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Andrea Allamprese

Progressive Narratives

The Future of Labour Law as Envisaged by Europe's National Labour Movements

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Tatiana Moutinho is the facilitator *transform! europe* strategic line "Cooperation Strategies for Southern Europe and was the editor of this paper.

Danai Koltsida is a Lawyer, Political Scientist and the Director of Nicos Poulantzas Institute.

Andrea Allamprese is Associate Professor in Labour Law at the Law Department of the University of Modena and Reggio Emilia, and Associate Researcher at the Institute "François Gény" of the University of Lorraine (Nancy). His research areas are Right of Dismissal, Right of Association, European Social Law, Posting of Workers, Intellectual Property Law and Internat Law. His most recent publication is A. Allamprese, L. d'Ambrosio (ed.), Alain Supiot. La sovranità del limite. Giustizia, lavoro e ambiente nell'orizzonte della mondializzazione, Mimesis Edizioni, 2020; A. Allamprese, S. Borelli, M. Morsa, L'Autorité Européenne du Travail, Bruylant, Bruxelles, 2020.

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I. INTRODUCTION

By Danai Koltsida

At the conference "Is Southern Europe the Weak Link of European Integration? Tracing Possible Areas of Cooperation among Movements and Parties of the Left", held in Lisbon in October 2018 and organised by *transform! europe* in the framework of its "Cooperation Strategies for Southern Europe", the issue of precariousness was a central one. Andrea Allamprese, Professor of Labour Law at the University of Modena, delivered a talk about several proposed reforms necessary to challenge – or even reverse – the trend towards labour precarisation in various European countries (France, the United Kingdom, Spain and Italy). These proposed reforms have been drawn up by groups of experts, often in connection with trade unions.

The purpose of this short introduction is to summarise the content of the document written by Andrea Allamprese (see part II) and to suggest policy/legislation strategy outlines relating to this issue for the Party of the European Left, the European Parliamentary Group GUE/NGL and the left-wing parties in the respective countries.

1. COMMON PROBLEMS, COMMON SOLUTIONS. THREE ALTERNATIVE NARRATIVES TO UBERISATION

Employment precariousness is, without a doubt, one of the most common and destructive outcomes of neoliberalism. By affecting workers' income, their ability to make long-term plans, their family lives and their voices, precarious work results in insecurity within people's lives as a whole.

Precariousness does not always take the same form. It depends on each country's legal framework as well as on the labour market situation. However, across Europe, it has many common features.

The labour market's deep-rooted transformation has clearly not been caused by the law. Unemployment and changes in production processes resulting from technological developments have made it possible. Nevertheless, without a favourable institutional context, employment precarisation would not be able to occur.

We are now facing a third phase of radical economic and social change: "uberisation", a term that refers to the growing digitisation of economic relations in the framework of so-called *platform capitalism*.

We are witnessing a new process of capital accumulation that is exclusive to 21st-century capitalism and is having major consequences on economic and social relations.

Once again, the organisation of production shapes economic and social relations, i.e. labour law. It is evident that the whole of society has been reshaped, from education and training to leisure and interpersonal and family relationships.

Therefore, we are facing strong pressure to review labour law on the basis of managing algorithms and artificial intelligence.

The narrative that supports "uberisation", including the language used, devalues labour, depriving it of its content (activities, consumption, platform work not being considered real work, etc.). In the end, we are witnessing a reconceptualisation of work by excluding it from the scope and protection of labour law. This is ultimately the same process that was boosted by labour law, or at least a good part of it, during the 1980s and 1990s, when there was pressure to support and facilitate post-Fordism and unprotected jobs.

But there is also some **resistance**, which is summarised in Andrea Allamprese's note in the form of three alternative narratives:

1. The "Charter of Universal Labour Rights", a bill presented by the Italian General Confederation of Labour (CGIL) in 2016, which was based on the idea of creating a labour law that provides basic fundamental rights for all workers, both employed and self-employed;

2. The proposal put forward in France by GR-PACT to expand the scope of labour law beyond employment contracts in order to include self-employed persons, using the concept of economically dependent workers;
3. The proposal of a group of British academics to apply labour law to include all workers who contribute to labour, except for business entrepreneurs, people who employ other people and those who contribute on a capital-intensive basis.

2. STRATEGY ISSUES

The adoption of a renewed labour law requires a dual strategy on a national level but also on a European level, as labour law is linked to one of the fundamental freedoms of the European Union: the free movement of people. Furthermore, as amply demonstrated by the *Laval-quartet*[1], it is inextricably linked with other economic freedoms too.

On a national level, the adoption of a renewed labour law requires the engagement of unions and left-wing parties:

- Concerning trade unions, the problem lies in the fact that a large number of precarious workers are not union members, either because they perceive their jobs as temporary or because they are not valued by unions in the way they would like. Nevertheless, the role of trade unions is extremely important to demonstrate that fighting employment precarisation requires not only solidarity towards precarious workers but also the protection of the rights of all workers, as precariousness "has taken multiple faces" and "has made use of different paths and instruments".

- Regarding the role of the left-wing parties in each country, it must be stressed that most of the solutions proposed by the groups of experts (and detailed in Allamprese's note) could be adopted immediately if, of course, the political will existed. Political parties – including those with a significant parliamentary presence – should draw up legislative proposals to amend labour law in their national parliaments. It is also important to emphasise that initiatives such as those mentioned above could serve as a common basis for the establishment of ad hoc alliances with other progressive parties at a parliamentary level.

On a European level, the Party of the European Left and the European Parliamentary Group GUE/NGL could, first of all, roll out an initiative to denounce the precariousness in all the actions taken by the European Union that affect working and living conditions (e.g. the so-called "Mobility Package", the revision of Regulation no. 883/14 on the coordination of social security systems in the EU, etc.). They could also explore the possibility of presenting an **initiative for a European statute of workers' rights across member states**. For this purpose, the proposals summarised in Allamprese's note (see part II) could be useful. In addition, taking into account the balance of forces within the EU, this last initiative could be set up according to Regulation no. 2019/788 in the form of a European citizens' initiative, also engaging all the political and social forces involved in the European Progressive Forum, in European trade unions and in social movements.

1 We are referring to the jurisprudence of the Court of Justice of the EU following the well-known judgment adopted on 18th December 2007 in the Laval case.

II. PROPOSALS FOR CHARTERS OF LABOUR RIGHTS IN EUROPE

1. CONTEXT

Between 2015 and 2020, in some European countries (France, the United Kingdom, Italy and Spain), several groups of academics (often closely linked with trade unions) drew up projects aimed at summarising reforms into a coherent set of proposals (in some cases, a real bill), which appear necessary to take on – or even reverse – the multi-faceted project of employment precariousness and decline in workers' protection that has characterised the last 30 years under the pressure of neoliberalist ideologies (Supiot 2010; Freedland 2016, 289).

Precariousness has adopted multiple faces, as it has affected the labour market as a whole, not just a particular segment, and has made use of different paths and instruments. Thus, the use (and abuse) of para-subordinate workers (in the form of continuous and coordinated collaborations in Italy) and atypical work relationships (such as zero-hour contracts in the UK, fixed-term contracts of very short duration, and "*contrats de mission*" or "*contrats de chantier*" in France [D. Baugard 2018]), replacing open-ended employment contracts, has targeted primarily young people, denying them satisfactory, or at least sufficient, working and living conditions. At the same time, the possibility to use fixed-term contracts has mostly been directed against workers in the tertiary sector. Moreover, legislative interventions that manipulate the traditional protection framework (e.g. the dismissal regulation[2]) have also exposed workers with permanent employment contracts in the industrial and manufacturing sectors to risks of precariousness.

Precariousness does not only affect the private sector. On the contrary, it is also widespread in the public sector, despite this sector nominally resisting the introduction of various deregulatory practices already in force in the private sector.

The "gig economy" embodies the latest manifestation of precariousness. Digital platforms allow jobs to be fragmented into micro-tasks and offered to a crowd of potential workers. These tasks are then performed by whomever is available.

In light of these observations, all four proposals considered in this note boost the protection of workers' fundamental rights (as well as their implementation within the work relationship) and of their democratic sources. Wherever possible, these rights should be linked to collective autonomy rather than to legal and authoritative rules.

The four proposals considered below offer alternatives to the idea of "uberisation", outlining ways to restructure not only labour law but also the economy.

We are witnessing a new process of capital accumulation that is exclusive to 21st-century capitalism and is having major consequences on economic and social relations. "Heteromated" labour can transform labour relations and the nature of the economy into a system of very short tasks of economically valuable labour, offering little income to the worker while largely supporting rich and powerful businesses (Ekbia, Nardi 2017, 32; Adams, Countouris 2019).

Labour law is under pressure to react comprehensively to changes in capitalism and production, but it is also offering forms of resistance.

2 Since the beginning of the financial crisis in 2008, Southern European countries have been implementing structural reforms in their labour markets. Some countries, such as Greece, Spain and Portugal, have been more or less forced to do so, to ensure financial support from the EU institutions. Others, such as France and Italy, have done so, notably under the pressure of specific recommendations from the Council of the European Union or the European Central Bank. All these countries have had to change their rules on justifying or sanctioning dismissals based on the idea that this lever could avoid dividing the labour market into insiders and outsiders (see B. Palli 2018, 618).

2. FRANCE: A "LABOUR CODE" PROPOSED BY GR-PACT (GROUPE DE RECHERCHE POUR UN AUTRE CODE DU TRAVAIL)

Legal clarity is a formal requirement of paramount importance that allows workers and their representatives to appropriate the rules and "mobilise" them. This requirement is at the heart of the proposed Labour Code, drawn up between 2015 and 2017 by GR-PACT – *Groupe de Recherche Pour un Autre Code du Travail* (E. Dockès 2017) in response to legislative activism surrounding the labour law reform that was introduced during François Hollande's five-year presidency. The revision of the Code[3] aims to demonstrate that it is possible to have systems of labour regulation that are not as complex but that still protect workers with employment contracts (S. Laulom 2017, 233; E. Dockès 2016, 422). Therefore, in addition to the need for clarity, there are goals to extend rights and to ensure that social rights are effective (ranging from guaranteeing workers' access to justice to ensuring standards relating to inspections and health and safety at work).

There are several challenges currently faced by labour law: unemployment, precariousness, "uberisation", globalisation, fragmentation of workers' communities, letterbox companies, the creeping of working hours into free time, new management methods, and the weakening of trade unions and workers' representatives. The project to rewrite the Labour Code aims to find new ideas and rules in order to address these challenges.

Chapter 1 of the proposal deals with employment contracts and employer powers. The extension of the qualification of dependent work and the related protection could be achieved by supplementing the criterion of subordination with another criterion, that of economically dependent work. This was proposed by Alain Supiot in an article published in *Le Monde Diplomatique* in 2017 (A. Supiot 2017). It is also proposed by GR-PACT (see Chapter 1, Section 1: "the definition of contract of employment").

According to the authors of this project, each "natural person who performs services under *de facto* power or under the dependence of another person" would be qualified as a worker (article L 11-3). Therefore, the proposal differentiates between "*salariés autonomes*" (article L 11-7) and "*salariés externalisés*" (article L 11-12), which are both governed by the Labour Code. This proposal has clearly been conceived to respond to the challenges of the "uberisation" of work and platform capitalism (E. Dockès 2017, general presentation, XIV). Regardless of the degree of power, either through outsourcing or workers' control techniques, these workers are dependent workers. Therefore, it is no longer only a matter of detecting fraud or trying to rethink the subordination criteria to facilitate the reclassification of employment contracts. Instead, it is a matter of extending the scope of dependent work by including workers who were previously excluded from it (J. Dirringer 2017).

Concerning the legal sources, the authors of the proposal recommend considering international and European regulations, as well as administrative and conventional rules. The proposed Labour Code contrasts those projects aimed at replacing core labour legislation with collective agreements at plant level. Labour regulation needs a hard, legal pillar that is sufficiently developed and detailed.

The authors of the proposed Labour Code also suggest – in Chapter 3 – a regulation of collective relationships (trade unions, workers' representation and collective bargaining). Chapter 3 establishes general rules on workers' representation and trade union representation, in terms of the levels at which they should be created and the rules regarding the calculation of company personnel. Section 2 of the chapter concerns trade union law; Sections 3 and 4, collective agreements; Sections 5, 6, 7 and 8, workers' representatives; and Section 9, protection of workers who could be subjected to employer victimisation due to their roles.

3 GR-PACT also takes into consideration the opinion of trade unions' legal teams (CGT, CFDT, FO, Solidaires, CFTC, CFE-CGC).

3. UNITED KINGDOM: THE "MANIFESTO FOR LABOUR LAW"

In the United Kingdom, in 2016, a group of British academics linked to the Institute of Employment Rights (IER) published "A Manifesto for Labour Law: towards a comprehensive revision of workers' rights" (Ewing, Hendy, Jones 2016).

The authors of the manifesto propose shifting the focus from legal regulation to collective bargaining (para. 4.1): the law establishes minimum standards that apply to everyone, while negotiations at the sectoral level are tasked with defining the detailed provision of labour law within certain macro-spheres – as minimum wages, working hours (paying specific attention to the problem of "zero-hour contracts"), equal opportunities, health and safety, etc. A branch-specific Labour Commission would be responsible for defining collective agreements for that branch, which would be mandatory for all those who work in the sector (para. 3.13 and following). Derogations to company collective agreements (for a single employer or for a group) would not be allowed unless they enhanced the terms set out in the collective branch agreements (para. 3.17). These company agreements could only be signed by unions representing at least 10% of the workers at the company (para. 3.18).

Existing legislation would be applied universally to all workers (para. 5.1). As a result, the legal definition of "worker"[4] (which currently excludes many precarious workers, from temporary workers to gig workers) would be expanded (para. 5.8 and point 11 of the final recommendations). There would also be a rebuttable legal presumption that anyone working for someone else, without exercising an economic activity on their own behalf, would be considered a worker unless there was evidence to the contrary (para. 5.9). Subsequently, the authors of the manifesto suggest considering that "continuity of employment" should not be interrupted when the worker has no professional activity but a future service could be required from them, based on the contract signed with their employer (para. 5.11)[5].

In September 2018, the IER published a second report, "Rolling out the Manifesto for Labour Law". This report "provides a blueprint of how a Labour government could roll out the 2016 manifesto commitments" (Ewing, Hendy, Jones 2018). This report has been supported by the British Labour Party (https://www.youtube.com/watch?v=kd7l7Mt99eU) and was directly referenced in the 2017 election manifesto "For the Many, Not the Few", and in the 2019 election manifesto "It's Time for Real Change".

4. ITALY: THE "CHARTER OF UNIVERSAL LABOUR RIGHTS" BILL

Notwithstanding what we said earlier, including the two proposals mentioned, we still need a legal initiative to qualify labour relations, and the result may encompass the risk of excluding some workers from subordination (e.g. uber-like workers) (J. Dirringer 2017). For this reason, the bill presented in 2016 by the Italian General Confederation of Labour (CGIL) and currently under discussion in the Italian Parliament (Bill no. c. 11) – the so-called "Charter of Universal Labour Rights" – suggests reconsidering the basis of social rights, in order to assure a universal social protection. The basic idea is that we should move away from what could be defined as the "eligibility barrier" and

4 "Worker" is a broad intermediate category in the UK. These are specific self-employed workers who offer personal services to a third party, who does not act as a mere customer or client. This "third" category allows access to the "minimum wage" regime, to the regulation of working hours (and therefore to rules on rest and paid holidays), to anti-discrimination and to collective protection.

5 One of the criteria drawn up by British courts to define labour relations is the so-called "mutuality of obligation test". Under this test, the relationship of subordination exists where the employer must request a professional service and the worker must deliver the service requested. It follows that workers hired under zero-hour contracts almost never reach the minimum level of seniority ("continuity of employment") required to benefit from numerous protective labour measures for workers (e.g. legal protection against unfair dismissal, which requires two years of seniority).

provide "diffuse" protection, no matter what the nature of the work is, relating solely to the worker and to the material activity they exercise.

Section I of the Charter is devoted to rights that apply both to employees and self-employed persons. Fundamental rights are also guaranteed to independent workers, who benefit from the same regulation as employees, except for in a few aspects.

The Charter also governs some additional protection based on the specific characteristics of the working relationship. The core rights are, in fact, integrated by two concentric groups of rules: one for employees (Title III); and one for collaborations that are continuous and coordinated with the employer's organisation and for economically dependent workers (i.e. self-employed persons who work for more than six months per year for a single contractor, who provides a remuneration corresponding to at least 60% of the worker's annual income). Both these categories are classified as employees, although there are some specific details regarding managerial powers and, therefore, the worker's autonomy in performing their activities (article 42, subparagraphs 2 and 3). The Charter is also concerned that independent work – or rather, the instrumental and inappropriate use of independent work contracts – should not become a loophole to avoid the guarantees given to employees. The only way to achieve this objective is to equalise the substantial economic and normative costs of these workers, so that employers' choices are based solely on organisational factors. The solution is, therefore, to extend the same protection that exists for employees to these other workers.

The authors of the Charter also propose – in Title II – a regulation of industrial relations aimed at implementing articles 39 (freedom of association and right to collective bargain) and 46 (workers' participation) of the Italian Constitution. The aim is to strengthen the democratic framework of the regulations, linked to collective autonomy rather than to legal bodies, on the condition that this collective autonomy is characterised by the preventive measurement of representativeness and ratification by workers (referendum).

Thus, trade unions that reach a certain size are guaranteed the right to negotiate (article 36 of the Charter). At a sectoral level, requests to initiate a negotiation shall come from unions that – alone or together – exceed 51%. This threshold is calculated as the average of the members and elected representatives. In order to calculate the trade union representativeness, a Commission shall verify the number of members and the votes at the Unified Union Representative elections.

At an individual employer level, it is sufficient for the majority of the members of the Unified Union Representative (referred to as "RUS" in the Charter) to initiate negotiations. An RUS (article 31) is set up within organisations where there are more than 15 employees; the request to set up an RUS shall be supported by at least 30% of workers that are members of a trade union or 20% of workers employed by the company. The Charter regulates universally applicable (*erga omnes*) collective agreements at the company and at a territorial level (site, supply chain, region), and at a sectoral level. However, collective agreements that improve workers' rights can be stipulated without any conditions. The single employer collective agreement produces *erga omnes* effects only if it is signed by the majority of the RUS members; collective agreements at territorial and sectoral levels produce *erga omnes* effects only if the registered trade unions, who have signed the agreement, achieve a representativeness of 51%. At a company level, collective agreements must be approved by the majority of the voting workers via a referendum. The referendum is valid if 50%+1 of the workers with the right to vote have taken part (article 37).

5. SPAIN: THE CCOO PROPOSAL "FOR A MORE DEMOCRATIC MODEL OF LABOUR RELATIONS" AND THE PROPOSAL FOR A NEW ESTATUTO DE LOS TRABAJADORES FOR THE 21ST CENTURY

The proposal from Spain's largest trade union, Comisiones Obreras (CCOO), published in 2015 (*Propuesta para un modelo más democrático de relaciones laborales y un cambio en la política económica y social*), adopts the same approach as the proposals described above in terms of stressing the need to focus on protecting individuals' fundamental rights, and guaranteeing and enforcing these in the employment contract, within the definition.

CCOO published its proposal at a particularly unfavourable political time, when the Partido Popular governments had changed significant parts of the *Estatuto de los Trabajadores*. In this context, CCOO's *Propuesta* in 2015 aimed to revise the *Estatuto* in order to strengthen its structure and make it more democratic. It suggests strengthening the recognition of workers' fundamental rights by introducing a specific section within the *Estatuto* on matters such as privacy, the right to health at work and the right to non-discrimination.

Of course, the proposal engages with the most significant problems within the Spanish labour market. As a result, the emphasis lies on contracts of indefinite duration as the typical form of hiring (with fixed-term contracts fluctuating at a high percentage of around 30% of the workforce) and on strengthening the principle of non-discrimination between part-time workers and full-time workers (CCOO 2015, 15 et seq.; Fundación 1° de Mayo, 2015). That is why there is also – in this proposal – a section devoted to redundancies, both individual and collective, which under Spanish law have always been protected through workers' rights to compensation and, in extreme cases only, through the right to be reinstated in their previous jobs.

In light of the elections on 28th April 2019, the CCOO and UGT unions presented *10 propuestas para el giro social*. These, however, were not as comprehensive as the CCOO's 2015 proposed regulations.

The CCOO's proposal has been used as a direct reference in the political commitment between the Spanish Socialist Party (PSOE) and Unidas Podemos (January 2020), which consists of drawing up a new *Estatuto de los Trabajadores* for the 21st century in 2020, with the aim of turning it into proposed legislation (Baylos Grau 2019)[6]. Work is well underway, and a first outline of the text should have been presented in March 2020, to coincide with the 40th anniversary of the *Estatuto de los Trabajadores*. However, the outbreak of the COVID-19 crisis has pushed the date to next autumn.

In the meantime, a Spanish Ministry of Labour bill to improve working conditions for platform workers should be presented shortly. The Bill supports the legal subordination of these employment relationships, in line with some recent judgments in disputes that have seen workers oppose Deliveroo and Glovo. The Spanish Supreme Court decided, in September 2020, that "riders" must be definitively qualified as employees.

6 Details of the debate organised by Fundación 1° de Mayo in October 2018 can be found here: http://baylos.blogspot.com/2018/10/un-marco-mas-democratico-de-relaciones.html.

III. CONCLUSIONS

When facing the employment precariousness and decline in workers' protection that has characterised recent decades (a precariousness that has taken on multiple aspects, as we said at the beginning), there is an urgent need to define **a statute of universal labour rights**, but this time at a European level.

The European framework is changing. The President of the European Commission has appointed the Commissioner for Employment and Social Rights, Nicolas Schmit, to move forward on an initiative to "improve the working conditions of platform workers" (ETUC 2020). Before the outbreak of the COVID-19 crisis, the Commission's timetable envisaged a legislative initiative within the first half of 2021. Despite the crisis, the European initiative should maintain the same schedule, and this initiative will be launched during the Portuguese Presidency of the Council of the European Union (January-June 2021).

Labour law in Italy, as in Spain and France, focuses on the fundamental distinction between autonomy and subordination. Now, we have to ask ourselves whether, in the context of the gig economy, an approach based solely on the concept of subordination helps us to extend social protection and collective bargaining to a wider audience of European workers. The relations of economic domination, upon which labour law was originally based, currently extend far beyond the limits of subordinate employment. Therefore, labour law shall become the *common* law for all employment relationships, subordinate or non-subordinate (Supiot 2000). The four proposals considered above are moving in this direction.

Whichever path we choose to draw up a European statute of workers' rights, we must carry out our analysis using new categories, since all those created for 19th-century work already highlighted their limits in the second half of the 20th century, and even more so now. In short, the change taking place in the "uberism", which produces profound change in both the superstructure and the capitalist system, will require careful reading. Only if we are able to understand – in the vast area of the European Left – what the changes of capitalism are that "uberism" entails will we be able to propose a model that can protect all workers.

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www.rosalux.de
Institute for Social, Ecological and Economic Studies – ISW
www.isw-muenchen.de

Greece
Nicos Poulantzas Institute – NPI
www.poulantzas.gr

Hungary
transform! hungary*
www.balmix.hu

Italy
transform! italia
www.transform-italia.net
Claudio Sabattini Foundation*
www.fondazionesabattini.it
Cultural Association Punto Rosso
www.puntorosso.it

Lithuania
DEMOS. Institute of Critical Thought*
www.demos.lt

Luxembourg
Transform! Luxembourg
www.transform.lu

Moldova
Transform! Moldova*
email: transformoldova@gmail.com

Norway
Manifesto Foundation*
www.manifesttankesmie.no

Poland
Foundation Forward / Naprzód
www.fundacja-naprzod.pl

Portugal
Cultures of Labour and Socialism – CUL:TRA
email: info@cultra.pt

Romania
Association for the Development of the Romanian Social Forum*
www.forumulsocialroman.ro

Serbia
Centre for the Politics of Emancipation (CPE)*
www.cpe.org.rs

Slovenia
Institute for Labour Studies – IDS*
www.delavske-studije.si

Spain
Alternative Foundation (Catalonia)
www.fundacioalternativa.cat
Europe of Citizens Foundation – FEC
www.lafec.org
Foundation for Marxist Studies – FIM
www.fim.org.es
Instituto 25M*
www.instituto25m.info
Iratzar Foundation (Basque country)*
www.iratzar.eus

Sweden
Center for Marxist Social Studies
www.cmsmarx.org

Turkey
Social Investigations and Cultural Development Foundation – TAKSAV*
www.taksav.org
R-komplex*
www.r-komplex.org

UK
Transform (UK) – A Journal of the Radical Left
email: transform@prruk.org
The World Transformed – TWT*
www.theworldtransformed.org

* Observers

Contact us

transform! europe
www.transform-network.net
office@transform-network.net
+43 1 504 66 86
Gusshausstraße 14/3, 1040 Vienna, Austria

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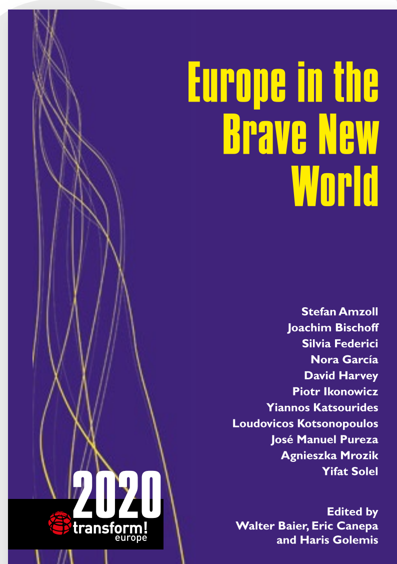

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