

Keynote Lecture

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We must deal with what we could call “the weight of the future” —in addition to the weight of the past—, which made David Lawrence, an English writer of modernity and industrialization, ask: why can’t my future be a mere succession of days? Among other reasons, because this future has already imposed unavoidable challenges to economic and social development, to the lives of people and, specifically, to workers, with digitalization and climate change being unstoppable phenomena of universal impact. Furthermore, the future, which by hypothesis we will not be in, can never be a mere succession of days.

It makes me very happy that you are celebrating the 7th Tokyo Comparative Labor Policy Seminar in Tokyo in person, after four years without being able to do so, and you are doing it with researchers from Asia-Pacific countries for the international comparison on the topic and to build a network among researchers. My most enthusiastic congratulations and my best wishes for success in your work and in the construction of a network of researchers, not only very useful, but necessary for real knowledge of the problems and the consistent proposal of labor policies and standards.

The topic they have chosen for this 7th edition of the seminar could not be more appropriate, since the diversification of jobs and workers, very minor in the past industrial analogue world, is a reality of our days to which we cannot close our eyes, since it calls into question the collective of workers and their common interests, a “class” community that is the origin of the union as a contracting agent, in the theorization of the WEBB spouses in England at the end of the 19th century, and of the industrial company. Traditional Fordist based on the work of the collective of workers and on the hierarchical organization of processes of division of industrial labor to obtain results in production and in the market.

The coordinates of work diversification: time, place, skills, longevity

Work is essential to the human condition; “it is more than making a living,” as the President of the European Commission said in her Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 14 January 2020, entitled *A Strong social Europe for just transitions*, as it offers “social relations and a place in society, as well as opportunities for personal and professional development,” which must be able to be defended by workers’ representatives, unions and other representatives, through dialogue and social agreement, collective bargaining and other techniques of conflictive action. However, this is only the case if the job “has fair and decent working conditions,” if it is a decent job that allows a decent life, which entails “obtaining the necessary support to look for a job, having access to assistance affordable and quality healthcare, decent education and training and affordable housing, as well as being able to pay for essential goods and services, such as water, energy, transport or digital communications.”

The ILO Declaration on Fundamental Principles and Rights at Work and their Follow-up, adopted at the 86th session of its International Conference in 1988 and amended at its 110th session in 2022, grants this fundamental legal status to the rights of freedom of association and freedom of association and the effective recognition of the right to collective bargaining, recognized in two of its eleven “fundamental” agreements, agreement numbers. 87 (1948) and 98 (1949), which bind all States regardless of their ratification.

However, these fundamental rights and agreements, without prejudice to the fact that they continue to be an invaluable guide to face the magnitude of the challenges and changes that are not easy in a present marked by a future that pushes you hastily, are applied today to diverse work realities and profoundly transformed, which call into question the effectiveness of union representation action and collective bargaining and that of the union subject itself in the face of the variety of jobs that refuse to be defined according to their traditional guidelines in force in the last century. The management of technological change, which must involve unions, must favor decent work.

It is said, and rightly so, that work is crossed by time. International institutions specialized in the analysis of labor markets and their legal regulations have agreed that the strategic use of working time in the Covid-19 pandemic contributed to mitigating its effects and promoting economic and social recovery (without prejudice to the incidence of subsequent crises). Currently, the European Union regulates (in its Directive (EU) 2019/1152 of the European Parliament and of the Council, of June 20, 2019, on transparent and predictable working conditions in the European Union) a right to predictability of employment. working time—there is also in the Law of the European Union a traditional instrument of working time, limiting that time to the benefit of “non-working time” —in the face of the uncontrollable growth of atypical jobs (of the atypicality and duality of the work) in which the form of organization of working time and its distribution are subject to patterns that may be determined, or indeterminate, or changeable, by decision of the employer, which, moreover, manifests itself, or may do so, through automated decision-making systems generated by artificial intelligence. Of course, the global transformations of the economy have distanced us from the “expansion of sovereignty” of workers over their own time, an excessive notion that not so long ago, in 2019, was defended by the ILO, its Global Commission for the Future of the Labor, in its report “*Working for a more promising future*” (January, 2019), favored by digitalization and technological change, with the aim of making work time compatible with family care time and making the rights of workers effective. reconciliation of work, family and personal life of working people. What it is about now is to ensure workers, certain atypical workers, numerous in all countries, a minimum predictability of their working time in the face of total uncertainty (in on-call work, in employment contracts 0 hours), which unions would have to avoid through collective bargaining.

The work is crossed by space. The single, traditional workplace has long been broken, replaced by numerous workplaces, unknown workplaces, and “non-work” places, such as virtual companies, which previously did not exist. Remote work, provided technologically (teleworking), agile work, smart work, digital nomads, digital platform workers, global supply chain workers... show a plural reality of jobs and workers, which, as the disappearance of unifying work time reveals a diversity to which unions and collective bargaining are not accustomed, but which they must penetrate if they want to be present in labor relations called for the growth of a previously unknown diversity.

Finally, work is also decisively affected by the adequacy of supply and demand, currently affected by serious imbalances; It has always been, but now the uncertainty, the unpredictability, has decisively extended to the professional qualifications of working people, qualifications that were previously thought to be acquired for a lifetime and today require continuous recycling, lifelong learning. Since the last decades of the last century, the possibility, then the evidence, of replacing the right to the stability of contractual work

life with a new right to mobility in the market and in training had been pointed out. In the new century, few people would have the same job throughout their lives and very few would have it in the same company. The work will not be provided—it is no longer provided—through a single contract, for a single company, during the working life of the worker. But that is not the only question. The point is that the “normality” of working life will experience transitions or changes, not only of tasks or functions, nor only of jobs in the occupation or profession, but of totally different professional occupations, and possibly not just one, but several throughout people’s professional lives, requiring workers affected by the loss of skills to have new rights to continuous training and adaptation of their skills to the changing circumstances of the economy, technology and transition climate change and, where appropriate, social protection rights not only against job losses due to these imbalances, but also against the obsolescence of their professional skills during requalification processes.

The longevity of people, undoubtedly a progress of humanity, science and medicine, produces a shortage of professional skills in economic transition processes as rapid and as decisive as those we are experiencing driven by digitalization and the fight against the destruction of the planet. People’s acquisition of new skills, their opportunities to complete and renew their professional qualifications, have strategic value for their own lives, and for a modern, productive and resource-efficient economy. This is the great issue of our time for unions and collective bargaining, which must deal, with the States, with recognizing and developing the training of adults as a true subjective right.

The effects of digitalization at work; new differences and inequalities

It is known that changes in work, in time, in space and in the skills of workers have accompanied the introduction of new technologies in the workplace since at least the first industrial revolution. It happens that the current technological impact has a greater and more intense capacity to affect work, in continuous acceleration. Automation, robotization, artificial intelligence, industry 4.0 on the way to communication and industry 5.0, create totally new qualifications, functions or tasks, jobs and jobs, new times and places to provide them, in permanent transformation, and destroy others. old, within the trend of decreasing human work in developed economies detected by all the projections about the future of work.

In its Report, already from 2016, on “*The future of employment: employment, skills and workforce strategy for the fourth industrial revolution*”, the World Economic Forum, which attributed the forecast to a “popular estimate”, considered that 65 % of girls and boys studying primary education in 2015 would work in jobs that did not exist at that time, which highlighted the need, in a context of great uncertainty, for a high capacity to adapt educational systems to demands required by the global technological transformation and creative jobs that machines could not replace, and, at the same time, by a greater need for personal services, which the educational policies of the States had to facilitate and seek.

The WEF, in its *Global Risks Report 2024*, published on January 10, has highlighted that climate change, demographic changes, technological acceleration, and geopolitical transformation are the dynamic “structural forces” that are undermining global stability. In the long term, developmental progress and living standards are at risk. Economic, environmental and technological trends are likely to reinforce existing challenges around labor and social mobility, hindering people’s opportunities to obtain relevant skills for the digital world and, consequently, income and therefore, the ability to improve their economic situation (Chapter 2.5: End of development?). Lack of economic opportunity is one of the top 10 risks identified by respondents over the two-year period. The narrowing of individual paths to stability in livelihoods and work also affects human rights development, from poverty reduction to access to education and health care, and, of course, to rights to freedom of association and collective bargaining.

Already in its 2018 report—*The Future of Jobs*—, the WEF had predicted that technological advances—ubiquitous high-speed mobile internet, artificial intelligence, widespread adoption of big data analysis and cloud technology, internet of things and new energy technologies to move towards a greener global economy—would mean the loss of 75 million jobs, particularly routine and repetitive manual and cognitive jobs, and 50 million emerging jobs would be created, with growth in remote work (data analysts and scientists, software and application developers, specialists in e-commerce and social networks and in ‘human’ skills, such as creativity, originality, initiative, critical thinking, persuasion, negotiation, attention to detail, resilience, flexibility and complex problem solving), and that the average change would affect 42% of the job skills required in the period 2018-2022.

In the surveys carried out, employers expressed their option for requalifying only workers with high-value functions, with key, front-line, or high-performance functions, as a way of strengthening the strategic capacity of their companies, and in a proportion much lower, 33%, to serve workers at risk of skills obsolescence due to the impact of their jobs due to technological disruption. The WEF concluded in 2018 that those who needed it most were less likely to receive new training, while noting that the skills gap could hinder the incorporation of new technologies and business growth.

The McKinsey Global Institute had estimated between 400 and 800 million people who would be displaced from their jobs in 2030 due to automation, with the effects of unemployment and social inequality (*Technology, jobs, and the future of work*, May 24, 2017).

The subsequent McKinsey Global Institute report, *The future of work after COVID-19*, dated February 18, 2021, stated that “the challenge of retraining and repositioning workers in new occupations in the long term” would be “greater than that of adapting to the crisis” of Covid-19, “as it developed”. It analyzed eight countries with diverse economic and labor market models: China, France, Germany, India, Japan, Spain, the United Kingdom, and the United States; Those eight countries, together, represented almost half of the world’s population and 62% of GDP. The possibility of professional transitions would have increased considerably due to and after Covid-19: by 12% on average and by up to 25% in some advanced economies compared to the situation before the pandemic, affecting occupational changes to more than 100 million workers who are difficult to retrain in the eight countries by 2030.

Progressively complex automation, robotics and artificial intelligence would demand people with training in engineering, computer science, neuroscience, programming, control of algorithmic biases, expertise in communication and social networks, graphic design, renewable energies, energy efficiency and waste treatment; in general, health and pharmaceutical and personal care professionals, and digital and environmental ecosystems, and people with social and emotional skills. In its quantification planned for 2030, 500,000 more jobs with high salaries would be created, and 700,000 more jobs with medium salaries and 100,000 more jobs with low salaries would be destroyed. With these large-scale forced employment transitions disproportionately affecting women (3.9 times higher than for men in Spain, France and Germany), young people, the elderly, low-wage workers, people without university degrees and immigrants belonging to ethnic minorities.

For the IMF, in its Discussion Note on “*Artificial Intelligence and the Future of Work*”, from January 2024, artificial intelligence, “a broad spectrum of technologies designed to allow machines to perceive, interpret, act and learn with the intention to emulate human cognitive abilities” is “called to profoundly change the world economy as a new industrial revolution.” The IMF has questioned, in that Note, the generalized estimate that in high-quality jobs, with creative and non-routine skills, the substitution effect of robotics and artificial intelligence would be lower, and the complementation effect would prevail. As the IMF now predicts, almost 40% of global employment would be exposed to artificial intelligence, with the

exposure rate in advanced economies being higher, around 60%, due to “the prevalence of jobs oriented to cognitive tasks”, although these economies are better prepared to benefit from artificial intelligence than emerging market and developing economies. The effects of artificial intelligence on employment are uncertain, as it can increase work productivity, while threatening to replace people in some jobs and complement them in others, causing greater income inequality between workers and countries. Only in the hypothesis of relevant increases in productivity, these increases could translate into greater growth and higher incomes for the majority of workers. The adoption of artificial intelligence could boost total income if it significantly complements human work in certain occupations with productivity gains. In this scenario, greater employment associated with artificial intelligence could offset its substitutive effect on human labor with an increase in labor income in the distribution of income and wealth through redistributive and fiscal policies.

The IMF insists on occupational displacements. Workers with university education are better prepared to move from jobs at risk of displacement to jobs with high complementarity, while workers without post-secondary education have reduced mobility. Younger workers who are adaptable and familiar with new technologies will also be better able to take advantage of new opportunities. On the other hand, older workers may be more vulnerable to the transformation of artificial intelligence and encounter difficulties in their recycling and reemployment, technological adaptation and training in new job skills.

Nobody is sure that the forecasts of the cited reports will be fulfilled. However, not addressing them and not contemplating a diverse and absolutely transformed reality of work, and with future forecasts of greater transformation, would be to close one’s eyes to reality and encourage false illusions or ignorance, results absolutely incompatible with scientific research. The problems that concern us as specialists in labor relations. The ILO also warned, in 2023, that the evolution of the world of work, also driven by digitalization and the growing needs of the assistance or care economy, is altering the demand for professional skills in companies, which will give “It leads to an inadequacy of competencies, if these are not reinforced through the educational system and lifelong learning.” For all economies, social safety nets and the retraining of workers susceptible to adapting to digital and climate change are crucial to ensure their social inclusion.

In short, the transformations of the economy and society, specifically the double green transition (Green New Deal) and digital (Digital Compass), will significantly impact work, the productive structure, the organization of companies, professional skills, converting them, in turn, into factors of transformation and the future, on our personal lives and the functioning and guarantees of the democratic institutions themselves.

The transformations in the functions of unions and collective bargaining in light of the diversification of work. The social justice of digital and environmental transitions and social dialogue

There is no doubt that the scenario of action of unions and collective bargaining has become enormously difficult, making them lose footing in their tasks of representation and defense of collective interests defined by their equal impact on the workers of a country, sector or company, which unions have been carrying out in different countries at least since the beginning of the 20th century.

Not only has the basis of representation changed, the human prototype on which the union subject was built has diversified and its old uniformity has been replaced by different workers (women, young people, older people, immigrants, highly qualified, unskilled, typical or atypical, unemployed, discouraged and other vulnerable groups...) and progressively diverse, unequal interests, of which it is increasingly difficult for unions to synthesize. It also happens that the time—the typical employment contracts for an indefinite period and with fixed hours—and the place—the factories or manufactures and the companies, that is, the

workplaces—of the representation of the unions have blurred, being replaced by varied times and places, which relocate the functions of union representation.

The management of work by a corporate management power, delegated on numerous occasions but previously identified or identifiable, has been combined or replaced by an algorithmic management of work, supposedly objective and even supposedly removed from human intervention, supposedly devoid of arbitrary biases and fair, and, as such, does not require the control of the unions, which are denied due information and transparency regarding the use of algorithms in making hiring, management, modification of working conditions, and termination decisions. contractual (dismissals). A kind of new divine justice against which there would be no room for any type of human defense.

The very representation capacity of unions, even in legal systems in which their affiliated entity of workers is not decisive in recognizing their status as social partner or subject of collective bargaining, is difficult to exercise in new forms of business. and work characterized by the individuality of jobs and workers, by new jobs and workers. How to represent workers who, in the field of digital platforms, provide services isolated from each other, remote workers, digital nomads or those who work in the closed areas of domestic and personal care? The European Union has just approved a *Directive on work on digital platforms* with the dual purpose of improving the working conditions of workers and regulating the algorithmic management of work. The European Union states that there were more than 28 million people working on digital platforms throughout the EU in 2022, setting its growth at 43 million workers by 2025; workers who carry out varied tasks, both on-site and remotely, such as delivery, translation, data entry, childcare, care for the elderly or taxi driving, for many constituting a second task.

Should unions resign themselves to remaining a residual figure in industrial and service companies with staff identified by the typical nature of their contract and work? Furthermore, should they be considered as institutions of the industrial past after having experienced the great change in the 1960s from the contractual union to the political union and the political function of collective bargaining being theorized? (A. Flanders, “*Collective Bargaining—A Theoretical Analysis*,” 1968).

The continuous transformations of unionism, a space of not definitively defined components, must take place once again to embrace the force of digital change, which is absolute. Failure to address demands for change could exacerbate social tensions and lead to growing bifurcation, greater inequality, between workers and wages. Unions need to understand that a well-trained workforce equipped with the skills to adopt automation, robotization and artificial intelligence technologies will ensure that our economies enjoy greater productivity growth and that the talents of all workers are harnessed. The lack of training offered to workers and social dialogue with unions, combined with low salaries and low productivity, do not favor business innovation, nor the creation and retention of talent.

Unions must move towards what is called long-term representation, transversal representation, without detriment to specialized attention to certain professions and jobs that require it, specialization with foreseeable growth in innovative occupations arising from digitalization.

For its part, collective bargaining, as a privileged instrument of union action, must be enriched with new contents and functions and combine in a more complex way than in the past its approach to companies as areas of negotiation and to the sectors, essential in the individualized work, and with greater development at the intersectoral level, necessary to face the inevitable digital, climatic and demographic transitions, whose impact on human work is, as has been expressed in broad strokes in these brief lines, of great magnitude.

The European Union and the ILO insist that transitions must be carried out with social justice, a notion whose variations occupy an inexhaustible literature. The term “just transition” is a contribution from North American unions in the 1990s to demand the need for a support system aimed at workers unemployed by

environmental protection policies. The concept was accepted internationally by governments in different areas and by international organizations.

The European Union has been pointing out, since before the pandemic, and in its most recent economic governance documents, that the application of the pillar of social rights and solid social dialogue between business and union organizations and effective at different levels, from elaboration of European and state policies down to the business level, is a condition of social justice of these transformations. A just transition implies, according to the ILO, which approved in 2016 Policy Guidelines for a just transition towards environmentally sustainable economies and societies for all, maximizing the social and economic opportunities of digitalization or climate action, while minimizing and challenges are carefully managed, through effective social dialogue between all affected groups and respect for fundamental labor principles and rights, including those of freedom of association and collective bargaining.

Digital and energy transitions require collaboration with unions, although only 23% of the companies surveyed would opt for unions as collaborators in the transition processes, according to the WEF, 2018. With companies, which are the best As they know what is needed in their industrial ecosystems, unions and individual workers need to seek a deeper understanding of the new labor market and be prepared to take a proactive stance in the face of ongoing changes.

I reiterate that it has been and will always be a privilege for me to share with the JILPT the excitement of holding its annual comparative law seminar with a result that is always beneficial for everyone, based on the excellence of its project, a conscious project of distancing of mediocrity and the search for excellence, inserted in a progressively open and interdependent world that, therefore, needs to be compared through rigorous analysis.

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