EXPANDING THE SCOPE OF LABOUR RIGHTS
- A PARADIGM SHIFT

SILVIA RAINONE

Labour Rights & The Digital Transition

28 October 2021
BACK TO THE ORIGINS:

THE ORIGINAL FUNCTION OF LABOUR LAW TO ADDRESS TODAY’S WORKERS VULNERABILITY

- The problems
- The emancipatory rationale of labour law
- A paradigm change
- Possible regulatory solutions
- Q&A?
DIGITAL INNOVATION IS CHALLENGING SOME OF THE FUNDAMENTAL PRECEPTS OF LABOUR LAW

The autonomy narrative

Disguised method of control

Apparent obsolescence of traditional normative concepts

Blurred lines between self-employed and employees

THE PROBLEMS

Labour market monopsonies and downward pressure on labour conditions

What are business assets? Is AI an asset?

Evolving nature of company and of its business models
LABOUR LAW EMANCIPATORY RATIONALE
CORRECT THE UNEVEN DISTRIBUTION IN THE BARGAINING POWER BETWEEN THE TWO PARTIES OF THE LABOUR RELATIONSHIP

REINVENTING THE WHEEL IS NOT NECESSARY
• Working conditions shall not disproportionately reflect the interest of the dominant party

• Employers shall not extract profits from lowering working conditions

• Limits to the tendency of businesses to compete on labour costs

**Statutory labour law:**
Limiting the freedom of contract of the business owner

**Collective labour law:**
Uplifting the contractual power of the weaker party through collective bargaining
The current/traditional scope of labour rights does not effectively prevent contractual arrangements which evidently reflect the economic and contractual power unbalance among the parties.

**Platform economy** is a prime example.
IDEALLY, LABOUR RIGHTS SHOULD BE RECOGNIZED WHENEVER LABOUR IS PERFORMED IN CONDITIONS OF UNBALANCED POWER DISTRIBUTION.

A ‘NEW’ PARADIGM
SOME ROW IDEAS!

Labour rights when the service performed:

**IS PREDOMINANTLY PERSONAL WORK – LABOUR INTENSIVE**

• Unless was provided in the context of the business activity habitually operated

**Example:** translator working through a crowd-work digital platform

**CONVERGES IN THE ECONOMIC ACTIVITY OF THE RECEIVER (THE BUSINESS)**

• The service performed is an integral part of the production process that enables the business contractor to conduct its business and perform its business activity / provide its services

**Example:** lorry driver or parcel deliverer that executes the delivery for a digital market platform that offers delivery services as part of its market offering

**IS PERFORMED FOR A BUSINESS THAT OFFERS THE SAME SERVICE OR PRODUCT ON THE MARKET**

• The contractor could be considered a competitor of the provider
  • Limited to wage setting – residual category; possible quantitative threshold

**Example:** baker that provides cakes that are sold to customers as package of groceries by an online grocery shopping platform / small milk producer selling its milk to a large dairy product conglomerate
EVALUATING POSSIBLE REGULATORY SOLUTIONS (1)

NORMS SPECIFIC TO PLATFORM WORKERS

1) **Platform workers as a third category**
   
   **Not desirable.** No proper emancipatory function; dumping and downward pressure; risk of progressive generalized lowering of working conditions

2) **Expansion of the status of ‘employee’ to platform workers**
   
   See Spanish presumption; option of European Commission DG EMPL and DG COM
   
   **Partial solution** – better than nothing. Might not cover all workers (SP); anchored to subordination
1) Broadening the criteria used to define ‘worker’
CJEU FNV Kunsten, Yodel.
Not a resolving approach - Still anchored to notion of control and subordination; lack of automatism – judicial avenue.

2) Person whose labour activity is performed in favour of a contractually and economically dominant party
Paradigm shift but - based on the three proposed criteria; lack of automatism – judicial avenue; classificatory problem persists.
1) Full body of labour rights when certain conditions
   Italian eterorganizzazione.
   **Not yet** - Scope still too narrow; judicial avenue

2) Certain rights and/or for a certain category
   SP in relation to AI and IT for platform workers in delivery
   **Better** — good automatic extension; but scope too limited

3) Whenever Algorithmic management is introduced
   Service provider can still submit that any of the three criteria of the proposed paradigm shift exist
   **Even better!** — AI tools as modern means of production
THANK YOU!