About the Manifesto for Sustainable Labor Law. Bruno Caruso, Riccardo del Punta and Tiziano Treu.

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Labor Law: debates on the future.

Labor law today is characterized as a branch of the legal system that is projected on a scenario of globalization of labor relations in which multinational companies have ceased to be just an employer to be an actor of first political level and in which the movement of people and their regulation are one of the biggest challenges, not only for the implementation of freedom of movement but, above all, from the right of dignity of persons. The evolution of the labor relations system makes up an organizing system with hard and soft law norms or rules, as well as hybrid regulatory instruments - including the manifestations of corporate social responsibility - which are generated at the transnational, national and local levels, offer a very complex panorama when it comes to composing the system of sources. The segmentation of markets, of subjects - companies and workers - as well as of rights and working conditions means that the object of regulation must be carefully delineated. In addition, the composition of individual and collective labor law is a richness for our discipline, but also the interrelation between both levels requires a very elaborate legal analysis.

The Manifesto of Professors Caruso, Del Punta and Treu presents a reflection on the current debates of Labor Law from a methodology of questions and answers that try to offer lines of action from the critique of law (Supiot, A., 1994). It is a valuable contribution that forces us to reflect on our discipline from a diachronic perspective that is projected to the future of sustainability from the contexts, the principles, the management system and the objectives of labor law on an initial premise that, in my opinion, situates the whole Manifesto and that is that "labor law is a fundamental and inalienable conquest of liberal democracies" especially at a time when we are facing

a "crisis of democratic capitalism" (Streeck, W., 2011). The conversation encouraged by this text is of great interest to labor law scholars because it brings together debates that cut across the models of labor relations in comparative law (Bogg, A., Costello, C and Davies, ACL, 2016 and Finkin, MW and Mundlak, G., 2017).

The approach with which the development of the values of labor law is formulated is presented from the dichotomy change or disappearance from what has been called the boundaries and functions of labor law (Davidov, G. and Langille, B., 2006; Fudge, J., McCristal, S. and Sankaran, K., 2012). In this context the definition of our discipline, as made in the Manifesto, as a key piece of democratic systems I believe is very relevant. The contribution that labor law makes to plurality and the commitment that both collective and individual law make to the fight against inequality are very valuable both in democratic societies and in those that aspire to be democratic and in which the construction of certain levels of social rights is key (Locke, RM. 2013). In this sense, I share the analysis of labor law from the perspective of democratic institutions. Two formulations emerge from this premise, in my opinion, the first, the demand for a definition or delimitation of a labor law that is re-cognoscible as a useful instrument for the elimination of inequalities and therefore requires a contractual balance and channels of collective representation of workers (Bogg, A. and Novizt, T. 2014) to advance this goal and secondly, a labor law that, connected with social security models generates mechanisms of agency to the vulnerable subjects of society and redistribution not only of wealth but also of the welfare of all. In this sense, I believe that the authors' presentation of a labor law as a tool for combating inequality and for the deep democratization of societies should be fully shared. The COVI-19 context is maintained in the text, it serves to highlight how the protection of vulnerabilities is articulated from a binomial of labor law and social protection that act as a mechanism for redistribution of wealth, what the authors call the new "map of winners and losers".

The regulation of labor, in my opinion, as the object of our discipline, must be faced from the decoding as the authors manifest the dignity of the person in a total dimension and which reinforces the premise that labor cannot be considered as a commodity, in a valorization of the dignity and philosophical foundations of labor law (Collins, H., Lester, G. and Mantouvalou, V., 2018). This idea connects this debate with a constitutionalized labor law (Dukes, R. 2014) and fundamental labor rights in a multilevel analysis that would integrate both transnational and domestic norms.

This is the framework in which the conversation between labor lawyers and economists should take place, from a perspective in which the labor market is not a goods market and the person is not separable from his or her work, therefore it is essential to de-commodification the multidisciplinary analysis carried out within the framework of the United Nations Decent Work Agenda, with the centrality of the person as the axis. Secondly, in the conversation with the economy that the authors propose and which is fully shareable, I believe that, as with labor law specialist, there is no single economic thought at the economic level, therefore, to collect the diversity of economic thought avoids the reduction in the possibilities that crisis response policies present (Akerlof, G. and Shiller, RJ, 2009). In this line we must defend a conversation between economics and law, but from a conception of the science of mutual respect and plurality. Studies on varieties of capitalism I think are relevant on this point (Thelen, K., 2014) and warn about the different results at the social level of capitalist models but which apply different social policies. One point for example, the precariousness of working conditions not only conditions the lives of the people who suffer it, it is also inefficient at the economic level because it generates higher costs in unemployment, occupational health and judicialization of the systems.

The construction of a labor law that articulates means and forms of protecting vulnerability requires, as the authors do, a synergy with social protection mechanisms that go beyond the boundaries not only of the employment contract but also of the forms of self-employment or self-employment. A point of attention highlighted in the Manifesto in this section is the important change that has taken place in the models of work organization (Stone, V.W. K., 2004). This is, in my opinion, one of the greatest challenges that labor law presents. We are living in a time of technological progress (Adams-Prassl, J. 2019) in which the change of models is characterized by the possibility of immediacy in decision-making, by the complexity of the technological factor and by the coexistence in globalization of Fordism, post-Fordism and organizational models in which the technological factor is the basis of the organization. This coexistence - as an example, in the automobile sector, there are in-line manufacturing and handcrafted and customized manufacturing - entails bearing in mind that there is no single business model, that there is a segmentation of productive organizations that has repercussions on the legal status of employees, which is also characterized by segmentation (Lopez Lopez, J., 2015).

On the other hand, I fully share the authors' approach the analysis of these complexities as opportunities to increase capabilities both at the individual level of workers and at the collective level of trade unions, but I believe that greater attention is required to the inequality and social fragmentation that this situation has generated (Salverda, W., Nolan, B, Checci, D., Marx, I., McKnight, Toth, IG and van de Werfhorst, H, 2014). The concept of solidarity mentioned in this section of the Manifesto I believe raises a relevant debate on the labor law of the future.

Solidarity as a principle and as a way to cut inequalities has been constitutionalized in the Charter of Fundamental Rights of the European Union (Rodotà, S., 2014) which identifies in one of its Chapters the contents to be developed by listing the inscriptions of Solidarity and connecting inclusive solidarity as a path towards material equality (Lopez Lopez, J., 2022). Inscriptions within collective rights- participation, representation, collective bargaining, collective bargaining, information, collective action- of individual right- reconciliation of family and work life, protection against unfair dismissal, working conditions- and social protection. The United Nations in the 2030 Agenda for the transformation of the world integrates solidarity, sustainability and the right to dignity as an integrated whole for the achievement of the objectives.

The role of labor law is linked by the authors to the protection of vulnerable people, the future reading of our discipline goes through the broad notion of sustainability - environmental, social and economic - to be built today, but with results in the medium and long term. From this point starts a reflection in the Manifesto that I think is very relevant to make: the connection between labor law and levels of production and consumption (Kolben, K, 2015).

The Manifesto, within the debates and challenges that are presented to a labor law of the future analyses, within the reflection on the contractual subjects, in the notion of worker and employee, in the connections between work transformation and contractual forms (Freedland, M. 2011). The authors focus on the concept of dependency and their proposal is a hybrid model that transcends the concept of subordination to integrate other forms of autonomous or semi-autonomous employment in the application of social protection and occupational health and safety standards.

In my opinion the analysis of the evolution of the notion of the worker as a subject of labor law cannot be separated from the study of the evolution of the notion of the employer who is the other contractual subject and this is so because what we are

trying to determine is the distribution of risks in society (Prassl, J., 2015). In this sense the complex forms of productive organization have been promoting new forms of employment with a boom in self-employment (Lopez Lopez, J. and Suarez Corujo, B. ed., 2019) and other hybrid forms of para-subordination, but at the same time have redistributed social risks differently and this reality must be kept in mind in the study on contractual subjects in our field. In my opinion, the analysis of forms of employment must integrate the issue of responsibilities and in this sense the notion of employer - not only of the organization of productive systems - imposes itself at the time of making a distribution of responsibilities in accordance with the definition of a labor law balancing power inside the labor contract. There are two questions to be answered: who is the entrepreneur or employer and his responsibilities, and how do we define the notion of employee and his risks. The answers are legal and are to be found in the rules defining the scope of application of both labor law and social security.

The authors of the Manifesto propose that in the management of labor relations, the technology that sets in motion new formulas of production and forms of employment (Adam-Prassl, 2019), which for the authors of the Manifesto must be framed within a collaborative model of enterprise - with reciprocal recognition is maintained - and in which traditional rights are recognized with new rights. The Manifesto defines the function of the new employment contract as one characterizes by participation and collaboration, strongly criticizing the positions that resolve these contradictions, between business and workers' interests, from the ideology of black and white. From this perspective, the authors try to promote, a new company-worker collaboration business which, in my opinion, is difficult to visualize as a way of integrating social conflicts that incorporates fundamental rights such as the right to strike. I believe that the dialectic between collective bargaining and the right to strike is permanent and that workers' representations in the defense of social rights pivot on these two dynamics. The collaborative model is possible in alternative forms of business organization where the distribution of decision-making power is less hierarchical, such as cooperatives. Collective rights must be approached from the recognition of conflicting interests between employers and workers and as mechanisms of counter-power not only in the company but also in society (Lopez López, J. ed. 2019).

Within the system of sources of working conditions, another central theme addressed by the Manifesto refers to the times, places and formulas for regulating the world of work. The authors integrate the norms and instruments of corporate social responsibility, with different balances, as sources for the regulation of working conditions, thus pointing out a very important thematic nucleus for labor law in the current scenario of globalization and multilevel sources of regulation. Labor relations management systems have moved from a hard law system to a system that incorporates soft law and hybrid instruments of corporate social responsibility. These sets establish management rules with different degrees of imperativeness and control by judges. The power of management rules of corporate social responsibility, ranging from the articulation of equality plans to the management of a relevant part of remote working conditions, justifies the importance of taking into account this complexity of subjects and instruments when reading the current system of sources of labor law.

Hard law, soft law and hybrid instruments are related at different levels creating spill over in the regulation of working conditions. An example of this is the Modernization of Labor Law, which led to the regulation of self-employment and its status in the member countries, or the Employment Strategies 2020 on the flexicurity model, which led to significant changes in the regulation of the termination of employment contracts in the member countries.

This complexity is compounded in the construction of the system of sources by collective bargaining at national and transnational levels - such as Framework Agreements - and sometimes in hybrid forms, as in the case of Directives negotiated within the European Union.

An interesting aspect to examine in depth is that, alongside the employment contract, as a contractual form of exchange between work and remuneration, other forms of employment appear in the labor market that are regulated by civil or mercantile norms. These forms of employment, many of them developed on digital platforms, push labor law to expand the boundaries with a digital reading of the classic labor indicators, in many cases the insertion of these groups in the boundaries of labor has been done by judges.

The authors dedicate some thoughts to analyzed how work and working time should be valued and in which they advocate the centralization of the person and not of the organization. Collective bargaining agreements, they argue, should serve to develop the personal capabilities of each worker. This approach is based on the trust

that should govern the relationship between employees and employer within the company. Job evaluation, they maintain, should be based on the fact that work involves the whole person and his or her motivations, that it is a personal relationship and not just a contractual exchange, and that it is a challenge to professional classification systems. The challenge is, in my opinion, how we ensure equality and non-discrimination in the implementation of these systems under this frame.

The model of professional organization, which is maintained by the authors, recognizes a decisive role for training as a social right in terms of professional careers and learning for all. This right to training as an education that goes beyond that reduced to competencies and performance must, according to the authors, have public-private financing. This point, which is linked to the whole employability discourse and which goes into the defense of a concept of training as integral education and not only as employability, I believe it should be shared. It should be shared not only because of the learning needs that new technologies have imposed in the company and in the functioning of society, but also because they are the only way to correct gaps in society by age, gender, educational level, etc.

A point of connection of the debate on training and equality is the systemic discrimination that young people have in the labor market and that is due to the chain of precarious contracts that, among others, involve training contracts that follow internships (Lopez Lopez, J. 2021).

Within the reorganization that the authors defend of the labor relations model, they develop the idea of worker welfare and work environment, connecting it with the notion of sustainability and occupational health and safety policies. They defend the application of these policies not only from the subordination but also from the inclusion of other employees in which the elements of labor determination are either absent or have been made more flexible, and thus recognize rights linked to welfare such as the reconciliation of work and family life and those related to protection against all forms of harassment. The Manifesto calls for a greater role for collective bargaining, especially company collective agreements, in developing these policies and for a remote work model that is integrated into these sustainability policies. Model transitions are defined as an investment in social capital and, once again, the Manifesto calls for the support of both public and private financing.

One aspect of the labor law of the future that is addressed in the text and that I think it is important to dwell on, within the system of sources, is constitutional

construction of fundamental rights, understood from a multilevel view, on the basis of the right to dignity (Dukes, R. 2015). It is interesting to follow the thread of the EU Charter of Fundamental Rights in which the rights of equality and non-discrimination, dignity and the principle of Solidarity form a framework that requires an interpretation of the whole. The worker of the 21st century is not a soldier in the company but a subject with social rights, not being applicable the classic notion of loyalty as a business requirement to the worker is underline in the Manifesto.

Only from the fundamental rights that are based on the dignity of the worker and that justify equality and non-discrimination policies can the challenge of the future of labor law be addressed from the point of view of protection against discrimination from an approach of achieving material equality (Hepple, B. 2001) that eliminates not only discrimination but also the differential gaps.

The fight against discrimination in the legal systems of developed countries has taken a path that is not debatable due to the inclusion and evolution of the notions of protection against direct and indirect discrimination and harassment. The role of judges has also been decisive in the cultural change that has taken place, especially when discrimination is based on gender, although it cannot be argued that not all case law has helped in this advance towards situations of greater equality. Having established this point, what can also be affirmed is that material equality between men and women is far from being achieved, basically because of the gaps or differences that subtly create a network of inequality that nurtures systemic discrimination. It is here where labor law has one of its greatest challenges for the future, the elimination of gaps between men and women through targeted equality policies that break the network that traps inequality and turns it into a system, as is the case with young people. In the implementation of these policies for the elimination of gaps, not only in the labor market but in all areas of society, legal and conventional norms are complemented by instruments such as equality plans, which are decisive in the detection of gaps. The combination of hard and soft law sources with corporate social responsibility policies are the anchor for the elimination not only of discrimination but also of the gap (Esping-Andersen, G. 2009).

It is also important to bear in mind that the progress that has been made in equality and non-discrimination based on gender has not been developed at the same level for other factors of discrimination: race, age or sexual orientation (Fredman, S. 2016). In this sense, gap policies have to occupy, together with the elimination of

discrimination, the agenda of labor law with more forcefulness and be woven on a multiple notion of gap which, as in discrimination, is the one that produces the most perverse effects. Educational, social protection and labor market policies must take these variables into account if we really want to continue within democratic social models in which the connection between the dignity of the person and material equality are the axes of the sustainability of social systems within democratic systems (Lopez Lopez, J. 2022).

In addition to the above, I would emphasize that collective rights are part of the constitutional definition of labor law, understood not only at the national but also at the transnational level, including the fundamental rights proclaimed by the United Nations. Defined as fundamental rights by the ILO, developed in conventions and recommendations and constitutionalized in the EU in the Charter of Fundamental Rights within the principle of Solidarity, the rights to freedom of association, collective bargaining and strike are key to address the democratic future of labor relations models.

One of the challenges facing workers' representation is the need to adapt to the new social realities, the debates on representation and representativeness are addressed in the Manifesto together with collective bargaining underlining the challenge for trade unions to articulate policies that protect the most vulnerable in society. The authors open a map of different models of representation and different levels of effectiveness of collective agreements as well and I would like to add the role of collective action - including strike and judicialization processes - (Lopez Lopez, J. 2015).

The future of labor law, in my opinion, should be analyzed not only from the individual perspective but also from the collective perspective in the interrelationship that actors, processes, institutions, law policies and consequences play in defining not only the model of labor relations but also the model of society. If we take as a reference the right to dignity of persons, its individual ownership is projected on the processes of collective action and has a series of consequences in the policies of law that demonstrate this spill over between the individual and the collective, labor law should not forget this dynamic and that it is in the essence of its definition.

The new forms of representation, of which, for example, the case of the riders is emblematic, with hybrid forms of collective representation that combine the classic ways with other new ones, occur not only in representation but also in collective

action with new dynamics in the territories of negotiation - transnational, national and local - with a complex game of centralization and decentralization of negotiating units together with a dynamic of protest that adds new protagonists and forms to the classic form of strike, such as for example those that are maintained in defense of pensions or public education. (Lopez Lopez, J. and De le Court, A., 2020) These processes are already underway and will undoubtedly be strengthened in complex societies in which segmentation of workers - which occurs at the same time as a greater affectation of the vulnerability of citizens caused by the development of financial capitalism - has demanded from collective action a reconstruction of workers representation forms (Bogg, A. and Novizt, T., 2014).

Another topic that the Manifesto highlights the challenges that social protection faces by connecting pensions with unemployment coverage, especially due to the impact of employment restructuring.

With regard to unemployment coverage, the flexicurity model is defended, which promotes training between jobs and the protection of the system with unemployment coverage. In this sense, this model defends the concept of employability as the key to the future and security based on training and unemployment coverage, and has had different consequences in the countries where it has been applied. The cases of Denmark and Austria have as a counterpoint Spain, the data of good performance in the former of the employment services and not in the latter and the variable of number of unemployed and period of unemployment has helped the former and has made the model fail in the latter of the countries mentioned by a strong impact of flexibility as precariousness (Lopez Lopez, J. De le Court, A. and Canalda Criado, S. 2014).

Regarding retirement pensions the Manifesto starts from the need to review the contributory system because it does not reach young workers or workers who have atypical work. The coverage of periods of inactivity is already being covered by the tax system and they are in favor of a public-private coexistence in the retirement pension system. Pension and health protection funds are mentioned as responses that have been given in the Italian case and that are common with other countries. But these initiatives present problems, especially for small companies.

I believe that the debates on the different levels of protection should be situated as a constitutional debate on the protection of vulnerability and as redistributive policies. The financing systems for the different protected situations of old age,

widowhood and disability should differentiate between the two levels, contributory and welfare, when it comes to structuring the financing systems, employers and workers or with taxes. I believe that unemployment coverage should obey another dynamic, that of the labor market, and therefore guarantee, in this specific situation of lack of protection, benefits that guarantee sufficiency and employability, i.e. that are programmed with training action. The collectability of social protection systems must be based on sufficiency, and in this conversation, between protection and taxes, the key must be redistribution and solidarity, not only between generations. The demographic challenge and the sustainability of the systems must take into consideration more contributors - women - and immigration policies that are more respectful of human rights and more solid contributions and not those generated by precariousness, all of which would also have the effect of reorganizing public pensions.

Labor law must be defined at the corresponding historical moment but any debate on the concept of labor law must start from the premise of the re-cognoscibility of our discipline as an instrument of inclusive solidarity, that is of material equality within the mechanisms that democracy designs with this objective and that cannot be more through a cosmopolitan legal system (Stone, Sweet, A. and Ryan, C. 2018) within what has been called the crisis of democratic capitalism (Streeck, W., 2011) and in which social sustainability will depend on the recognition of the fundamental rights of all.

References.

Akerlof G. and Shiller, RJ., (2009) Animal Spirits, Princeton.

Blackett, A., Trebilcock, A. (ed), (2015), Research Handbook on Transnational Labour Law, Elgard.

Bogg, A., Ford, M. and Novitz, T. (Guest editors), Special Issue on Gig Economy, King's Law Journal, V. 31, Issue 2, 2020.

Bogg, A. and Novitz, T. (2014), Voices of work. Continuity and change in the common law world, OUP.

Bogg, A., Costello, C., and Davies, ACL (ed) (2016), Research Handbook on EU Labour Law, Elgard.

Collins, H., Lester, G. and Mantouvalou, V. (2018) Philosophical Foundations of Labour Law, OUP.

Davidov, G. and Langille, B. (2006), Boundaries and frontiers of Labour Law, Hart.
Dukes, R. (2014), The labour constitution. The enduring idea of labour law. OUP
Esping-Andersen, G. (2009) The incomplete revolution. Adapting to women's new roles.
Finkin, MW., and Mundlak, G., (ed) (2015), Comparative Labour Law, Elgard.
Freedland, M. (2011) 'The Legal Characterization of Personal Work Relations and the Idea of Labour Law' in (ed), *The Idea of Labour Law* OUP.
Freedman, S. Past and futures: EU equality law in Bogg, A. and Novitz, T. Research Handbook on EU Labour Law, 2016, Elgard.
Fudge, J., McCrystal and Sankaran, K. Challeging (ed), (2012) the legal boundaries of work regulation, Hart.
Hepple, B., Equality and empowerment for decent work, International Labour Review, V. 140, n.1, 2001.
Lopez Lopez, J. Pursuing democratic depth in an age of multinational power: the case of platform workers protest in Cornell, A. and Barenberg, M. Handbook Labour and democracy (2022), CUP
Lopez Lopez, J. Formalizing the Segmentation of Workers' Rights: Tensions among Regulatory en Segmentation and the debate on labour laws, Guest editor Lopez Lopez, J., Comparative Labour Law and Policy Journal, V.36, n. 2, Winter, 2015.
Lopez Lopez, J. and De le Court, A. When the Corporate Veil is Lifted: Synergies of Public Labour Institutions and Platform Workers, King'law Journal, V.31, Issue 2, 2020.
Lopez Lopez, J. (2019), (ed), Collective Bargaining and Collective Action. Labour Agency and Governance in the 21st Century?", Hart.
Lopez Lopez, J. and Suarez Corujo, B. (2019) Magazine of the Ministry of Labor number 144.
Lopez Lopez, J. Anti-austerity activism strategies: Combining protest and litigation in Spain (2015) Research Handbook on Transnational Labour Law, edt Blanckett, A. and Trebilcok, A.
Lopez Lopez, J. (2021) Traineeships and systemic discrimination against young workers in Internships, Employability and the Search for Decent Work Experience ed. ILO and Elgard.

Lopez Lopez, J., De le Court, A. and Canalda Criado, S. Breaking the nexus between flexibility and security: flexiprecarity as the Spanish version of the model. European labour law journal, V. 5, num. 1, 2014.
Locke, RM (2013) The promise and limits of private power, promoting labor standards in a global economy, CUP.
Prassl J The concept of the employer, 2015, OUP.
Adams-Prassl, What if Your Boss Was an Algorithm? The Rise of Artificial Intelligence at Work *[2019] 41(1) Comparative Labor Law & Policy Journal 123*
Kolben, Transnational private regulation: consumer - citizenship and the consumer imaginary in Research Handbook on Blackett, A. and Trebilcock, A. (2015) Transnational Labour Law, Elgard.
Rodotá, S. Solidarietá, (2014), UN' Utopia necessaria, editori Laterza.
Salverda, W., Nolan, B., Checchi, D., Marx, I., McKnight, A., Toth, IG. And Werfhorst, H. (2014), Changing inequalities in rich countries. Analytical and comparative perspectives, OUP.
Stone, VWK (2004), From widgets to digits. Employment regulation for the changing workplace, Cambridge University Press.
Stone Sweet A. and Ryan,C. (2018) A cosmopolitan legal order. Kant, Constitutional Justice and the European Convention of Human Rights, OUP.
Streeck, W., The crisis of democratic capitalism, New left Review 71, Sept-Oct, 2011.
Supiot, A. (1994) Critique du droit du travail, Quadrige.
Thelen, K. (2014), Varieties of liberalization and the new politics of social solidarity, Cambridge University Press.