even the exclusion of false self-employed workers (dependent self-employed workers). More than that, one returns to the past even without reaching the present. That is, productive restructuring practices are adopted that erode formal wage earning, which never became hegemonic, weakening what was still being structured.

Conclusion

The option for legal subordination, in its classic sense, represented a reductionist shift in the scope of Labor Law, which, unduly, limited the concept of dependence to the situation of hierarchical subjection.

For this reason, overcoming the Fordist dynamics produced so many difficulties for Labor Law, notably due to the inadequacies of the (Fordist) concept of subordination. In the midst of these problems of legal subordination and aiming to reduce the spectrum of the notion of employee, the Labor Law crisis is structured in the rise of flexibilizing trends—formerly explicit and currently silent—that forge an increasingly liberal operationalization in labor law. Thus, speaking of crisis consists in recognizing the difficulties of dogmatics in, at least, maintaining the protective pattern of Fordism that has been, contemporarily, eroded by the flexibilities of productive restructuring. A counter-hegemonic view of the Labor Law crisis serves as a warning to demonstrate that the path adopted is aimed at dismantling the Fordist past of protection, in favor of a new precariousness and instability.

Regarding work on digital platforms, it was seen that flexibility does not only cover work processes, but the work relationship as a whole, from forms of hiring to forms of remuneration, giving rise to new forms of hiring, such as outsourcing and the temporary employment contract. This flexibility almost always implies a precariousness of labor relations, however, it is believed that this is an irreversible trend. There are no guarantees and no right guaranteed to the worker who starts to receive for what he produces, which generates insecurity and discouragement. However, it is believed that this is a trend that is here to stay. Maybe it's a way to alleviate unemployment, but there is no doubt, in terms of rights, it implies serious setbacks.

References

1. BAUMAN, Zygmunt. *Life for consumption: transforming people into merchandise*. Rio de Janeiro: Zahar, 2008.
2. BRANDOLINO, Enrique Ricardo. *Telework*. In: VARGAS, Luiz Alberto et al. (Coord). *Advances and Possibilities of Labor Law*. São Paulo: LTr, 2005. p. 137-150.
3. CASTELLS, Manuel. *The network society*. São Paulo: Peace and Earth, 2016.
4. CASTEL, Robert. *The metamorphoses of the salary issue: a chronicle of salary*. 6. ed. Petropolis: Voices, 1998.
5. FERRER, Catharina Martinez Heinrich; MOLLICA, Rogerio. *Competition Law and UBER*. *Argumentum Magazine*, Marília-SP, vol. 18, no. 3, p. 779-797, Sept./Dec. 2017. Four-monthly
6. HARARI, Yuval Noah. *Homo Deus: A Brief History of Tomorrow*. São Paulo: Companhia das Letras, 2016.
7. GARDEN, Carla Carrara da Silva. *Telework and its current modalities*. São Paulo: Ltr, 2003.
8. MACEDO, Alexandre Cordeiro. *The UBER case and the possible restrictive practices to competition: collusion or unilateral conduct?* 2018. Available at: <http://www.iiede.com.br/wp-content/uploads/2018/12/SSRN-id3305603.pdf>. Accessed on: Dec. 5, 2020.
9. OLIVEIRA, Murilo Carvalho Sampaio. *Legal Subordination: A Faded Concept*. *Journal of Labor Law*, São Paulo, vol. 126, p. 107-138, 2007.
10. OLIVEIRA, Murilo Carvalho Sampaio. *(Re)Thinking the Principle of Protection in Contemporary*. São Paulo: LTr, 2009.
11. OLIVEIRA, Murilo Carvalho Sampaio. *Employment Relationship, Economic Dependence & Legal Subordination: Revisiting the Concepts*. 2. ed. Curitiba: Juruá Editora, 2019.
12. PORTO, Lorena Vasconcelos. *Subordination in the employment contract: a necessary rereading*. São Paulo: LTr, 2009.
13. SANTOS, Osmar de Almeida. *In search of a lost job: the future of work in the technological age*. São Paulo: Textonovo, 1997.
14. SLEE, Tom. *Uberização: The new wave of precarious work*. São Paulo: Elephant, 2017.
15. TEODORO, Maria Cecília Máximo; DAFONSECA, T.C; FERNANDES, M. A. *Disruption, shared economy and the uber phenomenon*. *Revista da Faculdade Mineira de Direito*, vol. 20, p. 1, 2017.
16. VILHENA, Paulo Emílio Ribeiro. *Employment relationship: legal structure and assumptions*. 3. ed. São Paulo: LTr, 2005.
17. WINTER, Vera Regina Loureiro. *Telework: an alternative form of employment*. São Paulo: Ltr, 2005.
18. OLIVEIRA, 2007.
19. OLIVEIRA, 2007.
20. BRANDOLINO; 2005, p. 138
21. PORTO, 2009, p. 88
22. OLIVEIRA, 2019.
23. OLIVEIRA, 2019.
24. Lorena Porto explica a redução conceitual, a qual atribui à parassubordinação: “[...] a criação da parassubordinação propiciou a redução do conceito de subordinação – em sede doutrinária e jurisprudencial –, por meio da sua regressão à noção tradicional, o que o identifica à forte heterodireção patronal da prestação laborativa, em seus diversos aspectos. Trabalhadores tradicionalmente – e pacificamente – enquadrados como empregados passaram a ser considerados parassubordinados, sendo, assim, privados de direitos e garantias” (PORTO, 2009, p. 103).
25. “A parassubordinação, desse modo, exerce uma função de evitar, criando um obstáculo teórico, que o Direito do Trabalho atinja por completo os novos modos que o capital encontra para explorar o trabalho” (SOUTO MAIOR, 2010, p. 14).
26. OLIVEIRA, 2019.
27. PORTO, 2009, p. 199
28. PORTO, 2009, p. 199
29. PORTO, 2009, p. 199
30. CASTEL, 1998, p. 284
31. CASTEL, 1998, p. 286
32. Jorge Luiz Souto Maior indica como o “gato” torna-se “empresário”: “As experiências de formação das empresas de prestação de serviços, no Brasil, demonstram que aquela pessoa que antes se identificava como o ‘gato’, aquele que angariava trabalhadores para outras empresas (tática que inviabilizava o adimplemento dos créditos trabalhistas, pela dificuldade de identificação do real empregador, reforçado pela ausência de idoneidade econômica do ‘gato’), foi, como um passe de mágica, transformada em ‘empresário’, titular de

- empresas de prestação de serviços. Legalizou-se a prática, mas não se alterou o seu efeito principal: o dismantelamento da ordem jurídica protetiva do trabalhador” (SOUTO MAIOR, 2008, p. 145).
33. OLIVEIRA, 2019.
34. Demonstrando a política de sonegação e ilegalidade, Marx registra as ocorrências de fraude nos registros de horário na Inglaterra já em 1845, que, no intento do aumento da mais-valia, não se computavam na jornada de trabalho diversos minutos trabalhados. (MARX, 2006, p. 281).
35. SLEE, 2017, p. 22.
36. FERRER; MOLICA, 2017, p. 780.
37. FERRER; MOLICA, 2017, p. 780.
38. TEODORO et al., 2017.
39. No conhecido caso da decisão inglesa que reconheceu o vínculo empregatício dos motoristas da Uber, o traço da dependência econômica foi de considerável importância para essa conclusão. José Amado enuncia: “No caso em apreço, aplicando o referido teste, o tribunal não teve dúvidas de que os motoristas da Uber eram workers e não genuínos independent contractors. Eles estão, em relação à Uber, numa situação de subordinação ou, ao menos, de ‘parasubordinação’, prestando trabalho para esta empresa numa posição de acentuada dependência econômica. Trata-se, na ‘parassubordinação’, de um fenômeno difuso, algo híbrido - marcado pelas notas da autonomia jurídica e da dependência econômica - e de fronteiras mal definidas, ao qual o direito positivo português dá também guarida [...]” (SLEE, 2017, p. 347).
40. SLEE, 2017.
41. OLIVEIRA, 2019.
42. OLIVEIRA, 2019.

Copyright: ©2021 Tricia Bogossian. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.