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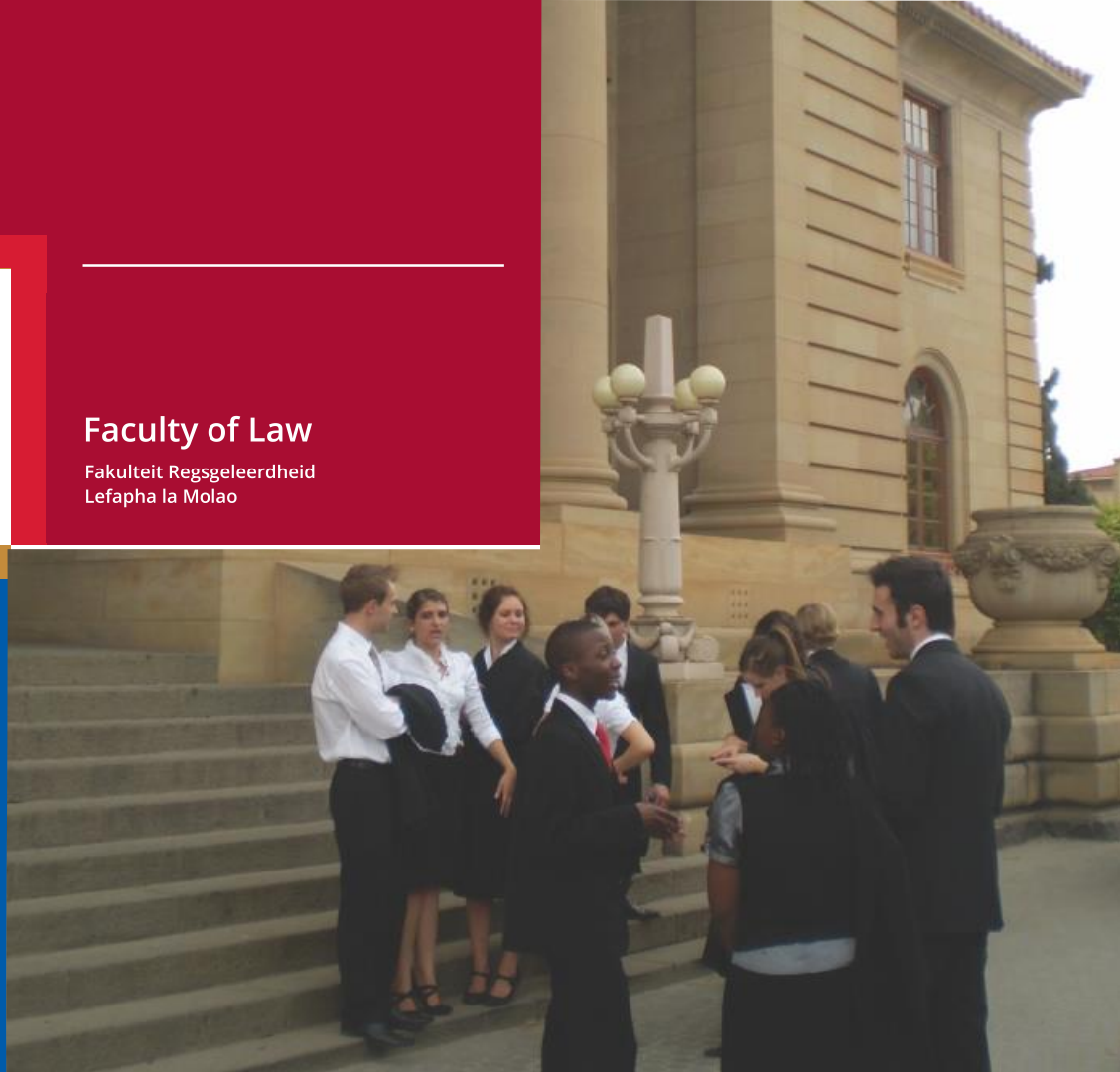
Faculty of Law

Fakulteit Regsgeleerdheid
Lefapha la Molao

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Make today matter



*What is the 4th Industrial Revolution and its Potential
Impact on Collective Bargaining and Individual
Employment Relations?*

INTRODUCTION

- ❑ 4TH IR on everyone's lips:
 - ❑ Quite rightly so, policy makers, conference organisers and LLD students are discussing it. We should not be caught unaware
- ❑ From a HR and Labour Law perspective divergent opinions:
 - ❑ Hugely excited about the prospect of reduction in unemployment; and
 - ❑ Extremely anxious about its impact on the world of work
- ❑ This paper discusses the 4th IR in broad terms and aspects about collective bargaining will only filter through during my discussion

INTRODUCTION

The paper consists of 6 parts:

- ☐ What are the 4 revolutions and is it really something new?
- ☐ What is the traditional role and function of labour law and where does collective labour law fit into this?
- ☐ Some definitions and, is the 4th IR good or bad?
- ☐ How could policy makers respond in protecting workers during the 4th IR?
- ☐ How should trade unions and employers adapt while going forward?
- ☐ Conclusions

THE FOUR REVOLUTIONS

Looking at the 4 revolutions:

- ☐ Is it a new and discernible phase (or species)?
- ☐ Is all of the hype about it really worth our time and energy?

1st IR (Late 1700s and early 1800s)

- ❑ The 1st IR came with the harnessing of steam power
- ❑ It was a huge breakthrough to use steam for industrial purposes
- ❑ It increased human productivity tremendously. Steam replaced muscle power
- ❑ Whereas spinning wheels produced single threads, the steam versions achieved 8 times the volume in the same time
- ❑ Steam-powered locomotives and steamships could move humans and goods to great distances in fewer hours

2nd IR (Late 1800s mid-1900s)

- ❑ The 2nd IR came with electricity, gas and oil (fossil fuels)
- ❑ Henry Ford (1863-1947) got the idea of assembly line mass production from a slaughterhouse in Chicago where pigs hung from conveyor belts
- ❑ He carried this to the motor vehicle. Units were produced in partial steps
- ❑ It brought down costs, increased output and labour became a commodity
- ❑ Significantly, telephone and telegram communication improved

3rd IR (Mid-1900s into 2000s)

- ❑ Nuclear was developed as a new source of energy
- ❑ From the 1970s computer technology was introduced in production
- ❑ Partial automation occurred when computer memory entered factories
- ❑ Since then, technology was able to automate entire production processes. Examples: robots performing programmed sequences
- ❑ Fax communication was replaced by e.mails

4th IR (Early 2000s -)

- ❑ Renewable energy has gained momentum
- ❑ This phase is characterised by the merging of:
 - ❑ accessible information (through the world wide web);
 - ❑ instant communication (such as e.mail, and mobile apps);
 - ❑ artificial intelligence (self learning computers); and
 - ❑ Improved modern industrial manufacturing techniques
- ❑ Lines between the physical, digital and biological sciences have become blurred
- ❑ Nanotechnology, medical surgery and manufacturing by printing of components have surged

COMMENTS ON THE 4 REVOLUTIONS

- ❑ Technological and scientific developments have driven each of the phases
- ❑ The one revolution builds on the other and they blur and overlap
- ❑ I see it as evolution in a continuum of developments and not as the ending of one phase and the beginning of a next
- ❑ However, in recent time, advancement has speeded up in leaps and bounds
- ❑ It is very important to recognise the changes and to plan ahead
- ❑ If this is not done it could become a run-away train

COMMENTS ON THE 4 REVOLUTIONS

- ❑ These phases of development have undoubtedly changed the workplace:
 - ❑ During the 1st 2nd and 3rd IRs employees were centralised in production plants, mines and intensive farming operations
 - ❑ Labour became a commodity and it became essential to protect workers
 - ❑ The 4th IR is fragmenting some factories, production processes and borders
 - ❑ The 4th IR holds the potential of disintegrating collective bargaining structures and traditional employer-employee relations
 - ❑ Not all doom and gloom – humans need to build and maintain the new processes and machinery

THE ROLE AND FUNCTION OF LABOUR LAW

- ❑ I now talk as a professor in labour law. It could become a bit theoretical
- ❑ There are two broad approaches to the regulation of labour markets:

The libertarian approach:

- ❑ Individual freedoms are protected – everyone to her- and himself
- ❑ Supports unbridled capitalism - go-getters encouraged to make profits
- ❑ Deregulate and remove minimum wages, collective bargaining and the extension of collective bargaining agreements
- ❑ Embrace all new forms of work. Don't restrict development or introduce limitations

THE ROLE AND FUNCTION OF LABOUR LAW

The social justice approach:

- ❑ Prevent exploitation of vulnerable groups
- ❑ Irrespective of social class, everyone should have basic human rights
- ❑ A significant gap between the rich and the poor should be countered as it could cause social unrest and revolution
- ❑ The creation of decent jobs, with social security through dialogue is promoted
- ❑ Societies should adopt a human centred, rather than machine and technologically driven approach

THE ROLE AND FUNCTION OF LABOUR LAW

- ❑ Generally speaking, labour law is a social science that consists of rules that seek to improve the functioning of a particular segment of our society. To a varying degree, it supports the social justice and human rights perspectives
- ❑ Secondly, in its broadest form, labour law applies to the segment of society where work is performed
 - ❑ In its narrowest interpretation, it only applies where there is a verbal or written contract of employment
 - ❑ In some instances, labour law also applies in an in-between area - where there is an employer-employee relationship, but no enforceable contract of employment
 - ❑ There is no country in the world where labour law protection extends to situations where all types of work is performed – including independent contractors and the self employed

THE ROLE AND FUNCTION OF LABOUR LAW

- ❑ Bringing all of this together, Kahn-Freund, one of the doyens of labour law, recognised that this field of study applies to a sector in society where one social grouping (namely employers) are the bearers of power,
- ❑ Whilst the other section, (namely employees) consists of persons who have limited social power
- ❑ Governments and app developers such as Air B&B, Uber and SweepSouth often have the social power of knowledge, capital resources, lawyers, superior technology and influence in society
- ❑ The ones that render the work do not have these recourses and as social justice and labour law would have it, the second category should be protected through policy choices and regulation to establish a more equitable balance

THE ROLE AND FUNCTION OF LABOUR LAW

- ❑ Kahn-Freund also recognised that there are two main mechanisms to protect the weaker party in the employment relationship
- ❑ The one is through the establishment of a floor of rights and protections. The best examples in South Africa are:
 - ❑ the Basic Conditions of Employment Act and the Minimum Wage Act;
 - ❑ the Labour Relations Act that protects workers against unfair dismissal, and gives protection to labour broker employees, fixed-term workers and part-time employees

THE ROLE AND FUNCTION OF LABOUR LAW

- ❑ The second is through the principles of:
 - ❑ freedom of association
 - ❑ the right to join a trade union
 - ❑ The right to engage in voluntary collective bargaining; and
 - ❑ The right to strike

THE ROLE AND FUNCTION OF LABOUR LAW

- ❑ How does this link to our discussion about the 4th IR?
- ❑ For those who adopt a purely libertarian and free-market perspective, the 4th IR holds no threat to the future of work
- ❑ As long as new work opportunities are established, irrespective if it constitutes decent jobs, there would be no problem with the new economy

THE ROLE AND FUNCTION OF LABOUR LAW

- ❑ However, the ILO, and governments that have adopted a social justice and human rights perspective, also see red lights flashing in the 4th IR
- ❑ There are concerns that in its worst form:
 - ❑ mega-factories could be taken over by robots and who will pay the taxes
 - ❑ workplaces could be fragmented to the extent that trade unions can no longer organise and engage in collective bargaining
 - ❑ the employer-employee relationship could change to the extent that labour law's floors of rights no longer applies
- ❑ The truth lies in the middle. As mentioned humans need to develop and maintain the new technologies

SOME DEFINITIONS AND IS THE 4TH IR GOOD OR BAD?

Platform services This is a basket term and it encompasses a range of online platforms through which a variety of forms of employment, services and bookings are offered in exchange for money.

- ☐ The online platform or app developer acts as intermediary and it;
- ☐ gathers and publishes information about the provider or services;
- ☐ establishes a market place;
- ☐ evaluates and publishes the end user's experience;
- ☐ collects a percentage of payment and remunerates the service provider.

It includes Bookings.com, Air B&B, Uber, Task Rabbit and SweepSouth

SOME DEFINITIONS AND IS THE 4TH IR GOOD OR BAD?

On-demand work –

- ❑ falls under platform services
- ❑ it only relates to traditional forms of work, which includes driving services, domestic work, and plumbing services
- ❑ It is limited to a specific demographical location of the worker
- ❑ It overlaps with work that is done in employment relationships

Uber and Sweep South are examples of on-demand platform work

SOME DEFINITIONS AND IS THE 4TH IR GOOD OR BAD?

Crowdsourcing – refers to a type of work performed remotely on on-line platforms

- ❑ This type of work is not limited to geographic boundaries
- ❑ It relies heavily on technology since most of the tasks are executed and submitted via online platforms
- ❑ This form of employment involves a situation where a bigger task is broken up into smaller components and individuals would remotely design their component

SOME DEFINITIONS AND IS THE 4TH IR GOOD OR BAD?

My comments:

- ❑ In general, new forms are a wonderful innovation and it has come to stay
- ❑ However, some forms, such as on-demand platform work holds the potential to increase the decent work deficit
- ❑ Although useful, Uber holds the potential to undermine the minibus taxi industry, the metered taxi industry and car rental agencies. Drivers work extremely long hours, with lower remuneration than in the other industries and there is hardly any health and safety regulation
- ❑ The Labour Court has held that they are not deemed to be employees and they can be removed with the push of a button

SOME DEFINITIONS AND IS THE 4TH IR GOOD OR BAD?

My comments:

A one-shoe-fits-all approach should not be adopted

SweepSouth has positive aspects to it:

- ☐ It pays better than the minimum wage
- ☐ It provides training and upskilling and vetting
- ☐ But no contributions are made towards unemployment insurance and occupational health and safety contribution
- ☐ The Domestic Workers' Sectoral Determination applies to employees and independent contractors

HOW SHOULD POLICY MAKERS RESPOND?

Policy makers should consider new forms of work on a case by case basis. Some forms are extremely positive, whereas others are negative viewed from a social justice perspective

- ☐ Extend the definitions of “employee” and “employer”?
- ☐ Establish basic rights for all workers irrespective of whether persons render services as employees, independent contractors or self-employed
- ☐ Sector specific regulation
- ☐ Joint ownership in the platform owner
- ☐ Education and reskilling
 - ☐ This is the most significant strategy that schools and tertiary educations should embark on. This must be spearheaded by government

HOW SHOULD TRADE UNIONS AND EMPLOYERS RESPOND?

Trade Unions

- ❑ Expand their mandate into non-standard forms of employment. Look for membership beyond traditional indefinite contracts of employment. Canvas under labour broker employees, fixed term and part-time employees
- ❑ Embrace modern technology to engage with trade union members. This could relate to communication, benefits of trade union members, voting procedures during collective bargaining and conferencing
- ❑ Proactive citizenry. Organisations across the globe are becoming engaged in social issues like earth warming and climate change. Trade unions could play a bigger role in influencing governments on policy issues like basic rights for all, irrespective of whether it is for workers or independent contractors in the gig economy.

HOW SHOULD TRADE UNIONS AND EMPLOYERS RESPOND?

Employers

- ❑ New forms of work have the potential of disrupting existing business enterprises. Two examples: Hotel industry by AirB&B, and motor rental agencies by Uber
- ❑ These employers should become active in protecting their investment and their industries.
- ❑ Big role players should argue for the extension of collective agreements and the application of health and safety standards to new forms of work
- ❑ Become invested in their own platforms to compete with the others out there. The metered taxi industry in Durban has developed an Uber-like app

CONCLUSION

- ❑ The 4th IR has both an attractive and an ugly face
- ❑ Labour lawyers should be careful not to throw the baby out with the bath water and to make the 4th IR all bad
- ❑ The protection of specific sectors will likely predominantly come through the establishment of floors of rights, but not through collective bargaining
- ❑ By changing labour laws will not stop the 4th IR, but a social obligation to protect
- ❑ Should policy makers ban, or over-regulate new forms of work, we run the risk of falling behind global role players. It could stifle economic growth in South Africa
- ❑ Embrace, but monitor the 4th IR. Train and do more training