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100
1919-2019

REFLECTIONS ON WORK

Perspectives from the Southern Cone of Latin America
on the occasion of the ILO Centenary

Fabio Bertranou
Andrés Marinakis
Editors



1919

Preamble to ILO Constitution

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization:

1944

Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia)

The General Conference of the International Labour Organization, meeting in its Twenty-sixth Session in Philadelphia, hereby adopts, this tenth day of May in the year nineteen hundred and forty-four, the present Declaration of the aims and purposes of the International Labour Organization and of the principles which should inspire the policy of its Members.

The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:

- (a) labour is not a commodity;*
- (b) freedom of expression and of association are essential to sustained progress;*
- (c) poverty anywhere constitutes a danger to prosperity everywhere;*

(d) *the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.*

2019

ILO Centenary Declaration for the Future of Work

The ILO marks its Centenary at a time of transformative change in the world of work, driven by technological innovations, demographic shifts, environmental and climate change, and globalization, as well as at a time of persistent inequalities, which have profound impacts on the nature and future of work, and on the place and dignity of people in it.

It is imperative to act with urgency to seize the opportunities and address the challenges to shape a fair, inclusive and secure future of work with full, productive and freely chosen employment and decent work for all.

Such a future of work is fundamental for sustainable development that puts an end to poverty and leaves no one behind.

The ILO must carry forward into its second century with unrelenting vigour its constitutional mandate for social justice by further developing its human-centred approach to the future of work, which puts workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies.

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Introduction

The future of work in Latin America: is a transformative leap possible?

Fabio Bertranou and Andrés Marinakis

A historical perspective

The centenary of the ILO's founding is an opportunity to reflect on how much progress has been made in the world of work. At the time of the ILO's constitution, a series of pressing needs had to be addressed in order to establish minimum standards for working conditions and provide a coherent framework for labour relations, as well as for social justice in general: full employment, limits on working hours, minimum wage, the elimination of child labour and of forced labour, workplace safety and health standards, protection against occupational accident, the expansion of social security for the elderly and in case of sickness, and others. Those needs required a multilateral approach and an international regulatory framework. For workers, international coordination would make it possible to improve working conditions and to combat the adverse effects of market forces on labour. For employers, meanwhile, equalizing working conditions internationally would help expand international trade (Rodgers *et al.*, 2009). Over the course of these one hundred years, the ILO has been a space in which governments, employers' organizations, and workers' organizations have been able, through a regulatory system of conventions and recommendations, to shape and work toward each of those goals.

The challenges that had to be overcome to make progress toward those goals are hard to imagine from today's perspective. There was no clear definition of the basic concepts addressed, like unemployment, or a definite sphere of action for a given policy (most were initially restricted to certain

economic sectors, like industry, and then extended to the service sector and agriculture). The different elements at play in a policy also had to be defined. The question of working hours, for example, entailed defining a standard workday, overtime, rest between workdays and per week, and paid annual rest. It also required incorporating spaces of dialogue and negotiation between social actors.

The articles in this series explore many of the ILO's core topics and how they have evolved over time. Some topics have persisted as concerns since the time of the ILO's creation, whereas others – like just transition to environmental sustainability and corporate social responsibility – have emerged more recently thanks to changes in production and labour. A historical perspective contextualizes the progress made while also opening a space to debate future challenges.

Technological transformations and work in recent history

In recent years, the world of work has been affected by rapid digital and technological transformation. Whether because of that transformation's speed or because of the types of innovations it brings, there is a widespread perception that we are in the midst of an unprecedented historical moment.

Past moments of transformation were met with similar concern, however. In the late seventies, the incipient development of microelectronics set off a series of expectations for improvement in productivity and the use of energy and materials, while also generating uncertainty about its impact on employment. In the preface to a report on that topic, Francis Blanchard, the Director-General of the ILO, stated:

Rapid technological advances have been made, particularly in microelectronics, which are bound to have far-reaching effects in almost every sphere of economic activity and on a large number of occupations. [...] considerable attention should be paid to ascertaining the relationship between these major technological changes and employment (Rada, 1980).

Later, in the nineties, advances in telecommunications and transportation bolstered growth in international trade through the development of supply chains. Michel Hansenne, Director-General of the ILO in those years, underscored that:

The globalization of the economy and rapid technological progress have led to new forms of social vulnerability which are further cause for concern. [...] Technological progress has resulted in a growing preponderance of knowledge-intensive jobs of new forms of work organization that are more flexible (ILO, 1994).

Today, the incorporation of the digital and the development of technology are, to a greater or lesser extent, changing all sectors of production and services not only through the introduction of completely new and innovative products and services, but also through new ways of working.

The impact of the use of robots on an array of production processes and on the destruction of jobs has been widely debated. The substitution of workers with robots to perform repetitive tasks puts at risk above all semiskilled jobs, thus further polarizing the labour market. Notwithstanding, countries where robots are used intensively in the production and service sectors tend to have low unemployment rates and high rates of labour utilization. Advances in communications and the internet in particular have expanded opportunities for distance work even beyond national borders. These changes in how products are produced and services rendered have brought globalization to activities once believed to be local by definition, activities like transportation services on digital platforms that compete with traditional taxis or delivery of food and other products.

Unlike previous transformations, this one has been so fast that people, firms, and institutions have had less time to adjust. That is, to some extent, even more the case in countries in Latin America due to their limited development. In terms of persons, education and vocational training have fallen behind new labour-market requirements, and opportunities to reskill are still severely limited. Firms tend to be more reactive than proactive; they incorporate technological advances and adjust their work organization as best they can. Regarding labour institutions, the changes underway in the organization of work have, to some extent, blurred the frontiers between an employer, a wage worker, and an independent worker. Workplace, length of workday, and questions of overtime pay have grown similarly hazy. All of that ensues, in Latin America, against the backdrop of a historically extensive informal economy.

Latin America: between riding the wave of transformation and succumbing to historical deficits

Artificial intelligence, the internet of things, along with robotization and automation, provide an image of future employment and working conditions. A series of other developments is transforming forms of production. Different types of renewable energy, construction with energy-efficient materials, waste treatment, and the circular economy are all areas of great potential that are generating new jobs. But the future will also require many more workers in sectors that already exist, like adult and health care. Now, it seems, is the time to ask how Latin America will meet this new challenge.

The various indicators on technological development suggest that the countries in the region are not prepared to take advantage of the transformative potential that that development might have to offer. The tendency, rather, is to adopt the technologies available to the existing production matrix.

In the year 2000, ILO Director-General Juan Somavía stated that:

There are many aspects of the global economy which might be reoriented to deliver more employment. The knowledge economy is the most obvious, as information and communications technologies open digital opportunities. But today for most people in developing countries the knowledge economy is a possibility, the informal economy is the reality (Somavía, 2014).

Almost twenty years later, that is still the case in the region – and that despite advances thanks to economic growth driven by the raw materials supercycle and a number of public policies geared to reducing informality. Barring powerful strategic interventions in education to provide new tools, chiefly to young people, and in production to expand significantly the current structure, another opportunity for the region will be missed.

Guy Ryder, the current Director-General of the ILO, insists on the importance of ensuring that the labour force have the skills required by new technologies:

Our research shows that the digital divide between developed and developing countries is becoming more acute, and is the result not only of business cost-benefit decisions but also of workforce capabilities. By capabilities, I mean not just the higher-level technical and vocational

skills needed to design, operate and maintain digital infrastructure, but also basic skills and ICT proficiency. The message is that skills matter, if we want to use technology to decrease, not increase, inequalities.

Tackling new issues and long-standing structural concerns

Given the debates on the future of work in Latin America, we may well ask whether a transformative leap is possible without having first overcome the structural problems of inequality and systemic low productivity. It seems that, in the twenty-first century, Latin America has no choice but to tackle the challenges of these times. We have already mentioned the effort required to make the most of technological advancement. It is imperative to improve teaching in mathematics, science, reading comprehension, and other basic skills required for quality jobs. Though progress has been made toward bringing women into the world of work, there is still much to be done. Dramatic population aging is just around the corner. It will not only alter the labour market, but also require new social security and health care solutions. Environmental sustainability is urgent in critical areas like agricultural and energy production, fishing, and mining – the backbone of the region's largest economies – as well as in the vast urban centers that concentrate the bulk of the region's population.

The issues at the heart of the ILO at the time of its founding are, then, as relevant as ever. While the length of the workday has been regulated by law and reduced in practice, a significant percentage of the working population works too many hours or has more than one job. Many others are underemployed, working less than they wish. Every country in the region has a minimum wage, but in many cases it is not high enough to keep a worker and his or her family above the poverty line. Significant progress has been made in social protection, but the scope and level of benefits are not enough. New forms of forced labour have appeared both in remote rural enclaves and in very densely populated urban areas. Though labour institutions such as ministries of work and social security, workplace inspections, and collective bargaining make it possible to implement labour policies and to monitor compliance with them, there are still significant limitations and gaps in coverage.

The region has, in the last one hundred years, been riddled by weak economic development, low productivity, incessant cycles of expansion and recession,

and macroeconomic instability – all of which have a profound and adverse social impact. In that context, not only full employment is an unreachable goal, but also the vulnerability of large segments of the population exposed to these ups and downs without adequate social protection, turn exit from poverty in, at best, a brief temporary respite. What's at stake is not only productive transformation – though that is indispensable – but also reducing inequality as much at its origin in the labour market as in public policies, that for the sake of more cohesive societies. Revitalizing labour institutions and strengthening democracy, along with social dialogue, will undoubtedly continue, in the decades to come, to be the ILO's primary tasks. The organization's first one hundred years evidence the importance of work to peace and progress.

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1 | Hours of work: where are we one hundred years after Convention Number 1?

Andrés Marinakis

The first limits on hours of work

Even before the formation of the ILO, excessive hours of work was a concern. Indeed, it was viewed as one of the most serious forms of labor exploitation, and a danger to workers' health and safety. In 1919, the ILO adopted the idea of limiting the workday in the Preamble to its Constitution, advocating regulations on hours of work per day and per week (Rodgers *et al.*, 2009). Later, that idea was developed and fleshed out by the ILO's normative instruments.

Convention N° 1, of 1919, on hours of work in industry, and Convention N° 30, of 1930, on hours in commerce and offices, set the limit of a forty-eight-hour work week with a maximum of eight hours per day. Later (in Convention N° 47, 1935), that limit was reduced to forty hours per week and further norms were adopted on weekly rest and paid vacation. Regarding the organization of the workday, Convention N° 171 on night work (1970) and Convention N° 175 on part-time work (1994) were adopted to protect workers employed according to those modalities.

While at the beginning of the twentieth century workdays were long and required limitation, there was also the expectation that economic progress coupled with industrialization would bring a significant reduction in time spent working. In 1930, Keynes anticipated that his grandchildren would work just three hours a day (Messenger, 2018). In the thirties, during the Great Depression, the ILO adopted Convention N° 47 to reduce the work

week to forty hours as a means to distribute what work there was and, thus, to mitigate the economic and social crisis. There was a return to that idea with postwar prosperity, and in 1962 the ILO adopted Recommendation N° 116. It proposed that countries assess the feasibility of reducing the work week to forty hours. The aim was not only to protect workers' health and safety, but also to pursue a better balance between family life and work.

Advances in the reduction of the workday and pressures due to globalization

The twentieth century witnessed significant advances in the reduction of the workday, chiefly in developed countries. Regarding the legal framework, by 2005 half of the countries in the world had established a forty-hour work week. National legislation had also set limits on overtime per day, per week, or over more extended periods. The idea of weekly rest is universally accepted; almost every country in the world establishes one day a week for rest. Annual paid vacations are also a recognized right in almost every country, though their duration varies considerably (ILO, 2013).

Toward the end of the twentieth century, however, a set of new pressures began to act on the eight-hour workday as firms adopted new forms of production and of rendering services. In terms of production, advances in telecommunications, transportation, and technology have brought rapid expansion to international trade and, with it, the economy has been globalized. Global supply chains formed by firms established in different countries attempt to minimize inventories and adjust production to reflect fluctuations in demand. To maximize production, the firms that operate under this model work day and night, adjusting production and work hours according to demand while minimalizing overtime costs. Cyclical increases in production are met by mechanisms like hour banks; calculating working hours and workdays on a quarterly, weekly, or even annual basis; and increased use of part-time and temporary contracts.

Services are not exempt from this tendency to override the limits set by legislation. The competitive edge that comes with being available to the client often leads to extending hours of work or number of workdays to seven days a week. Just like the realm of production, the service sector adjusts work hours to meet fluctuations in demand with part-time workers. More and more services are rendered on digital platforms. Technological

development means that clients' demand for services can be met by workers with variable workdays. Because such workers are usually considered service providers rather than employees, they are not protected by legal restrictions on length of workday.

Just as firms might prefer workdays more flexible than the traditional eight hours, workers often prefer such arrangements during a certain phase or even throughout their work life. That might be the case of parents (traditionally mothers) who, during the first years of their children's life, might prefer to work fewer hours. Young students may also want to work part time to cover their expenses. Others may want to reduce their hours of work temporarily to pursue further training.

It would seem, then, that one of the challenges confronting the workday today is reconciling firms' needs for flexibility in the face of fluctuations in production cycles, on the one hand, and workers' expectations that that flexibility allow them to improve their quality of life regarding key aspects such as family and education, on the other. That reconciliation must, of course, take place in the framework of guidelines regarding the workday (daily and weekly maximums, minimum periods of rest between workdays and each week) and ensure that employment relationship are not masked to avoid regulations.

Three paradigms

Berg *et al.* (2014) suggest that the ability of employers and workers to agree on workdays that meet their different needs is largely determined by the habitual practices in each country. They posit, for the sake of simplification, three general paradigms: countries where working hours are determined unilaterally by employers; countries where working hours are set pursuant to negotiation between the two parties; and countries where the state sets working hours. The United States would be an example of the unilateral model, Sweden of the negotiated model, and France of the model where the state determines the form of the workday and its regulation for most workers.

In the first model, the employer is the one that establishes working hours on the basis of demand. Workdays are, as a result, variable and unpredictable, at least for workers. Under the negotiated model, there is greater stability in workdays and greater leeway for accommodating the needs of workers

and firms alike. In countries where the state plays the predominant role in regulating working conditions, it is more difficult to adopt workdays that vary from the habitual pattern; there is a tendency to mistrust between social actors, each of whom attempts to influence the state's decision rather than to negotiate.

If we had to place Latin American countries in one of those three paradigms, it would be the third, the one where the state determines the form of the workday through legislation. While in some countries certain sectors or firms can negotiate special workdays, that is the exception, and it often requires authorization from the appropriate government body. The coverage of legislation is limited in Latin America, though, by the weight of wage workers in the labor force and by informal employment. Therefore, while regulations determine workdays in Latin America, their effectiveness varies widely from country to country.

Working hours and the organization of work: necessary limits and leeway for action

Bosch (2004) argues that, due to firms' growing interest in more flexible workdays as well as workers' varying preferences regarding their hours of work, standard workdays will be more and more difficult to legislate. That appears to be the case in Latin America, where existing legislation leaves no leeway for adjusting the workday to meet the needs of workers during their lifecycle. From the perspective of firms, meanwhile, there is ongoing interest in being able to negotiate special workdays.

The case of France is a useful example, in some regards, for Latin American countries. As stated above, in France the state regulates all dimension of the workday. In the year 2000, the country reduced its working week for one year to an average of thirty-five hours, the shortest in any industrialized country, while affording firms greater leeway to negotiate with their workers on the distribution of those hours.

Beyond the implementation of the reform in France, the example illustrates the possibility of combining a reduction in weekly working hours with greater flexibility in the organization of time spent working pursuant to negotiations between firms and labor unions in order to meet the needs of both. In Latin America, the legal working week is, in most countries, forty-eight hours (ILO, 2013), which reflects room for reduction.

A reduction in the working week from forty-eight to forty-five hours was enacted in Chile in late 2001 and implemented in early 2005, giving firms three years to adjust. That reduction brought a drop in effective working hours as well, with no negative impact on employment or on salaries (Sánchez, 2013). This reform did not, however, provide greater leeway to negotiate working hours on the firm level. While that was part of a labor reform proposed in 2015 after worker representation solely by unions was declared unconstitutional, the regulation was vetoed from the framework for collective bargaining. Notwithstanding, the Labor Code did afford the possibility of reaching agreements on the distribution of weekly working hours and in the case of workers with family obligations who worked in firms where at least thirty percent of workers were union members (Title VI, articles 374 to 377). This option has been applied in very few cases, however, and two additional proposals have been debated during 2019: one to reduce the working week from forty-five to forty hours, and another to enable the reduction of working hours while also providing leeway for flexibility.

Work time looking to the future

From the current twenty-first century perspective, when technological advances have enabled major improvements in productivity, the debate on the extent to which these improvements might drive new reductions in legal working hours, or the form working hours might take, hardly seems far-reaching enough. The Report of the World Commission on the Future of Work (ILO, 2019) indicates that reduction in working hours thanks to improved productivity is still a major policy goal. It points out as well that technologies that make it possible to work anywhere and anytime might lead to increases in working hours, making it important to introduce measures like the “right to disconnect.” On the other hand, information and communication technologies can also afford better options to organize work time, which could increase workers’ control of their time. That will be a challenge for new agreements between workers and employees in the framework of social dialogue.

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2 | Origins and recent developments of labour statistics

Marcela Cabezas and Andrés Bustamante

The origins of ILO statistics

From the time of its origin, the constituents of the International Labour Organization – governments, workers, and employers – understood that to discuss the different issues in the world of work required reliable statistics. In the early twentieth century, when the ILO was constituted, though, there were practically no statistics at all, let alone ones that facilitated international comparison. It was necessary, then, to develop common definitions, concepts, and methodologies in order to elaborate statistics on the world of work.

By 1919, in a world still in tumult after the Great War, the need for statistics was evident. In a context of concern over unemployment, information had to be gathered in a timely fashion. The first International Labour Conference (ILC), held in 1919, understood that information gathering required special attention to the processes by which statistics were generated, as well as to how data was collected and reference periods. The notion of internationally comparable statistics arose, which is why, that same year, the Conference called for the formation of:

an International Commission empowered to formulate recommendations upon the best methods to be adopted in each State for collecting and publishing all information relative to the problem of unemployment in such form and for such periods as may be internationally comparable. (Report of the Director to the Third International Labour Conference of 1921, §178, p. 128).

This three-member commission was constituted in 1920. After seven meetings and consultation with experts in different countries, it sent a series of proposals to the Governing Body. Subsequently, on September 16, 1921, the International Labour Office sent its member states: (1) a draft definition of involuntary unemployment; (2) a draft international classification of industries and occupations; and (3) draft statistical tables based on the working of unemployment insurance institutions and public employment exchanges and on the data provided by trade unions for the purpose of assisting the International Labour Office in the regular publication of international unemployment statistics.

After receiving comments from and exchanging observations with the member countries, the Office hoped that this procedure would contribute to:

publish[ing] periodical tables of statistics which will display the international aspects of the phenomenon of unemployment and which will elicit new suggestions for combating this scourge (Report of the Director to the Third ILC of 1921, §178, p. 128).

Regarding the ILO's Statistical Section, it established that:

Its most important function will be, not merely the collection of statistical information, but the working out of standard methods for compiling statistics which will be internationally comparable concerning labour problems. As things are, it is almost impossible, as will be indicated later, to give complete replies to requests for information received from Governments, which could only be answered by means of very wide statistical enquiries. (Report of the Director to the Third ILC of 1921, §302, p. 219).

In addition to tackling these challenges regarding statistics and their publication, a robust exchange took place with agencies in member countries, in particular with the national statistical offices, ministries of labour, and other ministries. That exchange would be the seed of the most relevant current institutional mechanism for international labour statistics: the International Conference of Labour Statisticians (ICLS). In the report for 1922, the director addressed the exchanges that had taken place and underscored the usefulness of discussions held in the hope of unifying statistics, thus anticipating what would become the ICLS:

Useful discussions have been held with a view to securing uniformity in the statistics and thus rendering them more easily comparable. Arrangements have been made for the Office to be supplied with all the necessary official and nonofficial publications which it has not hitherto received. Questions relating to the modifications to be adopted in classifying industries and professions and in the methods of centralisation and compilation of statistics have been discussed with the competent officials of different Governments. The possibility of holding a Conference of Labour Statisticians has been considered (Report of the Director to the Fourth ILC, §227, p. 843).

At its eighteenth session, which took place in April 1923, the Governing Body approved the motion to hold an international conference of representatives of all national labour statistics agencies. Regarding the first ICLS, the director remarked:

The International Conference of Labour Statisticians met at Geneva from 29 October to 2 November 1923. Thirty-three countries responded to the invitation of the International Labour Office. There were present 52 delegates, including heads of the departments dealing in the various countries with labour statistics, directors of statistical offices, as well as chief factory inspectors and other experts competent to examine questions relating to statistics. After the first sitting it formed three Sub-Committees entrusted with the examination of the three questions on its agenda:

- (a) Classification of industries and occupations for the purpose of labour statistics;
- (b) Statistics of wages and hours of labour;
- (c) Statistics of industrial accidents.

(Report of the Director of the sixth ILC of 1924, §292, p. 327).

In the realm of labour statistics, the ILO is recognized as the generator of the normative body. This is done through the ICLS, which meets every five years. In keeping with the tripartite nature of the ILO, participants in the ICLS include government experts – mostly named by ministries of labour and national statistical offices – as well as organizations of employers and workers. Observers that come from regional and international organizations and other stakeholders also participate.

The main goal of the recommendations on labour statistics issued by the ICLS is to develop international norms that improve measurement of labour issues and international comparability. They take the shape of resolutions and guidelines submitted for approval to the ILO Governing Body to then form part of the set of international norms on labour statistics. These standards establish concepts, definitions, classifications, and methodological procedures related to statistics in various realms becoming the “best practice”. If applied by national actors, these best practices are likely to produce labour statistics that are comparable between countries and domestically over a period of time.

The role of the ILO in the formation of statistical norms for realms proximate to the world of work: price statistics

The ILO has played a central role in the formation of statistical norms for spheres beyond, though close to, the world of work. That is the case of, topics like migration and – perhaps more surprisingly – prices.

Until the early nineties, the ICLS was the primary source of statistical norms on prices. The ILO ventured into that realm pursuant to a discussion by the world of work.

The first ILO resolution on the Consumer Price Index (CPI) was adopted at the second meeting of the ICLS, held in 1925. The main purpose of calculating the CPI was to adjust wages to offset increases in the cost of living and the drop in purchasing power that came with it. Revised resolutions were adopted at the sixth meeting of the ICLS (1947), the tenth (1962), and the fourteenth (1987):

One subject had been definitely suggested by the first Conference when discussing statistics of wages, namely statistics of changes in the cost of living, in -order that the deliberations of the Conference on wages might be completed by consideration of changes in the purchasing power of money. At the first Conference also a resolution was adopted, on the motion of the British Government representative, that an enquiry into the international comparison of real wages which had been started by the British Ministry of Labour should be transferred to the International Labour Office. This enquiry was duly undertaken and developed by the International Labour Office, and it was thought that a discussion of

the methods adopted would form a most suitable subject for discussion among labour statisticians of different countries. (General Report of the Second ICLS, Geneva, 1925. Series N (Statistics) N° 8, p. 3).

In fact, the manual most widely used by countries to measure CPI was produced by a group of organizations that included the ILO (*Consumer Price Index Manual: Theory and Practice*. ILO, IMF, OECD, Eurostat, UN, and WB, 2004). It is – an expanded version of *Consumer Price Indexes: An ILO Manual*, published in 1989 – considered the first comprehensive CPI manual.

The ILO and unemployment statistics

Of the wide range of topics covered by ILO labour statistics, one of the first and most important is unemployment. As mentioned above, concern with unemployment was one of the reasons that led to the founding of the ILO as it focused on economic reconstruction after World War I. Convention N° 2 on unemployment (1919) established, among other things, that countries communicate information to the Office in a timely fashion. Likewise, in 1920 the Technical Commission on Unemployment was created. As the Special Report on Unemployment Enquiry for the International Labour Conference of 1922 put it:

When the International Labour Conference held its Third Session in October and November 1921, the question of unemployment was not included on the Agenda, but the world had suffered so seriously from unemployment for over a year that the subject forced itself on the attention of the Conference. The initiative taken by Mr. Schurch, Swiss Workers' Delegate, for opening an enquiry into the international aspects of unemployment and the means of combating it was made the subject of an important debate. (Report of the Director to the Fourth ILC of 1922, Appendix XV, p. 1041).

Significantly, this was the first acknowledgment that different methods were used to collect and compile data and statistics, which meant that no statistic produced by any of these methods could form the basis for an international definition. In response to that heterogeneity and after discussion with the countries involved, the ILO's first definition of unemployment was proposed:

Unemployment is the condition of a worker (meaning thereby any person whose actual or prospective normal means of livelihood is employment

under contract of service) who is both able and willing to work under contract of service, but who is without work and finds it impossible owing to the state of the labour market to obtain such work. (Studies and Reports, Series C, N° 7, Methods of Compiling Statistics of Unemployment, quoted in the Report of the Director to the Fourth ILC of 1922, Appendix XV, p. 1060).

Later, the ICLS became the forum of debate on unemployment statistics. At the Second Conference, a resolution was adopted that held that the best unemployment statistics available were the ones related to the workings of unemployment insurance, whether voluntary or mandatory. But it was observed that the efforts to construct comparability had not been entirely successful, which made it necessary to hold further debates at later Conferences.

That promise of further discussion ushered in a tendency toward constant debate and revision of measurement frameworks evident at the successive Conferences. In these discussions, an extension was observed from the problem of unemployment to the general view on statistics on employment, unemployment, underemployment and the labor force. Significant along these lines were resolutions at the Eighth Conference (1954) that requested that the ILO put together one or more manuals on data collection in the abovementioned realms; at the Eleventh Conference (1966) on measuring underemployment and underutilization of the work force; and at the Thirteenth Conference (1982) that proposed, on the basis of then-recent discussions and findings, a new conceptual framework for issues like the difference between wage earners and own account workers, the measurement of underemployment, and an expanded definition of unemployment that considered not only the criterion of looking for work, but also availability. Its implementation would represent a key input for the characterization of work and its role in the economy.

The most recent ICLS and future challenges

The nineteenth ICLS, held in 2013, occasioned a major change in the conceptual framework to measure labour market indicators. A new statistical definition of work was established, a broader one, that distinguishes between employment (work performed for pay or profit) and unpaid forms of work.

Countries were encouraged to measure those unpaid forms of work, which include volunteer work and own-use production work. That afforded visibility to unpaid work and brought to bear a gender perspective. Furthermore, recognizing the complexity of the current dynamic in the labour market, new measurements of labour underutilization such as time-related underemployment were introduced to complement the unemployment rate.

Also in order to capture the more and more complex world of work, the 20th ICLS, held in 2018, adopted a resolution concerning statistics in work relationships tied to discussion of the future of work. A great range of new and atypical employment modalities is intended to increase labour market flexibility. It leads, though, to an urgent need for statistical data to assess how these new modalities are affecting the labour market. This resolution created a new category of analysis: dependent contractors. These are workers who do not exercise complete control of the unit for which they work. They are not employed by that unit, but rather bound to it by commercial contracts. These workers, then, are not governed by traditional arrangements on the distribution of economic risk or by the authority criterion of the classic categories of wage worker or independent contractor. This category would encompass, for example, a great many workers on digital platforms.

The complexities of the new world of work clearly present a series of challenges for measurement. The new norms provide a set of instruments that establish a baseline to measure the evolution of these new phenomena and dynamics. Many of the statistical offices in Latin America require significant support to incorporate these new norms. And now, no less than at the time of its founding one hundred years ago, the contribution of the ILO will be enormously important.

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3 | Environmental sustainability and the future of work: a vision from the ILO and Latin America

Guillermo Montt

The ILO and integrating environmental sustainability into work

At least six of the seventeen Sustainable Development Goals on the 2030 Agenda are related to the environment. The challenge is enormous and pressing. Unless immediate action is taken, a future of climate change and environmental degradation will be catastrophic for some regions, among them Latin America and the Caribbean. Environmental sustainability is also urgent for the world of work – work is, after all, intimately bound to the environment.

The ILO's centenary offers an opportunity to envision the future of work, recognizing that it will be marked by environmental degradation, climate change, and – hopefully – the development of sustainable economies. It is also an occasion to look back and see how and when the ILO became aware of the question of the environment.

The relationship between environmental sustainability and the world of work is tied to the environmental imbalance produced by economic activity. That imbalance was not part of the discussion during the first half of the ILO's history except in terms of direct effects on workers' health and safety. That disregard for environmental concerns was probably due to the belief that sustainability and the protection of the environment ran counter to job creation (Zbyszewska, 2019).

That vision began to change with the Stockholm Declaration on the Human Environment (1972) and, mostly, after the Rio Declaration on the

Environment and Development (1992). It was at that point that labour issues like occupational safety and health, the employment promotion, and environmental rights at the workplace began to appear in multilateral environmental treaties. It was on the ILO's seventy-fifth anniversary that – in recognition of the organization's role in social justice and of its ability to steer development – Maurice Strong, former Secretary General of the United Nations Conference on the Human Environment and former Under Secretary General of the United Nations, called on the ILO to include environmental issues on its social justice and development agenda (Strong, 1994).

Thus, in the late eighties and in the nineties, International Labour Standards began to consider environmental issues in their conventions and recommendations. The conventions that protect health and safety at work also prevent, if indirectly, environmental damage, e.g. the working environment (air pollution, noise and vibration) Recommendation, 1977 (N° 156), conventions and recommendations regulating the handling of potentially dangerous materials. The indigenous and tribal peoples Convention, 1989 (N° 169) recognizes the fundamental importance of the environment for the identity and activity of those peoples. This Convention strengthens the role of indigenous and tribal peoples in handling the relationship to the environment and provides a judicial framework to assess the impact different projects have on the environment and on these peoples. C169 also includes articles to protect and preserve the environments of the territories where indigenous and tribal peoples live. Convention N° 174 on the prevention of major industrial accidents (1993) gives protection of the environment the same status as protection of workers and the community.

During the twenty-first century, environmental concerns have been fully incorporated into the ILO. The organization began discussing jobs that have a negative impact on the environment (ILO, 2012). The issue was addressed at the 2013 and 2017 sessions of the International Labour Conference, where the notion that environment protection threatens jobs and job creation was dismantled. Indeed, it was concluded that advances in environmental sustainability can generate more jobs than they eliminate, and that the world of work and social dialogue can catalyze an economic change that furthers economic, social and environmental sustainability. The ILO created the Green Jobs programme to provide technical assistance to countries and to identify opportunities for activities conducive to sustainability and the promotion of decent work.

Trade unions of workers at extractive firms and governments of countries that depend on those raw materials pointed out the need for any transition to protect the rights of workers who would be negatively affected. Recognizing that this economic change would lead to job losses in specific sectors, in 2015 the Policy Guidelines for a Just Transition towards Environmentally Sustainable and Societies for All (ILO, 2015) was published. ILO (2018b) presents empirical evidence on the compatibility of decent work and sustainability.

Evidence of this integration, and of the role the ILO can play in it around the world, is, first, the idea of “just transition” found in the preamble to the Paris Accord in agreement with the United Nations Framework Convention on Climate Change (2015) and, second, the fact that follow up on that just transition is performed at each meeting of the Conference of the Parties (COP). Environmental sustainability is, today, a transversal issue taken into account in the actions the ILO undertakes. Whether in the form of direct technical assistance to countries, in the framework of the United Nations in, for instance, the Partnership for Action on Green Economy (PAGE), or as a permanent participant in the COP (ILO, 2017), the ILO supports countries as they make the transition toward sustainability, ensuring that that transition is just.

Climate change, environmental degradation, and the transition to sustainability: keys to the future of work in Latin America and elsewhere

At the current pace of resource consumption and waste generation in Latin America and the Caribbean, 1.6 planet earths would be required for sustainability. That means that we are using tomorrow’s resources for today’s consumption. This unsustainability is evident in, among other things, the accumulation of CO₂ and other greenhouse gases in the environment, gases that produce climate change; in pollution of the air, soil, and water; in the unprecedented loss of biodiversity; and in the overexploitation of resources. The causes and implications of these and other environmental problems are both local and global.

No less than demographic and technological change, the future of the environment will determine the future of work – that because the environment and the world of work are intimately bound through at least three channels (Montt *et al.*, 2018).

First, the jobs of almost sixty-five million people in Latin America and the Caribbean (some 20% of all employment) depends on the environment's ability to purify water and air, to regenerate soils and flora and fauna population, and to control water flows and temperature – to name just a few environmental services. By altering natural processes, environmental degradation threatens these environmental services and, as a result, the jobs that depend on it. Examples include the impossibility of restoring fish populations affected by overexploitation of fishing resources; and changes in rain and temperature patterns, part of climate change, that affect fishing, agriculture and forestry (ECLAC/ILO, 2018).

Second, natural disasters mean loss of the life and materials and infrastructure necessary for economic activity. Climate change has brought more frequent and more aggressive droughts, storms, as well as acute episodes of contamination and other natural disasters – a tendency that is likely to bring more losses in the future (ILO, 2018a, 2018b).

Third, environmental degradation accentuates inequality. The most vulnerable populations are the ones most affected by natural disasters and the loss of the environmental services because they depend most heavily on these services for subsistence. Climate change and environmental degradation represents, then, a threat to social justice by aggravating inequality and vulnerability.

How will the urgent need to advance toward an environmentally sustainable society affect the world of work? Advancing sustainability will require structural change in the economy no less far-reaching, some argue, than an industrial revolution. As in any transition or structural change, new jobs will be created (in this case, in activities conducive to a sustainable economy and to their value chain) and others lost (in this case, in polluting or unsustainable activities and their value chain). ILO estimates hold that increasing measures to reduce greenhouse gas emission and to limit global warming to 2° C would create a million net jobs in Latin America and the Caribbean before 2030 (ECLAC/ILO, 2018).

A series of policies can contribute to making any progress toward sustainability conducive to the creation of decent jobs and the protection of workers who might be negatively affected by possible job losses (ECLAC/ILO, 2018; ILO, 2018a, 2018b). Such policies include:

- The systematic incorporation of labour considerations in processes of environmental adaptation and mitigation through multilateral treaties and national initiatives of the sort undertaken in South Korea and Mexico.
- Social protection policies for households at risk of loss of income due to phenomena linked to climate change (drought, for instance) or policies where transfers are conditioned on environmental protection (payment for environmental services of the sort instituted in some programmes in Brazil and Costa Rica).
- Social protection policies to ensure the income and transition to other jobs of those who might be negatively affected by the transition toward sustainability (active employment policies, public employment services, and unemployment benefits).
- Skill development to augment the demand for new jobs (programmes in Costa Rica, Guyana, and Barbados have been geared to supporting activities like reforestation, energy reconversion and efficiency, water protection and decontamination, etc.).
- Incentives and opportunities to encourage firms to adopt environmentally sustainable processes that will prove profitable in the mid- and long-term.
- Social dialogue to help find solutions to improve sustainability within a firm and to perform oversight functions (as has been the case between Petrobras and YPF and their respective unions).

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4

The challenges to the world of work and to the ILO at its centenary

José Manuel Salazar Xirinachs

The ILO before the Twenty-First Century's new productive development

The centennial of the founding of the ILO is not only an occasion to pay tribute to the organization and its past achievements, but also – indeed mostly – an opportunity to reflect on a fundamental question: how can the ILO's founding values be put into practice in the very different conditions we face in the twenty-first century?

Many of the classic issues and challenges that the ILO and its constituents (governments, employers, and workers) confront in the world of work continue and will continue to be important into its second century. Issues like length of workday and working hours; working conditions; discrimination and combating it, especially labour discrimination against women; child labour and forced labour, and their eradication; workers' right to organize and engage in collective bargaining; and others.

But we also find ourselves in a new world: the world of work is being digitalized, automated, robotized, decarbonized, and disintermediated. Many countries are also facing rapid aging, and a new production paradigm associated with quick technological change is also taking shape, as are new business models and forms of hiring.

To deal with this new world of production and work, the ILO must rethink both the rules it devised for that different world and the nature of the tripartite social dialogue at the core of its governance. The dawn of the twenty-first century witnessed major steps along those lines under the leadership of

Juan Somavía. The concept of decent work and its tie to human dignity was introduced, as was recognition of the importance of peace at the workplace, in communities, and in countries. No less important were the analyses and recommendations of the World Commission on the Social Dimension of Globalization and the introduction of productive employment and decent work on the 2030 Agenda. These were all milestones that recognized the importance of the world of work and full and productive employment to human and sustainable development in the age of globalization. They were also fundamental to keeping the ILO influential and relevant into twenty-first century.

The most crucial question facing the world of work and the ILO today is what it means, in the twenty-first century, to put into practice the values of social justice, non-discrimination, and decent work.

The issue of the future of work – like the issues of climate change, geopolitical changes and risks, and international cooperation and multilateralism – is today one of the fundamental issues facing humanity.

The impact of technological change on the world of work

From this perspective, there are three major challenges facing the world of work and the ILO on the occasion of its centenary.

First, the challenge posed by quick technological change and by new production paradigms and business models. This is a far-reaching issue, and it is useful to break it down into five sub-issues regarding the impacts of different technological revolutions:

1. The acceleration of job destruction and creation is cause for great anxiety because it remains to be seen if the net result will be an increase in what is called technology unemployment if more jobs are destroyed than created as humans are replaced by robots. A number of alarmist, and widely-quoted, studies have been produced in developed countries. This is a topic shrouded in uncertainty, especially regarding its aggregate or macro figures. Few studies have been performed in the developing world. The only thing we know for sure is that the technological revolution has accelerated the pace of worker displacement on the micro-economic level, that is, their displacement between sectors and geographies or territories, and within and between countries. Flows of migrants in search of

employment opportunities have also increased. The rules governing the world of work must be rethought in the face of this new reality of much greater functional, sectoral, and geographic mobility for both production and persons.

2. A second rapid transformation is underway in occupations and the skills required for work. The age of automation and the digital economy have made certain skills obsolete, especially physical and manual skills, while increasing the demand for others. The new skills required are not only basic *technological and digital skills* for more and more digitalized workplaces peopled with “intelligent machines,” but also *social, emotional, and character skills*, like the ability to do teamwork; creativity; communication and interaction skills; taking initiative; leadership and management skills, etc. – none of which machines have, at least not yet. There is, today, a race between education, both formal and technical, and technology. Educational and vocational institutions are under pressure to adapt to the new conditions, and they must anticipate the changes in the skills required. Companies cannot expect workers to come job ready from the institutions from which they graduate, and on-the-job training should be a more and more integral part of education and preparation. The education-work-retirement cycle is obsolete. It has been replaced by the concept of lifelong training, according to which individuals must be trained and retrained many times over the course of their work lives. What is required are changes in the attitudes of individuals and firms, as well as in educational and training systems. At stake is a true cultural transformation with implications for persons, institutions, and firms as lifelong learning becomes indispensable to the competitive and agile workforce of the future.

3. The third sub-issue is the creation of a new production paradigm, called Industry 4.0, through the convergence of various new technologies in the world of production, but chiefly information and communication technologies, the internet of things, robotization, automation, and 3D printing. A new world of smart, automated, and interconnected products, factories, logistics, marketing, and distribution is in the making. Not only are routine tasks being eliminated and occupational profiles changed, but value chains, business models, and forms of hiring are being redefined. Modern production models present challenges to developing firms and

countries on how to make the most of the current world of production and production chains they are becoming part of.

4. A fourth sub-issue is the change in business models and in forms of hiring associated with the new “modes of production” (digital platforms, the collaborative or *gig* economy, freelancing, the increase in temporary and part-time work, and the “outsourcing of activities”). The basic policy question is, given this new reality, what type of labour regulations and practices can guarantee workers their classic rights and protections.

5. The fifth sub-issue regarding the impact of technology is its effect on the distribution of wages and income. David Autor and others have documented the tendency in developed countries toward what has been called wage polarization or the “shrinking of the middle.” That is a contemporary expression for what economics literature calls “skill-biased technical change”: greater demand and pay for high-skilled workers and shrinking demand and pay for low-skilled workers, along with the elimination of routine tasks by automation and robotization. This tends to have a detrimental effect on wage distribution.

These five sub-issues tied to the impact of accelerated technological change are undeniably interrelated. Two policy areas are fundamental to respond to them:

a) Investment in human talent, including strengthening educational and training systems, as well as on-job training. The quality of human talent is key to offsetting and confronting the negative consequences of these five tendencies. It is necessary to rethink educational and training systems and to emphasize the idea of lifelong training.

b) Policies and regulations that foster the flexibility and mobility of the labour market part and parcel of the new production paradigm without neglecting workers and their rights. Flexibility should not be seen as the same thing as precarity. The question is, rather, how the flexibility and mobility that seem innate to the new world of production and work can be coordinated with the protection of workers and the avoidance of unsafe and/or poor working conditions and precarity. To achieve that requires a thoroughgoing reconsideration of social protection policies and the welfare state at the base of the social pact in order to support just transitions in an age of rapid changes.

Tripartite governance: ongoing challenges

The second challenging area – this one tied specifically to the ILO as an international institution in the world of work – is tripartite governance and the reach of social dialogue. Two specific issues stand out.

One is the disconnect between policy frameworks, which are now integrated in approach, and policy implementation, which is characterized by fragmentation. The pillars of the decent work policy agenda are inseparable, interrelated, and mutually reinforcing, and the language of the 2030 Agenda on sustainable development is similar. While that may be useful to defining visions and aspirations, the institutional reality in which policies are implemented is highly fragmented regarding area of competence and relevant institutions—and that is particularly true at the national level. Public-private coordination is a key question to effective management of frameworks and policy goals, and the ILO and ministries of labour and employment should pay more attention to it.

There is another trap that tripartite governance must avoid. Focus on the current world of work, with its urgencies and conflicts, must be balanced with a long-term vision that anticipates future challenges. A future-oriented perspective is imperative. Thinking effectively about the future is no easy task. It requires, above all, recognition that the future will be different from the present, that new technologies will change what is possible and social movements will change what is acceptable. All we know about the future is that it will be different from the past and the present, and accepting that calls for a certain attitude toward change—not only flexibility, but also proactivity to build different economies and societies. That is the only way to build a better future for work. In developing countries in particular, tripartism must recognize that it will not be possible to build a better future for work without a better future for production. It should play a more active role than it has thus far in production transformation and diversification policies and in market governance policies based on public-private cooperation at both the national level and in territories within countries. This is a major challenge for tripartite governance as it looks to the future of work.

The future of work in Latin America: policies indispensable to productive development and productivity growth

The third challenge for countries and for the ILO in terms of creating quality jobs is how to bolster sustained and sustainable inclusive growth at high levels. Achieving this goal is tied directly to productive development policies and productivity growth. We sometimes seem to forget that the world of work is the world of production. Work and production are two sides of the same coin, and a better future for work cannot be created without also creating a better future for production.

Productivity in countries in Latin America and the Caribbean is only 20%, 30%, or at best 50% of the level in leading countries, and in recent years the gap has widened, not narrowed. Production structures are still highly concentrated on raw products and raw materials with little added value. Production matrices are also scantily diversified. The technological content of production and of exports is as low as the added value. Twenty-eight percent of employment is self-employment, and another 28% at micro-enterprises with fewer than five employees. That 56% of employment concentrates the bulk of informal work and poverty. The regional average for informal employment is 50%, and in some countries it is as high as 70%. The high growth rate the region experienced from 2002 to 2012 was due to the high demand for and price of raw materials, not due to efforts aimed at the development and diversification of production. As the world economy has slowed, a period of mediocre growth has set in. The question, then, is where the quality jobs that the region aspires to will come from. How will high, sustainable, and inclusive growth occur? How can a better future for production be encouraged?

The only way to create quality jobs is through productive development policies (PDP). Goal Eight of the Sustainable Development Goals is often interpreted as being about decent work, and while that is true, it is the *second* part of the goal. The *first* speaks of growth that is sustained, inclusive, and sustainable. The PDPs have the instruments to influence the pace and nature of growth.

In the developed world, the question of the future of work is dominated by the question of new technologies, and they will undoubtedly have an impact on developing nations as well. But the basic employment problem in these countries continues to be associated with inadequate development

of productive forces and skills and low productivity. We have often, in Latin America, focused on social policies and the challenges of unequal wealth distribution – both of which are unquestionably major issues – but that has sometimes been to the detriment of attending to ongoing challenges in the creation of wealth and productive development. It will not be possible to build a better future for work in the region – which means meeting goals to reduce inequality – without paying greater attention to the growth of companies and production with a wide base of participation. Otherwise, where will quality jobs come from? Greater emphasis and more effort has to be placed on productive development and diversification policies, as well as on increasing productivity. The time has come for social dialogue for productive development.

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5

Concept and measurement of unemployment: past and present

David Glejberman

The historical evolution of the concept of unemployment

The work ethic has been present throughout human history – at least thus far. The concept of *work*, however, has changed with different forms of social organization. In the primitive era, work consisted solely of production for consumption by oneself and by the community. Persons performed an array of tasks with no clear division of labour. When the Neolithic age began, human settlements appeared and work centered on agriculture and livestock herding. Accumulation was not possible, which meant that persons had to keep working to subsist. Unemployment could not, in those conditions, exist.

In Ancient Greece, work was performed by slaves – it had no value whatsoever for citizens. Unemployment as we conceive of it today (not having work and wanting to work) was not applicable in Ancient Greece.

During the Middle Ages, work was at the center of human activity. With the exception of feudal lords and the clergy, who lived off the work of others, people worked to subsist. At least as a social problem, unemployment did not exist.

It was in the Renaissance that, as a result of starvation and poverty, the first social movements emerged. Some countries, like England, found it necessary to establish laws to remedy the situation. The Elizabethan Poor Law of 1601, for instance, obliged citizens to make a contribution to parishes to defray the cost of helping the poor.

It was in the late eighteenth century that unemployment as a collective, even epidemic, phenomenon appeared, mainly as a result of the proliferation of the factory system (the Industrial Revolution's production and work-organization method). The (...) labour surplus brought a drop in the value of labour, or a devaluation of human work. That, along with freedom to hire, meant that one could either choose to work in usually dreadful conditions, or become unemployed (Labella Buitrago, 2015).

Who are the unemployed from the seventeenth to the nineteenth century? The English word at the time was *idle*. In France, unemployment was called *chômage*, which comes from the Medieval Latin word *caumare* for "taking it easy in the heat of day" (Pugliese, 2000). An unemployed person is, then, a laggard, someone who does not work because they don't want to, someone that, until the mid-nineteenth century, was at society's margin.

Since levels of industrialization vary from country to country, it is impossible to pinpoint when unemployment came to be envisioned as a major global topic. But eventually it did start to become a visible problem, albeit one that had yet to be formalized or quantified.

It was in the second half of the nineteenth century that unemployment began to be seen as a social problem – that due to the emergence of socialist movements – because understood as *involuntary*. It is not that people don't work because they don't want to, but because they can't find jobs. At that point unemployment began to be quantified.

Two basic conditions were necessary for the modern conception of unemployment to take shape: the first is that it be a somewhat widespread phenomenon, and the second that it be visible (Burnett, 1994).

At that point, and through the present, an unemployed person ceased to be a pariah to become instead a social problem that countries attempt to address by means of social security, employment agencies, training for unemployed workers, and programs for young people entering the job market for the first time.

Indicators to measure unemployment

Measuring unemployment requires not only a conceptual, but also an operative, definition of the phenomenon. Carroll Wright, director of the Massachusetts Bureau of Statistics of Labor from 1873 to 1878, stated that

“unemployment is like an elephant: easier to recognize than to define.” The first operative definition of unemployment is attributed to an 1878 study according to which, to be unemployed, one had to meet three conditions: a) not have work, b) be a healthy adult, and c) want to work.

While some of those conditions are objective (not have work, be an adult), being healthy can be interpreted as being apt to work. The last condition, wanting to work, also has a degree of subjectivity. Is a person who wants to work but cannot due to family obligations considered unemployed?

The importance of unemployment in the early twentieth century is evident in the ILO Unemployment Convention of 1919 (N° 2). It calls on countries to provide, at the greatest frequency possible, information on unemployment and the actions that have been taken or will be taken to combat it. Article one establishes:

Each Member which ratifies this Convention shall communicate to the International Labour Office, at intervals as short as possible and not exceeding three months, all available information, statistical or otherwise, concerning unemployment, including reports on measures taken or contemplated to combat unemployment.

A later international standard, the Unemployment Provision Convention of 1934 (N° 44), also addressed the issue. On that occasion, countries committed to providing the “involuntary unemployed” with a combination of benefits and allowances.

Countries began sending their unemployment statistics to the ILO, but the difficulty of comparing the figures quickly became evident: the definitions used and the geographic scope of polls varied from country to country. It was not until 1948 at the 6th International Conference of Labour Statisticians (ICLS) that, with the Resolution concerning Employment, Unemployment, and the Labour Force, the ILO undertook the measurement of unemployment as an international statistical norm.

The Resolution reads:

The total number of unemployed persons must include all persons capable of taking a job if it were offered to them that have been without work on a given day and have remained without work and looking for work for a minimum specified period that shall not exceed one week.

This definition introduces two elements not in Wright's definition: a) the condition of looking for work, and b) reference periods: a week without work and looking for work.

The aforementioned Resolution does not make explicit reference to the unemployment rate, but on the basis of the considerations made regarding different "groups," it appears that that rate would be calculated by using the ratio of persons unemployed against the labour force as a whole (the employed and the unemployed). The workforce was restricted to the "civilian workforce" – that because the Resolution was adopted three years after the end of World War II.

The second time the ILO addressed the measurement of unemployment was in 1954 at the 8th meeting of the ICLS, when the Resolution concerning Employment, Unemployment, and Labour Force Statistics was adopted. The member countries had accumulated experience in measuring the labour force and unemployment, and the Conference looked to that experience as it formulated a definition that would contribute to comparability.

According to the definition issued at the 8th ICLS, the unemployed are persons of working age who do not have jobs though they are available to work and have been looking for work for a brief period of time, preferably one week. Those who have not actively looked for work are not included in the category of the unemployed, with the exception of "initiators."

The ILO reexamined the concept of labour force and its components in the 1982 Resolution concerning the Statistics of the Economically Active Population, Employment, Unemployment, and Underemployment. The conditions to meet its definition of unemployed persons are largely the same as in the 1954 Resolution, though it adds an exception for job searches undertaken in situations where the conventional means of seeking work are of limited relevance, where the labour market is largely unorganized or of limited scope, where labour absorption is, at the time, inadequate, or where the labour force is largely self-employed.

By leaving out those seeking work as a consequence of adverse market conditions – or the outright nonexistence of a labour market – this exception gave rise to what is known in the literature as "expanded unemployment" or "flexibilized unemployment." The publication of two rates in some countries – the conventional and the flexibilized rate – led to problems interpreting

indicators. Furthermore, international comparison became very difficult or even impossible when countries opted for one or the other definition. That is why, in the ICLS's next revision, the option of a flexibilized unemployment rate was left out.

The current version of the unemployment rate

The most recent conceptual framework of the labour force was developed in 2013 at the 19th ILCIS with the Resolution concerning Statistics of Work, Employment, and Labour Underutilization.

The new conceptual framework introduced major changes that affect both the numerator and the denominator of the unemployment rate:

- The definition of employed person is now more restrictive, encompassing only those of working age and who work in exchange for pay or profit (business profits), that is, it does not include those who work mainly for their own use. Unpaid apprentices or trainees and volunteers are not considered employed either.
- Some of those persons who, in the previous framework, could be included in the employed category are now considered unemployed or outside the labour force.

According to the most recent version of international norms on labour statistics, a person is unemployed if they meet the following conditions:

- (a) Not have been employed, according to the narrower definition, during the reference period
- (b) Be of working age
- (c) Be available to work in the reference period for the employed and with the option to extend that period by two weeks
- (d) Have sought work

Reference periods are one week or seven days for the employed and one month or four weeks for job seekers.

Regarding exceptions, “initiators” are still considered unemployed and two new cases are added: unemployed persons who are in a training or retraining program, and those who have taken steps to emigrate in order to find work.

In those two cases, being unemployed does not require searching for work or being available to work.

In sum, then, according to the most recent international recommendations, a person is considered unemployed if they meet conditions a) and b) below, as well as one of the other conditions that follows:

- (a) Be of working age
- (b) Not be employed
- (c₁) Be available to work and have looked for employment in exchange for pay or profit
- (c₂) Be available to work but not have sought work because work that will begin soon has been found
- (c₃) Be participating in training or retraining courses with an offer of work to begin in the short term
- (c₄) Be waiting for an opportunity to emigrate in order to work.

Is unemployment the labor market's greatest problem?

The unemployment rate is an indicator of underuse of the labor supply. It reflects an economy's inability to generate jobs for all the persons who want to work but are not, even though those persons are available to work and actively searching for it. The unemployment rate is considered an indicator, first, of the economy's effectiveness when it comes to absorbing its labor force and, second, of labor market performance.

The unemployment rate relates those who are not working but are available to work and looking for work (they have time to work) and the total labour force. From the perspective of persons, unemployment is part of the gap between the labour market's supply and demand. From the perspective of firms, the other part of that gap consists of vacancies that the demand is not able to meet.

The unemployed and job vacancies are not the only problems in the labour market's functioning.

The unemployed are persons who cannot find work, not even an hour of work. The employed include those who work the number of hours they wish, but also those who work fewer hours than they wish (or fewer hours than

considered “normal.”) Those available to work more hours than they do are called “underemployed due to inadequate work time.” In some economies, they are a larger contingent than the unemployed.

Another significant group that evidences an inefficient labour market performance is those who have been looking for work for a prolonged period and not found it. When those persons are available to work and have been looking for a job for over a year, they form part of what the 19th ICLS called the “long-term unemployed.” When those persons have stopped looking for work because they are worn out or because they do not believe they will find a job, they are outside the labour force in a category called “discouraged workers.” That group is significant during prolonged periods of recession.

Unemployed persons, persons underemployed due to insufficient work time, and the potential work force (of which discouraged workers form part) are the three subsets of working-age people that the 19th ICLS Resolution bore in mind in its definition of a restricted set of four indicators of labour market underuse in order to assess labour market performance from the supply side.

The answer to the question “Is unemployment the labour market’s greatest problem?” requires taking into account informality – a problem that has proven persistent and that affects almost half of all employed persons in Latin America and the Caribbean.

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6 The ILO's view of rural employment: pending challenges in Latin America

Emilio Klein

The ILO's difficulties in considering rural employment

While during its first years the ILO adopted some international conventions on work in the agriculture sector, it, like the rural sector in general, does not appear to have been one of the organization's priority issues – that despite the fact that employment in the rural sector is significant the world over and the primary means of subsistence for much of the planet's population.

Convention N° 10 on minimum working age, Convention N° 11 on the right of association, and Convention N° 12 on workmen's compensation, all of which were geared to the agricultural sector, were adopted in 1921. Conventions on sickness insurance (N° 24 and 25, 1927), on old age insurance (N° 35 and 36, 1933), on invalidity insurance (N° 37 and 38, 1933), and on survivors' insurance (N° 39 and 40, 1933) were later adopted (the first in all cases applies to industry and the second to agriculture). The lapse between conventions to protect industrial and commercial workers and those to protect agricultural workers was larger regarding others issues, such as the minimum wage. Minimum wage-fixing machinery Convention N° 26, adopted in 1928, applied solely to industry and commerce. It was not until 1951 that a convention on a mechanism to set minimum wages in the agricultural sector was adopted. The same holds true for paid vacation. While Convention N° 52 did not encompass the agricultural sector, in 1952 Convention N° 101 on paid vacations for agricultural workers was passed. Other basic working condition protections, like hours of work, have never reached agricultural workers.

One reason for this skewed focus is that the constituents of the ILO – namely, governments and organizations of workers and employers – represent the interests of formal employment sectors, which are underrepresented in rural areas and in agriculture. More recent ILO instruments were not designed for specific sectors and are applied across the board. Recommendation 202 on social protection floors and N° 204 on the transition from the informal to the formal economy are both applied to all sectors.

In the case of Latin America, another reason for the lower priority of rural issues is that it is the most urbanized developing region in the world. As early as 1961, over half the population was urban – the world average would not be that high until 2006, forty-five years later (United Nations, 2018).

Creation of the World Employment Programme and the search for a new conceptual framework

The creation, in 1969, of the World Employment Programme brought a major change. The WEP had the autonomy to define its own lines of work and, as such, it veered away from the ILO's bureaucratic structure to operate at the margin of the ILO's regular channels and budget. From the start, the WEP's country reports had an integral focus. It was believed that an effective employment policy would require a wide range of reforms involving a society's entire structure. In Latin America, that meant agrarian reform and income redistribution (Sollai, 2019).

To further this novel vision of employment, a number of mass-scale research programmes were undertaken, including a study of rural employment that analyzed poverty, agrarian structure, and inequitable access to land. Studies of the Latin American case, like the one of the Asian case directed by Myrdal (1968), found that the conceptual framework for employment was largely inapplicable to the reality of the agricultural world. Concepts like open unemployment, participation rate, and minimum age for workforce entry did not shed much light on employment in the countryside. A number of countrywide studies of the employment demand in the agricultural sector were carried out, where the demand was calculated on labor use coefficient by crop. It was thus found that in all countries a high percentage of the labour force was underused in what was not open unemployment. That underemployment was related to poverty in rural households. It was evident that the agricultural and livestock sectors were not capable of providing the

population that resided in rural areas with enough productive employment. This was one of the causes for a rapid shrink in rural population. Indeed, today only 20% of the region's population lives in rural areas.

Non-agricultural rural employment

Census data for the seventies and eighties were analyzed in an attempt to find alternative ways to generate employment in rural areas. Until those decades, rural employment and agricultural employment were essentially seen as synonyms. The comparison showed that non-agricultural rural employment had grown during those decades at a greater rate not only than agricultural employment, but also than urban employment (PREALC, 1992). That finding led the ILO and other organizations to perform a great deal of country-level research that delved into the type of employment these activities encompassed as well as the requirements to obtain those jobs and the employment condition they entailed (Reardon *et al.*, 2001). It was observed that many workers had multiple jobs over the course of the year, some of them agricultural and others not. Temporary employment had risen in all the countries, whether in the form of migration – domestic or international – for certain periods of time or of workers who would commute daily from nearby towns and cities to work on the harvest. That meant that many rural workers, agricultural and not agricultural alike, lived in urban areas, and that the rural and urban labour markets were interrelated. Regarding income, pay for non-agricultural rural work was usually higher than for agricultural work, which indicated that policies to create non-agricultural rural jobs were, potentially, a good mechanism to diminish poverty. Indeed, one of the reasons for the reduction in rural poverty has been the increase in non-agricultural rural occupations.

Of course, not all poor households are poor solely because of employment problems. Other factors play a role, among them demographics, isolation, and limited access to productive resources. In 2017, some 46% of the rural population in Latin America was impoverished – a poverty rate much higher than the one for the urban population, which stands at 26% (ECLAC, 2019).

The main concern of those analyses was always the relationship between employment and poverty at the household level. The driving question was why there are employed people who live in poor households.

The rural labour market's institutions and processes

To try to answer that question, the functioning of the labour market was analyzed in greater depth, specifically the conditions governing both permanent and temporary salaried rural workers, since it was clear that the labour market was not distributing the benefits of growth, least of all to the poor (FAO, 2009). The FAO later developed a project in twelve countries; the ECLAC provided support in data processing and the ILO helped bring the research performed to the debates of the relevant social actors (FAO, ECLAC, and ILO, 2012a). A first line of analysis was the existing relationship between labour market institutions and rural poverty. Case studies in various countries in the region showed that labour market institutions were weak and functioned poorly in those contexts where levels of rural poverty among salaried workers were high. People living in rural poverty had informal jobs and, hence, they did not have social security coverage. They were not paid the minimum wage or have access to training. There were no trade unions to defend their rights through collective bargaining. Furthermore, they rarely had contracts and, if they did, they tended to be precarious and arrived at through intermediaries.

A second line of research examined work processes common in the rural sector. First, the problem of child labour as generator of poverty. When children work, they are taken out of the education system; they provide the household with little income while passing poverty down from generation to generation, since the association between low levels of education and poverty has been proven. A second process analyzed was women's work in the rural environment. Their low rate of participation in the labour market, particularly in non-agricultural rural occupations, also sheds light on levels of poverty in rural households. Women participate in the rural labour market at a lower rate than in the urban labour market. This explains, in part, poverty: in poor households, few people work, and that is crucial because labour income constitutes the largest part of total household income for the poor and the non-poor alike. Furthermore, the number of people that depend economically on each employed person is considerably higher in poor rural households than in non-poor rural households. A second income is an almost certain means to raise a rural household out of poverty.

For these reasons, the employment and employment conditions of female temporary agricultural workers were analyzed in depth (most women who

work in rural settings do so on a temporary basis). There is, then, significant sex segregation in rural labour, and stable jobs are usually occupied by men (FAO, ECLAC, and ILO, 2012b).

A dynamic analysis shows that the rural population has shrunk in relative and absolute terms, and that the rural youth population as percentage of the rural population is also shrinking as young people are likely to move to urban areas. Though it has not closed entirely, the productivity gap between urban and rural areas has narrowed. Levels of poverty in rural households have also dropped thanks to improvements in rural employment and better employment opportunities in non-agricultural activities. Precarious employment continues to be a concern, however, and public policies to combat it should be implemented. The ILO performed a regional study that emphasized the importance of carrying out policies in the areas of productive development and skill expansion, and of labour market and social protection, as well as the need to improve the design and execution of public policies aimed at rural settings (ILO, 2016).

Furthermore, agriculture is being technologized the region over, and that will bring an increase in productivity and a drop in direct employment, as well as benefits for the rural economy as a whole and, undoubtedly, improvements in wages and income.

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7

The ILO's vision of informality: evolution and perspectives for Latin America

Ricardo Infante and Daniel Martínez

The history and current scope of the concept of the “informal sector”

While the existence of informality, in developing countries in particular, is widely recognized, its definition and causes are always evolving.

The term “informal sector” was first used in 1972 in an ILO report on Kenya inspired by an article by Hart (1970). Its conceptual contribution consisted of showing that, in countries with relatively low levels of development, unemployment was less central to the problem of employment than employed workers who receive inadequate income.

That report explained that “poor workers” managed to survive thanks to trades, activities, and tasks performed on a small scale that, though not criminal per se, were often at the margin of regulations. The “informal sector” encompassed, the report observed, a wide range of activities, from those linked to subsistence to for-profit businesses. In many cases, though the activities in question were not recognized, registered, protected, or regulated, they were functional to the rest of the economy.

The Kenya report (ILO 1972) gave what it recognized as a new object of study the pragmatic name “informal sector.” It was defined in opposition to the modern and structured formal sector, and by the lack of access to productive resources and markets. The vision in the report was based more on empirical observation than on theoretical reflection.

Essential was recognition of a different sector capable of both creating jobs and generating self-employment: informality was the chief alternative

to unemployment for poor sectors. Its very existence meant that in some countries drastic changes in the economic cycle occur without increasing unemployment because the informal sector absorbs the surplus labour force like a sponge.

In Latin America, the concept of the “informal sector” was used and upheld by the ILO’s Regional Employment Programme for Latin America and the Caribbean (PREALC) which, since the seventies, has concentrated its efforts on research on the informal sector. Its study has been enriched by an array of perspectives, and the logic of survival was incorporated through the process of creating inadequate employment.

The analysis of the informal sector was grounded in the framework developed by the Economic Commission for Latin America and the Caribbean (ECLAC). It concluded that the informal sector arises as a result of the pressure exercised by the labour surplus, on the one hand, and the inability to create enough jobs – especially good jobs – on the other. The heterogeneity of the economic structure in those conditions brings employment heterogeneity (PREALC/ILO, 1976). Contexts of informality are characterized by a small sector of highly productive and well-paid workers employed in more modern strata and a larger sector of workers in intermediate strata with also intermediate levels of income and productivity (Tokman, 1987).

This vision, then, links the informal sector to the functioning of a country’s labour markets and its degree of development. From this perspective, the expansion of the activities that make up the modern sector would absorb only a small proportion of the workforce, and the rest is forced to find very low productivity jobs that generally provide fluctuating incomes in the economy’s traditional sectors. These sectors, then, turn into “bags” in which the surplus of the workforce – largely the underemployed – is placed (Souza and Tokman, 1976).

According to the PREALC, the informal sector consisted of self-employed workers (barring professionals and technicians), unpaid family workers, workers and employers at micro-enterprises (five or fewer workers), and domestic workers. Data show that the informal sector grew as proportion of overall urban employment in the second half of the twentieth century, hovering around 30% from 1950 to 1980 and jumping to 50% in 2000, due to austerity policies. During that period, the informal sector was more

dynamic – that is, better able to produce employment – than the modern sector. Estimates suggest that, from 1950 to 1980, four of every ten new jobs were informal, a proportion that grew from seven of every ten in the nineties.

Notwithstanding, the early twenty-first century witnessed a reduction in the incidence of the informal sector. It shrank to 43.1% in 2015 due to the rapid growth in modern employment during the commodity boom. These data reveal that the informal sector is sensitive to shifts in the economy.

Informal employment and new forms of informality

Three decades after the concept of the “informal sector” was introduced, the ILO, looking to the various dimensions that the concept and its subsequent analysis enabled, recognized that concern over this sector could not be separated from employment precarization, which began growing in the eighties. That phenomenon, which affected not only those who worked in the informal sector, but also workers at formal enterprises (Tokman, 2004), culminated with the introduction of the notion of the “informal economy” at the 2002 International Labour Conference and ratified at the 2015 conference. The term refers to “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements.” The notion of the “informal economy” thus expanded on the notion of the informal sector, adding to the productive unit labour relations not legally regulated or protected. The new definition, then, includes employees in the informal sector whose employment relationship is not subject to the standards established by labour laws, regardless of where they work.

As a result of this expansion of the concept of informality, the concept of “informal employment” was adopted at the 17th International Conference of Labour Statisticians held in 2003. It encompasses, in practice, three categories: informal employment in the informal sector, in the formal sector, and in the household sector. This definition unquestionably constituted an advance in the homogenization of informality indicators. What had, until that time, been measured as “employment in enterprises in the informal sector” was broadened to include employment with the characteristics of informality (no protection, no right to association, and others) not only in firms in the formal sector, but also – indeed in particular – in domestic work.

Recent data show that informal employment, which represented 52% of all urban employment in 2005, dropped to 46.8% in 2015 as a result of the reduction in the informal sector and the effectiveness of formalization policies (Salazar-Xirinachs and Chacaltana, 2018). The persistence of this high level of informality in the region's labour markets is a challenge for development options that prioritize policies aimed at facilitating transition from informality to formality (ILO, 2013).

In recent years, however, informal employment has changed dramatically with the appearance of new ways of using work. This has had logical effects on traditional employment relationships as new forms of informality emerge. These transformations are the product of technological changes and of the reorganization of production.

One of these new labour arrangements is crowdsourcing, or the open sourcing of tasks that were once performed by workers at firms or by contractors, but are now performed by a group of persons, a community, or an individual through an open call for services.

Why consider many of the jobs created in a crowdsourcing modality informal in the traditional sense of the term? In crowdsourcing, workers render services to a firm according to a commercial contract, but their income depends on one or just a few clients from whom they receive direct instruction on how to do the work. On an individual level, these workers are rarely covered by any country's labour laws nor do they operate within the collective bargaining framework.

In these jobs, the worker enjoys a degree of autonomy to set some working conditions, mostly regarding time. Some workers operate under contracts governed by an authority located in a country other than the one where the party performing the work and the party requiring it live. In no case does the employer take any responsibility for the employment relationship, though they do monitor the work performed constantly. These are, ultimately, jobs where the traditional power imbalance between the employer and the worker has been altered, hence the need for regulation. The employer and the worker can consider the contract over at any moment with no need for justification of any sort. That decision is not considered a dismissal, but the end of a non-labour contract. It is also common, in crowdsourcing, for a worker to collaborate with other workers located in different places, forming a team whose only end is to obtain the result that the hiring party has asked them to.

The main difference between crowdworkers and workers “on demand” is that the latter make use of a digital platform that is the property of the firm that hires them, whereas the former work online using any internet application.

Significantly, these are not illegal activities, simply – in a great many cases – informal ones. Some of the workers who work under these new sorts of arrangements declare their income, pay taxes, and make social security contributions. These are highly autonomous jobs, with no set working hours; workers are paid per result on the basis of a fee set unilaterally by the employing party, and working conditions are, in many senses, determined by the worker (place of work, health and safety conditions, etc.). In these jobs, the employment relationship is very vague – sometimes to the point of being hard to perceive at all.

A number of questions arise, then. Does crowdsourcing entail an employment relationship? Will, in the future, employment relationships regulated by labour codes be prevalent or will they be replaced by personal, commercial, or trade relations for rendering services regulated by the civil code and by laws on commerce and business? If there is, in fact, an employment relationship, how are labour regulations applied? Will there be one set of regulations for traditional jobs of indefinite duration and another – or none at all – for atypical labour arrangements and for new, non-conventional uses of work? If the hirer and the hiree are in different countries, which country's labour laws apply? What authority would intervene in the case of conflict? How are international conventions on length of workday, minimum wages, and so forth applied?

Whatever the answer to these questions, there is no doubt that this new use of work is, in most cases, encompassed by what, in 2003, the International Conference of Labour Statisticians called “precarious and informal work in the formal sector.” Precarity in crowdsourcing does not mean that the employer does not duly comply with labour regulations, but that it disguises, or denies outright, the existence of any type of employment relationship. It entails, then, a new and more extreme form of precarity in the formal sector and, therefore, a new manifestation of informality ushered in by technological change and the reorganization of how goods and services are produced.

Whatever proposals are made to formalize these jobs and new forms of work, they must heed the following five questions:

1. A new type of labour contract that takes into account the specificities of “new” labour arrangements at the margins of labour regulations. New types of contracts would not only explicitly establish the existence of an employment relationship, but also make it possible to agree on a flexible length of workday. After all, in the “new” work arrangements, an eight-hour workday and the regulations regarding it make little sense. New types of contracts would also afford the contracted worker social protection.

2. The establishment of a social protection floor, regardless of type of work or arrangement, as well as adequate working conditions, especially in terms of health and safety. Along these lines, the ILO’s Social Protection Floors Recommendation (Nº 202) for countries is particularly important.

3. Collective bargaining by sector, branch, or firm, should guarantee as a bare minimum the fundamental rights established in the ILO Declaration of 1998, regardless of whether that bargaining is limited to one nation or is transnational (bargaining between international unions and a firm or group of firms).

4. Sufficient control of “private labour regulation,” especially firms’ codes of conduct and some international labour standards established beyond the scope of the ILO, and the adjustment of that regulation to the ILO’s International Conventions.

5. Serious and unwavering commitment on the part of states to strengthening the national labour administrations, particularly in terms of workplace inspection.

These proposals to formalize the employment that arises from new ways of using work as a consequence of the deep technological change underway must act in concert with the proposals and policies already in place in most countries in the world to formalize informal firms and combat informal and precarious employment in formal firms. These are, in the end, proposals and policies to make progress toward the great goal of full quality employment for all.

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8 | From industrial labour to work mediated by digital platforms: post-fordism employment relationships

Humberto Villasmil

At the beginning of the last century, the second Industrial Revolution was well underway. Electrical energy and engines driven by oil products allowed for the mass production of manufactured goods. Urban factory centers that employed large contingents of workers led to major changes in the organization of work. The archetype of this new organization was the Fordist factory, which took its name from when “in 1909 Henry Ford announced the production of the Model T, a practical automobile for all to be produced for a mass market” (Raso Delgue). Production of the Model T began in 1913 on an assembly line considered “the scientific organization of work.”

Frederick Taylor theorized a model capable of increasing the production and productivity of men and machines alike in what he called “the one best way.”

But all of that had to be regulated, legislated. The mass gathering of workers in a single place gave rise to the concept *category* – by definition abstract – which was assigned a set task performed during predetermined work hours, a proportional and hierarchical wage structure, and direct supervision by representatives of the employer. At that juncture, as Juan Raso Delgue points out, the idea of the disciplinary power of the employer arose and, with it, its flipside: the subordination of workers (Raso Delgue).

All of that demanded a standard labour contract model based on the paradigm of a stable employment relationship – a requirement for promotions within the company’s hierarchy – for an indeterminate period of time such that the

relationship tended to endure. That labour arrangement was the basis for solidarity social security models.

Labour codification in Latin America began in 1931 with the Mexican Federal Labour Law and the Chilean Labour Code. Between that year and 1963, when El Salvador enacted its Labour Code, thirteen countries adopted codes or laws regulating work.

The framers of the first ILO conventions adopted over the course of the thirty years following the organization's founding in 1919 lived in the Fordist-Taylorist world, and that model of employment relationships was also the backdrop for the process of labour codification in Latin America. The cornerstone of that model was a bilateral relationship in which a personal service was rendered for another (*otherness* in the most classic sense of the word) in a relationship of dependence or subordination.

But subordination, understood as it was at the time as a single notion, one as confined as it was timeless, became multifarious: it was no longer possible to speak of subordination but of subordinations. There were signs that this change was happening in the mid-nineteen-seventies. The Italian theory of *parasubordinazione* was crystallized in Law N° 53,318 enacted on August 11, 1973. While the law did not define *parasubordinado* work per se, it did attempt to formulate a category of multifaceted employment relationships solely in order to guarantee the application of labour law.

In Latin America, the crisis in labour law was produced by the crisis in the subordination on which it had been based. What was actually happening was that the segment of the labour force effectively protected was shrinking in a palpable and sustained fashion. While the *centripetal or inclusive effect* according to which labour law was always recognized as at once inclusive and expansive – enjoyed first by industrial workers and then by all workers – unprotected work was growing steadily. Many workers who had been in clear and protected labor arrangements were cast out of that sphere. Solidarity social security systems – among other things – were challenged and collective institutions weakened because, outside that protected sphere, unions were weak or even nonexistent.

The expansion of the digital or *gig* economy is unquestionably challenging the very survival of labour law. Digital platforms represent a depersonalized – cybernetic even – modality of labour intermediation. The most pressing

problem, in legal terms, is who is behind and who controls the platform, since the platform is not, at least not initially, a judicial person that can be held accountable for its obligations in a possible relationship, employment or otherwise.

Employment relationships were always personal, hence the presumption that is common in labour law in Latin America and stated outright in ILO Employment Relationship Recommendation N° 198 (2006) “11. For the purpose of facilitating the determination of the existence of an employment relationship, Members should [...] consider [...] (b) providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present.” That is why an employment relationship indeed exists in the framework of a relationship that is bilateral by definition and where one of the parties – the worker – is obliged to provide a dependent service.

Employment relationships, in that paradigmatically bilateral framework, were personal, particularly on the worker’s side. The employer could be a natural person or a judicial person (civic association, commercial partnership, etc.)

At least in appearance, the digital platform distorts the typical traits of that employment relationship. The relationship is now quadrangular, where one of the corners is the digital platform, the second the one who controls that platform, the third the one who renders the service, and the fourth the user. The platform and the one who controls it are not distinguishable, and the relationships involved are not necessarily ambiguous or disguised, concepts that figure in Recommendation N° 198 that states “[...] a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due.” In effect, relationships mediated by platforms, whether or not understood as employment relationships, are still bilateral. And that is the topic that concerns us here.

The tendency to deny the existence of an employment relationship when the service is rendered on a digital platform is an attempt to distort the indicators characteristic of employment relationships – and that is nothing new. Indeed, labour laws throughout Ibero-America, albeit in different

terms, include articles that indicate the presumption of an employment relationship between the one who provides a personal service and the one who receives it. That is, of course, a distortable presumption, and the burden of proof is inverted such that it rests not on the one making the accusation – the classical rule in civil procedure – but on the one attempting to distort the nature of that relationship as, in fact, one of employment. In other words, if the worker-plaintiff in a case holds that he or she is in fact an employee and invokes *the presumption of an employment relationship*, the burden of proof falls on the other party insofar as the plaintiff claims that an employment relationship exists and provides prima facie evidence that he or she provided services to the other party. The employer who wants to rebut that presumption must demonstrate that the service was not rendered in a labour arrangement, but according to a different kind of relationship. That presumption of an employment relationship is formulated in response to a set of indicators – an employment relationship test – that, for the first time in the history of international labour legislation, the ILO systematized in its Recommendation N° 198.

Items a) and b) in that recommendation's paragraph thirteen systemize the indicators that determine an employment relationship when its existence might be ambiguous or disguised, or when it does not in fact exist. Of course, those indicators can only operate according to the principle of primacy of reality, a transversal principle of interpretation found throughout labour law in the region. According to that principle, the legal name that the parties give the relationship does not matter; what matters is the type of relationship that the facts indicate. This principle is named explicitly in ILO Recommendation N° 198, and in Convention N° 95 that states “(...) the term *wages* means remuneration or earnings, however designated or calculated [...]”.

With the primacy of reality principle and the presumption of the existence of an employment relationship, both of which operate in conjunction with indicators of an employment relationship, it is possible to determine whether or not an employment relationship exists. The indicators in the Recommendation distinguish between *closed indicators*, in the case of a more classic (Fordist-Taylorist) employment relationship – that is, where services are provided during working hours and under the direct supervision of the employer for a wage, with right to vacation, rest, etc; and *open indicators*, which appear in an indeterminate environment. These latter end up being more inclusive and expansive and, hence, more pertinent when it comes

to determining the nature of the relationship and of the services rendered on digital platforms. Recommendation N° 198 establishes as an indicator “[...] the fact that the work: involves the integration of the worker in the organization of the enterprise.”

This indicator is not only open, but also complex because it brings together three legal categories (integration, organization, and enterprise) with patent repercussions. The integration of the worker into the company’s organization – which is not explicitly defined – suggests an open and plural norm that could include the various forms that the enterprise might take.

The corollary to this open and complex indicator has to do with the notion of an enterprise in the framework of post-Fordist employment relationships prevalent in a world where most work is performed in the service sector and no longer in the industrial sector. Indeed, that traditional form of work explains why ILO Convention N° 1 is the hours of work (industry) Convention. That centripetal and inclusive relationship where workers gathered in the enterprise’s space has been replaced, to a large extent, by a centrifugal structure where the company no longer needs a physical space at all. New companies of this sort can be housed in a mobile device connected to an application that leads to a digital platform capable of linking those who require and those who offer a service.

The very notion of an enterprise must, then, be rethought. In the Fordist-Taylorist era, an enterprise was a *space* where the rights and obligations at stake in an employment relationship were enacted. For that same reason, verifiable supervision was possible, and the concentration of workers that made both their organization and the right to freedom of association a fact. Today, meanwhile, a company can be an *activity* that requires no physical place where work is concentrated. What it needs, rather, is, in many cases, digital platforms and cybernetic forms of relating: that traditional space does not, in such cases, exist. That is the crux of the problem.

Hence, the most open and pertinent indicator in Recommendation N° 198 is item a) of paragraph thirteen, which specifies that “[the presumed existence of an employment relationship] involves the integration of the worker in the organization of the enterprise.”

It is in this framework that debate on the relationships that take shape under the auspices of digital platforms will continue. Pertinent here is the court ruling issued on July 22, 2019 by Madrid Labour Court N° 19 when

admitting the case brought by the Labour Inspectorate against Deliveroo. The court states, “[...] delivery people have, for all intents and purposes, performed a personal job in conditions organized and supervised by the company, which is the only body that controls the *Deliveroo* brand, its digital application, and all the information that it produces. Indeed, there is a patent lack of a corporate organization in even the loosest sense of the term among the delivery people taken individually [...].”

For the time being, case law has spoken. In many countries, legal debate is underway on whether or not work mediated by digital platforms gives rise to employment relationships. Other relevant cases include the court ruling issued by Madrid Labour Court N° 53/19, ROJ SJSO 279/2019 on February 11, 2019, and, in the United Kingdom, *Aslam v Uber BV* [2016] EW Misc B68 – Employment Tribunal. A very recent case in Argentina ordered the suspension of activity on digital platforms until the situation of workers is regularized (*Clarín* newspaper, 2019). Legislation, on the other hand, has yet to determine explicitly whether or not there is an employment relationship when digital platforms intermediate. The pressure of jurisprudence will undoubtedly mean that this growing phenomenon with undeniable consequences for labour law will ultimately end up being legislatively regulated.

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9 The ILO and the development of vocational training in Latin America: a history of systematic cooperation

Fernando Casanova

Vocational training in ILO's regulatory actions

In the hundred years since its creation, the ILO has considered vocational training not only a right of persons, but also an essential tool for the effective exercise of other labour rights. Indeed, that is spelled out in its founding texts. The preamble to the ILO Constitution considers “the organization of vocational and technical education and other measures” essential to improving the conditions surrounding labour. The Declaration of Philadelphia, meanwhile, holds that, for the sake of full employment and raising the standard of living, the ILO must foment programs that provide opportunities for vocational training (Ermida, 2001).

From 1921 to 1974, the ILO was particularly active in laying out the regulatory groundwork for vocational training and orientation, issuing ten recommendations on that topic. Convention N° 142 and Recommendation N° 150, both adopted in 1975, were milestones in the development of human resources. The general articles of the recommendation included a definition so conceptually powerful that it still resonates: “the qualification of the terms guidance and training by the term vocational means that guidance and training are directed to identifying and developing human capabilities for a productive and satisfying working life and, in conjunction with the different forms of education, to improve the ability of the individual to understand and, individually or collectively, to influence working conditions and the social environment.” Recommendation N° 150 was replaced in 2004 by N° 195, which updated the articles on the development of human resources,

education, training, and lifelong learning – pillars of employability, the employment of workers, and the promotion of sustainable enterprises.

The ILO in the development of vocational training in the region

The ILO's work in the field of vocational training has not, however, been restricted to the regulatory. The ILO has also – indeed mostly – been active in providing technical assistance and in fostering cooperation between member countries. It has played a key role in the development of vocational training policies and institutions in Latin America since the mid-twentieth century.

The history of vocational training policies at the region's national institutions began with the creation of the National Service for Industrial Training (SENAI for the acronym in Portuguese) in 1942 and the National Service for Commercial Training (SENAC for the acronym in Portuguese) in 1946, both in Brazil. At almost the same time – in 1942 – the University of Labour was created in Uruguay and – in 1942 – the National Commission for Vocational Education and Orientation (CNAOP for the acronym in Spanish) was created in Argentina (it was absorbed by the Ministry of Education in the early fifties). Once the scheme adopted in Brazil had been consolidated, like institutions were created in other countries in the region. While they drew inspiration from that original model, they varied greatly in structure, organization, and coverage (ILO/Cinterfor, 1990).

The common impulse behind all the vocational training institutions was the search for an innovative institutional scheme capable of meeting the urgent need for a trained workforce, especially skilled and semi-skilled operators, to support the process of industrialization beginning in Latin American countries at the time. Regular education systems were not prepared to meet that challenge with the urgency or on the scale required (ILO/Cinterfor, 1990; Maertens, 1978).

Most of the vocational training institutions created starting in the late fifties – and, to an even greater extent, in the following decades – had certain basic traits that, to a greater or lesser extent, still characterize many of them:

- Independence from regular education systems and proximity to the sphere of work.
- Funding largely through a mandatory payment made by companies as a contribution to a nominal wage.

- Participation of the sectors directly involved (governments, employers, and workers) in the institutions' leadership bodies.

Together, those traits ensured vocational training institutions a large degree of autonomy, sustained and stable funding, and ongoing dialogue with the labour market they served.

The ILO played a decisive role in spreading throughout the countries in the region the organizational model for vocational training with the aforementioned characteristics. Its leadership in this area largely explains why the approaches embraced have revolved around the labour concerns and the policy frameworks promoted by the region's governments. The ILO's involvement contributed as well to the quick development of a culture of cooperation through dialogue and exchange between like institutions in the region's countries.

In 1952, the ILO and the government of Brazil subscribed to a far-reaching agreement on the development of vocational training. That agreement foresaw granting one hundred study grants so that professionals from different countries could receive training at the SENAI and, in so doing, exchange experiences to forge closer and closer and more and more intense working relationships (ILO/Cinterfor, 2013).

Cinterfor: an ILO tool for cooperation created at the initiative of constituents

Thanks to the systematic cooperation of the ILO and the valorization of its results in the region's countries, the proposal for the creation of what would eventually be Cinterfor was made at the VII Conference of American State Members of the ILO, held in Buenos Aires (Argentina) in April of 1961. The full name in English was the "Inter-American Research and *Documentation* Centre on Vocational Training." When a new strategic plan was adopted in 2007, the name was changed to the "Inter-American Centre for Knowledge Development in Vocational Training" (the acronym was not changed).

The ILO's Administrative Council later lay the basis for the Cinterfor's creation, establishing that it "should be an instrument for the promotion of permanent and active collaboration among national agencies responsible for vocational training." In the debates surrounding the Cinterfor's creation, it was pointed out that "although the Centre will serve in particular American

countries, it should also deal with questions that arise all over the world [...] the Director General will ensure that all the other countries also take full advantage of the research performed and experiences acquired by the CINTERFOR” (ILO/Cinterfor, 1977). In consonance with the aspirations formulated by the region’s countries, the ILO signed a convention in 1963 establishing that the Cinterfor’s seat would be in Uruguay. American nations, through their governments and vocational training bodies, played an active role in the project from the beginning, acting as the source and core of its activities. The Cinterfor’s founders had the foresight not only to entrust those national bodies with the central topics in the sphere of vocational training, but also to afford them the flexibility necessary to deal with new situations as they emerged. For that reason, since the time of its founding, the Cinterfor’s general framework has remained valid and relevant and, indeed, it will likely continue to do so into the future.

Six decades of changing challenges and the construction of responses through cooperation

It is important to point out some key stages in the development of vocational training in the region and the role the ILO, through Cinterfor, has played in it.

The nineteen-seventies were rife with challenges as many of the region’s vocational training institutions were not yet fully consolidated or, in many countries, still incipient. These institutions required ILO support not only in their institutional design, management mechanisms, and funding schemes – topics described above – but also for manuals and handbooks, as well as educational materials, that would provide the basis for new training options. The Cinterfor’s role as tool to promote horizontal cooperation between countries and institutions was evident in its identification of the region’s top specialists and technicians, who were then invited to develop those materials, published under the name “Cinterfor Basic Collections” (CBC for the acronym in Spanish). In the pre-digital age, those manuals, distributed physically in the region’s countries, were the first educational materials used in many of these then-novel institutions (ILO/Cinterfor, 1973-1977).

Later, in the nineties, new approaches to the design and administration of public training policies emerged. As the import-substitution-based industrialization at the origin of many of the region’s vocational training

institutions came to an end, the effectiveness of those institutions, first, and, second, the need for them at all, was called into question. In opposition to a vocational training model concentrated, in almost monopolistic fashion, in just one or a few institutions, the state was envisioned to have a subsidiary role where policies would aim to create a “training market.” In this regard, it was argued that the new models could more easily move towards demand-driven policies, have greater flexibility, adaptability and updating, and thus be more efficient and effective. Rather than mount a wholesale and unconditional defense of the institutions that formed its basis, Cinterfor acted in two complementary directions. First, it helped institutions in their efforts to detect their central – and very real – problems and to undertake, as a consequence, transformation and modernization. Second, it investigated and documented the implementation of policies based on these new approaches in order to better grasp their outcomes, and their strengths and weaknesses (ILO/Cinterfor, 1999). In hindsight, it is evident that the Cinterfor played a key role in going beyond the binary visions characteristic of that period, where the victory of one model was declared over the ashes of another. The region’s countries were gradually and pragmatically adjusting and transforming their policies, systems, and institutions, adopting and adapting solutions to challenges in the spheres of coverage, pertinence, quality, and equity (Weinberg, 2004).

But before that decade and its debates had come to a close, a new approach emerged, this time on how to orient and structure training and certification: the labour competencies approach. If previously training was conceived as a process of qualification (the development of capacities and abilities) that yielded, as outcome, the potential to perform a quality job, the new approach focused on the real and demonstrable skill to meet a goal or to produce a result in a determined context. This new model required adaptation on a number of levels: curriculum design, educational resources, learning environments, training of trainers, and evaluation strategies. Cinterfor, through exchanges both within the region and beyond and its publications, supported countries and institutions as they began exploring this new path. Today, the labour competencies approach has been adopted by nearly every training institution in the region (Vargas, 2004).

Vocational training and future challenges

Today, with the commitment it is known for, the ILO continues to emphasize vocational training as a necessary condition for the construction of a just, inclusive, and certain future of full and freely chosen productive employment and decent work for all. The ILO Centenary Declaration on the Future of Work (2019) states that “the ILO must direct its efforts to: [...] promoting the acquisition of skills, competencies and qualifications for all workers throughout their working lives as a joint responsibility of governments and social partners in order to: – address existing and anticipated skills gaps; – pay particular attention to ensuring that education and training systems are responsive to labour market needs, taking into account the evolution of work; and – enhance workers’ capacity to make use of the opportunities available for decent work.” (ILC, 2019, SII. A. iii).

Training is considered critical at a juncture when the world of vocational education is undergoing one of the most profound changes in its history. The jobs that are being created today and that will, most certainly, be created in the future call for more complex basic abilities and skills of a technical, digital, and socio-emotional nature. Those jobs challenge education and vocational training systems not only to be up-to-date in order to adapt to and anticipate new requirements, but also to be effective in the equitable provision of quality education and training opportunities over a lifetime (ILO/Cinterfor, 2017).

On an operational level, this requires, among other things, developing mechanisms to better coordinate vocational training, education, and on-the-job training in order to ensure lifelong learning as outlined in the National Qualification Frameworks; to encourage quality learning, that is, modalities that combine learning at training centers and workplaces to increase the pertinence and currentness of training options; to promote social dialogue in and on vocational training in order to devise policies with balanced goals while also making the most of the existing capacities of the relevant actors in the world of work; and to innovate instructional methodologies to develop skills for the twenty-first century. All of these goals must be tackled jointly to face challenges presented by technological innovation and disruption, changes in job markets, new jobs and occupations, transition to environmentally sustainable development, while also narrowing gender, generational, territorial, and socioeconomic gaps.

New times and new challenges demand more than ever greater cooperation between countries and regions. Thankfully, Latin America as a region is today, no less than in the decades discussed here, home to countless exchange and cooperation initiatives and projects, largely due to the support of the ILO.

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10 | Setting the minimum wage: learning through trial and error

Andrés Marinakis

A brief history of international conventions on minimum wages

When the ILO was created in 1919, one of the main demands of the workers' sector was establishing a wage floor. That demand was expressed in the chapter of the Treaty of Versailles on work and in the preamble to the ILO Constitution. In both documents, one of the main areas for improvement in working conditions was the provision of an adequate living wage. Mention was also made of equal pay for equal work.

Though a priority topic, an international convention on the minimum wage would not come until 1928, when the ILO adopted Convention N° 26 on minimum wage-fixing machinery. Three causes might explain that delay. First, there was little experience at that time on how to determine the minimum wage, and its scope was often limited to certain industries and/or regions within a country. Second, the only sources of information on wages were workplace inspection, accounting books, and dispute settlements. The first International Conference of Labour Statisticians was held in Geneva in 1923. Its tasks included developing statistics on wages and how to combine them with cost of living indicators. Third, some groups hoped the Convention itself would set a minimum wage. It was gradually understood that what the Convention had to do, rather, was create a mechanism with which to set minimum wages (Marinakis, 2008).

Convention N° 26 was restricted to the industrial and commercial sectors, or even – potentially – to certain industries or parts of them. Prevalent in

the spirit of the Convention was the notion that minimum wages should only be established for those activities vulnerable to exploitation; in other cases, collective bargaining would determine wages. Convention N° 99 on minimum wage setting machinery for agriculture, adopted in 1951, complemented Convention N° 26.

By the early sixties, a minimum wage was in effect in much of the world (with the exception of Asia, where it was less widespread) and Convention N° 26 was the third most ratified of all the ILO conventions. In a number of developing nations, however, the minimum wage had gone beyond what that Convention called for, as nationwide minimum wages were adopted in order to meet the needs of workers and their families. At the same time, the economic growth underway in most countries in those years had not brought a significant reduction in poverty. These issues led to a discussion of mechanisms to set minimum wages geared specifically to developing countries.

Minimum wage fixing Convention N° 131 (1970) brought a number of major advances. First, it established the idea that minimum wages should be as wide as possible in coverage, a shift from the previous idea of protecting only those sectors most vulnerable to exploitation. Second, the criteria it set to fix the minimum wage were tied to the needs of workers and their families, on the one hand, and to economic factors, on the other. Third, it asserted the need to review and adjust the minimum wage periodically. Like Convention N° 26, Convention 131 pointed out the need for social actors to be consulted closely during the process of fixing minimum wages and for an inspection system to be put in place to punish failure to comply with the regulation.

A comparison of Conventions N° 26 and N° 131 shows how the vision of minimum wages had evolved. The first one focused solely on the least protected workers, whereas the second called for general protection and provided the elements crucial to determining the minimum wage. Those differences make sense since, when the earlier convention was formulated, there had been very few and limited experiences implementing minimum wages, and just in a handful of countries. By the sixties, most countries had a system to fix minimum wages. Similarly, the approach to key aspects of minimum wage policy in different countries had evolved thanks to experience.

Implementation of minimum wages in Latin America: evolution and institutional aspects

In 90% of all countries in the world there is a minimum wage (ILO, 2006), making it one of the most widely applied labour policies of all. Every country in Latin America has a minimum wage system. Mexico was the region's pioneer, enshrining the minimum wage in its Constitution of 1917. Most of the countries in the region began implementing their minimum wage in the forties.¹ Peru did not implement a minimum wage until 1962, making it one of the last countries in the region to do so.

The minimum wage was not, in most countries, enacted immediately via a single piece of legislation, but rather through a process. In some cases, the instrument was not put into practice until a few years after the first legislation on it had passed; in others, the minimum wage was extended gradually to encompass different groups. Some countries have introduced, over the course of their histories, sudden changes in the method to fix the minimum wage and in the format of the minimum wage system.

Most of the changes in minimum wage systems have to do with making them more complex or more simple. For example, when Brazil introduced the minimum wage in 1940, there were fourteen different wages according to region. By 1963, that number had climbed to thirty-nine. Later, that process was turned around on the premise that all workers should enjoy the same protection regarding a wage floor; in 1984, a single minimum wage was set for the entire country. In Colombia, meanwhile, a single minimum wage was set in 1949. Gradually, different minimum wages were established for agriculture, industry, commerce, services, and transportation, and also for different provinces and firm sizes. In 1983, Colombia returned to a single minimum wage for the entire country (Arango *et al.*, 2008). The minimum wage system in Chile took shape gradually, first with a scheme for private-sector employees implemented in 1937. In 1953, a system was established for agricultural workers (it varied by province), and in 1956 the industrial and commerce sectors were added. In late 1973, a minimum income

1 Argentina, Bolivia, Chile, Colombia, the Dominican Republic, Ecuador, Guatemala, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela. In Costa Rica, the first minimum wage legislation was passed in 1934, but the minimum wage was not applied systematically until 1943.

was established for all workers (García, 1991). Mexico also began with multiple minimum wages determined by states. In 1931, the Labour Code transferred responsibility for minimum wages to the federal government, which established a system with three groups according to a city's level of development; specific levels were set for a series of occupational categories as well. Regional differentiation was gradually reduced, and one of the zones was eliminated in 2012. In 2015, all minimum wages were unified.

These cases show how difficult it is in practice for a single administrative body to determine multiple minimum wages, even when it consults the relevant social actors. It is very tricky for a structure to find a way to accommodate the changes that take place in labour markets due to development and economic cycles. That is why many countries have been inclined to simplify their minimum wage systems, establishing one floor for the entire labour market. Furthermore, a single level might be more directly tied to the needs of workers and their families, which do not vary with the economic sector in which they work. In addition, a single minimum wage is complemented by real wages determined through collective bargaining, a major factor in Southern Cone countries and in the more modern sectors in the region's other countries. The tendency in South American countries, with the sole exception of Paraguay, has been toward a single minimum wage system applied nationwide. In Central America, meanwhile, multiple minimum wage systems are still more prevalent, perhaps due to the lesser weight of collective bargaining.

Another important institutional issue is regular adjustment to the minimum wage. Minimum wage systems did not, at first, establish a regular interval for review. It gradually became clear, however, that, without a set period for review, the aim of adjustment – to improve the minimum wage's real value – would not be met. The high levels of inflation in a number of countries in the region conspired against the idea of adjustments at regular intervals. Starting in the late nineties, though, inflation was relatively low in most countries in the region, which made it possible to enact adjustments at regular intervals, usually annually;² in Panama, the adjustment is every two years. In many countries, however, minimum wage adjustment is irregular – and progress in that area is important.

2 Bolivia, Brasil, Chile, Colombia, Costa Rica, Ecuador, México, Paraguay, Uruguay.

In most countries, no clear criteria are used to adjust the minimum wage; in some, however, mathematical formulas are applied. Regardless, there seems to be now, as opposed to during other periods, a widespread intention to improve, to a greater or lesser extent, the real value of the minimum wage. In countries where that intention has been consistently held over a long period, the buying power of minimum wages has improved significantly. If we take as a reference the poverty line per person as calculated by the Economic Commission for Latin America and the Caribbean (ECLAC), the minimum wage is still not, in most cases, enough to meet the basic needs of workers and their families. It is, therefore, still a priority objective to bring up minimum wages until they approach that level.

Lastly, there are indicators that noncompliance with minimum wage regulations is widespread in many countries. That is borne out by income information provided by household surveys (ILO, 2017). With the exception of extreme cases, where the minimum wage represents a very high percentage of an economy's average salaries, levels of noncompliance vary between countries with relatively similar minimum wage levels. One cause for these variations is institutional factors such as degree of awareness of the regulation throughout the country, inspection capacity, dissuasive fines and sanctions, effective administrative processes, etc. Notwithstanding, there can be low levels of noncompliance in a country with an extremely low minimum wage. In those cases, widespread compliance is irrelevant to the ability to cover the consumer basket.

Conclusion

One hundred years ago, minimum wage policy was incipient, applied in just a very few countries. Today, it is one of the most widely applied labour policy. ILO international conventions played an important role in bringing about that change. How minimum wages are applied varies greatly between countries and, as we have pointed out, over time. To some extent, those changes are the result of countries' efforts to improve the effectiveness of the policy and to better respond to a nation's specific needs. In all cases, the minimum wage is a crucial point of reference for companies and workers alike in both their collective and individual dealings. It is a guideline not only on a minimum income level, but also on the need to adjust wages and by what percentage. Due to the extension of the minimum wage and awareness

of it, it is central to a country's wage policy. For all those reasons, attempts to improve its implementation must not be abandoned.

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1 1 | Occupational safety and health over the course of a century: from anthrax prevention to mental health problems

Carmen Bueno

Occupational health and safety: a foundational concern

When the ILO was founded in 1919, improving occupational safety and health conditions was one of the most ardently held demands of the workers' sector. Workplace accidents like the Triangle Shirtwaist Factory fire in New York (1911) in which 146 workers were killed, the Senghenydd colliery disaster (1913) in Britain which left 439 dead, and the Halifax dock explosion (1917) in Canada with nearly two thousand dead and nine thousand wounded, most of them workers, were among the chief reasons for this demand. As a result, the Treaty of Versailles and the Preamble to the ILO Constitution, both of them dated 1919, recognized the urgent need for "the protection of the worker against sickness, disease and injury arising out of his employment," and established the far-reaching principle that "the well-being, physical, moral, and intellectual, of industrial wage-earners is of supreme international importance." Later, in 1944, the Declaration of Philadelphia included as one of the ILO's obligations "to further among the nations of the world programmes which will achieve [...] adequate protection for the life and health of workers in all occupations."

Three of the six ILO recommendations adopted at the First International Labour Conference held in Washington in 1919 dealt with occupational safety and health (OSH). Recommendation N° 3 on anthrax prevention urged countries to adopt measures to disinfect wool potentially containing anthrax spores at ports of landing; Recommendation N° 4 on lead poisoning recommended that women and children not be allowed to work in areas

exposed to lead and its derivatives; and Recommendation N° 6 requested that countries prohibit the use of white (yellow) phosphorus in the manufacture of matches.

In its one hundred years, the ILO has adopted over forty regulations on OSH. Some of them are on *specific occupational risks*: Convention N° 13 on white lead (painting), N° 115 on radiation protection, N° 136 on benzene, N° 162 on asbestos, and N° 170 on chemical products, to name a few. Others regulate OSH conditions in specific areas of activity: Convention N° 167 on safety and health in construction, N° 176 in mines, and N° 184 in agriculture. A third group of norms deals with prevention measures: Convention N° 127 on maximum lifting weight and N° 174 on the prevention of major industrial accidents. Finally, a series of standards addresses the basic principles of OSH. Called “framework guidelines,” such norms include Convention N° 155 on occupational health and safety, Convention N° 161 on occupational health services, and Convention N° 187 on promotional framework for OSH. These conventions and recommendations, along with the codes of practices and OSH guidelines, attest to the fact that OSH is one of the areas that ILO regulations have been most prolific about.

From prescription and protection to management and prevention

The twentieth century witnessed a clear shift in the ILO’s regulatory approach to occupational safety and health, moving from a prescriptive and protective vision to a more integral and preventative one. Until the eighties, the content of ILO standards on OSH drew on a “Fordist-Taylorist” perspective of industrial production and employment relationships. Regulations on OSH rights and obligations were very specific and detailed. Issues included, for instance, limiting levels of exposure to toxic agents and spelling out protection measures. With technological and scientific advances, many of those contents gradually became obsolete. Furthermore, while measures were taken to protect workers, the source of the risks faced were neither combated nor prevented. Hence the need for a less prescriptive approach, a vision based on OSH management systems and continual improvement with greater emphasis on risk prevention, where protection plays a complementary role. Thus, and in keeping with the framework guidelines mentioned above, the “ILO promotional framework for OSH” was established. This framework advocates the formulation of national OSH policies and programmes

to be reviewed periodically; the development of a culture of prevention where maximum priority is placed on the prevention principle; and the full participation of employers, workers, and their respective organizations in all phases and instances of OSH and in the definition of their respective obligations, rights, and responsibilities as well as the obligations, rights, and responsibilities of national institutions.

Starting in the eighties, that regulatory shift also made itself felt on the national level, in European countries first and then in Latin America. Labour codes' traditional focus on the obligation to protect began, in some countries, to give way to the principle of prevention and to risk-management systems. Examples of that shift in Latin America include Decree N° 291/2007 on the safety and health of workers and the work environment in Uruguay; Law N° 29,783/2011 on OSH in Peru; and Decree N° 72/2016 on national OSH policy in Chile.

There are still only a few countries in the region that regulate OSH with a specific and legally binding standard separate from the others that regulate reparation mechanisms in the event of workplace accidents or occupational diseases. Most countries address OSH in a more general regulation, whether the labour code or social security laws, thus relegating OSH to norms with lesser status (decrees or resolutions).¹ Exceptions are the Law on Workplace Health and Safety in Argentina (1972), the Law on Safety and Health in Peru (2011), and a more recent law passed in Paraguay in 2007 that establishes a national risk-prevention system. In Chile, Part VII of Law N° 16,744 (1968) on insurance for workplace accidents and occupational diseases addresses risk prevention. Because OSH is the object of an array of regulations and norms, spreading knowledge and raising awareness of it is difficult; it is less understood and known than labour rights that are enshrined with legally binding regulations.

Challenges for occupational safety and health

The transformations underway in the world of work have significant repercussions for OSH. Technological, demographic, organizational, and climatic changes are already having an impact on the safety and health

1 Argentina: Law N° 19,587/1972; Peru: Law N° 29.783/2011; Paraguay: Law N° 5,804/2017.

of millions of workers around the world. In some cases, those changes bring opportunities as some occupational risks diminish or even disappear altogether. Others, however, are arising or worsening. Statistics for the most industrialized countries show a reduction in workplace accidents, but an exponential increase in occupational diseases, many of them psychosocial or ergonomic in nature or due to exposure to chemical products. In other countries, workers and employers still face traditional risks, like falls, heat stroke-related accidents, black lung and occupational cancer. They must also find ways to avoid new risks due to the use of nanotechnologies, whose effects have yet to be studied in depth.

Accident rates in some countries already indicate that these new trends are setting in Latin America. In Chile, for example, there has been a substantial drop in workplace accidents, from 4.9 for every one hundred workers covered by the insurance in 2012 to 3.1 in 2018. The number afflicted with known occupation diseases, meanwhile, has increased from 4,432 cases in 2011 to 6,911 in 2018, and 36% of those cases are mental health related.

It is important to remember that the aim of occupation health is “the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions” (ILO/WHO Joint Committee, 1995). As early as 1981, Convention N° 155 defined health in relation to work as “not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work”.

It would seem, then, that one of the major future challenges for OSH, particularly in Latin America, will be the prevention of psychosocial risks and the mental health of workers. Adequate organization of work (its pace and burdens), a reduction in work time, strict respect for rest, the right to digital disconnection, greater flexibility, and conciliation of personal and professional life, as well as prevention of violence and harassment, are among the most pressing needs when it comes to guaranteeing occupational health.

Occupational safety and health as a fundamental right

In its report for January 2019, the Global Commission on the Future of Work recommended that OSH be recognized as a principle and as a fundamental labour right, as it is by the Universal Declaration of Human Rights of 1948 (articles 3 and 25) and the International Covenant on Economic, Social and

Cultural Rights of 1966 (article 7b). If that recommendation were heeded, occupational safety and health would be afforded the same status as the freedom of association and the right to collective bargaining, as well as the elimination of forced labour, of child labour, and of discrimination in respect of employment and occupation – all of which are recognized in the ILO Declaration on Fundamental Principles and Rights at Work (1998). Though it may seem obvious, it is important to bear in mind that when we speak of occupational safety and health we are speaking of the life, integrity, and wellbeing of persons. At stake, then, is a right as inalienable as any other basic human right.

For that reason, and now more than ever, this topic merits specific action. Hopefully, in a very proximate future, the ILO – in keeping with the recommendation in the aforementioned Commission report – will consider the safety and health of workers as a fundamental principle and right. No right is more important as long as thousands of workers the world over die, have accidents, or get sick while performing their jobs.

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12 | Digital day-labourers and garment home workers: modernity or a return to the past?

Gerhard Reinecke

Introduction

Fifty-five-year-old María is a garment homemaker in a poor neighborhood in Santiago, Chile. She began working at her home ten years ago in order to take care of her mother, who has a terminal illness. She makes uniforms for three schools. She has demanded that the schools provide her with a contract, but to no avail. She works for the schools starting in June each year to get everything ready for March, when the school year begins in South America. The rest of the year, she does minor mending for occasional clients.

Juan is twenty-four years old. Until five months ago, he was a civil servant in Venezuela, but he decided to move to Chile due to the economic crisis in his country. He left Venezuela on bicycle. It took him twenty-eight days to reach Chile. Once there, he used the same bicycle to work as a delivery person for Rappi for a few months. To increase his income, he started driving for the Uber digital platform. Since he is still undocumented in Chile, he has to pay to use a registered driver's account. He also has to pay a daily rent for the car he drives. Notwithstanding, he is pleased with his income: it's enough to buy food and even to go out with his girlfriend on occasion. He sometimes works as many as eighteen hours per day. He knows that his situation is precarious: a passenger could report him or he could get caught in a routine police inspection, which would be particularly troubling considering his irregular immigration status.

María and Juan may seem to live in very different worlds, yet they have a number of problems in common: neither one has an identified employer on whom to make demands and in neither case is it clear whether they are dependent workers or self-employed.

Wage-earner or self-employed? Conceptual framework and historical precedents

While new non-standard employment arrangements are different from old ones in many respects, they have one central commonality: uncertainty about whether or not a dependent employment relationship exists. For regulation to be effective, it is essential to know for certain, first, if an employment relationship is dependent or independent. That is often difficult to ascertain in non-standard employment arrangements, old and new alike, because they combine elements associated with employee status and elements associated with self-employment. Second, when it has been determined that an employment relationship exists, it is not always clear who the employer is. In many cases, employment relationships are triangular, involving different intermediaries (“scouts” or recruiters, platforms, contractors and subcontractors) who take on some of the responsibilities traditionally assumed by the figure of the employer.

There is nothing new about employment arrangements that give rise to doubt about whether what’s at stake in that relationship is wage-labour or self-employment. Indeed, the ILO has grappled with determining that status throughout its one-hundred-year existence. Two of those nebulous arrangements are home work and day labourers who work through a “scout,” whether human or virtual. While the basic problem has not changed with technological advancement, new challenges have arisen. As traditional “scouts” have been replaced by digital platforms, their spatial scope has expanded, as has the number of people involved.

Home working is a long-standing phenomenon, as is concern with how to design policies to confront it. In the early twentieth century, home work was seen internationally as wage labour that had to be regulated to avoid exploitation and abuse. Thus, the first article of Convention N° 26 on minimum wage-fixing machinery (1928) mentions “home working trades.” Concern with homeworkers set in early in Latin America as well. A document

on home work issued in Chile in 1907 describes a situation that continues into the present:

The conditions faced by homeworkers are always more onerous than the ones faced by workers in workshops or industrial establishments. It is widely known that seamstresses, sewers, embroiders, shirt makers, linen makers, spinners, etc., often work well into the night in order to earn enough to simply get by. (Ministry of Industry and Public Works, 1907, p. 40).

Home work was also, in the early twentieth century, a major concern of the labour movement, even on an international level. Trade unions held the First International Conference on Industrial Home Work in Brussels in 1910. It was followed by a congress in Zurich in 1912, at which a resolution was passed on a “model” law on how to regulate this form of employment (Caffarena, 1924; Bureau of Labor Statistics, 1920).

A number of countries in the region enacted regulations on home work (wages and other conditions) early on: Argentina, Colombia, and Peru in 1918, Chile in 1931, Uruguay in 1934, and Bolivia in 1942. Most regulations attempted to calculate a wage for homeworkers that would be comparable to the pay received by a worker in a factory or workshop performing the same task. A number of countries’ efforts to create administrative bodies to inspect home work are well documented (ILO, 1939; Caffarena, 1924; Brandi, 2007).

In the twenty-first century, digital platforms for transportation such as Uber, for delivery such as Glovo, and for shopping such as Cornershop have become widespread in Latin America. As with homeworkers, one of the primary problems is determining whether the employment relationship is independent or dependent.

One of the characteristics that suggests an autonomous relationship is the variable nature of the workday. It is rare for work to be performed for an entire workday or even for a standard if lesser number of hours; work is performed different hours from one day to the next. The platforms themselves explain that persons work the number of hours they want and according to their own schedule, just as the self-employed do.

Second, work on a platform is not exclusive. A person can work for one platform part of the day and for another or others the rest of it. This type of work is, then, often a secondary activity, a source of additional income.

Third, the digital-platform worker has a form of working capital in his or her computer, mobile telephone, bicycle, motorcycle, or car. The worker uses those elements to connect with the platform and to render the service for the customer. Hence, platform workers, like many independent workers, invest to be able to perform the service.

In sum, then, workers on digital platforms organize their own work according to their needs; they are the ones to determine, at least partly, the time they spend working. They do not necessarily work on only one platform, and they can change from one to another whenever they so desire. They are also the ones who decide what specific form of capital they will use to perform the service.

At the same time, another series of characteristics indicates a dependent employment relationship between the worker and the platform. Some platforms select collaborators in a process similar to the ones carried out by more traditional companies. In some cases, that selection is followed by training. In many cases, the platform gives workers materials that identify the company and oblige workers to use them while performing the service.

The platform, generally speaking, organizes the entire process. The worker relates to the customer only through the platform, which mediates the communication between them. The platform closely monitors the entire process of rendering the service, and each action taken generates information that is evaluated constantly. The platform unilaterally establishes the price the customer will pay for the service and the pay the worker will receive in function of the variables the platform deems pertinent.

In addition to those explicit characteristics, there may be others hidden in the application's algorithm and unknown to the worker. For instance, the algorithm may privilege workers who offer their services during high-demand periods and who are available for long periods over those who make themselves available at moments of low demand or for short periods of time. Another characteristic that may be hidden in the algorithm is the worker's tendency to accept or reject a request. If a worker tends to reject requests that are not very lucrative, the algorithm penalizes him or her, preferring workers who accept any request.

Three of the main characteristics of autonomous work are, thus, significantly conditioned or limited by algorithms: freedom to choose to accept or

reject a request, to arrange a workday the worker finds convenient, and to participate in determining the price of the service. Algorithms' functioning is not random, nor is it neutral to the worker's behavior. On the contrary, by means of incentives and penalties, it sways workers to adjust to the needs of the platform.

Regulation and inspection: pursuing decent work in non-standard employment arrangements

In almost all labour law, the existence of an employment relationship is determined by a combination of elements over which the employer has control and to which the worker is subordinate or dependent. There are, in reality, many situations where control and subordination are at play, but where that control is not exercised directly, immediately, or completely as it is in a standard employment arrangement where the work is performed at the establishment of the company that employs the worker (Casale, 2011).

As shown above, in some respects manufacturing home work and day-labour on digital platforms are like dependent wage-earner relationships and in others like the independent relationships of the self-employed. The report of the Global Commission on the Future of Work makes some recommendations that could be useful for those activities (ILO, 2019). First, ensuring the dignity of persons who work "on call" such that they really do have options in terms of flexibility and control of their working hours. That would require regulations that establish a minimum and predictable number of guaranteed hours. Second, ensuring that collective representation of workers and employers, including those involved in the platform economy, engage in social dialogue as a public good.

To successfully implement these recommendations, a basic definition of the legal status of workers is required. That would make it possible to determine what exactly their labour rights are and who is responsible for making sure they are exercised. Examples of regulation and implementation in the region include Colombia's labour inspection office, which has a programme to identify and combat ambiguous or disguised employment relationships in the supply chains of goods and services. The programme is geared to identifying employment intermediation that, by means of subcontracting, covers up abusive practices such as the illegal dispatch of workers (Bueno, 2018).

The city of Buenos Aires in Argentina requires that delivery service workers be treated like dependent workers. The ineffective implementation of that law, however, has led to a number of lawsuits. In terms of inspection, in April 2019, a court ordered the Buenos Aires city government to ban bicycle delivery services on the Rappi, *Pedidos Ya*, and Glovo platforms due to lack of basic safety standards. It was also proven that workers on those platforms are faced with employment vulnerability and informality. In Uruguay, all the drivers who work on the Uber and Cabify applications have been formalized. Those workers are not considered dependent employees, though, but independent business entities registered in order to pay taxes and participate in the social security system (AISS, 2017).

In conclusion, while many of the challenges in the area of decent work with the emergence of new non-standard employment arrangements like digital-platform workers are strikingly similar to the challenges that the ILO has faced in this sphere throughout its one-hundred-year history, there are new dimensions that require new solutions. The wellbeing of María and Juan, and millions of other workers like them in Latin America, the Caribbean, and the rest of the world, will depend on those solutions.

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13 | Paid domestic work in Latin America: advances and challenges for the protection of an overwhelmingly female occupation

María Elena Valenzuela and Jacobo Velasco

The history and present of domestic work in Latin America

For their basic functioning, all societies must be able to guarantee both the production and the care of individual and collective life. Caretaking implies the physical, mental, and emotional activities necessary to raise children, as well as to maintain families and persons from childhood through old age. A primordially relational task, caretaking is assigned to women because considered feminine by nature (Brites, 2007). Caretaking can be unpaid, that is, performed as an “obligation” assumed – usually by women – for other members of the household, or paid when a person – once again, almost always a woman – is hired to perform care services for members of a family. In either case, caretaking is mostly performed by women and enjoys little recognition or social valorization.

In the public policy agenda and in academic studies, women’s reproductive labour was invisible for many years. Because their work was not recognized as such, women who took care of their families were categorized as inactive and women who performed such work as an occupation were considered members of the secondary labour force. Paid domestic work (PDW) in particular has been treated as a hybrid labour category: though the employment relationship at stake is by nature wage labor, it operates in practice, due to the conditions in which it is performed, like informal employment. That situation, along with the institutional inability to enforce legislation on PDW, has meant that PDW has been slow to catch up to other forms of wage labour in terms of working conditions. PDW has been

considered a low-productivity activity associated with the generation of tangible products and services without recognizing that it enables members of the household to engage in paid work.

PDW is emblematic of the employment insertion challenges faced by women in Latin America. It is one of the largest female occupational categories in the region, though, as pointed out above, it does not enjoy the recognition or social valorization it is due. In 2017, PDW accounted for 14.6% of all employed female workers in Latin America (ILO, 2018). Historically, most women who performed paid domestic work have been poor, and their educational levels low. Many are of indigenous or African descent. For many years, domestic work was the gateway into the world of work for young women who migrated from the countryside to the city in search of income for themselves and their families. Working conditions were precarious, workdays long, salaries low, and discrimination widespread. Generally speaking, labour guidelines to protect paid domestic workers granted them fewer rights than other wage-earners. Notwithstanding, levels of noncompliance have traditionally been very high (Valenzuela and Mora, 2009).

There have, recently, been major changes in the regulatory framework on PDW. The adoption, in 2011, of Convention N° 189 on domestic workers was a milestone in recognition of the status of this occupation and of the rights of those who perform it.

Latin America, like the rest of the world, is currently facing a crisis in caregiving, which makes the discussion of PDW particularly important. The increased rate of female participation in the labour force has not been accompanied with a redistribution of the relative amount of time men and women spend on family care. That, combined with the impact of changes in the organization of work and in time spent working, as well as the lack of public investment on care services and an increasingly urban population with long commutes, has heightened the pressure on employed women and men alike as they attempt to respond to growing care demands. In a context of fiscal austerity, the private sphere and families bear the brunt of the responsibility for taking care of children, elderly adults, the disabled, and the ill. In practice, that has aggravated inequality, since only families with relatively high incomes can afford to hire help to meet care needs. Most households, including the ones that contain paid domestic workers, are in no condition to tackle this care deficit.

Structural changes in paid domestic work

The composition of the PDW labour force and the arrangements under which that occupation is performed have undergone major changes in recent years. While it is still performed almost exclusively by women, the average age of paid domestic workers has gone up. Younger women, who often have higher educational levels, prefer other jobs, since PDW is not only often subject to poor working conditions but also stigmatized. In some countries in the region, PDW is an employment niche for migrant women.

At the same time, traditional PDW arrangements have shifted to a large extent, becoming more modern. The overwhelming majority of domestic workers do not live where they work, and more domestic workers work for more than one employer. The length of their workday has shrunk to resemble the hours of other wage-earners. The services rendered are more and more specialized, and some paid domestic workers perform tasks that in other contexts would be performed by skilled workers in the health and education sectors. The digital economy has also affected the job-hunting process; there are now digital platforms that offer domestic cleaning and care services. Greater demand for domestic work and legal frameworks that afford workers greater protections have also been key to improving working conditions. Wages for PDW have increased at a higher rate than for the rest of employed women, often due to increases in the minimum wage. For these reasons, PDW has gained greater recognition in recent years.

The role of organizations of domestic workers

Organizations of domestic workers have played an important role in this transformation. Latin America has a rich tradition of organizations of paid domestic workers. By the mid-twentieth century, organizations in a number of countries in the region (Chile, Argentina, and Brazil) fought for decent treatment and minimum working conditions for paid domestic workers. Those organizations grew as did the number of countries with them. In 1988, the Latin American and Caribbean Confederation of Household Workers (CONLACTRAHO) was formed, an umbrella organization that now has twenty-three member organizations in fourteen countries throughout the region. With the ILO's support, the first regional encounter between representatives of CONLACTRAHO organizations and representatives of trade unions (the Women's Commission of the Inter American Regional

Organisation of Workers (ORIT for the acronym in Spanish)) took place in 2005. That encounter ended with a joint call to the ILO to adopt an international convention to protect the rights of paid domestic workers.

Despite difficulties in organizing due to the isolated nature of the work and its geographic dispersion, organizations of domestic workers within nations and in the region as a whole have successfully mobilized to promote changes in laws and in policies. One major achievement was the establishment of collective bargaining process in Uruguay, Argentina, and the city of São Paulo (in Brazil). Uruguay was a pioneer. The first round of collective bargaining for the domestic sector was held there in 2008. The process was not devoid of difficulties. Though a law including the domestic sector in collective bargaining was passed in 2006, it was not implemented for two years due to the lack of an employer counterpart (that role was eventually played by the League of Housewives). The technical support provided by the ILO and other actors helped to strengthen the representatives of both trade unions and employers. Since that first round of negotiations, a number of others have been held to set wages by category and to determine other conditions.

The importance of Convention N° 189 in Latin America

ILO Convention N° 189 and Recommendation N° 201 (2011) recognize the fundamental rights of domestic workers and their right to working conditions no worse than other dependent workers. Convention N° 189 underscores the right to association and to collective bargaining. It also emphasizes the need for access to legal mechanisms and for labour inspection. Due to its content and guidelines, Convention N° 189 has become a standard for the labour rights of domestic workers in a framework of equality in relation to other dependent workers.

Even though a number of countries in the region had modified their laws to expand the rights of paid domestic workers before Convention N° 189 was adopted. Latin America has been a leader in the ratification of that convention, in particular and in the broader extension of legal protections to domestic workers. Of the twenty-nine countries to ratify the convention, sixteen are in Latin American and the Caribbean; eight in Europe; four in Africa; and just one in Asia. Uruguay adhered to Convention N° 189

in 2012, making it the first country anywhere to do so. It was followed by Nicaragua, Bolivia, Ecuador, and Guyana in 2013; Costa Rica, Argentina, and Colombia in 2014; Chile, Panama, and the Dominican Republic in 2015; Jamaica in 2016; and Brazil, Peru, and Granada in 2018.

Convention N° 189 clearly establishes the basic conditions for domestic work. Its ratification led a number of countries to enact labour law reforms in accordance with the principles the convention lays out, seeking to narrow the rights gap and eventually ensure that paid domestic workers have the same rights as other wage-earners. The major advances to eliminate discrimination and to ensure equal rights include the norm on work time and maximum weekly and daily hours of work. In eight countries, the maximum length of workday for domestic workers is the same as for other wage-earners (Argentina, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Paraguay, Peru, and Uruguay); a greater number has enacted requirements on breaks and rests during the workday. In eight countries, the minimum wage for domestic workers is the same as for other workers (Bolivia, Brazil, Chile, Ecuador, Colombia, Guatemala, Nicaragua, and Paraguay), and in two others (Argentina and Uruguay) wages are set pursuant to collective bargaining. While in some countries in kind payment is permitted in the case of domestic workers who live in their employers' homes, in most it cannot be considered a part of pay, which means that it does not affect wages. In eleven countries, reforms required overtime pay, though in some cases overtime is limited to work on holidays or weekends. The reforms tend to eliminate discrimination in access to social security.

The process of ratifying Convention N° 189 also contributed to changing the regulatory framework that governed paid domestic work in a number of countries in the region in the 2010s. Reforms implemented in Argentina (2013), Brazil (2013, 2015), Chile (2014), and Paraguay (2015) incorporated many of the convention's recommendations or altered the overarching framework on dependent workers. Alongside these reforms, a significant ruling by the Supreme Court in Mexico in 2018 held that not registering domestic workers in the Mexican Social Security Institute was "unconstitutional," requiring the enrollment of some two million Mexican domestic workers within a three-year period. In Paraguay, a national minimum wage for domestic workers was enacted by decree-law in June 2019.

Challenges for paid domestic work

Hiring a paid domestic worker is the strategy many upper-middle- and upper-income households in the region deploy to meet their care needs, thus allowing the adult members of their households to perform well-paid jobs. While recent years have witnessed growing recognition and professionalization of domestic work and legal frameworks have been reformed to narrow the rights gap and improve working conditions, PDW is still one of the lowest paid occupations, with high levels of informality and low levels of social security coverage. PDW in Latin America should form part of an integral caregiving policy that takes into account not only domestic workers' working conditions but also their level of professionalization and social recognition. To that end, institutions and policies should engage in complementary efforts and actions to meet the care needs of the entire population, not only the part that can afford PDW services. Questions on the future of paid domestic work arise as the volume of young people working in this sector diminishes and as the number of migrant workers joining it is likely to grow.

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14 | Poverty, inequality, and the working poor phenomenon

Luis Beccaria and Roxana Maurizio

The distribution implications of the labour situation has traditionally been a concern of the ILO as it analyzes labour markets in developing nations, particularly those in Latin America. As early as the first writings of the Regional Employment Programme for Latin America and the Caribbean (PREALC, for the acronym in Spanish), published in the seventies, emphasis was placed on the concentrated distribution of income – more accurately, the distribution of pay – in the region. That was due, in part, to a marked differentiation in occupational structure that reflected, with varying degrees of intensity, the levels of underemployment characteristic of the region's economies.

This characteristic of the labour situation not only broadens income gaps between employees in different occupational groups, but also helps explain the significant presence of those with earnings too low to meet their own or their households' basic needs for goods and services. Absolute poverty and inequality relative to work income are associated with structurally unsatisfactory labour markets. The phenomenon of the “poor worker” evidences that, in the region, having a job is no guarantee against poverty.

Developing countries are not the only ones struggling with the lack of occupational homogeneity. Industrialized nations are also characterized by discontinuities between different subsets of workers in terms of level of productivity, as well as between types of labour relationships and occupational categories. There are significant differences between developing and

industrialized nations, however, in terms of the size of those gaps and the weight of non-salaried employees, in other words, of atypical wage workers.

The ILO's perspective of analysis on labour markets is tightly bound to the Latin American structuralist tradition. Focusing on the postwar period and through the seventies, the structuralist approach detected marked differences in productivity both between and within sectors (Prebisch, 1949; Pinto, 1970). That was associated with the fact that the region's economies were not capable of sustained growth or of generating high-productivity jobs in the face of the growing labour supply, particularly in urban areas. One consequence of this was that wide sectors of the active population of cities had to generate their own occupations, establishing small productive units with low levels of efficiency and few wage employees (sometimes they were just one-person operations). Awareness of the importance of disguised underemployment in these occupations did not mean that, in the case of Latin America, the PREALC failed to consider the high rate of open unemployment in the region (PREALC, 1974).

These small units, characterized not only by low efficiency but also by the minimal division between capital and labour, were the basis for what the ILO called the *informal sector of the economy*.

As early as the seventies, a number of PREALC reports showed the tie between poverty and work in the informal sector. On the basis of evidence on a group of cities in the region, it was concluded that "the work of the poor in urban areas is concentrated in activities that constitute the informal sector" (Souza and Tokman, 1978).

Wage workers employed in informal units are rarely covered by labour regulations or social security, since evasion of those systems is among those units' survival strategies. That means that most workers in the *informal sector are informal workers*.

Furthermore, in a context of inadequate labour demand, firms in the formal sector have the de facto ability to hire wage workers without complying with labour regulations in what amounts to *informal* wage workers in the *formal* sector. Precarious dependent workers are, in Latin America, a large group. They receive less pay than formal wage workers and face some of the same drawbacks as those working in the informal sector. The ILO drew this difference between *formal workers* (covered by labour regulations) and *informal*

workers (not covered by labour regulations) within the formal sector more recently, and it helps explain why workers in the formal sector form part of poor households.

The role of skills and human capital

Emphasis on the characteristics of the productive unit as a factor that explains unequal pay has been questioned widely. It is argued that income gaps are the result of gaps in “human capital.” Workers with few skills are concentrated in low-productivity establishments and in precarious jobs in the formal sector. In the end, then, greater inequality in the developing world is tied to greater differentiation of labour supply in terms of productivity due exclusively to the human capital endowment. The widespread poverty associated with the low pay received by a large group of employees in the informal sector and by precarious wage workers (as shown in, for instance, Souza and Tokman’s study, 1978) is simply the result of those workers’ low skill levels.

There is, indeed, an association between income and human capital in the region. The distribution of the human capital endowment is more unequal in Latin American countries than in the developed world (see, for instance, Castelló-Climent and Doménech, 2014). At the same time, low-skill employees are overrepresented in the informal sector and amongst formal precarious wage workers. That evidence is not grounds per se to support an argument based on the human capital theory. The ILO and others offer perspectives that emphasize the dynamic nature of Latin American economies, and its impact on labour demand. It argues that such economies impede continual improvement in the skill profile of the region’s workers and lead to a degree of inflexibility in distribution before reductions in the concentration of skill levels.

This analytic perspective has questioned the more traditional perspective by emphasizing the significant influence of occupational variables in determining income. The PREALC/ILO has, more specifically, contributed to recognition of the independent effect of these traits. From a conceptual point of view, the low productivity of informal units is understood not solely, or mainly, as due to the fact that the workers in them are less productive, but rather that, for a series of reasons, those units are not very efficient or profitable. Those reasons include low or nonexistent capital use, inadequate

or obsolete technology, poor access to supplies, and competition from formal establishments. For all those reasons, these units can generate only low incomes for those who work there, owners and employees alike. These firms are created and subsist because those who work in them have little or no chance of finding employment in the formal sector, where they would earn more. While there has been debate on the degree to which informality is involuntary, with the resulting questioning of the meaning of the monetary income gap, there seems to be evidence to support the existence of a segment of independent workers who find “refuge” by working in an informal establishment.

The heterogeneity of productive units

But the importance of the characteristics of the productive unit in determining income has not only been argued conceptually. In Latin America, the PREALC has been a pioneer in providing direct empirical evidence on income gaps between people with the same level of human capital but who work in firms of different characteristics. A key point of reference along these lines is the article by Souza and Tokman (1978) cited above. It concludes that “labour markets are segmented. Income gaps cannot be explained solely by differences in the characteristics of workers. At play as well are differences in the productive units where they work.”

In its original contributions to the region, the ILO has also emphasized that the informal sector is heterogeneous. It includes productive units with varying degrees of underemployment, that is, with differences in efficiency/productivity levels. That difference in productivity gives rise to heterogeneous incomes as well: not all workers in the informal sector receive pay so low that they fall into poverty. More recent studies have shown, though, that, generally speaking, their pay is at the lower end of the distribution curve.

Other factors: macro-economic stability, social protection, and non-standard forms of employment

While the entire postwar period was characterized by occupational differentiation and widespread informality in the employment structure, the ILO was also aware of changes in distribution in the region due to macroeconomic dynamics in the individual countries and on a broader level.

Relevant factors included the debt crisis of the eighties, market-oriented policies starting in the middle of that decade (Klein and Tokman, 2000), and redistribution policies in a number of countries in the early twenty-first century. Beyond a long-term distribution matrix influenced by the occupational structure, levels of inequality were also affected by the evolution of economies and the resulting aggravation or reduction of concentration. The dynamics of informality in the context of shifts in the economy may or may not be a factor that captures, if only partly, variations in levels of inequality and poverty.

The limitations resulting from social protection policies are another significant aspect in the influence of informality on distribution – that because in Latin America, like in most other regions, social protection mechanisms are largely contributory. Formal wage workers are, generally speaking, the beneficiaries of policies to address periods of unemployment or the loss of a job, an assured minimum wage, and the right to receive an income after the end of one's working life. It was not until the past two decades that some countries enacted non-contributory mechanisms that provide coverage in some of those situations to non-salaried workers and to those who do not have or have not had social security coverage – that is, most workers in the informal sector. While those devices have increased the wellbeing of informal workers and their households, their impact on inequality and/or poverty is usually minimal.

More recently, the ILO has focused its efforts on the growing relevance of occupations associated in some way with medium-sized and large companies that, though not strictly informal, have more and less marked traits of precarity. Those traits range from more traditional atypical employment arrangements (employment for a fixed period or part-time employment) to more novel ones (especially in developed countries, for the time being) such as zero-hour contracts and platform-economy jobs. These jobs tend to be sporadic. There are no set working hours, and coverage of labour risks is low or nil. Workers working under these arrangements receive less pay than their formally employed counterparts with the same skill level. Those traits, and others characteristic of these occupations, generate, together, greater income insecurity for the workers who perform them, making those workers more likely to fall into very-low income levels or poverty.

While these new arrangements are still not widespread in Latin America, the region's labour panorama is expected to grow and become even more

heterogeneous. They will likely become another source of precarious and low-income work, though more traditional arrangements associated with informality will continue to be the largest source of low-quality jobs. This is one of the primary challenges to reducing poverty and improving the distribution of labour and household income in the region.

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15 | Evolution and future of youth employment policies: global debates and their implications for Latin America

Juan Chacaltana and María Prieto

The evolution of the approach to youth employment policies

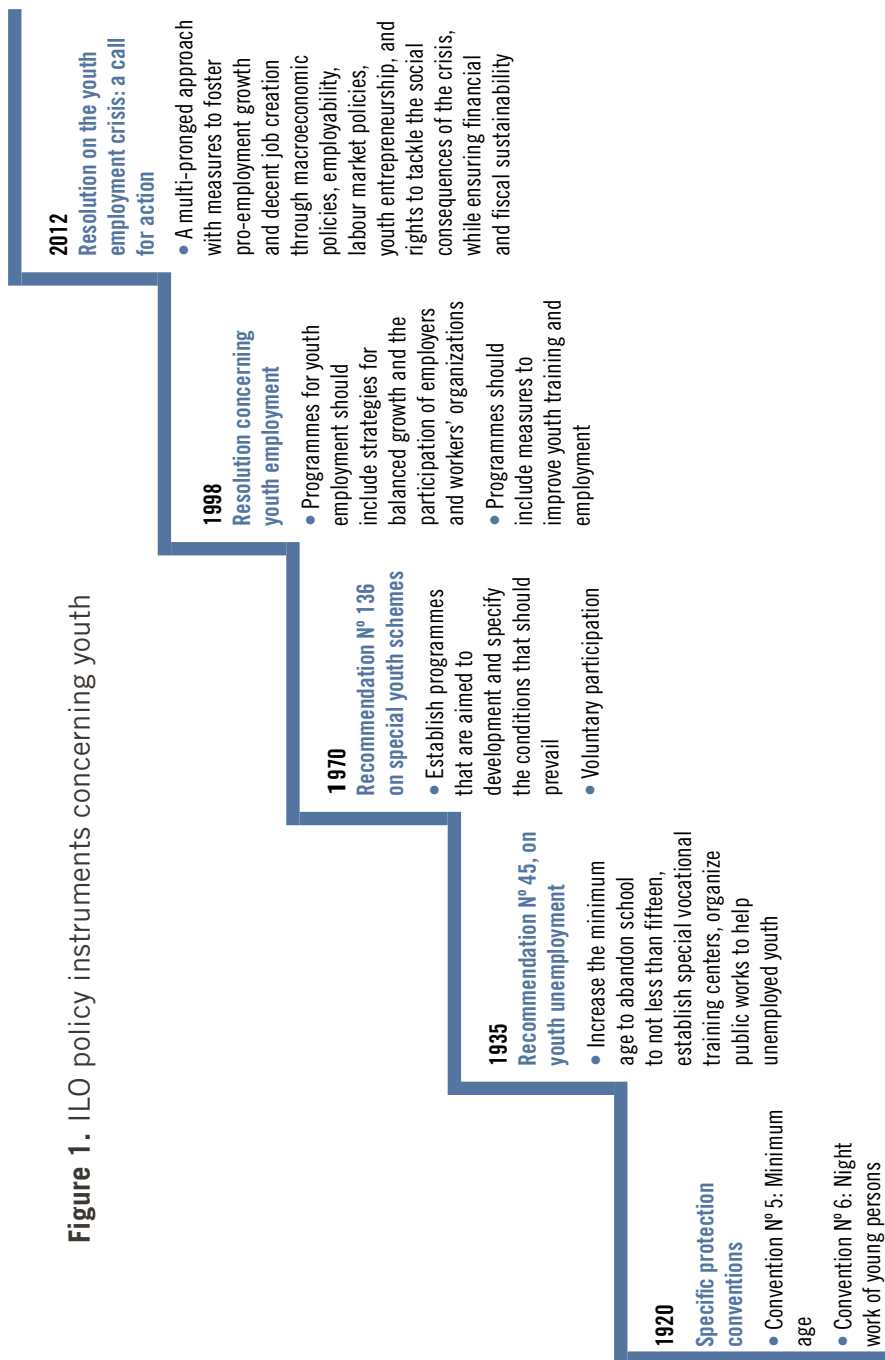
Youth employment is an ongoing and constantly evolving challenge, and policies to address it are also changing. That reflects, in part, debates on and visions of the role of youth in societies, but also the different characteristics of each generation and their shifting status in the labour market. Recent years have witnessed a new shift in that evolution in light of dramatic and far-reaching changes in the drivers of the future of work, in particular new technologies. In this context, it is fundamental to renew policy approaches and tools to help increase opportunities and minimize risk of exclusion.

Figure 1 illustrates the evolution of the ILO's primary regulatory instruments on youth over time as it gradually came to recognize the active role that young people play in society.

The instruments developed by the ILO during its early years were not, generally speaking, geared specifically to youth, though they were the main beneficiaries. That is the case of ILO Convention N° 3 on maternity protection, as well as Conventions N° 5, 7, and 10 on minimum age to work in industry, sea, and agriculture respectively. Notwithstanding, the first ILO instrument that addressed youth specifically was Convention N° 6 (1919) on the night work of young persons, which prohibited night work for those under age eighteen.

The habitual approach to fostering youth employment was through supply-side measures, mainly training programmes. ILO Recommendation

Figure 1. ILO policy instruments concerning youth



N° 45 (1935), which revolved around youth unemployment, declared that “Juveniles [defined as those under the age of eighteen] [...] who are unable to find suitable employment should [...] be required to continue full-time attendance at school until suitable employment is available for them.” For those between the ages of eighteen and twenty-five, there should be vocational training centres do not become institutions for military training and attendance is voluntary.

Convention N° 122, issued in the post-war period, emphasized the need to stimulate economic growth and to solve the problems of unemployment and underemployment. Regarding youth in particular, Recommendation N° 136 (1970) on special youth schemes establishes that special programmes for youth should be temporary (2 years) and that “during service in a special scheme, participants should be given information and guidance to assist them in making decisions regarding their occupational future.”

Starting in the late nineties, youth employment policy shifted to an integrated approach. The 1998 ILO resolution on youth employment recognizes that it was harder and harder for young people to enter the labour market. It also points out that youth unemployment is only one dimension of the wider and generalized problem of unemployment and underemployment, and that it cannot be solved without a global increase in economic growth and employment.

The 2005 ILO Resolutions concerning Youth Employment and its Conclusions establish that “the youth employment challenge is bound to the general employment situation [...]” and “the challenge is to bring young people into employment without displacing other workers.” One of the key challenges being intergenerational issues, in other words, the need for policies to have a “life cycle approach.” This resolution is very clear on the fact that sustainable economic growth is necessary, but not sufficient to generate sustainable employment. There is a need for complementary policies, specifically “the development of entrepreneurship” and “the continued relevance of vocational education and training to labour market needs [...].”

In 2012, after the international crisis, the ILO adopted a Resolution entitled *The youth employment crisis: A call for action*. It is a call to address the serious youth employment crisis with a “multi-pronged approach” that includes “measures to foster pro-employment growth and decent job creation

through macroeconomic policies, employability, labour market policies, youth entrepreneurship, and rights to tackle the social consequences of the crisis, while ensuring financial and fiscal sustainability.”

Based on an ILO databank on five hundred youth employment policy documents generated from 1990 to 2015, it is clear that, in their policy documents, countries are taking more and more integrated measures. A growing number of countries are incorporating mechanisms to improve policy coordination, including budgetary concerns, while also implementing impact-assessment measures.

Evolution in Latin America

This evolution has also been observed in Latin America. According to Rodríguez (2011), the region’s agenda, like the international agenda, the first attempts to tackle youth unemployment were related to training the young labour force and tended to be more “in the classroom” than “in practice.”

Later, in the nineties, a number of governments implemented youth (*Joven*) programmes (the first was *Chile Joven*), a generation of employment interventions explicitly oriented to young people excluded from earlier initiatives. These programmes had a demand-side approach, that is, they considered the needs of the firms. Another innovation was that the effectiveness of these programmes was assessed more regularly. Based on those evaluations, results appeared to be better than in the earlier initiatives, though the evaluations also revealed significant limitations. For instance, they did not reach the most vulnerable persons, but rather benefitted those in the best situations among the excluded. It was also clear that these programmes failed to address the roots of unemployment. The resources they were allocated were small and/or their results depended to a large extent on the macroeconomic context (Ibarrarán and Rosas, 2008).

Starting in the 2000s, a renewed emphasis was put on “first job” programmes and, to a lesser extent, entrepreneurship interventions. The former adopted an array of approaches, including a combination of training and first-work experiences (like the *Joven* programmes), but also through special contracts for youth and even through wage subsidies (Dema, Díaz, and Chacaltana, 2015). The underlying assumption was that firms should be incentivized to hire young workers and that a major obstacle to doing so was the cost of

hiring them. The effects of these programmes were relatively modest, though, because that underlying assumption had been overestimated. In terms of entrepreneurship promotion, evaluations showed positive results, though programmes of this type are still incipient in the region and the resources they are allocated lower than those granted other types of interventions (OECD/ECLAC/CAF, 2016).

More recently, some countries have been experimenting with integrated measures. While different combinations work for different scenarios, there is evidence that programmes that offer services complementary to the main service, regardless of what those services may be, tend to do better (Kluve *et al.*, 2017). Evidence on the impact of multi-pronged interventions and approaches is still scant, however.

Youth and future policy perspectives: challenges and opportunities

Debates on the future of work have identified a number of disruptive challenges and opportunities that will affect the future of young people in the labour market (ILO, 2018 and 2019a).

By 2050, the global older adult population is projected to be larger than the youth population. That implies, among other things, that the active labour force will have to support social protection schemes for a growing number of persons. Latin America is no exception to this trend. Social protection will have to confront these challenges, particularly in a region with a high dependency ratio. Migration might partly offset the effects of an aging population and a shrinking work force. Furthermore, in some countries retirement age has been extended to adjust to these demographic changes. This might lead to a drop in the demand for youth employment, since the jobs held by youths and by older adults are often substitutable. Population aging also brings major changes in occupation. For example, the care economy as well as activities related to leisure are expected to grow due to population aging.

Because of its speed, technological change is currently considered the most disruptive factor for the future of work. For current generations of young people, future labour markets will be characterized by the convergence of technologies such as the internet of things and artificial intelligence – a production paradigm unknown to previous generations. Today's youth

cannot conceive of the world without those technologies. Some of those young people are digital natives, which means they have a natural advantage in the use of new technologies. For others, especially those in regions where access to technology is uneven or lagging, catching up will take some time (Weller, 2017).

Technologies also bring new risks, like automation of existing jobs, the misuse of personal data, and the potential polarization of jobs. They also bring new business models and employment arrangements, like platform work and work on demand. Technological change generates new opportunities by broadening the capacities of companies and workers. With the spread of automation and digital technologies, developing and emerging countries, including those in Latin America, have an opportunity, since their industrial production will likely veer to higher value-added manufacturing with the application of automation and digital technologies.

Climate change and globalization have a major impact on how we live and work. Significant modifications in consumption and production are among the consequences they bring. The current generation of young people is very sensitive to and aware of the transformations underway, and they will undoubtedly be the ones responsible for their future administration. In light of these developments, a new generation of policies for youth employment must be envisioned; such policies would help young people make their way down new paths toward a just transition.

Toward a new generation of youth employment policies

The quick transformations of the labour market bring the need to debate a new generation of youth employment policies that take into account at least three aspects:

1. *Supporting lifelong learning and employability.* The transition to a first decent job should be a priority for national employment policies. In the future, the trajectory of a work life will be less and less linear, which means that policies should support dynamic transitions for all groups, beginning with efforts to facilitate entry into the labour market. Policies should prepare workers for the multiple transitions they are likely to experience – educational transition, reproductive transition, transition from school to work, etc. – and facilitate their continuous participation in the labour market. This implies supporting

lifelong employability, which in turn implies envisioning lifelong learning as a key entitlement for every (young) persons (ILO, 2019b).

2. *Policy upgrade with and for new technologies.* New technologies can change how youth employment policies are implemented, in traditional youth employment areas like capacity and skill provision (using blockchains or complex information systems), employment services (using artificial intelligence to connect supply and demand), and entrepreneurship (through the spread of information on market opportunities).

3. *Promoting lifelong social dialogue that begins with active participation of youth.* Experience shows that social dialogue leads to better policies based on the knowledge and experience of social actors, where the costs and benefits of opposing interests can be negotiated and resolved for the sake of the greater national interest. Social dialogue also induces support for the measures proposed and hence pre-empts future opposition and conflict that would otherwise reduce their effectiveness. (ILO, 2012). Social dialogue is thus a powerful tool that can be used successfully to mitigate the negative effects of the challenges in the world of work today and that will undoubtedly continue in the future. Young people – the primary actors in the future of work – have generally been considered the object of youth employment policy, but they aspire to, and should, become active subjects of those policies. They have the right to make their voice heard in the design and implementation of policies that affect their employment, personal, and family trajectories. While there is much to be done in this respect, there have been interesting cases of tripartite youth dialogue on employment (including in Spain, Peru, and Paraguay at different junctures) that show a promising path to follow. The use of digital technology, for example, might be a good instrument to facilitate a new dialogue, through which young people, who are more digital savvy than their elders, would stand a better chance than they do today to make their voices heard.

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16 Revisiting employment informality and policies to reduce it in Latin America

Fabio Bertranou

Half of Latin American workers are informal

Currently, one of every two employed persons in Latin America works in an informal situation. For that reason, informality is a priority issue for the International Labour Organization and the realms of its mandate such as international labour standards, technical cooperation, and the development of knowledge for public policies. Regarding the latter two, fifty years ago the ILO launched the World Employment Programme. In this part of the world, that programme took the form of the Regional Employment Programme for Latin America and the Caribbean (PREALC for the acronym in Spanish), which devised and implemented an ambitious technical cooperation plan to overcome employment informality and to mitigate its effects (Infante and Martínez, 2019).

Regarding international labour standards, the ILO's Recommendation N° 204 concerning the transition from the informal to the formal economy helped reconceptualize the framework for action, recognizing the causes and the consequence of a phenomenon that cuts through the region's social and production structure. In 2018, the International Conference of Labour Statisticians adopted recommendations regarding employment statistics and introduced new categories such as the dependent contractor. It established new criteria to identify situations that have characteristics typical of informality such as limited access to labour protection and to social security.

Like the Global Commission on the Future of Work's report *Work for a brighter future* (ILO, 2019), the new guidelines adopted by the ILO attempt to place in the current and future context the need to tackle informality in a rapid changing world for production and employment. This emerging world generates a new set of public policy challenges on top of the structural causes for the region's limited development and for its insufficient capacity to create quality jobs, yielding an occupational structure where informality is widespread.

Four questions must be taken into account in revisiting policies on informality. The first is to develop a longitudinal approach or a vision of employment trajectories in order to understand the dynamic at play in processes of formalization/informalization. The second is to better understand how exactly instruments that favor formalization operate during expansive cycles and how other instruments act to prevent informalization in periods of deceleration or recession. The third is to analyze the effect of some recent public policies that have contributed to formalizing employment, but only precariously. Finally, to examine the new informality that is arising alongside the "modernization" ushered in by digital technology.

How to better characterize informality over the course of employment trajectories

An employment-trajectory approach to informality makes it possible to go beyond the traditional stylized conceptualization of dual labour markets where a worker is categorized as either formal or informal. On the aggregate level, that criterion leads to an also dual conception of the economy, with the (modern) formal sector on the one hand and the (low-productivity) informal sector on the other.

From an analytical point of view, one of the greatest challenges consists, then, of describing employment informality in terms of different possible employment trajectories. Regardless of the limitations of employment statistics, a longitudinal approach makes it possible to determine the extension and intensity of informality, and hence to develop a broader consideration of policies over the course of a lifecycle and of their accumulated effects. In the past twenty-five years, administrative records, mostly from contributory social security schemes though also from non-contributory social protection programs, have furnished information on workers' trajectories in the

relation to labour market and to social protection systems. “Social security contribution density” is an indicator that provides insight on workers’ exposure to informality during their work lives and, hence, on what we might call “intensity of informality.”

Beyond there is sufficient evidence on whether labour market entry at an informal job and a significant permanence in that situation increases the likelihood of employment trajectories with decent work deficits, longitudinal employment data indicate that, generally speaking, workers in this region fall into three categories. First, permanent formal workers associated with the most dynamic and economically formal sectors; for those workers, episodes of unemployment tend to be brief. They are characterized by “high formalization densities.” Recent transformations in production have, however, increased subcontracting and dislocated production. As a result, workers in this segment sometimes move to smaller firms, with a higher level of informality, or to independent work, which in most countries in the region is characterized by low levels of social and employment protection. Second, there is a group of structurally informal and poor workers who always hold informal jobs with “low or no formalization density.” Finally, the third group of workers encompasses a large intermediate segment that moves back and forth between formality and informality, with short spells as wage workers and as independent workers, as well as periods of unemployment and even inactivity. These workers with “intermediate levels of formalization” are inclined toward informality; their access to social security is intermittent, and their income protection in old age through contributory systems is meagre or nonexistent.

Public policy implications of employment trajectories: a more integrated approach considering the economic cycle

There is widespread consensus that transition to the formal economy in Latin America requires an approach that contemplates both the longitudinal dimension of employment trajectories and a battery of coherent complementary policies that facilitate formalization. That approach should prevent informalization in adverse periods of the economic cycle and in the face of unfavorable events in the employment life of workers.

An integrated approach should include: (i) normative and regulatory dimensions; (ii) productive policies and others that directly affect the

economic and labour productivity; (iii) inspection in the framework of a new culture of compliance; and (iv) finally, incentives to firms and workers that turn the cost of informality into an inhibitor of informal production and work.

In 2015, the ILO adopted this integrated approach in Recommendation N° 204 concerning the formalization of the informal economy, which took into account both macroeconomic and enterprises dimensions. Sectoral, regulatory, and incentive-based policies are not enough to tackle informality. Necessary as well is a minimum real per capita growth threshold capable of invigorating the economy. Economic cycle considerations are, then, fundamental to the design of instruments. When the product cycle is expansive, the integrated approach should foster formalization. During recessions and economic crises, when the cycle is negative, instruments should act to prevent the informalization of the economy and employment. In other words, the instruments to transition from informality to formality are not necessarily the same as the ones required in situations of growing informalization.

Experience shows that the economic cycle is not symmetrical. Both the adjustments in employment effected by firms and the economy as a whole seem to follow an asymmetrical U-shaped pattern, with more dramatic cuts in formal employment in the short term followed by a slow expansion during recovery (formal employment does not expand as much as the economy in the wake of adverse cycles, however). Due to the high rate of independent work, the structure of employment on an aggregate level also changes with the economic cycle. During periods of deceleration and low growth, independent jobs are created at a proportionally higher rate than other types of employment.

Policy priorities for the three segments with different informality intensities

Beyond the considerations of the integrated approach, of the importance of the macroeconomic context, and of the effects of the economic cycle, the identification of three different labour market segments each with its distinct accumulated level of formalization implies prioritizing different sets of integrated policies. For structurally informal worker, that is, the “hard core” of informality, a robust set of social protection benefits is required to

ensure income security and access to quality essential services like education to prevent the children and adolescents in these households from reproducing the adult members' pattern of exclusion. The strategy, in other words, requires a long-term vision and perseverance so that the next generation has the chance not to fall into informality and poverty.

For workers who move in and out of different occupational categories and states of formality and informality, a set of benefits to improve training and employability should be a public policy priority. The coverage of critical labour institutions, such as labour intermediation through public employment services and workplace inspection to ensure firms' compliance with regulations, should be expanded. Finally, for those workers with better quality jobs and for those that work under informal arrangements for only brief periods ("bridges" between formal jobs), the reduction of labour turnover should be a policy priority. These policies could have a positive effect on productivity and, therefore, reduce risks of informalization during periods of deceleration in the economic cycle.

Is precarious formalization the new norm?

After the decade-plus period (from 2002 to 2015) of intense improvement in employment and formalization indicators in the region due to the supercycle of commodities prices and the strengthening of employment policies, Latin America has experienced a slowdown in that process; in some countries, rates of formality have even dropped. The significant progress made in the early 2000s, though, should be reexamined since some of the headway in formalization took place in relatively precarious categories such as minimum-wage salaried work characterized by instability because usually under fixed-term contracts and the "formalization" of self-employed workers through simplified "monotax" regimes.

While the balance is positive on the aggregate level, there has been substitution within formal employment to more precarious types of formality where social risk coverage by social protection is incomplete and/or special arrangements prevail in the tax regularization of small economic units. The dichotomous aggregate informality/formality indicator should form only part of the overall concern of economic and employment policies. Relevant as well is the "intensity of formalization," since it is closely correlated to the "intensity of productivity levels," which resembles the situation of the

network of firms that vary in terms of level of productivity and that are also likely to have different trajectories in terms of productivity growth.

Another emerging concern is the new informality resulting, in part, from technological transformation, specifically atypical employment arrangements and platform work. Though in many senses like traditional informality, this new informality is mediated by technological devices that enable digitally-powered distance work and service provision on demand. Challenges in terms of identifying levels of subordination and access to labour protection and social risk are similar to those faced in traditional informality (ECLAC/ILO, 2019).

A formalization policy should have a mid- and long-term perspective, and there are few experiences in Latin America of enduring practices to integrate and coordinate actions to share common diagnoses of the causes and effects of informality or of agreements for policies and programmes that effectively reduce it. Though the empirical evidence and its scope are limited, it has been argued that formalization policies geared to social protection have had an adverse impact on incentives for the formalization and growth of firms and their employees. Furthermore, uncoordinated or inadequate workplace and social security inspections limit positive impacts and even foster evasion on the part of economic units.

It appears, then, that a robust and persistent framework of formalization policies in a context of economic growth would be necessary to set off virtuous cycles that can improve on experiences that have led to mostly precarious formalization. There is, of course, no silver bullet capable of inducing sustained formalization in economic units by creating decent work. On the contrary, what is required is a wide set of policies and instruments in an integrated strategic framework tied to productivity policies in which the interests and actions of an array of actors come together.

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17 | The right to collective bargaining in Latin America

Hugo Barretto

The tripod holding up the collective labour law

In the framework of freedom of association, collective bargaining is twofold: it is a right in and of itself, fundamental to a democratic society, but it also generates other rights as a privileged means to produce legal regulations.

From a structural standpoint, collective bargaining is one leg of the “tripod” that holds up the collective labour law as conceived in Latin America by authors like Mario de la Cueva and Oscar Ermida Uriarte. Both argued that collective bargaining is intrinsically bound to the right to strike and to association. Neither of those constituent rights can be violated without jeopardizing an essential core of values like the ones enshrined in the ILO Declaration on Fundamental Rights and Principles at Work (1998).

The right to collective bargaining forms part of a set of human rights in the labour sphere and, as such, it is recognized in international and constitutional norms. It is a basic component of the “block of constitutionality” and, hence, a cornerstone of countries’ national laws.

The doctrine of the ILO’s supervisory bodies

The ILO doctrine that arises from the statements of its governing bodies holds in no uncertain terms that there can be no restriction in the exercise of collective bargaining. It establishes:

According to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention N° 98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and, consequently, the level of negotiation should not be imposed by law, by decision of the administrative authority or by the jurisprudence of the administrative labour authority (ILO, 2018).

Furthermore, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has indicated that:

the right to bargain collectively should also be granted to federations and confederations; any restriction or prohibition in this respect hinders the development of industrial relations and, in particular, prevents organizations with insufficient means from receiving assistance from higher-level organizations, which are in principle better equipped in terms of staff, funds and experience to succeed in such bargaining. On the other hand, legislation which makes it compulsory for collective bargaining to take place at a higher level (sector, branch of activity, etc.) also raises problems of compatibility with the Convention. The choice should normally be made by the parties themselves, since they are in the best position to decide the most appropriate bargaining level, including, if they so wish, by adopting a mixed system of framework agreements supplemented by local or enterprise-level agreements (ILO, 1994).

As the ILO observed in its Resolution concerning Trade Union Rights and their Relation with Civil Liberties, collective bargaining is closely tied to other rights:

the rights conferred upon workers and employers organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights (ILO, 1970).

Though its conception as a fundamental right is cardinal, more than that is at stake in collective bargaining. It is not a mere regulatory figure. Collective bargaining's real importance lies in its very exercise and in the social practice that, ideally, it unleashes. We must appreciate it, as stated above, as part of the wider right to freedom of association.

The meaning of freedom of association is multiple, but it could be defined as a right to engage in trade union “activity” (article 3 of Convention N° 87). That “activity” encompasses a breadth of actions limited only by public order. Those actions include the right to join, create, or administer a union, as well as to act with autonomy from other economic and political entities and, thus, to *generate capacities* in persons subject to a dependent labour relationship.

While collective bargaining is one of those “activities” that trade unions engage in, it enjoys special status within the concept of freedom of association at its origin.

Collective bargaining in other realms of international law

Due to that singular status, the right to collective bargaining is legally recognized in other international realms such as the International Covenant of Economic, Social, and Cultural Rights (art. 8.1.a holds that trade unions are geared to the “promotion and protection” of workers’ economic and social interests), the Additional Protocol to the American Convention on Human Rights (article 8.1.a here as well), article 4 of ILO Convention N° 98, and its Convention N° 154. That final instrument clearly identifies the subjects of collective bargaining (trade union organizations at different levels and employers or their organizations), as well as the scope of contents that agreements can cover as described in its article 2: determining working conditions and terms of employment; regulating relations between workers and employers; and regulating relations between employers or their organizations and a workers’ organization or workers; or all of the above.

Collective bargain as a “right to obtain rights”

The importance of the collective bargaining mechanism is also patent in the wide range of possibilities it opens up for organizations of workers and employers alike.

Specifically, collective bargaining is a privileged means of legal production since it allows the actors (workers and employers) involved to engage, first, in a democratic exercise in regulating work and, second, in determining working conditions. For that reason, some authors have called collective bargaining a “right to obtain rights.”

The exercise of bargaining on all levels (establishment, enterprise, sector, branch of activity, etc.) enables the legal regulations on the rights and obligations of the parties (whether in individual work relations or in relations between collective subjects) to reflect the specific realities of enterprises, trades, and sectors. That because the norms arising from collective bargaining instruments represent arrangements, occupational traditions, and the real possibilities and restrictions of the sector at a given juncture in compliance with the minimums established by public labour regulations.

Organizations of employers and workers thus act as true “co-legislators.” Through their agreements, they regulate labour activity and, by that means, end up designing a sort of occupation-specific statute of labour, which complements the regulations set forth in legal codes and labour laws in a diverse legal structure that some call “regulatory pluralism.”

Indeed, that pluralism is part and parcel of labour law because it draws on regulations that vary in terms of hierarchy of origin (the constitution, law, decree, resolution, etc.), territory (national or international), and actors involved in their design and adoption. Social interlocutors are thus bearers of capacities that enable them to adopt a legal framework parallel, in some respects, to the State system. That is due to the collective autonomy of those interlocutors in the full exercise of freedom of association.

As if the ability of collective bargaining to create norms were not enough, its constant and seamless production of law increases and complements democracy itself. That because the free and autonomous citizen voter can engage freely and have input on the social and economic repercussions of democracy, thus expanding a conceptualization conducive to ideas part and parcel of the social State.

A construction of this type situates collective bargaining as a component of the right to freedom of association. Insofar as an inalienable right in a democratic system, a driver of other workers’ rights, and a deeply egalitarian right because indifferent to persons’ position in the production system, collective bargaining requires instruments of support that prevent its apparatus from collapsing due to noncompliance or distortion.

Regarding the risk of noncompliance, freedom of association and collective bargaining require a positive attitude on the part of the State. Indeed, international norms require that States foment and erect freedom of

association and collective bargaining, as mentioned above, holding them as capacities of those in an employment relationship regardless of type (see article 9 of Employment Relationship Recommendation N° 198, 2006), because the mere category of “legal subordination” is not enough. That broadens considerably the scope of those entitled to those rights.

States can, though, reduce or minimize collective bargaining at times, barring it of incentives by restricting it to the enterprise level. Along these lines, the ILO has pointed out:

With regard to the bargaining level, it should also be borne in mind that, according to Paragraph 4(1) of the Collective Bargaining Recommendation, 1981 (N° 163), “Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels.” Similarly, the Committee of Experts, having recalled that the right to bargain collectively should also be granted to federations and confederations and rejected any prohibition of the exercise of that right, has stated that “legislation which makes it compulsory for collective bargaining to take place at a higher level (sector, branch of activity, etc.) also raises problems of compatibility with the Convention” (ILO, 2012).

Confinement of bargaining to the enterprise level on occasions goes hand in hand with other limitations, such as the requirement of a minimum number of workers to constitute a trade union organization. Regarding this, the ILO’s Committee on Freedom of Association has established that “legal requirements for a minimum number of members must not be so high as to impede in practice the formation of trade union organizations.”

In other cases, collective bargaining is subject to a cumbersome set of procedural norms that bureaucratize, slow down, and complicate its process, which is by definition complex due to the disparate interests it tries to balance.

These are not the only limitations harmful to collective bargaining. Restricting or prohibiting, in some countries, the right of certain sectors to strike, for instance, is harmful since measures of collective action undertaken by trade unions, such as striking, are indispensables to ensuring bargaining and compliance with its devices.

Fostering collective bargaining

Despite those difficulties borne out by comparative experience, recognition of the right to collective bargaining is in the constitutions of Latin American countries (Article 57 of the Constitution of Uruguay, Article 14 bis of the Constitution of Argentina, Article 7 of the Constitution of Brazil, Article 19 of the Constitution of Chile, to name a few), and the ratification of ILO Conventions N° 98 and N° 154 lay the groundwork for the region's current framework and future path.

The commitment of the region's countries has been bolstered by the ILO, specifically the support and guidance provided by its Constitution's aims and purposes, the Declaration of Philadelphia, and other documents, among them the recent Centenary Declaration on the Future of Work (2019). In that final document, the ILO commits to gearing its efforts toward "promoting workers' rights as a key element for the attainment of inclusive and sustainable growth, with a focus on freedom of association and the effective recognition of the right to collective bargaining as enabling rights."

The most recent labour reforms in the region have been uneven in terms of contents and courses set. Modifications to the Law on Wage Councils in Uruguay (2009), the Labour Code in Chile (2016), the Consolidation of Labour Laws in Brazil (2017), and the labour reform in Mexico, as well as the ratification of Convention N° 98 (2012, 2018), have been cause for debate. That because there is no consensus among the actors in the world of work on the rules to determine bargaining level (that is, branch of activity or enterprise, as the case may be). Furthermore, modifications to legal standards of protection have been condemned for favoring flexibilization or for not going far enough to promote greater collective autonomy in, for instance, the case of Mexico. These processes are indicative of the dynamic and of the great impact that economic and political components have long had on labour relations in general.

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18 | Responsible business conduct: towards businesses that build sustainable development in Latin America

Nicolás Torres

Enterprises in Latin America

Latin America is facing new social challenges. The region's democracies have been put to the test by an economic slowdown, a reduction in job growth, and mass protests. New concerns like the deterioration of the environment and the natural heritage have emerged in a region that is still the most unequal on earth. In that context, it is more important than ever to renew the social contract. More effective measures geared to inclusive, just, and sustainable development must be adopted, development capable of responding to social demands, promoting economic growth in harmony with the environment, and consolidating sound and democratic institutions.

Regardless of form of ownership, companies are also facing a crisis due mostly to the lack of confidence on the part of consumers and citizens. In that sense, all actors – governments, workers, enterprises, and civil society – must contribute to sustainable development. Corruption scandals, illegal political financing, destruction of the environment, as well as high levels of informal employment and low wages have undermined businesses' social legitimacy. However, sustainable development is not possible without economic growth, which in turn depends to an enormous degree on the private sector, the main driver of the economy and of prosperity.

Enterprises must commit wholeheartedly to the United Nation's 2030 Sustainable Development Agenda, which establishes seventeen goals to eliminate poverty and hunger, to protect the environment, to achieve peace,

to facilitate access to justice, and others. Initiatives like the UN Global Compact attempt to mobilize the private sector's contribution to sustainable development, transforming how companies do business.

A number of the goals on the Agenda 2030 are tied directly to the world of work and to the role of companies in promoting decent work. Goal eight, for example, which deals with “decent work and economic growth,” establishes a series of specific objectives geared to the elimination of forced and child labour and the achievement of full and productive employment and of decent jobs for all women and men, including young people and those with disabilities. The goal also endorses, among many other things, equal pay for equal work, the protection of labour rights, and the right to a safe and risk-free work environment.

International Labour Standards and the ILO's Declarations of Principles

Since the ILO's creation one hundred years ago, the world of work has been at the core of its regulatory activity, mostly in the form of conventions and recommendations that lay out the international labour standards.

More recently, the ILO adopted the concept of decent work, defined as work that dignifies the person who performs it and allows them to develop their capabilities and potentials. Decent work respects the fundamental rights at work and provides a fair income that allows for a dignified subsistence. Decent work is also, according to the ILO, performed in a safe and informed fashion. It is socially protected, affords and encourages social dialogue and tripartism. There is, in decent work, no room for arbitrary discrimination.

Of the dozens of ILO conventions, the Governing Body, the ILO's executive body, has established that eight are fundamental because of the extent to which they regulate and encompass fundamental principles and rights at work. Those key conventions address freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective elimination of child labour; and the elimination of employment and occupational discrimination. As stated above, decent work is work performed in keeping with the fundamental principles and rights at work.

The promotion and protection of decent work is not, however, only a question of adopting international labour standards. The ILO declarations

are resolutions of the International Labour Conference that contain a formal and authoritative statement and represent a symbolic and political commitment on the part of member States to a set of principles and values. At times, they address watershed moments in the history of humanity or specific advances or changes in the world of work. Over the course of its history, the ILO has adopted a series of declarations. Particularly significant among them is the Declaration of Philadelphia (1944). Incorporated into the ILO's Constitution, that declaration lays out the aims and purposes of the organization. Similarly significant is the Declaration on Gender Equality (1975), which establishes equal opportunities and treatment of male and female workers and calls for the elimination of all forms of discrimination against women. The Declaration on Fundamental Principles and Rights at Work (1998) lays out a series of fundamental rights and principles at work so essential to ILO conventions that they must be observed regardless of what specific conventions members have ratified. The Declaration on Social Justice for Fair Globalization (2008) expresses the vision of the ILO's mandate in the age of globalization. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) was adopted in 1977, and most recently updated in 2017. It is the only international tripartite instrument directed at multinational enterprises, governments, employers, and workers on issues of employment, training, working and living conditions, and labour relations. The ILO Centenary Declaration on the Future of Work (2019) issues a call to focus once again on persons in the face of far-reaching technological and demographic transformations, climate change, and the possible effects of automation and the fourth industrial revolution.

The ILO's Declaration to foster responsible corporate conduct

Effectively achieving decent work for all depends on a range of actors. Governments not only bolster economic growth and job creation, but also promote and protect human rights and the fundamental principles and rights at work through their legislative, regulatory, and inspection efforts. Workers seek better working conditions, wages, safety at the workplace, and a healthy balance of work and family life through their organizations and the collective defense of their interests. Enterprises have the duty to respect human rights and fundamental rights at work, and to comply with each nation's laws.

There is a consensus that enterprises must do more than simply comply with laws and regulations. Through their economic activity, businesses – and multinational businesses in particular – can have a positive impact on the communities in which they operate. They can contribute, for instance, to economic and social wellbeing, to improving standards of living, to meeting basic needs, while also creating employment opportunities, developing and transferring technology, and fostering and providing decent work, among many other things.

Responsible corporate conduct consists of a combination of preventing and mitigating negative impacts on human rights and the fundamental rights and principles at work, on the one hand, and fostering the positive effects of the enterprise's activity, on the other. A number of different terms have been used to describe this phenomenon: the social responsibility of business; corporate social responsibility; responsible business conduct; business and human rights. All of them are tied to the idea that enterprises should consider the impacts, both positive and negative, that their operations and supply chains have on persons, the planet, and society. Indeed, that should be a primary – not a complementary – component of their commercial operations. Responsible business conduct, then, goes beyond simple compliance with laws or philanthropy.

To encourage enterprises' positive contribution to countries' economic and social progress, the ILO adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977 (it was updated in 2017). The declaration is a series of guidelines for governments and enterprises, regardless of size, geographic location, or structure, conducive to decent work, true social dialogue, and full protection of the fundamental rights and principles at work. The tripartite declaration surveys the positive contributions that enterprises make to social development. It covers concerns specific to the world of work, among them: the need for active government policies in favor of productive and freely chosen employment and decent work; tripartite discussions before undertaking new commercial operations; use of technologies that produce jobs; transition to the formal economy; social security floors; the elimination of forced and child labour and of discrimination; protection of jobs; occupational safety and health; continual training; freedom of association and collective bargaining; and remedy and solution mechanisms to deal with labour conflicts.

The framework for this declaration is a series of international instruments geared to fostering responsible business conduct, instruments like the OECD Guidelines for Multinational Enterprises. Those guidelines cover all areas of corporate responsibility (labour rights, human rights, the environment, information disclosure, combating bribery, consumer interests, science and technology, competition, taxation, and intellectual property rights). The United Nations' Guiding Principles on Business and Human Rights, meanwhile, establish the State's duty to respect, protect, and fulfill human rights and fundamental freedoms, and the responsibility of enterprises to comply with all applicable laws and to respect human rights and effective access to grievance and remedy mechanisms when those rights are breached.

Challenges to responsible corporate conduct in Latin America

Reaching the sustainable development goals on the 2030 Agenda is particularly difficult in Latin America for a number of reasons. The region presents a series of complex challenges to implementing effective policies, strategies, and programmes to eradicate poverty and hunger and to ensure decent work for all, among them the dearth of transparent institutions working to those ends.

Responsible business conduct is not immune to these challenges. Latin America is fraught with not only income inequality, but a number of other deeply rooted problems: unequal access to rights on the basis of gender and ethnicity; the destruction of the environment due to extreme dependence on the exploitation of natural resources and primary products, some of them on global supply chains; and the situation of the region's indigenous peoples who have historically faced discrimination and been excluded from development. No less important are the known challenges regarding the social legitimization of political and business actors, and limited trust in democratic institutions.

This difficult context also presents a great opportunity for enterprises in Latin America – whether multinational, *multilatina*, or local – to contribute to truly inclusive and sustainable development, and thus gain legitimacy in the countries in which they operate. While complex, the challenges are not insurmountable provided businesses include responsible corporate conduct as a core part of their operations. To that end, the international instruments mentioned above, chief among them the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, enable governments,

companies, workers, and all other interested parties to create, through constructive dialogue, the conditions for decent work, social dialogue, and sustainable businesses.

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19 | From social insurance and social security to social protection in Latin America: a critical review

Fabio Bertranou

Reasons for a critical review of social protection

There are many different causes and explanations for the social and political crisis that has erupted in a number of Latin American countries in 2019. One common thread, though, is the persistence of development of a sort that has not substantially reduced the inequality and exclusion that continue to riddle the entire region, with evident consequences for social cohesion.

Among the factors responsible for this state of affairs are the performance of employment and of labour institutions – social protection in particular. This article sums up some considerations relevant to the development of social security/protection over the course of the ILO's centenary existence, discussing its virtues and defects. It also shares some reflections on the role that social security/protection would have to play in order to become a true pillar of sustainable development instead of a public policy “problem” because of low coverage and a source of inequality and financial and social unsustainability.

Just over one hundred years of social security, one century after the creation of the ILO

The origin of social security dates back to Germany under Chancellor Otto von Bismarck, who introduced social insurance between 1883 and 1889, when the Industrial Revolution and urbanization were gaining ground as the development model. Underlying that social insurance paradigm were

three guiding principles: it was mandatory; it was funded by workers and by employers; and it was regulated by the State. Benefit schemes were organized by branch of economic activity and/or by group of workers (status in employment).

In 1919, the ILO was created in order to establish an international normative framework for work which, in turn, could act as a mechanism to contribute to social justice and, hence, world peace—the dire consequences of the Great War were patent, as was poor working conditions due to growing industrial development. The first generation of ILO conventions and recommendations concerning social protection (1919-1944) were heavily influenced by the Bismarck social insurance model.

Social insurance was implemented even before the creation of the ILO in a number of countries in Latin America, specifically in South America. At the First Labour Conference of American Member States held in Santiago, Chile in January 1936, a resolution was adopted on the basic principles of social insurance. The aim was to facilitate the development of social insurance and foster its spread among American States in an attempt to introduce a thorough and mandatory social insurance scheme. But there were two major unwanted consequences of the gradual adoption and expansion of social insurance: fragmentation and stratification of benefits, which led to the large inequalities and inequities that persist in a number of countries.

The end of World War II marked another watershed for the ILO: it became part of the United Nations system as a specialized agency. It began working not only on the production and promotion of international labour standards, but also on development-oriented cooperation activities. At the same time, a major change in the social protection paradigm was taking place. There was, essentially, a shift from social insurance to social security. In 1942, William Beveridge released the *Social Insurance and Allied Services* report, which modernized and expanded the conception of social protection, advocating an “integrated social security plan” that would encompass social insurance, but also social assistance and complementary voluntary insurance plans. The Beveridge model expanded the basic principles underlying the social security paradigm, with emphasis on universal coverage, equal treatment, solidarity and income redistribution, adequate benefits, unity, State responsibility, efficient administration with social participation, and financial sustainability. In the Declaration of Philadelphia of 1944, the ILO adopted those new

criteria, raising social security to the status of an international instrument and declaring the need to expand its coverage. Soon thereafter, in 1948, the Universal Declaration of Human Rights established that all members of society have the individual right to social security.

A new model of social development was thus established, paving the way for the idea of a welfare state based on a broad conception of social security, where different social security regimes would be unified and coordinated in a system that covered all contingencies for all workers. In this context, a second generation of normative instruments was developed in the ILO from 1944 to 1952. Convention N° 102 on social security (minimum standards) establishes coverage for risk of sickness, maternity, occupational accidents and diseases, unemployment, disability, old age, death, protection in the form of in kind medical care, and aid to families with children.

This new social security paradigm had tangible effects in Latin America. According to Mesa-Lago (1978), pioneering countries (Argentina, Brazil, Chile, Cuba, and Uruguay) began unifying their schemes, though with limitations since the systems had become veritable legal labyrinths with hundreds of laws and regulations. Furthermore, the most organized and best-positioned groups of workers, who had been coopted by the State to some degree, resisted the unification at stake in less fragmented, solidarity-based systems.

The countries in the region with intermediate levels of social security at that time (Mexico, Ecuador, Peru, and Paraguay, for instance) developed their systems under this new paradigm of a unified insurance that would cover a range of risks and encompass social assistance. In practice, universality was limited. While benefit programmes were established under the wing of a single social security institution, coverage was restricted to formal workers and their families in a continent where over half of the employed workforce was – and still is – informal.

There is, arguably, a third generation of ILO norms on social security instruments, one that developed between 1952 and 2000. It encompasses conventions that complement or expand the protections established by Convention N° 102. Convention N° 128, for instance, addresses benefits for invalidity, old age, and survivors.

While social protection gradually expanded from the fifties through the early eighties, it was limited to formal employment. Informal workers and their

families depended on welfare benefits, which are limited in coverage and benefit level and, hence, a far cry from the principles Beveridge lay out. The debt crisis of the eighties – known as “Latin America’s lost decade” – due to stabilization plans and structural adjustments, along with reforms in the nineties based on the policies advocated by the Washington Consensus, ended up perpetuating the social security system’s deficits and, in some cases, actually shrinking effective social security coverage in the region.

Caveats to the encouraging developments in social protection in the 2000s

Two major developments have taken place since the year 2000. In 2001, the International Labour Conference adopted a Resolution concerning social security, calling for the urgent expansion of coverage. In the world at large, and in Latin America in particular, coverage indicators were extremely discouraging. Few countries had ratified Convention N° 102, and it was not oriented to encourage substantive improvements in “horizontal” coverage, that is, to increasing the number of workers and families covered by social protection. There was consensus, however, that it was a valid instrument to bolster “vertical” coverage, that is, to providing adequate benefits.

It could thus be argued that, from 2001 and 2012, a fourth generation of instruments was established. Not based on a new Convention, this generation led to Recommendation N° 202 on national social protection floors. That instrument attempted to guarantee basic income security and essential health care during the entire lifecycle as a fundamental component of comprehensive national social security systems.

Together, Convention N° 102 on minimum social security standards and Recommendation N°. 202 on social protection floors constitute the current normative framework and guidelines for the development of social protection policies in terms of both coverage and benefit adequacy.

Meanwhile, soaring commodity prices brought significant and accelerated economic growth to the region, which led to more formal employment and a larger fiscal space. Both elements meant that, starting in 2003 and through almost 2015, contributory social security schemes tied to formal employment expanded along with non-contributory social protection, that is, protection financed by general taxes and that does not require eligibility to periods

of wage contribution. While on an aggregate level substantial progress was made in the region, experiences were, in practice, diverse and results uneven. Labour formalization policies along with growth in employment also made a major contribution in a number of countries. Workplace inspection improved as did the regulation of employment for groups previously not mandated to make contributions to social security, like domestic workers, rural workers, and independent workers.

Starting in the 2000s, the concept of social protection replaced the concept of social security. While in its recent documents and instruments, the ILO uses the terms “social protection” and “social security” indistinctly, controversies have arisen on the change in terminology, which has conceptual and practical implications for the making of public policies. There are a number of arguments in favor of the adoption of the concept of social protection, but the main one is the need for a broader framework of policies and programmes that encompasses those traditionally not included in social security. Examples include income insurance and health care provided not by public programmes or social security institutions but by, for instance, cooperatives, for-profit private administrators, and insurance companies. The widespread privatization of social security in the nineties, which began in Chile in 1981, meant that State often adopted a subsidiary role. It was necessary, for that reason, to adopt a wider and more flexible concept that would encompass these new pro-market policies. That, in turn, led to serious criticisms of the erosion of the State in guiding, providing, and funding social security.

Going beyond social protection, is it time to return to the principles of social security?

Starting in 2015, growth slowed and stagnation set in Latin America, bringing with it considerable consequences for job creation and for the fiscal space needed for new and broader social protection policies. Coverage is currently at a standstill or even shrinking. But even in the years immediately prior to the onset of stagnation, expansion in coverage of transfer programmes was relatively limited and their contribution to shrinking the poverty gap modest. Regarding contributory benefits, improvements in coverage were generally limited to segments of workers with low contribution capacity through simplified tax schemes known, in the cases of Argentina and

Uruguay, as “monotax” programmes. The increasing importance of the monotax system has serious implications for the financial sustainability of social security systems insofar as other fiscal resources have not been tapped to meet funding needs.

At times of stagnation or economic recession – though, as the crises in late 2019 in Chile and Bolivia, two countries with relatively strong economic performance, show us, at other times as well – social tensions begin to surface and a struggle over the distribution of resources and social security benefits sets in. Tensions are often aggravated in the region by unmet promises for better social protection with the privatization of pensions and health care. In that privatization, social risks were individualized and the solidarity components of the previous systems overridden. Furthermore, the actual effects of these schemes in a context of mediocre employment and wage development, and population aging, were not duly addressed.

Is it possible to get back to the principles of social security? At times of crisis, the political response has been to introduce and/or improve social security. Crisis always offers an opportunity to review and restructure policies and the paradigms at their origin. But a return to the foundations of social security means not only reexamining the role and relevance of the components that were privatized – chiefly pensions, health care, and occupational risks insurance – but also scrutinizing the problems that have riddled social security throughout its history. Its fragmentation and stratification produce and exacerbate inequalities and inequities. In public systems, institutional and cultural factors act as barriers to the effective implementation of the universality and solidarity principles determining financing and benefits entitlement conditions.

In the coming decades, the population’s age structure will undergo a significant change chiefly due to population aging. This will necessitate serious reflection and resounding action to ensure systems conducive to meeting the triple objective of wide coverage, adequate benefits, and sustainability (ILO, 2018).

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