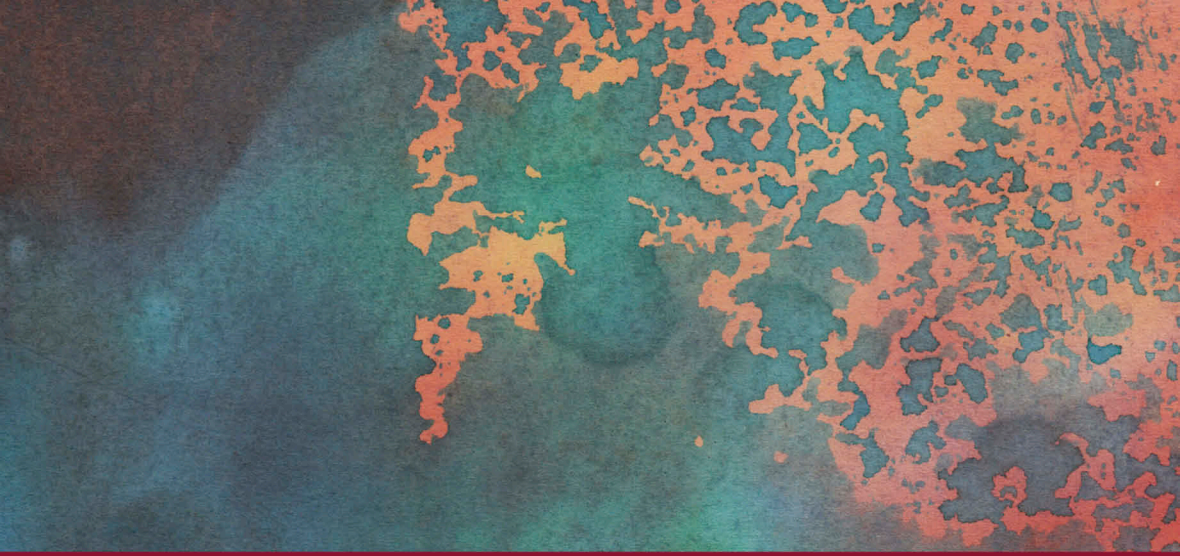
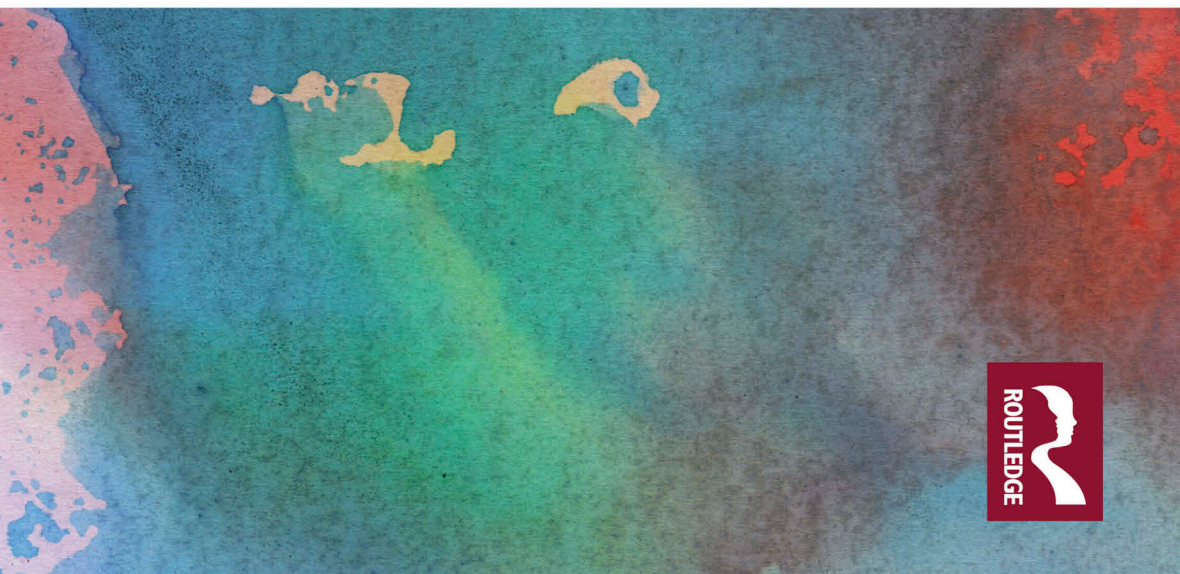


LABOUR LAW AND THE GIG ECONOMY

CHALLENGES POSED BY THE DIGITALISATION OF LABOUR PROCESSES

Edited by
Jo Carby-Hall and Lourdes Mella Méndez



Labour Law and the Gig Economy

This international book analyses the impact of digitisation in labour markets on labour relationships and also on labour processes.

The rapid progress of modern disruptive technologies and AIs, and their multiple applications to each phase of the labour production system, are changing the production rules on a global scale with significant impacts in every aspect of work. As new technologies transform work patterns and change the type of jobs available – destroying some while creating others – and even the nature of the tasks performed, numerous legal problems arise which are challenging to legislators and legal scholars who need to find appropriate solutions to them. Considering the labour law issues which have been created by technological developments and currently affect the work of millions worldwide, this book highlights the full scope of these issues, suggesting solutions to emerging problems and ways to mitigate the risks brought about through technological advancement.

Approaching the present debate with perspectives on legal problems with expertise from a wide range of different countries, this book presents informed and scholarly studies which answer the challenges that new technologies present in labour markets, private lives and labour processes.

Jo Carby-Hall is Professor of Law and Director of International Legal Research in the Centre for Legislative Studies at the University of Hull, UK.

Lourdes Mella Méndez is Professor of Labour Law and Social Security at the University of Santiago de Compostela, Spain.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Challenges Posed by the Digitalisation of Labour Processes

Edited by Jo Carby-Hall and Lourdes Mella Méndez

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Foreword

Law affects everyone. It determines what taxes people pay, how their children are educated, and what they are prohibited from doing. Bad law can have disastrous consequences. It is important that legislators enact clear laws, drafted to deliver what is expected of them. Laws are subject to interpretation. Cruel and unusual punishment may be prohibited by law, but where is the dividing line between punishment that is cruel and unusual and that which is not? Drafting matters. To be prohibited, the punishment has to be cruel and unusual, not cruel or unusual.

It is thus important not only to know what the law says, but also what it means. Explaining and interpreting law is core to making sense of how a nation is regulated. Works on law that complement the formal wording of legislation play an essential role in understanding and are of value not only to lawyers and parliamentarians, but also to all those wishing to understand the significance of what has been enacted. Understanding the law empowers citizens.

I therefore warmly welcome the publication of this volume. Society cannot function without workers. The scope and nature of how labour is deployed has become more complex as nations have industrialised and become more specialised. Laws to protect workers have developed over time, though the nature of the development has varied from nation to nation. Labour law is now substantial and often complex. That complexity is compounded by new technology. Given the speed of development, there is a challenge for ensuring that the legislative framework is sufficiently robust to cope with the changes. To what extent is it possible not only to keep abreast of new means of communication, but also those still in gestation? Law may become dated very quickly. Technological change impacts massively on labour processes, creating opportunities as well as threats to traditional practices. How does one regulate labour in the light of those changes, including communication through social media, e-mail and electronic means of surveillance?

The contributions to this volume help make sense of this complex body of law. The volume is notable for its breadth and depth. Drawing on the impact of new technology on labour law in a range of countries – drawn in this case from Europe, Asia and Africa – provides analyses and insights that can inform law in other nations. The volume is substantial both in scale and coverage. It is a welcome, and timely, addition to the literature.

Philip Norton
(Lord Norton of Louth)


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A reflection on the challenges posed by digitalisation of labour markets

Lourdes Mella Méndez

The introduction of a new collective book is always both a responsibility and a true pleasure for the editors. This book, entitled *Labour Law and the Gig Economy: Challenges Posed by the Digitalisation of Labour Processes*, is made up of chapters from the United Kingdom, Russia, India, China, Portugal, Egypt and other Arab states, Spain, Belarus, Poland and France. This international scope is relevant to analyse the topic related to the impact of the digitalisation in labour markets and labour processes.

From an introductory and explanatory perspective, the three main research issues analysed into this international book are the following:

1) *The main changes that the introduction of new technologies produces in the labour market, from a general viewpoint*. The rapid progress of modern technology, ICTs and AI and their multiple applications to each phase of the labour production system is changing the production rules on a global level and has a significant impact in every aspect of work. New technology transforms work patterns and changes the type of jobs and even the nature of the tasks performed. A new term appears for the new labour market and economy, which is 'gig economy', and it reflects the temporary and flexible jobs that now are commonplace, as companies prefer to hire independent contractors (freelancers) or part-time or temporary employees instead of the traditional full-time employees (who rarely change positions and focus on a lifetime career).

   Flexibility for both parties is an advantage of the new employment, as is indicated in chapters two and three. In the modern digital world, it is becoming increasingly common for people to work remotely or from home. This enables flexible work as many of those jobs do not require the freelancer or employee to come into the office to provide services. Employers also have a wider range of applicants to choose from around the world. Another advantage of digitalisation is the huge possibilities of new businesses and services to provide to the world market with efficiency (fast and immediate service and cost savings). So, special interest is paid in blockchain technology and all its applications in execution of labour contracts in chapter two or in social networks related to employment relationship and noncompete clauses in chapter five.

On a negative perspective, this new economy and digitalised employment, which is possible thanks to new technologies and online platforms (as these connect workers with customers), brings new challenges for the workforce, such as the clarification of their employment status, as it will not always be self-employed or autonomous worker status. In a digitalised labour environment it is possible to have employees coexisting, self-employees or even the so-call third option 'economically dependent autonomous worker'. The national legislators should provide some criteria to protect workers from employer fraud, which deprives employees of their traditional labour status and, consequently, labour rights. Chapter one deals with this issue in a splendid manner and so does chapter six. In the last chapter, the author highlights how pre-industrial companies' allegation of property rights emerges again to justify the control over employees and limit the scope of labour protection. Another negative effect of this new digital revolution is the possible increase of unemployment. Computers with intelligent programmes and robots could take many routine tasks and jobs away from workers in next few years. Chapters three and four examine – from different countries (India and Arab States) and legal systems – this global challenge and point out the urgency of providing specific training for upskilling and reskilling the workforce that will be affected by automation.

2) *The principal effects of the interaction of new technologies with an employee's private life*. Three key and interconnected aspects are examined here: the first, the limits of employer control – increased by new technologies – in relation to the protection of employee's fundamental rights to privacy. Two chapters, on a complementary basis (the seventh from a theoretical approach and the eighth from a more judicial and practical method), analyse this burning issue. The second aspect is the right of the employee to a work-life balance and the third is the right to disconnection from the workplace and the limitation of corporate control of working time. On this point, two complementary studies from France and Spain – chapters 10 and 11 – defend the importance of clearly separate times both for health protection and to guarantee the immunity of rest time from the employer whose power is amplified by digital tools. All these risks are relevant in the new employment generated by digitalisation, as flexibility in a gig economy often means that workers have to make themselves available any time gigs become available, regardless of their other needs. So, flexibility of working gigs is prone to disrupt work-life balance, sleep patterns, and activities of daily life. The solutions offered in these chapters could be helpful for social agents and legislators.

3) *The impact of digitalisation on the labour process*. Digitalisation of the employment relationship has consequences on labour process too, although very few authors pay attention to these important effects. Due to the scarcity of doctrinal analysis, and with the intention of filling the gap, this book includes two specific and complementary chapters devoted to examining the nature of digital evidence on labour procedure and its connexion with the fundamental rights of the employee. When an employer uses new technologies

to control an employee and then makes decisions based on them, digital evidence appears as a new type of evidence, with a specific legal regime. Despite the fact that two authors are from Spain, the research done has a global interest as the problems caused by new technologies and digital evidence are similar in different countries.

The selection of countries included in this book is not random, but intentional, as the phenomenon of digitalisation is universal and facilitates a global economy and society too. So, it is important to analyse the current situation of the digital revolution not only in the main European countries (e.g., France, Spain, Portugal, Poland) and the USA (as many books and conferences do), but also in very far and different economic, social and legal systems around the world. This enables us to offer the reader a new, fresh and unique approach to this important topic from Arab States, Russia and Asia (India) and show how the common challenges and risks emerge in a similar way everywhere.

The previous political and economic countries' situation determines the nature of the answer given by national political institutions to this digital change so far. So, in Arab States the delay in enacting appropriate legislation in connection with the development of technology in the Arab labour market is due to political unrest and revolution that has occurred in many of these countries, and led to a greater focus on constitutional amendments as to the exercise of political rights and criminal legislation. This requires a stronger effort by social agents (trade unions and employers' organisation) to raise awareness about the importance of tackling the current problems of the labour market, which is related to national economic growth and social welfare. The conditions in these Arab countries are ideal to develop this digital revolution, i.e. a great interest by young people in learning engineering and applied technological sciences in universities and institutes, which will contribute significantly to the absorption of this technology by a wide sector of Arab citizens. Arab countries also have huge financial resources (especially the Gulf countries) to acquire advanced technology and employ it in different workplaces.

In the case of Russia, the inexistence of a specific regulation about digitalisation can be explained by the inflexibility of the governmental decision-making system or a lack of political will to promote the necessary changes. This delay may also partly be attributed to the simplified approach that the Labour Code presents with regard to the classification of platform workers (and other cases where new technologies are involved) thanks to which the Russian judicial system does not experience a rise in claims related to this issue despite the wide network of Uber-like services. The Russian Labour Code has an old provision that presumes employment relations to exist in case of doubts that cannot be ruled out when a court considers a dispute on the recognition of such relations to be employment relations. Finally, for India, the 4th Industrial Revolution brings great opportunities to jump many stages of progress, speeding the process to become a developed economy. Companies are adopting different technological advances in diverse ways, some cautiously, some in a confident manner and many companies are still waiting and watching. From the negative perspective, India is afraid of unemployment. Automation and robotics in

industrial manufacturing suits countries with low productive populations, but it does not suit countries like India, where more than 12 million people enter the job market every year. So, there is a natural fear of job loss resulting from automation and robotics in India. Which is why, in this book the author's chapter on India stresses the need to train a workforce that is able to face the current digitalisation in a positive manner.

The principal aim of this book is to expose the huge and global importance of new technologies in labour markets, and their challenges, and then to alert governments and international organisations about them so that they can take the necessary action to combat some of the most important risks to protect people from them.

Divided into three parts, this book will enrich the present debate with new approaches to legal problems from different countries.

In the first part, entitled "The impact of new technologies in the labour market", the reader will find, in chapter one, a critical appreciation on a selection of legal aspects of the 2017 Taylor Review, written by Professor Jo Carby-Hall, of University of Hull (United Kingdom). In general, this Review treats a rich variety of industrial relations and other topics and generally makes realistic and wide-ranging recommendations for changes in specific laws for the British government and Parliament to consider prior to enacting legislation. The "Good work: Taylor Review of Modern Working Practices", published in July 2017, deals with each of the "four conversations" or aspects selected by the ILO's Future of Work Centenary Initiative (namely "work and society," "decent work for all," "the organisation of work and production" and the "governance of work") in the British context. Thus, the British Government set out its "Good Work Plan" in response to the Taylor Review recommendations.

This chapter makes an interesting critique on a selection of some legal topics of content of that Review. This critique includes the following crucial issues related to the British labour market: (a) the importance of employment status; (b) the worker status conundrum in comparison to employee status; (c) greater transparency of rights in the particulars of employment; (d) one/two sided flexibility; (e) continuity of employment; (f) agency workers and HRMC rules; (g) corporate governance and social dialogue; (h) corporate transparency; (i) enforcement and (j) a summation. Although the Taylor Review is criticised for failing to provide clear recommendations to distinguish the three main status categories (namely employee, worker and self-employed or independent contractor), the chapter does not hold the same opinion. On the one hand, the Taylor Report makes constructive suggestions in respect of this complicated issue and, on the other hand, the author does not believe that the laws are falling behind when faced with cases involving modern technological and innovative advances. Recently, British tribunals and courts have been very effective in dealing with the most up-to-date digital and technological innovations which have encouraged the establishment and rapid development of the gig economy which is why the author is against any fundamental changes being made to the laws relating to status, which could generate new problems. However, the author suggests

some discreet changes to take into account employers who abuse the system to the detriment of the worker.

What is clearly missing in this Review is the solving of an imminent problem facing the British flexible labour market, namely providing a definition of the *genuine* independent contractor status or *genuine* self-employment status. The independent contractor status currently is one that applies to those who are not employees or workers and is therefore a default category of individual or body. It would be useful to have a concise definition in the near future.

According to the author, this Review has much merit and is rich in ideas that could prove seminal for both working practices as well as developing trends in the British labour market. Indeed, the Review has raised the profile of the debate surrounding the importance of good employment practices in non-standard working arrangements, which cannot be ignored by legislators, employers or other stakeholders.

In the second chapter, Professor Daria Chernyaeva, of the Law Faculty of the National Research University "Higher School of Economics" (Russia), draws up some relevant considerations related to the impact of the 4th Industrial Revolution on individual employment relationship under the regulatory regime in Russia. The main advantages and disadvantages of the major new technologies associated with the current Industrial Revolution are exposed in the context of the labour framework, elaborating on the ways to eliminate or reduce disadvantages and boost the benefits derived from them. Special attention is paid to blockchain technology, which offers a distributed and shared ledger (or a database, or digital platform) based on cryptographic algorithms which store information on all verified transactions performed on a certain asset (digital or digitised). The penetration of blockchain-based technologies is increasing in several spheres. Apart from cryptocurrencies or internet of things (IoT), the blockchain can be used to provide digital identity, support digital voting, financial services or even be used in contractual relationships to execute the terms of regular contracts through the computerised transaction protocol that the blockchain provides.

According to the author, technically the new technologies have no imminent features that would automatically protect workers involved with them. Therefore, a very smart regulation is needed to step in and establish a system of minimal standards applicable to workers involved in such relationships.

The chapter also contains a short review of the Russian position on the regulatory efforts on the use of new technologies in labour relationships (i.e. regulating remote work, health and safety or the use of electronic technologies in human resource management, employee record keeping and document processing), as well as an analysis of responses to this by the Russian courts.

The following chapter, by Professor Dr. Durgambini A. Patel, Professor of Law at Savitribai Phule Pune University (India), and entitled "Digitalisation *vis-à-vis* the Indian Labour Market: Pros and Cons", gives the reader a clear and interesting view on the impact of digitalisation in another important Asian country, India. At the beginning of the chapter, the author compares the two interrelated phenomena "digitalisation" and "digitisation" and links the 3rd Industrial Revolution to the

first (digitalisation) and the concept of outsourcing. The researcher then deals with the meaning of this latter concept and the advantages and disadvantages on labour markets. On the positive side, it increases growth in business along with cost savings and allows for an efficient utilisation of resources. From a negative perspective, the author emphasises the constant feeling of job insecurity and the loss of jobs in the domestic workforce.

As noted by Professor Durgambini, the 4th Industrial Revolution is characterised by automation. So, several traditional methods of working would be replaced by automated technologies which reduce labour time and cost. The inventions of robots and automatable technologies are posing a threat to the existing industrial setup as the tasks which were previously not automatable are now under the radar of automation.

The analysis leads to the conclusion that routine jobs performed by the population are amongst the ones most likely to be automated by machines. It is relevant to note that such jobs are mostly performed by people with lower educational qualifications who aspire to rise above the minimum wage. Replacing such workers will lead to social security problems, including both societal and economical imbalance, so the Indian policy maker must formulate the right policies in the coming times to help mitigate the impact of such replacements. Educating the soon to be replaced workers and inculcating new skills will help them survive. The Skill India campaign launched by the government in 2015 aims to train over 40 million people by 2022 in various skills.

According to the author, the government must also consider the impact of digitalisation on the economic system of India. The disruptive nature of technologies will ultimately result in the concentration of wealth in the hands of the owners of such technological assets, who are not in the majority. This justifies the immense importance of education of the masses and especially those in the workforce in the age of rapid digitalisation.

In the fourth chapter, Professor Alaa Eltamimi, from the Faculty of Law of Mansoura University (Egypt), analyses the impact of new technologies in the current labour market of selected Arab States which include Egypt, Oman, the United Arab Emirates, Qatar, Jordan, Lebanon, Kuwait, Yemen and Saudi Arabia. The author shows how the Arab states have taken important measures to adopt modern technology systems in numerous fields of work. These measures are described by the author who illustrates the effects of changes being made to labour laws in the various Arab countries and the importance of training programmes. In the first part of the chapter, the author analyses the challenges arising from modern technology. In the second part, the author deals with future job development in relation to the developing technology, followed in the third part by recommendations and concluding remarks.

In the fifth chapter, Professor Duarte Abrunhosa e Sousa, of the Centre for Legal and Economic Research of the Faculty of Law, University of Porto (Portugal), delves into a specific and good example of the current digitalisation of labour markets: the impact of social networks in the employment relationship. Social networks – such as Facebook, Twitter or LinkedIn – allows the construction of a new

online public space with interactions and consequences in the labour market, because they have moved discussion forums into a virtual reality that can have an unlimited reach. The author starts from this idea to analyse the potential impact of social networks in the breach of employment non-compete clauses. In other words, the objective is to know how employment non-compete clauses can be breached by workers with posts, tweets or profile updates on social networks, with an emphasis on Portuguese law.

These types of clauses should be well regulated in each country's legal framework since they can promote important restrictions on workers' rights to work. These restrictions are more relevant if their effects continue in a post-contractual period because employers can claim damages if a non-compete clause is breached by a former worker. So, it is easy to appreciate the importance of this new topic. For example, in 2015, a Danish court decided that updating a LinkedIn profile could be a violation of a covenant not to compete. This way, only by studying the importance of social networks in society and the economy, is it possible to determine if the information shared by a worker on social networks can cause damage to a former employer. Some conclusions are that industry analysis is essential to determine if the use of social networks for professional purposes is a breach of a covenant not to compete; and social networks are a new paradigm that must be interpreted sufficiently well by courts in order to avoid their use to evade liability by workers.

In the sixth chapter, Professor Julia Tomassetti, of City University of Hong Kong, School of Law (China), reflects on the necessary balance between worker rights and property rights in digitalised work. The author explains how companies appeal to property rights to limit the scope of labour legislation, focusing on disputes over employment status involving service work (with customer interaction) and work coordinated through digital technology. The analysis exposes a potential legal consequence of the digitalisation of work: the restoration of the pre-industrial master's property rights to the servant's labour.

As the legal basis of the right to control the labour of others is ambiguous, companies draw on this ambiguity by arguing that they direct labour not in their capacity as employers, but rather in their capacity as disposers and protectors of their property (entrepreneurs). So, companies dismiss the relevance of labour controls to their labour law obligations. As illustrated by lawsuits involving the digital platforms Uber and Lyft, companies exploit the worker-customer encounter and the embedding of managerial controls in software to increase the relational space over which they can redefine employer authority as the prerogatives of the enterprise owner.

However, according to the author, the appeals to entrepreneurial prerogatives in disputes over employment status are debatable. The origin of the employer's authority to control the enterprise was the employment contract, not property. Besides, there is no reason that the legal standards for employment status should cede to property rights.

The second part of the book, entitled "The impact of new technologies in the employees' private life", consists of five chapters related to concrete aspects

of the influence of the technological innovation on the employee's private life. Two chapters deal with the relation between the employer powers and the employee's fundamental rights. So, in the seventh chapter, Professors López Aniorte, Ortiz González-Conde and Megías-Bas, from University of Murcia (Spain), examine, from a legal point of view, the conflict between the fundamental right to privacy of the employee and the exercise of managerial power by means of capturing images of employees by using CCTV and hiring detectives. In the first instance, the authors analyse the traditional doctrine of the Spanish Constitutional Court, which admits that such means of control is legal provided that the control measure is justified, appropriate, necessary and balanced. However, the casuistic nature of the so-called "proportionality doctrine" allows the adoption of contradictory judicial solutions in analogous or identical cases, generating situations of legal uncertainty.

In the opinion of the authors, this flexibility will have to be nuanced after the judgments of the European Court of Human Rights (ECHR) in the well-known cases of Bărbulescu II and López Ribalda, that require a rethinking of the theory of fundamental rights of working people in many countries, within the framework of the new digital and technological era. The ECHR Judgment of January 9, 2018, case of López Ribalda and others *versus* Spain, emphasises the need for prior, express, specific and unequivocal information to the employee about the employer control. The authors agree with the idea that this ruling will allow deepening transparency and the protection of privacy and personal data of workers in an environment of intensification of employer control through new technologies.

In a similar way, the eighth chapter also explores the limits of new technologies and the need of protection of employee's fundamental rights through different important judgements. The author, lawyer and researcher Professor Artur Rycak, from Łazarski University (Poland), considers that the use of modern technologies (by the employee as part of an employment relationship) is linked with the threat of a violation by the employer of the right to privacy and the confidentiality of the employee's correspondence. The author reviews the most relevant rulings of the ECHR, in which the Court has ruled that the right to privacy includes the sphere of employment within the framework of industrial relations, both in the public and private sectors. At the same time, the Court specified the boundaries of the employer's interference with the employee's private sphere based on several international laws, in the light of Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe.

Special attention is also paid here to the Bărbulescu case (2017), as the Court established minimum standards for the protection of the right to employee privacy and the secrecy of correspondence, which governments must consider in their legislative process. These standards are addressed to employers too. So, according to the author, it is clear that since that judgement it is necessary to take seriously the duty to inform employees about the monitoring of their activity (the notification should be clear, complete and given in advance) to avoid the violation of the right to privacy and to respect the principle of proportionality. In any case, the

extent of monitoring by the employer and the degree of intrusion into the employee's privacy should be measured in each specific situation taking into account all circumstances of the case.

The ninth chapter is related to another important topic linked to the employee's private life: namely, the influence of new technologies in the employee's work-life balance. The author, Professor Tatsiana Ushakova, of Belarusian State University, Minsk (Belarus), reflects on the theme under the legal framework of the European Union. In the field of labour law, work-life balance is always relevant and should be taken into account for two reasons: on the one hand, it is connected to other significant issues (such as labour rights, equality and non-discrimination, safety and health at work, organisation of working time and new forms of work); on the other hand, work-life balance is a dynamic concept that has experienced the same transformations that has affected the world of work so far. From this starting point, the author revisits this concept within the European Union legal framework as it is necessary to define the impact of the European Pillar of Social Rights and the phenomena of Industry 4.0 on it.

The European Pillar includes a comprehensive approach to the work-life balance, however the author is critical of the document's vague proposal in terms of its legal nature and effectiveness. In this sense, according to the author, the recognition of the fundamental right to work-life balance should be considered including a set of effective measures, mainly the organisation of working time and positive protection measures. Even more, a framework directive with a comprehensive approach and a genuine balance between organisational and technological aspects and negative and positive protection should be devised.

The two following chapters are related to a specific aspect that enables the effectiveness of the work-life balance, i.e. the right to disconnection from the workplace. Certainly, the need of establishing rigid limits to the possibility of permanent communication, permitted by new ICT, is essential to protect health and other workers' rights. The technological availability of workers for indefinite periods of time, beyond traditional working hours, blurs the lines between working and rest time, and even creates a new kind of (working) time, known as "technological connectivity time", in which the worker is not free to completely rest. This is analysed in the tenth chapter authored by Rodríguez González, from the University of La Laguna (Spain), related to the digital disconnection as a limit to corporate control of working time. The author studies in greater depth whether digital disconnection should be incorporated into the Spanish legal system as a "new" right or, by contrast, if it should be considered a specific part of the "right to rest" and a mandatory minimum content of collective bargaining. According to this author, within the Spanish judicial framework, technological disconnection need not be incorporated as a novel right but may instead be simply upheld as a specific subset of the established "right to rest". To that end, a modification of Articles 34 and 85.3 of the Workers' Statute in Spain is recommended, in order that the notion of technological disconnection is duly upheld and considered as part of collective bargaining, and so that the right and duty to disconnect is accompanied by global company policies implemented to raise awareness of this issue.

In a complementary way, the eleventh chapter is focused on the French legal model. Professor Loïc Lerouge, of the COMPTRASEC, University of Bordeaux (France), examines the right to disconnect in his country, which was the first to regulate this important issue. Indeed, the French Labour Code was modified, by Law n° 2016-1088, in 2016 (the so-called "El Khomri" law), to include this new right to disconnection. According to the researcher, that means that the public sector is not directly concerned and that creates an unbalance in terms of this right between the private and the public sectors. So, in order to implement the right to disconnect, the public service has to bargain and conclude an agreement without any legal incentives.

In relation to the private sector, at first, the arrangements to exercise this right by the employees are defined by collective bargaining which must be implemented by companies with at least 50 employees and a trade union representative at the time of the annual negotiation on the professional equality between women and men and the quality of life at work (Article L. 2242-8 of the Labour Code). However, the employer is not compelled to reach an agreement. If companies do not have any union representative or the bargaining fails, the law provides that the employer must still implement the right to disconnect in the form of a charter. However, the absence of a charter is not sanctioned whereas the obligation to negotiate is punishable with one year in prison and a fine of €3,750 under the article L. 2242-8 of the Labour Code.

In the author's opinion, the analysis of the agreements concluded on the quality of life at work in France shows that the right to disconnect is more focused on a technical and organisational approach rather than on an approach based on health at work. It is important to take into account that recognising legally a right to disconnect from the workplace is related not only to the employer's management power, but also to matters of health and psychological harassment generated by some methods of managing employees. This link has even been recognised in France by the Court of Cassation, which the reader will be able to peruse during the reading of the chapter.

The third part of the book is related to "the impact of new technologies on the labour process," and consists of two chapters. Both chapters are written by Spanish researchers but it is important to bear in mind that the type of problems which new technologies are causing in the Spanish labour process are similar to the problems experienced in other countries, especially when the violation of the worker's fundamental rights is alleged, so the solutions suggested here have a general interest and are thus of great importance. Chapter 12 deepens the digital evidence in the labour process and the fundamental rights of the employee. The author, Professor Mella Méndez, of the University of Santiago de Compostela (Spain), reflects on the use of e-mails as a software tool commonly employed in the workplace, which by facilitating easy storage and the recording of all information transmitted through them, serve as a means of digital evidence in the labour process. So, this work analyses its real probative value, for which it is necessary to verify its authenticity and accuracy of content. In addition, the researcher focuses on the process of

obtaining this digital evidence, as when the employer violates the fundamental rights of the employee in obtaining the evidence, such evidence is illegal and ineffective. Additionally, this illegality is transferred to any possible sanction that the employer imposes on the employee (as a result of the information obtained), although legal doctrine and jurisprudence are in doubt between the two classical positions: qualification of the nullity or the unfairness of the dismissal (when this is the sanction).

The author considers that the best solution is to take into account all circumstances of the concrete case (as it is also defended by the so-called intermediate position) and then reach a decision. Thus, in that situation in which first an employer violates the fundamental rights of the employee and, later, a contractual breach of the employee is discovered, it is logical that the illegality of that employer surveillance and, consequently, the nullity of the technological evidence, also implies the nullity of the subsequent dismissal. This brings the cause of that unlawful conduct, that is, the employer acquires knowledge of the contractual breach of the employee as a result of his own irregular conduct.

However, the situation is very different when the employer has certain knowledge or a well-founded suspicion of an employee's non-compliance and, in order to prove it, decides to perform surveillance behaviour to gather objective evidence to submit to the proceedings. In this case, if that surveillance violates fundamental rights, it will be null and void and will not have any effect on its own, but the extension of the nullity to the employer's decision to dismiss may be excessive.

In the final chapter, Professors Ferrando García, Rodríguez Egio and Megías-Bas, of the University of Murcia (Spain), insist on the probative value and effectiveness of the evidence obtained through e-mail and messaging in the control of the workplace activity. Special attention is paid to the compatibility of those means of surveillance of labour activity with the constitutional right of the worker's privacy, in order to verify the legality or illegality of the evidence obtained.

Related to the key issue of the effects of the unlawful evidence, obtained with the violation of fundamental rights, in the classification of the disciplinary action, it is concluded that it is necessary to defend "the irradiation thesis" which entails the nullity of the disciplinary decision. Therefore, in this way, it considers that the transgression of a fundamental right not only involves the nullity of the act constituting the infringement, but also the restitution of the situation prior to the moment at which the infringement occurred and the reparation of all the consequences derived from the referred act.

Bearing in mind the analyses and evaluation which have taken place in the 13 chapters of this volume, the relevance and interest of the book is clear for two reasons: first, the challenging topic and second, the volume's international scope. Very few books – if any – offer such a broad variety of legal issues and countries' studies in relation to the impact of new technologies in labour markets, private lives and labour processes.

In general terms, the main conclusions of the research included in this book are the following:

1) The 4th Industrial Revolution is already influencing the global economy and society, as shown in the different chapters. All countries around the world are making changes to adapt their labour markets and companies to the huge challenges that these new technological advances (ICTs, robots, 3D printing, AI, digitalisation of manufacturing process) will pose in the coming years. One is the emergence of the gig economy based on flexibility and occasional work, which are elements that lead to the discussion about the nature of the new services provision. Most national legislations have not kept up with those technological and innovative changes and employers and individuals working for those employers find themselves in a legal limbo in relation to the legal status (i.e. employee, worker, economically dependent autonomous worker, independent contractor or self-employed worker) (see chapter one). The specific status must be determined in each situation according to the concrete circumstances, avoiding employer fraud in misclassification, with the intention of removing labour rights for employees.
2) Digitalisation presents some important risks, such as the increase of the unemployment, as exposed in chapters two, three, four and six. The experts conclude that routine and basic jobs performed by the population are amongst the ones most likely to be automated by machines; humans are not needed at all for many tasks, as computers gradually replace them. For example, driving jobs will disappear as vehicles become self-driven. To the extent that those type of jobs are mostly performed by workers having lower educational qualifications, their replacement will lead to social security problems, including both societal and economical imbalance, so the governments must articulate the right policies to mitigate the impact of such replacement (i.e., unemployment benefits, social basic income). Furthermore, a key and urgent measure is workforce training to acquire new skills and competences, especially related to the use of digital tools.
3) New technologies clearly impact the private life of employees, particularly with regard to fundamental rights (i.e. dignity, privacy and secrecy of communications), as analysed in chapters seven and eight. Employers can search for people online and maybe see them expressing controversial opinions in social media. Digital cameras watch and record our movements in public and private places. Currently, it is much harder to have personal privacy in the digital world, specifically when the person becomes an employee and the employer has power augmented by ICTs. The European Court of Human Rights has ruled about some important cases and emphasises the need for an employer to give employees prior, express and unequivocal information about the use of these cameras and tools to record the labour activity. This judicial doctrine will allow more transparency and the protection of privacy and personal data of workers in an environment of intensification of business control. The infringement of the employee's fundamental rights has serious consequences in the labor procedure when the employee files a claim against the employer, as elaborated in chapters 12 and 13.

4) Governments and social agents have to take care of employee's health and safety in the digital labour context, as claimed in chapter 10 and 11. On the one hand, the physical isolation imposed by remote and digital work (i.e. telework) increases the tendency for people to socialise and communicate via digital devices rather than through real life contact. This can easily lead to several health problems as studies suggest that the lack of real-life contact is causing depression and other forms of mental illness in many people. On the other hand, the limitation of working time and digital disconnection are important actions to protect workers from overtime and psychological risks (technostress, techno-addition, anxiety). Collective agreements and social dialogue are good ways to adopt effective measures to avoid these risks.
5) It is crucial to ensure a good work-life balance in the context of the 4th Industrial Revolution and for that the organisation of working time is the key issue, as concluded in chapter nine. Flexible working hours, part-time work and even working from home have been shown to considerably raise job satisfaction, productivity and lead to higher motivation in employees. A good work-life balance is related to nondiscrimination and equality policies in labour markets with important results in increasing productivity too.

The editors believe that the reader will find within the pages of this volume numerous theories and solutions presented in an informed and scholarly manner in answer to the challenges resulting from the digitalisation of labour markets and processes. We wish to thank the publishers for their constant professional support throughout the preparation of this international book. The editors also wish to thank the authors for their painstaking work in contributing their chapters and collaborating with the editors' numerous suggestions, demands and constructive criticisms.

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