



THE SOCIAL VULNERABILITY OF THE PLATFORM WORKER FACING THE COVID-19 PANDEMIC: A NEW READING OF WORKING RELATIONS FROM THE PRECARIAT CONCEPT

Tiago Seixas Themudo¹
Álison José Maia Melo²
Ana Virgínia Porto de Freitas³

ABSTRACT

This article discusses the worsening of the vulnerability of workers inserted into the economy of digital platforms during the pandemic. It is investigated the impacts of the pandemic on the fundamental rights of these workers, discussing the challenges of law in the face of the virtualization of labor relations, based on the concepts of vulnerability and social disaffiliation found in Robert Castel. It starts from a critical view of law, using a transdisciplinary approach, through a deductive methodology of qualitative nature, from a bibliographic review of foreign and domestic literature. It concludes that the COVID-19 pandemic has shown that work in the 21st century faces a structural challenge, due to the intensification of the precariat, placing the mission of union organizations to reorganize their mechanisms of action.

Keywords: Pandemic, Platform Work, Social Vulnerability.

MOLDANDO A LEGISLAÇÃO ANTIMONOPÓLIO? O LOBBY DAS ELITES EMPRESARIAIS NO BRASIL

RESUMO

Discute-se neste artigo o agravamento da vulnerabilidade do trabalhador inserido na economia de plataformas digitais durante a pandemia. Investiga-se os impactos da pandemia sobre os direitos fundamentais desses trabalhadores, discutindo-se os desafios do Direito diante da virtualização das relações de trabalho, com aporte nos conceitos de vulnerabilidade e desfiliação social encontrados em Robert Castel. Parte-se de uma visão crítica do direito, utilizando-se de

¹Graduação em Ciências Sociais pela Universidade Federal do Ceará, mestrado em Psicologia (Psicologia Clínica) pela Pontifícia Universidade Católica de São Paulo e doutorado em Sociologia pela Universidade Federal do Ceará (2004). Atualmente é professor em tempo integral do CENTRO UNIVERSITÁRIO 7 DE SETEMBRO. Professor do Programa de Pós-Graduação em Direito Privado e Relações Sociais; titular da disciplina de Antropologia Jurídica à luz do Direito Privado. Coordenador do grupo de Pesquisa em Teorias do Desenvolvimento e Direito Privado.

²Doutor em Direito pela Universidade Federal do Ceará (UFC). Professor Permanente do Programa de Pós-Graduação em Direito do Centro Universitário 7 de Setembro (UNI7). Professor Titular de Direito Empresarial do Centro Universitário 7 de Setembro (UNI7). Editor da Revista da Faculdade de Direito da UFC, da Revista Jurídica da FA7 e da Revista da Procuradoria-Geral do Município de Fortaleza. Avaliador ad-hoc do INEP. Servidor público. Advogado.

³Possui graduação em Direito pela Universidade Federal do Ceará (1993) e especialização em Direito Processual Civil (UECE) e Direito do Trabalho (UVA). Mestre em Direito Privado, pelo Centro Universitário 7 de Setembro. Doutoranda em Direito do Trabalho pela PUC-SP. Atualmente é advogada do Sindicato dos Trabalhadores em Empresas do Ramo Financeiro no Estado do Ceará - SINTRAFI e professora do Centro Universitário Farias Brito e da Faculdade de Ciências e Tecnologias do Nordeste - FACINE.

uma abordagem transdisciplinar, por uma metodologia dedutiva de caráter qualitativo, a partir de revisão bibliográfica de literatura estrangeira e nacional. Conclui-se que a pandemia da COVID-19 evidenciou que o trabalho no século XXI passa por um desafio estrutural, pela intensificação do precariado, colocando para as organizações sindicais a missão de reorganizarem seus mecanismos de ação.

Palavras-chave: Pandemia. Trabalho PLATFORMizado. Vulnerabilidade Social.

INTRODUCTION

The globalized world was challenged in the XXI century, with humanity facing a new obstacle: the fast spread of a virus that, due to its specific characteristics regarding contamination speed, incubation period and intensity of symptoms, fit into the pandemic concept. The *Coronavirus Disease 2019*, more known as Coronavirus or COVID-19, set a great challenge for the international scientific Community, for the States and communities under several aspects. One of these aspects, which is certainly at the top of the list, is the social distancing policy, adopted by most governments, with the United Nations support.

Social isolation, aside from the impacts in family relations, generated significant economic effects in the market, most importantly in the work relations, which had to be reinvented due to the vulnerability conditions to which workers are submitted to. Without intending to conform all diverse forms of urban work, it can be affirmed that the pandemic crisis created a working market with four corners.

There are people, on one of the corners, that can work in remote regime. Teleworking in this period of social isolation appears not only as a possibility of health assurance, but also to avoid dismissals and reduction in business finances. COVID-19 worked as a catalyzer for the insertion processes of different businesses and activities in virtual reality, also reaching the public sector with promising results in some cases.

The population in the second corner is composed by workers that, due to the essentiality of their activities, could not have access to telework and still are at their workplaces, such as the health professionals, public transportation, energy, and communication area, among others. On these two corners, some levels of institutional protection in labor activity are verified, despite the explicit threats that the speech about economic crisis affects workers.

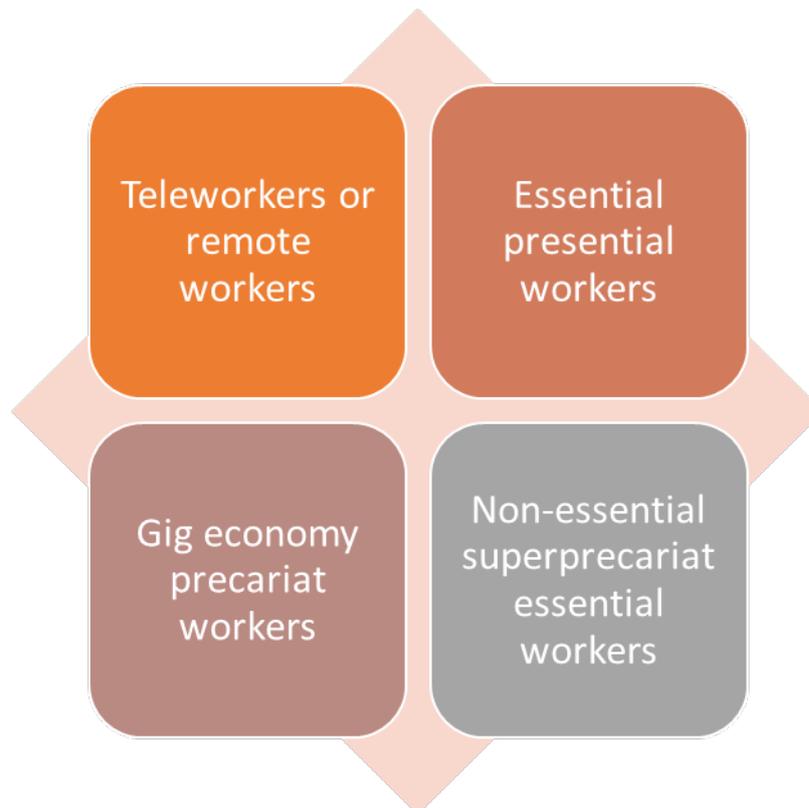
On the third corner are the precariat workers, inserted in the new forms of platform work, outsourced and exposed to social and environmental risks, increased by the pandemic and the lack of protective public policies compatible to the economic retraction context. Concerning this group, the work relation is put at highlight/eminnence with the proliferation of different labor organization forms.

On the fourth and last corner it is verified the essence of super-precariat people removed from work and the possibility of any income such as artists, workers with reduced qualification and the ones with no access to technology for platform work. It is important to consider the case of the automakers' industrial sector, which is one of

the great economic pillars of the country and generator of a significant number of direct and indirect jobs, considering the entire economic chain of parts and dealers⁴.

In the same scope are the small businesses, which are responsible for a major part of job generation, many of them in the presential sales sector. In this same group there are those without access to technology adapted to platform work. Figure 1 summarizes this quarticity:

Figure 1 – Workers impacted by the pandemic effects scheme



Last one: Non-essential super precariat essential workers

On the upper side are the workers that did not have high precariat impacts in their jobs. In the lower side are the precariat workers due to the social isolation effects. On the right side, presential workers. On the left side, remote workers (or susceptible to virtualization) or app dependent.

In Brazil, just like in other parts of the world, the pandemic exhibits the adverse social consequences due to the inexistence of an effective institutional system for protection and for smooth social risks.

There is now a reflection about the labor world in the pandemic context, when several tensions are consolidated before the new work forms that dismantle formatted

⁴ Ewing, Jack. A pandemia mudará para sempre o setor automotivo. *Estadão*, São Paulo, Economia & Negócios, 14 maio 2020. Available at: <https://economia.estadao.com.br/noticias/geral,a-pandemia-mudara-para-sempre-o-setor-automotivo,70003302590>. Accessed at: 15 sept. 2020.

and regulated labor work standards of the last two centuries. For the purposes of this study, from a methodological point of view, this is the so-called platform or on-demand work, a result of the gig economy. Gig economy is the terminology which is indicated to refer to a kind of labor activity characterized (1) by the independent or temporary nature regarding the employer and (2) by the supplementary or secondary purpose concerning other activities and from the financial point of view.

Platform workers were determinant for the essential services to society during the pandemic but at the same time remained unseen for public policies⁵.

These workers are in the center of a problematic that can be affirmed as one of the main characteristics of the current crisis, the lack of a consolidated institutional system to promote the social protection of these workers⁶.

The advance in the adherence of unemployed people to platform work deposits the existence of a social portion that receives and assumes all the risks involved in the work process, which increases their social vulnerability and reduces their capacity to reflect and act about reality.

The iFood platform had an exponential growth in the registration of new employees. In March 2020, 175.000 new workers joined the platform when compared to the number in February⁷. At the same time, the income of registered drivers at Uber had a significant reduction impact on its demand⁸.

Therefore, due to social isolation to contain the pandemic, part of the platform workers was submitted to explicit risks, despite the social security standards destined to this category, while others subsisted without income perception. The emerging tensions of new work forms were inflated by the pandemic, expressing a concerning vulnerability level of these workers in the face of social rights' inefficiency.

It is sought to investigate the pandemic impacts upon platform worker's fundamental rights and discuss which challenges are imposed to Law by bonding virtualization in work relations for the implementation of work's social value and human dignity, as constitutional vectors.

From a Law's critical view, aside from the complaints about contradictions inherent to the capitalist society that uses law to maintain privilege structures, which understands law implementation as a space of struggle and as a possible autonomy creation instrument for individuals and of society emancipation⁹. Through these struggles and

⁵ Bonis, Gabriel. Pandemia precariza ainda mais o trabalho de entregadores de aplicativos. **Deutsche Welle**, Bonn, Notícias, Economia, 10 jul. 2020. Available at: <https://p.dw.com/p/3f5Rd>. Accessed at: 8 dec. 2020.

⁶ Uchoa, Flávia Manuela. Saúde do trabalhador e o aprofundamento da uberização do trabalho em tempos de pandemia. **Rev. bras. saúde ocup.**, São Paulo, v. 45, n. 22, 2020. Available at: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0303-76572020000101501&lng=pt&nrm=iso. Accessed at: 8 dec. 2020.

⁷ Mello, Gabriela. Candidatos a entregador do iFood mais que dobram após coronavírus. **Reuters**, São Paulo, Notícias de Tecnologia, 1 abr. 2020. Available at: <https://br.reuters.com/article/idBRKBN21J6N4-OBRIN>. Accessed at: 8 dec. 2020.

⁸ Braun, Daniela. Uber viaja 80% menos devido à crise. **Valor Econômico**, São Paulo, Empresas, 7 out. 2020. Available at: <https://valor.globo.com/empresas/noticia/2020/10/07/uber-viaja-80-menos-devido-a-crise.ghtml>. Accessed at: 8 dec. 2020.

⁹ Coelho, Luiz Fernando. **Teoria crítica do direito**. 5ª ed. Curitiba: Bonijuris, 2019.

the doctrinal support around them, it will be possible to envision innovative and proper juridical solutions to attend current needs.

Consequently, a transdisciplinary approach is used, and the study follows a deductive methodology of qualitative character, having as input the bibliographic review of foreign and national literature.

In the first part, it is exposed the platform work context, from the precariat concept. On the second one, it is discussed the social vulnerability issue implemented in contemporary society by the metamorphosis of the labor world, aggravated during the pandemic due to the COVID-19 spread. At last, the impacts of platform workers' social vulnerability on their fundamental rights are analyzed, as well as the consequent juridical challenges for this scenario's confrontation.

1. THE PLATFORM WORKER AND THE PRECARIAT AFFIRMATION

The XXI century is highlighted, when compared to the previous century, by the evolution of techniques used in the development of daily activities, techniques based mainly on technological advances. With accessibility expansion, technology began an important rupture in forms of organizing activities and models in social relations¹⁰.

It is a habit to designate this platform work model as a disruptive process, or as a technological improvement process that promotes innovations which represent a break from the ancient production models without a continuous and comfortable transition¹¹.

A new standard is created in the market, and consequently, in consumption and labor relations¹². Work forms have been going through a deep restructuring, such as it occurred in the industrial revolution, as well as from the phenomenon brought by Taylorism and Fordism. Therefore, the gig economy (or freelance) practiced with shared economy is also denominated as activity on demand.

It is a form of labor, structured by the use of people's service who have temporary occupations, or perform their tasks without a formal contract to a service taker, or also formally bind themselves as partners or collaborators, receiving the consideration for the work in a fluctuating manner, according to the demand¹³.

Service provision is established on an individualized, temporary, and autonomous basis in face of digital platforms that are fed by countless unemployed or underemployed workers. This scenario of labor market flexibility gains relevance in the context of the speed and competence required by the digital age¹⁴.

This model of labor work use is instrumentalized by the management of digital platforms that register and organize the distribution of these services based on customer demand. These platforms are developed and maintained by companies that call

¹⁰ AGUIAR, Antônio Carlos. Eu, o robô e o trabalho em mutação: antes, agora e depois. In: _____. **Direito do trabalho 2.0: digital e disruptivo**. São Paulo, SP: LTr, 2018. p. 67-104.

¹¹ Aguiar, Antônio Carlos op. cit. p. 82.

¹² Slee, Tom. **Uberização: a nova onda do trabalho precarizado**. São Paulo: Editora Elefante, 2017.

¹³ Aguiar, Aguiar, Antônio Carlos op. cit. p. 83.

¹⁴ Slee, Tom. **Uberização: a nova onda do trabalho precarizado**. São Paulo: Editora Elefante, 2017.

themselves technological entrepreneurs, with the goal of promoting connectivity between people through the so-called sharing economy¹⁵.

This connectivity of people, services, and products would be based on intersubjective collaboration that finds in the platform its form of viability. The diversity and scope of this collaboration gain global dimensions since technology is not bound to territorial limits and reconfigures space and time in a revolutionary way. The sharing economy would, in this way, be the most accessible, ecological, and distributive type of global economy model¹⁶.

The digital platforms propagating the collaborative economy enable people to share anything, anywhere, with anyone, including their labor power, without establishing solid or durable ties. This practice creates the image that the worker's flexibility and autonomy define his workload, his schedule, and his goals¹⁷.

The sharing economy is based on the possibility of community integration for the supply of everyday needs. From a trivial idea of sharing economy, there is the false impression that this sharing would be guided by non-profit organizations¹⁸. However, the collaborative economy has been invaded by large commercial organizations that sell and reproduce the collaborative discourse as a business opportunity and placement of idle and non-idle labor, the result of unemployment, underemployment, informality, and economic precariousness of formal jobs, ultimately subverting the original ideal of sharing¹⁹.

This means that the capitalist pattern of the economic organization applies to the collaborative speech and appropriates, with a typically capitalist contribution, the communication platforms that have emerged from the collaborative or sharing economy ideal.

The platforms generate extremely competitive markets, and, among other reasons, because all the service professionals are, in a current context, inserted in a pressured conditioned economy induced by globalization and by the imposition of expenditure control, in the search for low cost²⁰.

This sector expresses very well, in fact, how services are contracted at a time when the commodification of human labor is reaching another phase, in units of increasingly reduced time and that can be developed in totally diversified spaces. This phenomenon begins in the service sector, produced by the incentive to entrepreneurship, based on the initial idea that work is developed on its own and without control, whose flexibility is its greatest characteristic.

¹⁵ Slee, Tom. **Uberização: a nova onda do trabalho precarizado**. São Paulo: Editora Elefante, 2017.

¹⁶ Rifkin, Jeremy. **O fim dos empregos: o declínio inevitável dos níveis dos empregos e a redução da força global de trabalho**. São Paulo: Makron Books, 1995.

¹⁷ Aguiar, Antônio Carlos. Eu, o robô e o trabalho em mutação: antes, agora e depois. In: _____. **Direito do trabalho 2.0: digital e disruptivo**. São Paulo, SP: LTr, 2018. p. 67-104.

¹⁸ ECKHARDT, Giana M.; BARDHI, Fleura. The sharing economy isn't about sharing at all. **Harvard Business Review**, Cambridge, Economy, 28 jan. 2015. Available at: <https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all>. Accessed at: 8 dec. 2020.

¹⁹ SLEE, Tom. **Uberização: a nova onda do trabalho precarizado**. São Paulo: Editora Elefante, 2017.

²⁰ CAVALCANTE, Jouberto de Quadros Pessoa. O sistema de proteção jurídica do emprego frente às inovações tecnológicas: uma proposta de proteção sistêmica. In: **Sociedade, tecnologia e a luta pelo emprego**. São Paulo, SP: LTr, 2018 p. 99-124.

This trend in search of transaction cost reduction or, more specifically, the search for bargaining these costs, tends to promote a formal work metamorphosis into exceptional jobs, which is translated into several contract models such as shift work, project work, crowd work, on-demand hiring etc.²¹.

The objective of avoiding “idle resources” in companies is not restricted to material resources. This manifestation is expanded for human resources, through models that aim to minimize the availability of personnel for work, controlling more strictly the expenses of the productive organizations. Platform technology is the ideal mean to manage an on-demand job, maximally adjusted to the needs of the people who hire, with ease on hiring and disengagement²².

Technologies foster the worldwide corporate trend of transferring to the employee or subordinate the management responsibility of the activity, transforming him into an entrepreneur of his own activity, through the creation of increasingly simplified corporate figure, such as, in Brazilian legislation, the unipersonal society and the individual limited liability company, in addition to the promotion of outsourcing of activities that involve human resources²³. Situations like these come close to the tensions present in work-related harassment contexts.

On-demand hiring is combined with other economic low-costs mechanisms, formatting a work market characterized by intense stress which generates low-quality jobs without social benefits, with the possibility of hiring qualified professional services through auctions and dynamic pricing systems²⁴.

The characterization of contemporary service markets, therefore, continues to be marked by the transfer of risks from enterprises to workers. The worker supports the cost in terms of precariousness and insufficient income. The company presents itself as a mere manager or intermediary, through the platforms.

Affirming worker’s legal autonomy means to transfer all social and economic risk, making void any institutional possibility of sharing the responsibility arising from these risks²⁵.

The platform worker is the faithful representation of the new precarious class. The precariat worker subjects himself to pressures and experiences disqualifying his dignity that lead to an insufficient present life existence without the possibility of developing a secure identity or a sense of community. The precariat workers are not

²¹ RODRIGUEZ-PINERO ROYO, Miguel. La agenda reguladora de la economía colaborativa: aspectos laborales y de seguridad social. In: Temas laborales: **Revista andaluza de trabajo y bienestar social**, ISSN 0213-0750, N^o 138, 2017, p.125-161. Available at: <https://dialnet.unirioja.es/servlet/articulo?codigo=6552391>. Accessed at: 23 aug. 2020.

²² RODRIGUEZ-PINERO ROYO, Miguel. op. cit., p. 125-161.

²³ ANDRADE, Everaldo Gaspar Lopes de. O direito do trabalho na filosofia e na teoria social crítica. Os sentidos do trabalho subordinado na cultura e no poder das organizações. **Revista do TST**, Brasília, v. 78, n. 3, jul./set. 2012. Available at: <https://juslaboris.tst.jus.br/handle/20.500.12178/34299>. Accessed at: 8 dec. 2020.

²⁴ RODRIGUEZ-PINERO ROYO, Miguel. La agenda reguladora de la economía colaborativa: aspectos laborales y de seguridad social. In: Temas laborales: **Revista andaluza de trabajo y bienestar social**, ISSN 0213-0750, N^o 138, 2017, p.125-161. Available at: <https://dialnet.unirioja.es/servlet/articulo?codigo=6552391>. Accessed at: 23 aug. 2020.

²⁵ RODRIGUEZ-PINERO ROYO, Miguel. op. cit., p. 125-161.

entitled to, by his individual and social condition, the development that could be reached by work or by an emancipating lifestyle²⁶.

In fact, in addition to the technological increase and globalization, the scenario of platform labor finds special conditions of fluidity and flourishing in the neoliberal political field. Without specific legislative treatment, platform work continues to be regulated by the contractual laws of Civil Law, which presupposes equality between the contracting parties; sometimes, depending on the argumentative and factual-probative construction, labor courts bring up the Consolidation of Labor Laws (CLT), although this is also not at all adequate for the regulation of the activity²⁷.

All this process experienced in the labor world has one common denominator: the reduction of the State's role, deregulation, overexploitation, and precarious work conditions²⁸. In 1989, the Washington Consensus consolidated the idea of market as center of development. Essential reforms in the public-private relationship were designed to reduce public spending and open up the world to private intervention.

The focus of this reformulation was on deregulating social protections and guaranteeing a single right, namely, the right to property. Consequently, the precariat is not destined to social security, but only the social risk for the supposedly autonomous labor²⁹.

This recipe has been built since the 1970s, with the emergence of neoliberalism as an ideology of economic policy for development³⁰. The current pandemic clearly reveals the failure of these policies that defend State reduction and market predominance.

The absence of specific security and health rules for platform work imposes insalubrious work and with no individual protection equipment to thousands of deliverers workers, exposed to the dissemination of the virus. On the other hand, the lack of a social security system and minimum wage has resulted in thousands of workers entering the poverty line³¹.

This issue cannot be treated as a lack of capacity or market aptitude to relocate resources. Although the construction of the market involves an institutionalization whose objective is to bring closer producers and consumers, reducing transaction costs, the main agent in this market are the companies, which have the goal of profit maximization with cost reduction³².

In contrast, public and non-governmental institutions must act to guarantee market sustainability; it occurs, however, that a government guided by a capitalist agenda

²⁶ THEMUDO, Tiago Seixas; DE FREITAS, Ana Virgínia Porto. Reflections on the organization of the Brazilian union in the age of the precariat. *Revista Direito e Práxis*, [S.l.], v. 11, n. 4, p. 2420-2439, dez. 2020. ISSN 2179-8966. Available at: <https://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/44613>. Accessed at: 07 jan. 2021.

²⁷ THEMUDO, Tiago Seixas; DE FREITAS, Ana Virgínia Porto, op. cit., p. p. 420-439.

²⁸ RODRIGUEZ-PINERO ROYO, Miguel. La agenda reguladora de la economía colaborativa: aspectos laborales y de seguridad social. In: *Temas laborales: Revista andaluza de trabajo y bienestar social*, ISSN 0213-0750, Nº 138, 2017, p.125-161. Available at: <https://dialnet.unirioja.es/servlet/articulo?codigo=6552391>. Accessed at: 23 aug. 2020.

²⁹ STANDING, Guy. *O Precariado*: a nova classe perigosa. São Paulo: Autêntica Editora, 2014.

³⁰ STANDING, Guy. *O Precariado*: a nova classe perigosa. São Paulo: Autêntica Editora, 2014.

³¹ DOWBOR, Ladislau. *A era do capital improdutivo*: Por que oito famílias tem mais riqueza do que a metade da população do mundo? 2 ed. São Paulo: Outras Palavras & Autonomia Literária, 2018.

³² COASE, Ronald H. *A firma, o mercado e o direito*. 2. ed. Rio de Janeiro: Forense, 2017.

tends to drive the market towards the concentration of income of the capital holders, who directly and intensely influence public decision-making. It does so in this scenario, through the widespread use of technological tools. This leads to a first observation about a paradoxical and contradictory problem: the development of a new technological pattern, coexisting with terrible forms of injustice and exploitation³³. Therefore, one needs to reflect about the dimension of this social vulnerability in which the working class is inserted, in order to proceed to the analysis of possible institutional answers.

2. PLATFORM WORK IN THE PANDEMIC CONTEXT: THE EXACERBATION OF SOCIAL VULNERABILITY

The imposition of the western modernity project, in its economicist version, ended up directly attacking one of its main creations: the wage society. However, this is only a part of the story. What currently happens to societies regarding job precariousness cannot be attributed just to technical changes. The factors are rooted mainly in the logics of profit maximization via wage depreciation and by redefining production relations³⁴.

The global increasing of communication and production, as well as the expropriation of rights, are vectors that run side by side. Capital is concentrated and accumulated, at the same time that there is a greater wear and tear on workers with intense social impact. This process affects not only the productive moment, with a smaller capacity of worker recovery, but also the reproduction capacity, generating exclusion, loss of social rights and exposure of worker's life and health³⁵.

Observing the emergence and consolidation of the gig economy, one notices a process in which the speed of economic-financial flows increases the pace of production and reproduction of capital, tending to speed up the growth of the economy. However, parallel to this acceleration of the economy, there is an evident process of withdrawal and denial of fundamental rights³⁶.

This social context, inaugurated with digital work's metamorphosis, demands an expanded view that is not restricted to specific confrontations in face of social inequalities, without having an efficient and transforming prospection of the problematics resulting from job precariousness³⁷.

According to Castel³⁸, this new social issue derives from a general vulnerability situation. Inequality implies a differentiated access to resources and opportunities, where the achievement of these objectives is limited, while vulnerability implies a risk situation that, in different levels, affects all. This has been becoming evident during the pandemic regarding platform work.

³³ HARVEY, David. **O Novo Imperialismo**. 8. ed. São Paulo: Edições Loyola, 2014.

³⁴ CASTEL, Robert. **As metamorfoses da questão social: uma crônica do salário**. Petrópolis: Vozes, 1998.

³⁵ HARVEY, David. **O Novo Imperialismo**. 8. ed. São Paulo: Edições Loyola, 2014.

³⁶ ANTUNES, Ricardo. A explosão do novo proletariado de serviços. In: _____. **O privilégio da servidão: o novo proletariado de serviços na era digital**. 1. ed., 1. reimpr. São Paulo: Boitempo, 2018. P. 325.

³⁷ RODRIGUEZ-PINERÓ ROYO, Miguel. La agenda reguladora de la economía colaborativa: aspectos laborales y de seguridad social. In: Temas laborales: **Revista andaluza de trabajo y bienestar social**, ISSN 0213-0750, N^o 138, 2017, p.125-161. Available at: <https://dialnet.unirioja.es/servlet/articulo?codigo=6552391>. Accessed at: 23 aug. 2020.

³⁸ CASTEL, Robert. **As metamorfoses da questão social: uma crônica do salário**. Petrópolis: Vozes, 1998.

In the social-occupational vulnerability analysis field, the groups associated to this condition are described as those with lower educational or qualification levels for a task. Other groups, apparently better protected in case of contingency, composed by more instructed workers, or with formal and specific qualifications, are also affected by the predominant job market instability³⁹.

However, the difference between them lies in responsiveness, where the relational capital generally held by the last group can act as a buffer against the impact of losing a job or its deterioration. So that, given the generated risks, physical or natural, typical of advanced modernity, although they potentially reach all groups, the capacity to minimize or inhibit their impact is different, according to the socioeconomic condition⁴⁰.

With the pandemic crisis, this phenomenon emerged with greater visibility. The categories reached by legal statutes and organized in unions had possibilities of minimally remedial responses, while the categories without collective aggregation suffer in a more overwhelming way the effects of the pandemic⁴¹. Regarding this social mediation sphere, it is verified that neo-liberal policy also drives a disarticulation vector of collective movements. Standing⁴² observes that one of the social marks of the precariat consists in the non-existence of organization and collective identification.

For Castel⁴³, the new social issue in the labor world “can be characterized by the concern with the capacity of maintaining cohesion in a society”. The author introduces the concept of social disaffiliation to explain how vulnerability occupies a dangerous place in the crisis of the wage society. Work starts to be considered as an element that promotes the creation of bonds and social networks that integrate the individual to community.

Vulnerability would be a broader concept than social exclusion because it is in a traffic zone between a stable insertion and a social withdrawal. This zone would be characterized by a turbulence caused by job precariousness and by the fragility of relational supports, which would contribute to the decomposition of the base that sustains strategies and action that could be implemented for life improvement in society⁴⁴.

In this position, social vulnerability constitutes a concept strictly related to the deterioration of the integrating work capacity. Therefore, it is a dynamic state that does not refer only to a material deficiency situation, but to the latent possibility of people losing their bonds with the social body, not just in its material dimension, but also symbolic, when the minimum well-being boundaries accepted by the community in which they belong are lost. That is why subjective dimension has a fundamental role, because it directly affects the capacity of collective organization⁴⁵.

³⁹ CASTEL, Robert. *As metamorfoses da questão social*: uma crônica do salário. Petrópolis: Vozes, 1998.

⁴⁰ CASTEL, Robert. *As metamorfoses da questão social*: uma crônica do salário. Petrópolis: Vozes, 1998.

⁴¹ FRAMIL FILHO, Ricardo e MELLO E SILVA, Leonardo. Trabalho, sindicatos e proteção social na pandemia de 2020: notas sobre o caso brasileiro. In: *Ciências Sociais Unisinos*, São Leopoldo, Vol. 56, N. 2, p. 177-188, mai/ago 2020. Available at: http://revistas.unisinos.br/index.php/ciencias_sociais/article/view/csu.2020.56.2.06. Accessed at: 26 dec. 2020.

⁴² STANDING, Guy. *O Precariado*: a nova classe perigosa. São Paulo: Autêntica Editora, 2014.

⁴³ CASTEL, Robert. *As metamorfoses da questão social*: uma crônica do salário. Petrópolis: Vozes, 1998, p. 29.

⁴⁴ CASTEL, Robert. *As metamorfoses da questão social*: uma crônica do salário. Petrópolis: Vozes, 1998.

⁴⁵ CASTEL, Robert. *As metamorfoses da questão social*: uma crônica do salário. Petrópolis: Vozes, 1998.

The institutionalization of unemployment promotes resignation, conformity and acceptance of precarious working conditions and undignified living. This situation produces an immobilization of social strata, stimulates disruptive competition, and reduces the possibility of direct and authentic social response.

Faced with this observation, Castel⁴⁶ proposes the resurgence of a more protective State, not so interventionist, but a state action that manages the risks of a sickening individualism, capable of promoting the reconstruction of the social fabric. A strategist State that directs its actions to neutralize the points of tension and avoid ruptures, to reconcile the subjects that are exposed to the same vulnerabilities, does it because “without protection there is no social coercion”.

This conclusion, however, requires us to remember that the historical role of the State and, consequently, of Law, has been to subsidize the market in the face of cyclical capitalism crises⁴⁷. In April 2020, the Central Bank of Brazil passed on to financial institutions about R\$ 1.2 trillion⁴⁸, while the total expense with the amounts paid as emergency aid to the population sums, in three months of the pandemic, to an expense of about R\$ 154 billion to the public coffers in Brazil⁴⁹.

This data shows, without a sophistication in the analysis, that the acting of the State, in this case, had as focus the financial market, for the equating of the economy, which has not generated – as it should – the circulation of essential goods, nor access to indispensable services, since the money remains in private coffers to make financing possible. This direction marks the subjection of the political system to the neoliberal economic system

Platform workers were also excluded from the profile for the perception of emergency aid during the pandemic, due to the veto given to the future article 2nd, § 2nd-A, of Law 13.982, of April 2nd, 2020, which would be included by Law 13.998, of May 14, 2020, for alleged offense to the principle of isonomy⁵⁰.

For Santos⁵¹, the pandemic only emphasized the problems of the neo-liberal capitalist economy that, oriented for privatization and by the market law, reveals that the countries which privatized health and protected less the worker are the ones that operated with more difficulty when confronting the pandemic.

In this sense, as long as the globalized world continues to reproduce a trend to de-bureaucratization and decrease the income of the working mass in favor of a profit rate, compacts with the monopolistic concentration and continues under the reign of

⁴⁶ CASTEL, Robert. **As metamorfoses da questão social**: uma crônica do salário. Petrópolis: Vozes, 1998, P. 610.

⁴⁷ HARVEY, David. **O Novo Imperialismo**. 8. ed. São Paulo: Edições Loyola, 2014.

⁴⁸ CASTRO, Fabrício de; GAYER, Eduardo; SILVA, Regina. Recursos liberados a bancos estão empoçados no sistema financeiro, diz Guedes. **Estadão**, São Paulo, Economia & Negócios, 4 abr. 2020. Available at: <https://economia.estadao.com.br/noticias/geral,recursos-liberados-a-bancos-estao-empocados-no-sistema-financieiro-diz-guedes,70003260593>. Accessed at: 8 dec. 2020.

⁴⁹ CASTRO, Augusto. Gastos com auxílio emergencial podem chegar a R\$ 154 bilhões em três meses. **Agência Senado**, Brasília, 7 maio 2020. Available at: <https://www12.senado.leg.br/noticias/materias/2020/05/07/gastos-com-auxilio-emergencial-podem-chegar-a-r-154-bilhoes-em-tres-meses>. Accessed at: 8 dec. 2020.

⁵⁰ BRASIL. Presidência da República. **Mensagem nº 268, de 14 de maio de 2020**. Veto ao Projeto de Lei nº 873, de 2020. Brasília, DF: Presidência da República, 2020. Available at: http://www.planalto.gov.br/ccivil_03/ato2019-2022/2020/Msg/VEP/VEP-268.htm. Accessed at: 8 dec. 2020.

⁵¹ SANTOS, Boaventura de Sousa. **A cruel pedagogia do vírus**. Coimbra: Almedina; 2020.

the speculation of financial capital⁵², any discussion about the social issue that suggests the State as a central mediator must pay attention to a new theoretical paradigm, which guides a legal regulation able to produce in reality the realization of fundamental rights.

It is hoped that a post-neoliberal law that fosters a truly social and cooperative economy to reaffirm social rights will emerge, facilitating the distribution of wealth and the abolition of inequality. Therefore, we analyze, by way of conclusion, the challenges for the construction of this possible legal paradigm, starting from the recognition that the social vulnerability of platform workers leads to serious ineffectiveness of fundamental rights.

CONCLUSION

Traditional legal science takes as true the statement that the legitimacy of the legal system is justified by the normative production from representatives elected by free vote. Therefore, the legitimacy of the Rule of Law would be linked to the rationality of the laws and the legal order. However, from the critical theory of law, it is realized that "these connections are imaginary, since freedom is illusory, and the authentic connection must be between legitimacy and conscience"⁵³.

This critical conception therefore unveils the myths used as premises of the dogmatic principles, denouncing concealment of reality by the normative treatment given to the facts. In this perspective, the first challenge to Law for confronting precariat platform work concerns the identification and removal of the myths that rest in the imaginary of this social relation, covering up its true face: the myths of sharing and entrepreneurship.

Rifkin⁵⁴ optimistically believes that sharing economy will gradually impregnate capitalist economy in such a way that both systems will coexist in partnership. This sharing model will establish a global regime of collaborative common goods increasingly independent, almost free. The author is based on the revolutionary possibilities arising from hyper-connectivity (internet of things) and the use of renewable energy, which would imply the establishment of an economy with zero marginal cost.

However, there is a center point that cannot be left out of this debate. It is about the technological development process that does not possess democratic potentiality. Consequently, network society is a society that feeds the accumulation process and does not generate substantial access to the foundation of technological knowledge, but only to the technological product that captures the worker, automating him⁵⁵.

This finding does not characterize any connotation of sharing between the worker and the company that maintains the platform, which also manages, supervises, and controls all the activity. The myth of sharing also crumbles when subjected to the test of altruism and generosity as these digital platforms are designed and maintained

⁵² HARVEY, David. **O Novo Imperialismo**. 8. ed. São Paulo: Edições Loyola, 2014.

⁵³ COELHO, Luiz Fernando. **Teoria crítica do direito**. 5ª ed. Curitiba: Bonijuris, 2019, p. 511.

⁵⁴ RIFKIN, Jeremy. **O fim dos empregos: o declínio inevitável dos níveis dos empregos e a redução da força global de trabalho**. São Paulo: Makron Books, 1995.

⁵⁵ DUPAS, Gilberto. **Ética e poder na sociedade da informação: de como a autonomia das novas tecnologias obriga a rever o mito do progresso**. 3. ed. São Paulo: Unesp, 2011.

by billion-dollar corporations. Slee⁵⁶ highlights that “corporations from California withheld more than 85% of the obtained profit by the shared economy companies”.

On the other hand, the entrepreneurship myth, implemented by the neo-liberal logic, consumes itself in the same way that the political system does not immediately direct in face of the pandemic crisis, considerable efforts, and support as they direct to the financial market. The stimulation of entrepreneurship generates self-employment, notably within the context of the digital economy, only serves to feed the platform labor chains.

As a result, this pandemic crisis reveals the structural character of labor problems, inviting us to reflect on work relations that are inserted in a complex context of social change; with the increasing of precariousness living conditions, in consequence of the urgency of adopting preventive policies and policies to protect the working class.

In conclusion, the observation about the importance of the unions for the equation of emergency issues during the pandemic indicates that these public policies should consider the organized popular participation to neutralize the feeling of disaffiliation and individualization that contributes to the fraying of the social bonds of solidarity and increases the social vulnerability of precarious workers.

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⁵⁶ SLEE, Tom. **Uberização: a nova onda do trabalho precarizado**. São Paulo: Editora Elefante, 2017, p. 19.

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