

Keynote Lecture

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Thinking about the 21st century requires reflection on the current problems of social democratic states, their functions and their means of exercise, and the failure of their main function of correcting social inequalities, whose extreme growth throughout the world is notorious as a consequence of the neo-liberal economic agenda, the coronavirus crisis and those that have followed it without yet bringing us back to normality (inflationary, energy, and war due to Russia's invasion of Ukraine). The recovery, which we believed could be tackled after the pandemic outbreak, is being delayed by the new humanitarian and economic difficulties that have arisen and, as we had predicted, it is not a uniform recovery, but one that is uneven across countries and groups of populations and workers.

In 2021, the global economy posted 5.5% growth according to the UN Department of Economic and Social Affairs, which noted its unevenness and marked slowdown by the end of 2021 in major economies with particularly unfavourable effects on emerging and less developed economies and scenarios of declines by 2022 and 2023 due to new waves of COVID-19 infections and uneven vaccination roll-out, persistent labour market challenges, protracted supply chain challenges, rising debt, and growing inflationary pressures. It estimated, however, that by 2023 GDP in developed countries would have recovered to pre-pandemic levels.¹

The World Economic Forum also stressed that a divergent recovery threatens long-term prosperity for all and can lead to polarisation, social fractures and geopolitical tensions that impede collaboration in the face of global challenges.² Not to mention the effects of Russia's invasion of Ukraine.

Thinking about the 21st century, so far the century of inequality, also calls for a reconsideration of the effective validity of fundamental rights, the expression of universal values that defend personal dignity, autonomy and freedom, in the face of the unstoppable advance of technology and science and the emergence of technological giants that operate worldwide, beyond the borders of any one country. The advance of automation, robotisation, artificial intelligence and neuroscience will demand the recognition of new rights. The effects of climate change will increase migration.

It can safely be said that inequality is the biggest problem of our societies. But also of countries' economies and of the global economy, which negatively affects their efficient functioning, their productivity and competitiveness.

From the social point of view, the effects of inequalities are corrosive of social cohesion and political democracies, creating "discriminated minorities" and "discriminated majorities," for whom, unfortunately, there is no other way than social exclusion and poverty, which has increased worldwide, both among the unemployed and the employed, in the post-COVID-19 era. These discriminated majorities are made up, to a

1. *World Economic Situation Prospects*, WESP 2022, 13 January 2022.

2. *The Global Risk Report 2022*, 17th ed., 7, 14.

greater extent, of women, young people, migrants and members of ethnic minorities, workers without training or with training or skills that are inadequate for the far-reaching socio-economic transformations, both current and future, workers with atypical contracts that place them in a considerable legal and social precariousness, and the unemployed.

The “social” market economy requires the special attention of social states in order to be social in a globalised world. However, it cannot be ruled out that the institutions of global governance, the world banks, faced with inflationary pressures and the accumulation of large public deficits and imbalances, will resort to policies of stabilisation and painful fiscal adjustments and will be reluctant to ensure the necessary stimuli to feed the objective of necessary social spending in the face of inequalities and poverty in such far-reaching transitional processes as the digital and climate ones, in which we are immersed. These transitions must be made with social justice, so as to ensure decent work and social protection, which will require associated fiscal policies of a structural nature to ensure these developments in the long term.

Although the macroeconomic debate will be arduous, especially in the face of new economic recessions, the solution must not be a return to the past, to the economic policy of stabilisation of the 2008 financial crisis, which has left its negative effects for more than a decade, deepening social inequalities. Also because the time that has passed, as well as serving as an experience, raises new problems.

Changes do not take place in the realm of the inevitable, driven by an ideology outside politics, but under democratic and social orders and states, which have to deploy their functions in order to prevent the increase of social inequalities, which inevitably lead to social expulsion and poverty.

COVID-19 revealed and accentuated the inadequacy and weaknesses of labour and social security or social protection legislation, i.e. the limitations of the capacity of States and their legislation to determine the living and health conditions of workers and, consequently, the inequalities that exist in the labour market.

The shifting sands of these legislations were diluted in countries with informal work and without social protection networks. The labour legislations of the states of what we can call the “European model” based their crisis governance on flexicurity institutions, on an undeniable return of regulatory imperativeness, on more extensive and better resourced health and social protection systems, and on social dialogue, tripartite agreements and collective bargaining, with varying degrees of intensity and effectiveness.

Labour doctrine from all over the world has agreed that the unusual experience “dramatically aggravated the existing problems” in labour law and the “criticality” of labour lawyers in relation to the normative evolutions followed in previous crises.

The health crisis highlighted the existing protection gaps in labour and social security law in the various countries, and the impossibility of resolving them with exceptional, temporary rules once the crisis has passed.

The task of economic and social recovery must give due importance to the recovery of labour systems, which must undertake structural reforms to address unresolved problems, equip themselves with new regulations and techniques to face future challenges, which are already here, and improve their capacity to adapt to systemic shocks.

Labour rights and social security or social protection are today living “between regulatory reforms.” The pandemic was a transformational event with proven effects of accelerating the “arrival of the future of work.”³ In this sense, the virus has been described as “transformational” or an “accelerator of existing trends.”

The world of labour law doctrine was divided into four irreconcilable blocs in pairs: those who proclaimed that nothing would be as before and those who considered that nothing should be as before versus

3. World Economic Forum (WEF), *The Future of Jobs Report 2020*, 5.

those who were confident that everything would be as before or even maintained that everything should be as before. A sterile doctrinal polemic, in my opinion.

The complete return to “legal normality” in the post-COVID-19 era could not consist of a return to the previous labour rights, a hypothesis that is impossible to fully realise, as that legality has already been partially reformed in many legal systems.

“Nothing would be worse than a return to business as usual,” it has rightly been said, i.e. without correcting the mistakes of the past, or moving towards labour and social protection systems that are commensurate with the complexity of the changes in production, the digital and climate transitions, the demographic transformation, and guaranteeing fair transitions. And without making the correction of social inequalities an essential objective.

Do we need a debate on the re-foundation of labour law, as the President of the French Republic said at the beginning of the pandemic crisis? But it was undoubtedly an excessive proposal, and such proposals are frequent in debates on labour law reforms at truly significant moments in its history. Certainly, the COVID-19 crisis was the deepest and most far-reaching crisis ever experienced, along with the digital transformation, which labour law should have faced long ago and whose effects on work, business models and the organisation of companies are increasingly demanding.

This is not to say that far-reaching legislative reforms are not necessary; they are essential. Nor do I mean that these reforms, which have already begun in all legal systems, do not need to be redirected towards a different social valuation of work and public social security systems, which is also indispensable. To such an extent is the regulatory transformation necessary that simple technical adaptations of existing laws, which are limited to “frequenting the future” by giving them a “green and digital” varnish, will not suffice for the reformist purpose.

The ILO has warned that the recovery will be slow, uncertain and uneven, and of the risk of falling into the mistakes of the past, chronicling, even widening, social inequalities instead of correcting them. The 109th International Labour Conference adopted a Global Call to Action for a people-centred, inclusive, sustainable and resilient response to the COVID-19 crisis.

Equality is the priority value of social states and liberal democracies at this moment in history; their social systems must be prepared to contribute to the “energetic correction” of the social inequalities that the pandemic has exacerbated.

It is true that the European labour law doctrine has not been optimistic about a future of labour law that would embrace the “virtuous legacy” of the pandemic, promoting a new regulatory model that restores the constitutional value of work and its protection in sustainable economic and social development, fearing the rearmament of deregulatory positions.

But the occasion should be conducive to this end. The democratic policy of labour law will require, in a world where inequality is the structural feature, “the ethics and responsibility of enterprises in the creation of material and immaterial wealth and, most especially, in the creation of work”: “the enterprise of the future will be social or it will not be;” “ending hunger, poverty and reducing inequalities is also the task of economic activity.”

Such regulatory action for structural reform must make use of instruments of social dialogue and consultation and collective bargaining. They should provide balanced socio-economic solutions and take care of those most in need. The participation of the social partners in decision-making, and of workers’ representatives in companies on their own choices, will ensure democratic spaces in the governance of companies, beyond a labour law that protects their working conditions to ensure their consumer position and the redistribution function of this law.

Regulatory reforms must take into account the particular dysfunctions of labour markets (women, young people, migrants, unskilled workers...) and the singularities marked by the economic and political-cultural assumptions of each legal system.

Technological change, the introduction of technologies with very high capacities and speed, is and will have such an intense impact on all markets that, without exaggeration, it can be said that it will force a general reform of labour and social security systems. Technological capacity requires investments, also in human capital, to correct digital gaps and prepare workers for the innovation needs of production and business systems.

Digitalisation, the “mobile” technology, is therefore the current and future scenario for labour law, which cannot be ignored by labour law and its actors, even if they are concerned about the employment adjustments it may entail. Workers and their organisations have discovered the beneficial effects of environmentally friendly technological change in improving sustainability, business competitiveness and workers’ living and working conditions. In any case, we cannot close our eyes. Technological change and the green and circular economy have transformed and will transform, with unstoppable force and speed, individual and collective labour relations.

The professional skills and competencies of workers have always been important for their work/employment, their remuneration, their retention and the working and living conditions of workers. They will be essential in the post-COVID-19 era. Their acquisition and renewal must be guided by the principle of equal opportunities in access to education, training and lifelong learning.

Professional skills have taken on a new relevance and require new approaches in the face of the unstoppable revolution in technologies and economic transformations, which have led to the emergence of new markets, new business models and new jobs, which, in addition to being provided in a technological environment, must be compatible with the habitability of the planet, which is not always harmonisable. There are already numerous scientific studies by labour law researchers, analysis centres and economic institutions on the changes in the professional profiles of the workers required in this decade and in the coming ones. They all agree that, in effect, there have been and will continue to be transformations in the demand for workers’ qualifications in the different productive sectors, traditional, with significant changes in jobs that are also traditional, and emerging or innovative, in which new professional profiles have emerged, which are expected to experience notable growth driven by digitalisation, automation, robotics and artificial intelligence and will require new specialised knowledge.

These new approaches are based on the premise that the accelerated economic transformations and the ageing of the population cause a shortage of professional skills. And they take as their starting point not only the need for their increase, but also their continuous adaptation and renewal, forced by the obsolescence of certain workers’ skills and their replacement by new ones, objectively demanded by the jobs, occupations and tasks provided and their organisational models.

The transformations of the economy and society, in particular the Green New Deal and the Digital Compass, promoted by the European Union, are driving a fourth industrial revolution, which, like the previous ones, will have a significant impact on work, the productive structure and professional skills, turning them, in turn, into factors of transformation and future, and on our personal lives and the functioning and guarantees of democratic institutions themselves.

Change is presented as an opportunity, but also as a necessity, so lifelong learning must be a reality.

In this transitional landscape, it is worth noting the statement of the recent study by the McKinsey Global Institute, *The future of work after COVID-19*, dated 18 February 2021, which analyses eight countries with different economic and labour market models: China, France, Germany, India, Japan, Spain, the United

Kingdom, and the United States; these eight countries together account for almost half of the world's population and 62% of GDP. The assertion, which should be striking, is that “the challenge of retraining and redeploying workers into new occupations over the long term” will be “greater than that of adapting to the crisis” of COVID-19 “as it unfolded.”

It is difficult to imagine a greater adaptation challenge, which resulted in millions of sick and dead, and which imposed confinement of people and paralysed economic activity in countries, as well as closing borders.

The Jobs Reset Summit, organised by the World Economic Forum (WEF) in October 2020, estimated that 50% of employed people would need to retrain by 2025, as the adoption of new technologies by the productive fabric increases, with companies consulted by the WEF considering that 44% of employed people would need to be trained in the use of new tools and methodologies.

According to the McKinsey Global Institute, if pre-COVID-19 calculations estimated that, by 2030, automation and robotisation could destroy or substantially transform 4.1 million jobs in Spain (21% of the workforce), post-COVID-19 that risk could reach 4.6 million workers (24%) with medium and low skills and wages in “declining” occupations (retail salespersons, administrative staff and office clerks, packaging and filling machine operators, accounting and auditing clerks, supermarket cashiers, parcel packers and warehouse inventory clerks, access controllers...), while employment would grow in the “declining” occupations (retail salespersons, administrative staff and office clerks, packaging and filling machine operators, accounting and auditing clerks, supermarket cashiers, parcel packers and warehouse inventory clerks, access controllers...), while the employment of professionals in health, personal care and STEM (science, technology, engineering and mathematics), business and law, creative and art management, home entertainment and food retailing, etc., also affected by digitalisation, will grow.

Digitalisation, automation and artificial intelligence require people with the skills of engineers, computer scientists, neuroscientists, programmers, algorithmic bias controllers, experts in communication and social networks, graphic design, renewable energies, energy efficiency and waste treatment; in general, health and pharmaceutical professionals and personal care, digital and environmental ecosystems. With women (3.9 times more affected than men in Spain, France and Germany), the young, the elderly, low-wage workers, those without a university degree and ethnic minority migrants being disproportionately affected by these large-scale forced employment transitions.

According to the McKinsey Global Institute, “almost all of the growth in labour demand could occur in high-wage jobs,” requiring new and more advanced and complex cognitive, technological, emotional and social skills that machines cannot replace, and which will need to be attained either for the first time through curricular studies or through job or career transitions from low- to medium-wage jobs, which is a challenge, as transitions from low- to high-wage occupations have historically been infrequent. Medium jobs may then decline, depending on the country, as they are not compensated for by low growth in low-wage jobs (in the personal care economy, home health aides and personal carers).

What about social security? In the aftermath of the pandemic, a compartmentalised conception of labour law and social security cannot be sustained. All over the world, there are calls for governments to establish social security systems with “components that can act as automatic stabilisers” without the need for “discretionary interventions” or “legislative action” in crisis situations. For many developing countries the creation of a national-state social security system is a challenge.

In the interests of equality, the post-COVID-19 era must address the organisation of unpaid and underpaid personal care work, mostly provided by women, in the family and in care institutions, with a new division of responsibilities between families and States. The commitment of labour law to this work is a commitment

to the goal of achieving gender equality, which will not be possible without substantial progress in the recognition and regulation of care work and its provision by men and women.

The emergence of COVID-19 showed that self-employed work was no less exposed to its effects than subordinate work, as the very fragility of their autonomy exposed these workers directly and unprotected to the turbulence of the market. In all countries, the pandemic has opened up the questioning of the meaning of the binary division of the world of work between salaried work and self-employment, a division that digitalisation has blurred and which, moreover, is not static but dynamic in the career paths of many workers. It is well known, however, that traditional trade unions have resisted their joint regulation within the labour law, considering it a mechanism for escaping from labour law. Is there a labour law without an employer, without a company and without genuine collective rights?

At the same time, the dependence of economies on global supply chains has renewed doctrinal proposals to build a labour law that applies to labour in value chains on the basis of international standards and global framework agreements of the leading business groups in these productive decentralisations, in addition to endowing state laws with standards that demand labour and environmental responsibilities from multinational companies along supply chains beyond their borders.

This brings the debate on the situation between labour law reforms to its final frontier, informal and casual wage work, the ultimate expression of non-standard work, inequality, and injustice, which has grown after the pandemic and places millions of human beings on the margins of all protection and livelihoods, including their health and life. The great challenge of integrating informal, or undeclared, work, as called for by the ILO, requires effective means to achieve it.

Labour law and social security law cannot be detached from the economic and social reality. But in a social and liberal-democratic state governed by the rule of law, it cannot be condemned not to be a political project aimed at guaranteeing the freedom and security of workers, not to exercise its institutional function of compensating for inequality by recognising workers' rights and their collective contractual power. Its political failure is that of the social state, lacking an essential factor of legitimisation of its existence and functions.

The achievement of the fundamental value of equality is an imperative of social states. The social democratic state requires the effective enforcement of people's fundamental rights, especially equality, while guaranteeing freedom, which is the essence of all fundamental rights.

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