EXPLORING LABOUR CITIZENSHIP FROM A SOCIO-LEGAL PERSPECTIVE

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Abstract

This paper intends to critically explore the role of law in the reproduction of the social representation that considers that labour citizenship produces social inclusion. The apparent interlocking of citizenship with production relations masks the symbolic-juridical construction of work and citizenship. In particular, it argues that those symbolic-juridical constructions operate in many scenarios as mechanisms of exclusion and as deterrents for contestation.

Current conceptualizations of 'work' reveal a hegemonic assimilation with 'wage labour' that excludes wide proportions of the labour force. The modern representation of work both in the literature and in regulations tends to be associated with 'waged labour'. This representation excludes and invisibilizes those income-generating activities that are not illegal but are not recognized by labour regulations either. Those activities and the groups that perform them are on the margins of law.

Labour citizenship is a highly contextual and class oriented representation. This representation operates not only upon excluded groups. Societies and groups that strongly rely on labour citizenship as a mechanism of social inclusion may find in the fear to precarization a deterrent for collective strategies of contestation. This deterrent is reinforced, among other factors, by the fact that unemployment has believed to be a consequence of individual deficits under a Fordist paradigm and by a strong individualist culture of consumption and the lost of social countenance. However, social inclusion does not depend only on the opportunity to access formal work, but also on the formalization or precarization of the activity itself by labour regulations and its enforcement. Thus, it is not just a matter of some flows in the market that makes it impossible to sustain formal work for a vast number of people.

From this perspective it becomes important to empirically assess the gap between, on the one hand, these legal symbolic constructions of work/citizenship, and on the other hand current reconfiguration of income generating activities. It is important to acknowledge the strength this legal symbolic constructions have in shaping both perceptions and material relations.

In other words, the chain social inclusion= citizenship= dignified work is based on a legal symbolic construction of 'work' and 'citizenship', which in current economic relations plays as a deterrent for collective contestation. In this sense, this paper will argue that the notion of 'work' form a de-colonialist perspective may be a starting point to visibilize marginalized groups and activities and it can also be a useful theoretical and epistemological framework to assess the dynamism of power and contestation within and against law in labour scenarios.

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Academy by Lamplight
Joseph Wright (1768-69)

In ‘Academy by lamplight,’ six young students pay varying degrees of attention to the sculpture they should draw. This painting uses the Italian renaissance technique of chiaroscuro, which is the artistic technique of light modelling using strong contrasts by the value gradation of colour and the analytical division of light and dark, usually for dramatic effect. Every object in a chiaroscuro painting finds its relevance according to the illumination it receives, but at the same time each object is related to the other by the game of shadows and reflection.

If we picture a painting that includes every activity that human being do for a living, we will probably get a plural and heterogeneous image. However, not every income generating activity has the same relevance in policymaking, knowledge production or social representations. The chiaroscuro on the labour frame shows the hegemonic reification of certain activities as ‘normal work’, while others remain in the shadows. It also shows the reciprocal relation of these heterogeneous activities in the making of the labour subject.

As a spotlight, law has a major role on producing the contrasts and exclusions in the paintwork. Certain legal symbolic constructions reproduce the hegemonic reification of wage-dependent-contractual labour as ‘standard work.’ For this presentation, I will first explore this hegemonic reification of work and its reciprocal relation to other

labour configurations such as precarity and informality. Second, I will critically assess how the notion of labour citizenship can operate as a mechanism to exclude a significant part of the labour force and as a deterrent for contestation against the degradation of working conditions. To conclude, I propose a decolonialist notion of work as a starting point to visibilize those groups who are on the shadows of the labour frame and their practices of contestation within and against law. Those who remain in the shadows of hegemonic reification are neither absent nor are they passive, even if for indifferent bystander may remain unseen.

The Chiaroscuro on the Labour Frame

The labour frame presents plural and heterogeneous income generating activities conforming the economic flux in contemporary societies. These activities find dramatically contrasted attention in policymaking, legal systems and social representations, which make some activities reified as 'work' while other tend to be invisibilized. Boundaries between work and non-work are not natural or universal, they depend on dominant social conceptions on this matter (De la Garza Toledo 2000, 13); therefore, these configurations may encounter contextual differences. Notwithstanding, the hegemonic reification of work has been widespread together with the configuration of capitalist nation-states.

The hegemonic reification of certain income generating activities as ***'standard work'*** is produced by a number of representations and regulations, discourses and practices that converge in the construction and reproduction of asymmetric relevance given to plural activities. These configurations may encounter contextual differences; notwithstanding, the hegemonic reification of mercantile-wage-contractual work has been widespread together with the configuration of capitalist nation-states.

The 'modern semantic of labour' are the series of representations that in the past two centuries have made prevail mercantile, waged and contractual labour over other type of work (Santamaría López 2011, 27). These income-generating activities are highlighted in policy making processing, official reports on labour relations, regulations, academic knowledge, etc. Like the primary objects in the chiaroscuro painting, standard work is emphasized in the labour frame and contrast dramatically with those income-generating activities excluded from the spotlight.

Social scientists tend to use in an undifferentiated way terms such as "industrial relations", "labour relations", "work relations"(Estanque and Costa 2012, 257). In contrast, unemployment tends to be understood as 'passivity'. This semantic equation is

not casual and can be tracked to the industrialization process and the knowledge produced within its context. In this respect, sociology itself is a typical example of a dicipline that has emerged together with urbanization and industrialization processes in Western Europe, which means that the main concerns of thinkers like Marx, Weber or Durkheim situates industrialization at the core of modern society. “Each in his own way grasped the category of work as the locus of change and, in most cases, worsened social relationships” (Hamilton 1980, 73).

Marx considered working class and bourgeois class as the two poles of irreducible and basic conflict of capitalist societies. Weber looked at the proliferation of the bureaucratic machinery of the State -and thus of bureaucrats and public employment- in the process of rationalization of societies. Durkheim promoted the creation of an occupationally oriented society based on the division of labour, which considers occupations valuable according to their mutual dependence and coordination between functional activities.

Concurrently, the process of colonization developed certain knowledges, practices and mechanisms that were interlock with the development of capitalist mode of production. The hierarchical organizing principle of colonial power has build up an international and local division of work strongly determined by race and gender (Escobar 2003; Grosfoguel 2006). Labour was produced -as a modern concept- in terms of a 'singular collective,' it was shaped by a violent tension of appropriation and synchronization of multiple times producing subjectivities (Mezzadra 2011).

In other words, hierarchical racial and gendered divisions of colonial power have been at the core of the construction of the notion of ‘work’ as we know it nowadays. It is not incidental that the exclusions of coloniality have shaped the reified hegemonic notion of work by invisibilizing other modes of production -and its correlative subjectivities- as legitimate and protected forms of labour.

Hence, parallel to the major focus on industrial relations on modern thinking a whole knowledge was being produced to justify colonial relations of exploitation. In this sense the construction of the non-worker can also be tracked in the knowledge produce to justify primary accumulation and slavery. Those colonial subjects were ‘the otherness’. They did not enter the capitalist game of ‘free selling’ of time and work force because of their race or ‘condition’. In socio-legal terms, the activity of these groups and their conception within economic circuits emanated from property or ownership relations.

Ownership relation also occurred within the metropolis although it was applied more as a sanction to discipline the soon-to-be proletariat than to relegate them as things to own. Multiple legislations were enacted to expand the number of 'workers' in the metropolis. Marx and Engels show how at the end of the 15th and during the whole of the 16th century, throughout Western Europe a bloody legislation against vagabondage included the possibility of enslaving the undisciplined soon-to-be proletariat (Marx and Engels 2010, Chapter 28). 'Worker' and 'Non-worker' categories did not depend on the activities performed, but rather on the status of recognition that the raising modern state gave to that activity.

The making of the nation state and the development of industrial capitalism have sediment the eurocentric model of industrial labour and, later on, of public employment that conforms the base for public policies and rights protections worldwide. These ideas of capitalist industrial work has influenced future labour studies as well as social representations of work. Notwithstanding, it was during the decades of the so-called 'Fordism' in Western Europe that the hegemonic idea of relatively stable waged dependent employment was widely spread as 'normal labour relation' (Mezzadra 2011). As we will see further down, this reification of wage dependent employment was of paramount importance for the making and subsistence of the welfare state in Western Europe, mainly because social security and formal labour organizations through unions was built upon mercantile, wage and dependant labour relations.

Nowadays, it is possible to see a widely accepted emphasis on this income generating activities as the prominent aspect of labour relations policies and regulations in different parts of the world. Official statistics on the labour market tend to focus on formal work as index of unemployment mainly when those data is gathered through unemployment offices or other administrative institutions of the kind. However, as the assumption is that unemployment means passivity and rise concern of the population and policy makers, then certain indexes are variables are contstructed in a way that allows certain room to produce favorable labour data. It does not necessarily mean that all those activities catched by the labour data are recognized as work by the labour regulations or even if it coincides with social understanding of what an employment is.

Labour regulations fixes the institutional legitimate understanding of work; that which will be heard and protected by legal institutions. In this sense, the hegemonic reification of the triad 'waged, mercantile and contractual' tends to be the axe of labour law. Law Schools' curricula then reproduce this understanding even in societies and

contexts where the majority of the population do not have a formal dependant, wage and mercantile work.

As Williams explains, “central within the dominant legal and policy framework is the conception of a 'worker' as someone engaged in wage labour (…) This definition identifies as 'non-workers' and therefore excludes many individuals who are, in fact, active in waged work as well as the many who work but do not receive a wage. These definitions reinforce the socially constructed identities upon which mainstream discourse and political rhetoric are founded” (2004, 94).

The spotlight set upon ‘normal work’ looses its strength though a darker pallet that paints the halftones of ***precarity*** in the labour frame. Precarity is characterized by the lack of something: stability, sufficient income, security, protection; thus the starting point to speak about precarity is what is to be considered ‘standard work’ (Santamaría López 2011, 159).

Hegemonic imaginary of ‘standard work’ may also clash with the legal regulation of labour. This is what happened with the so called ‘de-regulation’ of labour during the nineties in Argentina and other countries which were starting the neoliberal era. In this sense, flexibilization legalizes precarity. The process of flexibilization involved the transformation of state as protector of workers, it meant to break the equation formal= stardard. Thus, these policies meant that formal work could legally be instable, insecure, unprotected, etc.

In the shadows of the labour frame we find ***informal labour relations***. While the binary division ‘precarious/standard work’ is based on the hegemonic social understanding of labour; the ‘formal/informal work’ divide is based on the legal design of labour.

The emergence of the term ‘informal sector’ can be tracked to Hart’s anthropological study in Ghana in the 70s. In his book titled ‘Employment, incomes and equality’ the author did not necessarily gave to this sector a negative connotation; “it was rather a picture of self sufficient economic transactions not dependent on organized capital” (Routh 2011, 211). From its origins the idea of informality conceived in relation, and by opposition, with the power of modern states to organize and regulate economic transactions.

Following Routh (2011), the formal/informal divide has been explained by main theoretical conceptualizations: dualism and structuralism. The dualist perspective understands both sectors as operating simultaneously but unrelated one to another; in

this sense, formality and informality are parallel phenomenon. The structuralist approach, on the other hand, argues that there is an inherent relation between the formal and informal sectors; under this perspective structural changes influence the capitalist mode of production modifying both formality and informality. By the end of the 80s a book edited by Castells and Prates (1989) incorporated a structuralist perspective into the studies of informality. These authors consider that the informal economy is "a process of income-generation characterized by one central feature: *it is unregulated by the institutions of society, in a legal and social environment in which similar activities are regulated"* (1989, 12). This means that to study informalization means to study the redefinition of production relationship through the articulation of the juridical divide of labour activities in formal/informal. "Any change in the institutional boundaries of regulation of economic activities produces a parallel realignment of the formal-informal relationship" (Castells and Portes 1989, 12).

Particularly in the global south, dependent-mercantile-waged activities may not even represent the wide majority of populations' activities are not the only income generating activities people perform for a living. However, the spotlight in the labour frame (flexibilized or not) is set almost exclusively on those activities excluding others to the shadows.

The last shades we can find in the labour frame are, on the one hand, those remaining in the dark. The spotlight that constructs the hegemonic notion of 'standard work' makes a dramatic contrast with the deep shadow of illegality. Certain income generating activities are considered ***criminal activities***.

We still have one more shade remaining, which is the cast shadow of those activities that are *neither legal nor are illegal*. Those workers are on the ***margins of law*** (Fassi 2010), a legal limbo that has in itself the potentiality to enable and constrain social action. These workers are excluded from the labour citizenship schema, but since they do not have an illicit object they can still find on the legal field a site for contestation. This potentiality makes them a significant group to study once the hegemonic notion of work has been reconsidered.

Labour Citizenship as an Exclusion Mechanism

The idea that acces to work means social integration certainly becomes problematic once the notion of work is nuanced by new labour relations that erase social rights from working conditions. Notwithstanding, for as long as it exists as a strong

social representation it can operate as a mechanism of exclusion and as a deterrent for contestation.

As we saw in the previous section, the shades in the labour frame are rising concern and widening up in quantitative and qualitative terms. The reciprocal relation between 'standard work', precarity and informality is incresingly a concern worldwide concern. Neither precarity nor informalization can be equated to poverty or limited to so called 'undeveloped countries'. As Castells and Portes explain, "[t]he informal economy (…) is a specific form of relationships of production, while poverty is an attribute linked to the process of distribution" (1989, 12).

Nonetheless, even if informality and precarity have spread and grew worldwide it does not imply that labour relations, and the construction of the labour subject associated to them, are uniform. These constructions find particularities in different times and spaces. Thus, the aim here is far from trying to formulate universal statements; it rather emphasizes the role that certain legal designs -in this case the idea of labour citizenship- tend to play in the construction of the labour subject.

The main statement here is that the worsening of labour conditions is a process that include not only material changes but also symbolic constructions (regulations, conceptualizations and proceedings) affecting behaviour and perceptions. Labour citizenship implies that it is though standard work that inhabitants access economic and social rights, all which bring about social inclusion. In this way, the apparent interlock of citizenship with production-relations masks the legal symbolic construction of both citizenship and work in the notion of labour citizenship.

In other words, citizenship does not necessarily have to be interlocked with labour in order to access social inclusion. The fact that social groups understand the access to work as their gate into social inclusion is a legal symbolic construction. Law is here an exclusionary mechanism because it defines on the one hand what is 'work,' on the other hand who is a 'citizen.' Labour citizenship legitimizes class, gender and social inequalities (Santamaría López 2011, 33).

Moreover, it can be a deterrent of contestation because those who are still labour citizens may be threaten to loose their social inclusion. The fear of exclusion is a deterrent for formal workers' to enforce their juridical subjectivity and claim for rights in a context where 'normal work' is perceived as a scarce resource. In this context informalization can be perceive as social exclusion. In practice labour conditions are flexibilized giving the illusion that citizens still have 'work' but erasing the social and

economic rights out of the schema. This process is what Robert Castel called the 'destabilization of stable workers' (1997, 413).

Therefore, social inclusion is not only disputed at the material level but also at a legal symbolic level. Notwithstanding, this legal-symbolic aspect plays along with exclusionary material transformations. According to De Giorgi "The crisis of the Fordist–Keynesian pact suggests that the institutions of (economic) government of society can no longer produce social inclusion through work. In this respect, the dissociation between the material constitution of society—its productive forces—and the formal constitution of citizenship—its mode of regulation—becomes structural" (2007, 247). Moreover, this equation is reinforced by theschema that considers that to have or not work is a voluntary individual responsibility. This schema is higly related to the idea of labor citizenship as a deterrent to contestation. If the perception is that to have or not to have a job depends on each others will, then each person is responsible the exclusion from labor citizenship.

Hence, if the notion of labour citizenship operates as a deterrent for those who are 'included,' then we may better look at those who are 'excluded' by the same notion of labour citizenship in order to see alterative contestation to the worsening of labour conditions.

To See the Unseen

Who are those excluded from the notion of labour citizenship but still able to contest within and against law? These are workers whose activities are neither regulated by labour law nor are illegal. These are workers on the margins of law.

The concept of 'margins of law' is highly contextual; each legal system regulates and performs their legality in different ways (Fassi 2010). Examples of income-generating activities on the margins of law are: street parking attendants, independent sex workers, cardboard pickers, independent craftsmen, jugglers, windscreen cleaners, beggars, street vendors, among others.

It may be argued that these activities are informal activities and this distinction I am proposing does not bring up anything new. It is true that the formal/informal divide sets these activities as informal. Nonetheless, the notion of informality just tells us that the activity does not tally with the legally established requisites of its protection as labour. A worker in a factory can be informal. It also may be argued that those activities precarious. However, precarity refers to the lack of stability or security. Most probably the activities I am referring to are also precarious, but not necessarily.

These groups are not performing ‘standard work’ or precarious work and live a specific form of informality that does not have the possibility of becoming formal just by fulfilling certain legal requisites because those do not exist as labour regulation. A double socio-legal filter excludes them. The first filter is the one that considers the activity as labour even if it lacks of something that would makes it ‘standard’ (precarity, informality). The second filter is the one that do not consider the activity as labour power by labour law. The latter, tend to be invisibilized in classifications and conceptualizations, their income generating activities are not illegal but they are not considered as work either.

There is a semantic vacuum to refer to those groups and that they tend to get invisibilized in the general reference to informality. These workers cannot be named as ‘unemployed’ or ‘passive.’ Strict conceptions of labour disregards attention to non-traditional workers' agency in relation to the labour market economy and its governance.

These groups are actively operating on the labour and economic market on daily bases and the margins of law allow them to use and contest legal regulations. Thus, it becomes of paramount importance to acknowledge these groups’ particularities, their agency, and their relation with the state in its different forms, and mostly their legal actions and perception. Some of these groups may even work on dependency relations; their labour power is commodified and subsumed under the logics of capitalism. However, labour law does not refer to their activities as labour power.

These activities also tend to be subsumed in development and poverty studies. Those are supposed to be activities people perform to survive and to avoid hunger. If they find some protection in the legal system is in terms of pity. For instance, the Infringement Code of Córdoba condemns to five days of prison to *those who being able to work or having livelihoods perform professional vagrancy, except for those who are involuntary without livelihoods* (art 47, Act nº 8431). A similar norm can be found in the Citizen Security Code of Buenos Aires which states that *street selling is not condemn only when it is perform to gain the subsistence on daily bases* (art 83, Act nº 1472).

The legal system allows compassion towards those unable to work and only on the limits of their subsistence. Those income-generating activities and hence allowed in terms of pity and compassion. If that legal design is set on social and normative bases, does that mean that those activities are a marginal phenomenon for charitable social

research? Or are we in presence of a fundamental legal-economic process at the core of contemporary societies?

To look at invisibilized workers as marginal phenomenon means to consider it as a parallel process unconnected to the 'core' of economic activity. Under this perspective, labour market's interconnection, as well as agency and context tend to be blurred from the analysis. Those who are excluded are passive victims of an oppressive system or circumstances; thus, their political agency is suppressed and replace by a centenary of receipts to save this poor people from their conditions. Notwithstanding the good intentions behind this perspective, it has been highly patronizing and castrating for groups themselves. The assumption behind is that they need to be saved and 'we' (the necessary opposite construction of the 'otherness') have a duty to help them (by telling them what to do).

These discourses violently set at the shadows of the labour frame their claims and labour subjectivities. Following Spivak (1988), we could say that –even if they speak- their voices do not acquires dialogical status. They are ***subaltern workers***.

I argue that to look at power and resistance of subaltern workers is paramount to recognize political agency of these groups as well as the heterogeneity of income-generating activities. In sum, to rethink the politics of pity and the socio-legal hegemonic idea of work will allow us to incorporate new labour subjectivities into the analysis of current reconfigurations of the labour frame, recognizing the dynamism of law, power and contestation.

Open Reflexions

Hitherto, I have tried to explore the chiaroscuro on the labour frame. The plural set of socio-legal configurations regarding income-generating activities shows that some activities are highlighted by legal regulations, policies, statistics, academic discourses. Those activities under the spotlight and its normative dimension conform the hegemonic reification of 'standard work.' The pallet of shades is composed by precarity, informality and criminal activities. Notwithstanding, there is a semanthic vacuum for certain income generating activities that do not fit in any of those socio-legal configurations.

The focus of this thesis is on the activities remaining in the cast shadows of the labour frame. From a socio-legal perspective, those activities are not legal but are not

illegal either. The potential for social and legal action from these margins are a site to explore labour contestation to the worsening of labour conditions

In other words, the notion of labour citizenship excludes those who are not 'standard workers,' and can be a deterrent for those who actually are labour citizens. Once we rethink the division work/non-work and we give a thorough look at the shades in the labour frame, then we may find significant experiences of contestation coming from subaltern workers, from workers on the margins of law.

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