

# SUBSTANTIAL EQUALITY OF WORKERS AS A CONDITION TO FREEDOM<sup>1</sup>

Marcelo Maciel Ramos<sup>2</sup>  
Pedro Augusto Gravatá Nicoli<sup>3</sup>

## CONTENTS

1. *Equality in the conflictual relationship between work and freedom*; 2. *The roots of a foundational dissociation between work and freedom: the moment of denial*; 3. *Freedom and work in modern era: from the affirmation to the simulacrum*; 4. *The contemporary captivity of work*; 5. *Substantial equality (still) as a condition to freedom*.

## 1. EQUALITY IN THE CONFLICTUAL RELATIONSHIP BETWEEN WORK AND FREEDOM

In Western socioeconomic arrangements, founded on the appropriation of the efforts of many by few, human work has never been free in a widespread way. Throughout history, the states of submission that were associated to necessity and oppression in its various forms, as engines for the expropriation of work rendered by women and men, were disguised in institutional forms that legitimized or masked the inequality they represented. These models of subjection, opened or concealed, ended up impeding or significantly reducing the possibilities of emancipation and of effectively free existences for all. If it is true that modern regulated employment contracts is what best has been achieved<sup>4</sup> for the integration of those who are compelled by need to estranged and expropriated labor, one is still far from a definitive answer as to the contents and the experience of freedom in the world of work.

There are many reasons for this absence of truly free existences for the overwhelming majority of the workers of the globe. Among them, lines of substantial inequality that are very well drawn between the haves and the have-nots in various segregation platforms, which remained over the centuries as obstacles to the realization of freedoms. Historical experience shows that substantial equality at work is an essential

---

<sup>1</sup> The authors would like to thank the support from *Coordenação de Aperfeiçoamento de Pessoal de Nível Superior* (CAPES).

<sup>2</sup> Professor of Law, from the Law and Sciences of the State School of *Universidade Federal Minas Gerais* (UFMG), Brazil. Member of the permanent body of Professors of UFMG's Post-Graduation Program in Law. PhD in Law and LL.M. at UFMG. Visiting researcher at the *Institut de la Pensée Contemporaine* from the *Université Paris-Diderot*, and at the *Fondation Maison Sciences de l'Homme* (FMSH) in Paris, France.

<sup>3</sup> Ph.D. in Law and LL.M at *Universidade Federal de Minas Gerais* (UFMG). Postdoctoral researcher at UFMG, with a scholarship sponsored by CAPES (PNPD). Visiting researcher at the *Collège de France*, Paris (2013-2014); at the *International Labour Organization* (2014), and at the *Institut d'Études Avancées de Nantes* (2014). Member of the research group IdEx RSE-O from the *Université de Strasbourg / CNRS*. Has done part of his graduation studies at the University of Wisconsin – Madison. Lawyer.

<sup>4</sup> DELGADO, Mauricio Godinho. *Capitalismo, trabalho e emprego: entre o paradigma da destruição e os caminhos de reconstrução*. São Paulo: LTr, 2005, p. 30.

condition for the interruption of subjugation cycles and for individual and social experiences of freedom, with the affirmation of working women and men as *social subjects of rights*, in a framework that can be called a “truly humane labour regime”<sup>5</sup>.

Considering the contemporary permanence of the centrality of work to the subsistence of almost all of the planet’s population, as well as for the transformation of the world and for the construction of human culture, substantial equality of workers is currently a necessary condition for an effective experience of freedom. It is to say, *there is no possible freedom without freedom at work. And freedom is impossible at work without substantial equality between workers.*

In Western history, the relationship between work and freedom is permeated by contradictions, discontinuities and permanence. With denials of reality, axiological projects and theoretical traps, the *experiences* of freedom among those who have depended and still depend on their own efforts to live remain even today covered by a deeply enigmatic ideological character, preventing the confrontation with the heart the problem: *after all, what is really human work in freedom?*

Before getting to the contributions of the present to this foundational question (with no claim of exhausting it), at least two major historic moments in regard of the work-freedom binomial should be brought to the reflection: a classic-medieval paradigm and a modern paradigm. Generally speaking, the first captures work mainly as a form of pain or punishment, antithesis of freedom, as the second understands it as a process of realization, liberating and valuable in itself. Hence, the foundations of the very concept of work are laid, being restated in its duality in the world of monstrous inequality and misery of the present.

## **2. THE ROOTS OF A FOUNDATIONAL DISSOCIATION BETWEEN WORK AND FREEDOM: THE MOMENT OF DENIAL**

A first scenario for the understanding of the link between work and freedom in the West is the Greek civilization. After an archaic inflection towards an appreciation of

---

<sup>5</sup> The expression comes from the preamble of the Constitution of the International Labour Organization. In the French version, one has “*régime de travail réellement humain*”. The English version seems more constrained, making reference to “*humane conditions of labour*”. In any case, the expression was evoked by Alain Supiot in its deepest dimension — of the relation between the subject and his work, beyond the regulation of the conditions of a work that is still taken as an abstract category — in his course “*Les figures de l’allégeance*”, offered on the *Collège de France*, in the spring of 2014, as part of the activities of the chair “Social State and globalization: legal analysis of solidarities”.

work as a form of religious behavior<sup>6</sup>, Greek society establishes strong perceptions around what is essentially negative regarding work. The developments of philosophy and Greece's sociopolitical system set a conceptual convergence space where work is not valued, and its perception evokes from man the idea of penalty and not yet creativity<sup>7</sup>. It is thus an activity in itself incompatible with freedom and citizenship, although essential to make these viable to others. The division of labor becomes the very "foundation of the 'politeia'"<sup>8</sup>, as Vernant points out, distributing the burdens on a complementarity net that supports the constitution of the Greek city.

In any case, given the slavery-based social structure and the innovative notion of citizenship, there is, in fact, a prevalence of dependence, a concrete tie of submission, in what is associated with work, making it incompatible with freedom, central civic aspect of the *polis* life<sup>9</sup>. Therefore, even if the disdain was not directed to the idea of work in itself, as Hannah Arendt<sup>10</sup> understood, the fact that it is imposed as a necessity determines in the Greek philosophical tradition an undeniable contempt in the face of loss of freedom generated by the "state of dependence to which poverty could lead"<sup>11</sup>, especially for those who depended directly from their work. Then, a separation between work (in itself devalued) and other forms of human activity, especially praised in the

---

<sup>6</sup> In understanding the relationship of the Greeks with the idea of work, an initial space for questions, still in archaic Greece, is the cultivation of the land. By that time, agricultural work is truly the mainstay in the organization of society, a position which engages it in religious symbolisms, associated with the blessings of the deities, unfolding a sense of effort rewarded. It is the scenario for the appearance of a work ethic. In the poem *Works and Days*, text that Vernant calls the first hymn to work, Hesiod prophesizes that "work is no disgrace: it is idleness which is a disgrace", associating thereafter, virtue to a rewarded sacrifice. In any case, it is still Vernant who brings up an essential conceptual element, giving a proper scale to Hesiod's exhortation to work, confined in that moment to the peasant life. It is not the case for a general work ethic, or an amplified philosophical understanding of its senses. During this period, work "does not constitute a particular form of behavior that aims to produce useful values to the group by technical means. It is, rather, a new form of religious experience and behavior. (...) By working, men become a thousand times dearer to the Immortals". See VERNANT, Jean-Pierre. *Trabalho e natureza na Grécia antiga*. In VERNANT, Jean-Pierre, VIDAL-NAQUET, Pierre. *Trabalho e escravidão na Grécia antiga*. Trad. Marina Appenzeller. Campinas: Papirus, 1989, p. 11, 13-14. HESÍODO. *Os trabalhos e os dias*. Texto bilíngue Grego e Português. Trad. Alessandro Rolim de Moura. Curitiba: Segesta, 2012, p. 95 (§ 311).

<sup>7</sup> In the original version: "L'idée de travail évoque l'homme de peine et pas encore le créateur". Translated by the authors. SUPIOT, Alain. *Critique du Droit du Travail*. 2. ed. Paris: Quadrige / PUF, 2011, p. 6. Mitigating this line of thought, François Vatin affirms that this conclusion would be a result of the application of the category work to societies that do not conceive it in the same way. At the same time, even if there is no disvalue in itself, he recognizes that the slavery structure associated what is today understood as work to bonds of servitude, subjection. VATIN, François. *Le travail et ses valeurs*. Paris: Albin Michel, 2008, p. 19.

<sup>8</sup> VERNANT, *Trabalho e natureza na Grécia antiga*, cit., p. 22.

<sup>9</sup> SUPIOT, *Critique du Droit du Travail*, cit., p. 6.

<sup>10</sup> ARENDT, Hannah. *The human condition*. 2 ed. Chicago: University of Chicago Press, 1998, p. 83-84.

<sup>11</sup> MIGEOTTE, Léopold. Os filósofos gregos e o trabalho na Antiguidade. In MERCURE, Daniel, SPURK, Jan. *O trabalho na história do pensamento Ocidental*. Trad. Patrícia Reuillard e Sônia Taborda. Petrópolis: Vozes, 2005, p. 33.

realization of freedom in public space, becomes quite clear. The conclusion is that for the ancient Greeks work will be globally seen as unworthy of the citizen, subject to the private sphere<sup>12</sup>, domain of needs.

The portrait does not change substantially in the ancient Roman experience, in what concerns an essential perspective on the meanings of work and its relation to freedom. In spite of profound transformations in the social and institutional baselines, “to work” is still to fulfill the concrete determinations of sheer necessity, to suffer, to sorrow. Jacques Ellul points out that “the ideal of a free Roman man, not the patrician, the rich, but of all citizens, is idleness”<sup>13</sup>. The Roman legal pioneerism, one has to admit, brought up new contractual figures centered on human work, giving rise to social statutes that were inexistent up to that point. It is the case of *locatio operarum*, agreement through which a free man was put to the service of other<sup>14</sup>. This is, however, a restricted, lateral institution, if compared to the prevalence of slavery as the *locus* for the reproduction of social life. Moreover, it was a contractual operation of degrading contents<sup>15</sup>, utterly a form of harm to liberty.

In the Middle Ages, a gradual process of conceptual requalification is began, what in the interpretation of Jacques Le Goff is associated with Christianity and especially urbanization. The author notes a synchronicity between urban development and the valorization of creative work<sup>16</sup>. In line with the Christian idea of man made as the image of the Creator, paths are opened to a new work ethic<sup>17</sup>. To Le Goff “the

---

<sup>12</sup> GORZ, André. *Metamorfoses do trabalho*: crítica da razão econômica. São Paulo: Annablume, 2007, p. 22.

<sup>13</sup> In the original version: “L’idéal de l’homme libre romain, non pas du patricien, du riche, mais de tout citoyen, c’est l’otium”. Translation by the authors. ELLUL, Jacques. *Pour qui, pour quoi travaillons-nous?* Paris: La Table Ronde, 2013, p. 39. For the author, the concept of idleness is not equal to laziness or relaxation, being closer to human relationship, discussion and political participation.

<sup>14</sup> Institutes of Emperor Justinian, III, 24, 3 to 6. The authors consulted here the translation from José Cretella Júnior and Agnes Cretella. INSTITUTAS DO IMPERADOR JUSTINIANO. 2 ed. São Paulo: RT, 2005, p. 207-208. Regarding some contractual figures of the *locatio*, see PETIT, Eugène. *Tratado elementar de Direito Romano*. Trad. Jorge Luís Custódio Porto. Campinas: Russell, 2003, p. 539-537.

<sup>15</sup> SUPLOT, *Critique du Droit du Travail*, cit., p. 14. The exception would be in the so-called liberal arts, such as architecture, medicine and teaching. See CÍCERO. *Dos deveres (de officiis)*. Trad. Carlos Humberto Gomes. Lisboa: Edições 70, 2000 (I, XLII).

<sup>16</sup> In the original version: “un synchronisme entre l’essor urbain et la valorisation du travail des artisans, créateurs d’instruments”. Translation by the authors. LE GOFF, Jacques. *Au Moyen Age, une pénitence rédemptrice. L’Histoire*, Paris, n. 368, Dossier ‘Le travail: de la Bible aux 35 heures’, p. 58, out. 2011, p. 58.

<sup>17</sup> Ellul, on the other hand, does not see on Christianity any trace of an appreciation for work. As a need, it cannot be a creative freedom, value or virtue in the biblical texts. ELLUL, *Pour qui, pour quoi travaillons-nous?*, cit., p. 35.

Middle Ages invented the distinction between manual work, which keeps the peasant world at the bottom of the social scale, and creative work, which elevates”<sup>18</sup>.

Even if a Greek origin for such distinction could be actually recognized — rejecting the absolute innovation pled by Le Goff — it is true that the Middle Ages undertook the resettlement of work as something valuable and strengthened the *duality which is characteristic to the concept of work*, recovering creativity as an inherent element. However, such a formulation did not become universal in a society of feudal and servile bases, in which a relative contempt towards work still dominates.

It is clear that the Greek, Roman or Medieval paradigms provide systematic frameworks that are profoundly different, and that it would never be reasonable to unfold immediate correlations with the present, as an undesirable inflection of “presentism”. In any case, a fact is also clear: the dimension of work as painful effort, incompatible with the notions of freedom and citizenship, raises foundational reflections, relevant also in the modern age and up to the present. The social metabolism of ancient and medieval citizenship had in the exploration of concrete work, unevenly distributed in society and done without freedom, a founding element, through which the widespread human needs were met. And if *non-work* was an essential condition for freedom and, to a large extent, for citizenship, a *non-inclusion* crystallized *non-subjects* of political and juridical life in its completeness. Hopelessly unequal, not all could enjoy the same freedom, guaranteed only to those who, as subjects of citizenship, were not submitted to the calls of necessity that determine work.

### **3. FREEDOM AND WORK IN MODERN ERA: FROM THE AFFIRMATION TO THE SIMULACRUM**

It is only in the transition to the modern age<sup>19</sup> that the recognition of an ethical substance in work gains structural density. In that sense, Gorz is right when stating that

---

<sup>18</sup> In the original version: “Le Moyen Age a inventé la distinction entre le travail manuel, qui maintient le monde paysan au bas de l’échelle sociale, et le travail créatif qui élève”. Translation by the authors. LE GOFF, *Au Moyen Age, une pénitence rédemptrice*, *cit.*, p. 58.

<sup>19</sup> The concept of modern age is deeply controversial, from its time limits to its substantial meanings. In face of the object of this study — and of the weight of capitalism to the reflections around work — an open conceptual approach is here adopted, in line with the one from Anthony Giddens, for whom “modernity refers to style, life mores or social organization that emerged in Europe from the seventeenth century, which later became more or less global in its influence”. See GIDDENS, Anthony. *As conseqüências da modernidade*. Trad. Raul Fiker. São Paulo: Editora da Universidade Estadual Paulista, 1991, p. 11. Regarding the amplified historical process of the formation of modern age, in the affirmation of an atomistic society, of individuals, with the separation between civil society and State, and the

“what we call ‘work’ is an invention of modernity”<sup>20</sup>. In fact, modern era and industrialism elevated work to the condition of essential vehicle to human relationships, social and economic institutions and also to the construction of oneself, truly a *total social fact*<sup>21</sup>, inaugurating a *civilization of work*<sup>22</sup>.

The forces gathered to start such a radical rotation is highly complex: *philosophical, economic, social* and finally *juridical* elements were combined to determine what happened to work in the last two or three centuries of human history. In an unique combination of factors, the nature of the movement shares the same structural ambiguity that is inherent to the very concept of work. Mainly because potentially conflicting elements are expressed, ranging from the centralization of work in theoretical, philosophical, economic and religious systems, the transforming power of proletarian collective action in its resistance strategies and ideologies, the emergence and legitimation of a specific system of exploitation (capitalism), the maturing of the notion of subject of rights and some innovative experiences in the field of freedom.

The singularity of this moment for the purposes of institutional and legal treatment of work is indisputable. After a few centuries, mainly due to the social struggles around the severe exploitation of work and the misery in the nascent industry, an effectively new treatment panorama appears in Law, in contrast to all previous arrangements that built under the essential sign of a disdain towards work and of the open domination of those who were obliged to perform it. An expansive model of socialization, institutional inclusion and addressing of the issues of human labour was implanted. Although still maintaining many oppression lines (and revealing many others), this model ceased to represent work as the expression of pure need, turning it effectively into a political and legal issue in itself.

This new model, consolidated in a Labour Law of wide reach, both collective and individual, finds in freedom as an innate attribute of the human person (as per the Declaration of the Rights of Man and of the Citizen, 1789) a constituent element. The

---

capitalistic productive basis, see FONSECA, Ricardo Marcelo. *Modernidade e contrato de trabalho: do sujeito de direito à sujeição jurídica*. São Paulo: LTr, 2001, p. 29 *et seq.*

<sup>20</sup> GORZ, *Metamorfoses do trabalho, cit.*, p. 21.

<sup>21</sup> The idea of *total social facts* is developed by Marcel Mauss, as all those fact which “put into action, in certain cases, the totality of the society and its institutions”. The framing of work as a total social fact is proposed by Dominique Méda, when discussing the centrality of work built in modern age. See MAUSS, Marcel. *Sociologia e Antropologia*. Trad. Paulo Neves. São Paulo: Cosac Naify, 2003, p. 309. MÉDA, Dominique. *Le travail: une valeur en voie de disparition?* Paris: Flammarion, 2010, p. 8.

<sup>22</sup> CASTEL, Robert. Trabajo y utilidad para el mundo. *Revista Internacional del Trabajo*, Ginebra, v. 115, n. 6, p. 671-678, 1996, p. 672.

paradigms of complete subjection of the worker, on the slavery and servile experiences, give way to the empire of legally free work.

This affirmed freedom, however, does not translate immediately and universally into experiences. The concomitance with the dawn of capitalism soon reveals a state of generalized asymmetry in the dynamics of forces of the economic world, which restricts the freedom of the worker to the conformation of *legal subordination*, which progressively becomes the prerequisite of employment in face of Law. The prerogatives associated with the subjection of the past are then mitigated in a legal contractual arrangement, whereby the free subject of rights was submitted by an act of will to the power of others as to how perform work.

The legacy from critical perspectives of the concreteness of work in the capitalist system — especially from the analyzes of Karl Marx<sup>23</sup> — starkly exposes how distorted the incorporation of the discourse of work as a value can become in the real dynamics of the production system. The exposure of the process of estrangement and alienation<sup>24</sup> give room to the emergence of some veiled aspects of this moment of modern foundation of free work and its corresponding legal structuring, moving towards the maintenance of the systemic stability of a new exploitation scheme. Denying a speculative idealism of the subject for modern philosophy, as well as the private formalism of subject as legal-dogmatic category, Pachukanis points out that “the waged worker (...) appears on the market as a free seller of his workforce, and due to this reason, the capitalist relation of exploitation takes place under the legal form of contract”<sup>25</sup>, producing, in the author’s view, a “decisive importance of the category of subject in the analysis of the legal form”<sup>26</sup>. The subject would be, for such critical lines, a simple result of objectified relations around work, developed under a contractual form.

It is then, in the moment of concrete affirmation of the human value of work, that the risk of a new expression of work as a penalty or pain arises, as perceived by Gorz:

---

<sup>23</sup> All of Marx’s writings, in a way or another, is devoted to the question of work, working class and its exploitation in the capitalist system. See, especially, MARX, Karl. *Manuscritos econômico-filosóficos*. Trad. Jesus Ranieri. São Paulo: Boitempo, 2010 and MARX, Karl. *O capital: crítica da economia política*. Livro I: o processo de produção do capital. Trad. Rubens Enderle. São Paulo: Boitempo, 2013.

<sup>24</sup> See MARX, *Manuscritos econômico-filosóficos*, cit., p. 82.

<sup>25</sup> PACHUKANIS, Evgeni Bronislávovich. *A Teoria Geral do Direito e o marxismo*. Trad. Silvio Donizete Chagas. São Paulo: Acadêmica, 1988, p. 69.

<sup>26</sup> PACHUKANIS, *A Teoria Geral do Direito e o marxismo*, cit., p. 69.

“As a result of capitalist rationalization, work ceases to be an individual activity and a submission to basic necessities; but at the precise point at which it is stripped of its limitations and servility to become *poiesis*, the affirmation of universal strength, it dehumanizes those who perform it”<sup>27</sup>.

Therefore, the pattern of free and contractual work, partially protected in the asymmetry of power, on the grounds of the rationalization of production, pillar of the modern age, also sustains *a sublimation of the broad process of suppression of the same freedom that was announced as an inherent human attribute*. To Herbert Marcuse, “a comfortable, smooth, reasonable, democratic unfreedom prevails in advanced industrial civilization”<sup>28</sup> due to “regulation of free competition among unequally equipped economic subjects”<sup>29</sup>. Those are elements of an internal contradiction of the industrial civilization which remain very ignited in the present, as it will be later seen.

It is here that equality, also affirmed as a fundamental value in modern age, assumes its condition of balance point, as a propagator of substantial meanings for freedom. At the time when freedom was revealed as a simulacrum — taken just as a legal abstraction to establish a contractual system for the exploitation of dehumanized labor — social struggles move strongly towards concrete progresses, in order to limit the power in private relations and maximize social equality for oppressed workers. Formed in the tension between revolutionary and reformist tendencies, the idea of Labour Law that will result from this process, by multiple mechanisms (wage and working time guarantees and health protection for workers), progressively embodies the role of a social justice instrument, contrasting this first legal form of freedom to the uneven substance of the production lines. It is then definitely revealed that freedom “without equality does not mean anything”<sup>30</sup>.

What becomes clear from this moment in history is that by refusing substantial equality as a necessary condition for the idea of freedom, the institutional and legal system that sustains capitalist relations of production and work prevents the experience of the utter senses of freedom itself. Márcio Túlio Viana shows such limitation when noticing that “the worker, by entering into a contract, gives the domain of his gestures:

---

<sup>27</sup> GORZ, *Metamorfoses do trabalho*, cit., p. 28.

<sup>28</sup> MARCUSE, Herbert. *A ideologia da sociedade industrial*. Trad. Giasone Rebuá. Rio de Janeiro: Zahar, 1967, p. 23.

<sup>29</sup> MARCUSE, *A ideologia da sociedade industrial*, cit., p. 23.

<sup>30</sup> CORREIA, Marcus Orione Gonçalves. Os conflitos de princípios e as falácias da liberdade. *Revista Brasileira de Direito Constitucional*, São Paulo, n. 17, p. 199-208, jan./jun. 2011, p. 202.



it is as if he was using his own freedom to lose it”<sup>31</sup>. And besides that, even at the time of the conclusion of the contract, one realizes what there is of fictional in the freedom that is presumed and ultimately nonexistent: “if he was really free to sell (or not) his freedom, the worker would keep it. (...) For the relations of production to be perpetuated it is necessary not only that there is formal freedom to contract, but that it lacks real freedom not to contract”<sup>32</sup>. The unveiling of this modern representation imposes the need for a radical revisit to the freedom at work, especially when considering new forms of oppression (and its efficient concealment) in a globally uneven and poor world, marked by the deconstruction of solidarity, by the capture of subjectivities and by extreme individualism.

#### 4. THE CONTEMPORARY CAPTIVITY OF WORK

The balance between freedom and equality, as seen, has always been at the core of Labour Law. And there it remains nowadays. In a world with extraordinary rates of poverty and inequality, the meanings of what is truly free work remain in dispute. In the foreground, one has to consider the fact that the current world of work is still a major *locus* for the reproduction of inequality and forms of oppression.

In the beginning of the twenty-first century, the extent of poverty in the world is, indeed, absolutely atrocious. According to the International Labour Organization<sup>33</sup>, there were, in 2013, 750 million working women and men living on less than USD 1.25 a day (which would represent 22% of the global workforce<sup>34</sup>) and 1 billion and 678 million living on less than USD 2 per day (50% of the total). In spite of a declining trend in recent years, the rates are still shocking, especially when considering that one is dealing with the most extreme poverty, of working women and men living with about USD 40 to 60 per month. To go a little further, still in a range of recognized social vulnerability, an instructive exercise is to consider for comparison purposes what the

---

<sup>31</sup> VIANA, Márcio Túlio. Da greve ao boicote: os vários significados e as novas possibilidades das lutas operárias. *Revista da Faculdade de Direito da UFMG*. Belo Horizonte, n. 50, p. 239-264, jan./jul. 2007, p. 243.

<sup>32</sup> VIANA, Da greve ao boicote, cit., p. 243.

<sup>33</sup> INTERNATIONAL LABOUR ORGANIZATION. *World of work report 2014: developing with jobs*. Geneva: ILO, 2014, p. 41. Available at <http://ilo.org/global/research/global-reports/world-of-work/2014/lang--en/index.htm>. Access on January 9, 2015.

<sup>34</sup> According to the data from the World Bank, there are around 3.314.906.000 workers in the world, as part of the economically active population. See <http://data.worldbank.org/indicator/SL.TLF.TOTL.IN/countries/1W?display=graph>.

largest economy in the world understands internally as poverty. In the United States of America, a couple who live on less than USD 15,142.00 per year<sup>35</sup>, *ie* USD 20.7 per person per day, is considered poor. That means more than five times the limit taken individually by the ILO in the global measurement of poverty. Many of the working poor in the world earn in a month what someone considered poor in the USA earns every one or two days. In addition, about half of working women and men of the world are in some kind of vulnerable employment relationship<sup>36</sup>, without adequate social protections or no protection whatsoever.

In this framework, the intensity of the questions presented by Arthur Diniz is more than justified: “how to decipher the paradox of the poverty of nations? How to explain, given the scientific development surpassing all previous centuries, wealth never dreamed by the most ambitious despot, that there can still be such colossal misery?”<sup>37</sup>. The answer is obviously multifarious, having occupied the thinking of the humanities in very different approaches to the social and economic roots of the question<sup>38</sup>. And, given the fact that the existence of the great majority of humanity depends on work, poverty also reveals itself as a Labour Law problem and even more so of social protection in its global reach.

Another dimension of contemporary society shall be added: the precariousness of labour relations. In the propositions of post-industrial capitalism, a mythical idea of a total sovereignty over oneself reaches very high levels, hiding with great efficiency the relations of exploitation and the proportions of inequality. The process of disqualification of the modern constructions that aimed to guarantee dignity in dependency situations (such as social protections around work) is radicalized, associated with the emergency strategies of “colonization” of the workers’ subjectivity, through the implanting of corporate values and the exaltation of a supposed freedom as a tactic for dissolving resistances. For Bourdieu, in this this manipulative turn, the “freedom of action left to the agents is the condition for their contribution to their own

---

<sup>35</sup> Data from the *United States Census Bureau*, regarding the 2013. See <http://www.census.gov/hhes/www/poverty/data/threshld/index.html>. Access on January 12, 2015.

<sup>36</sup> INTERNATIONAL LABOUR ORGANIZATION. *World of work report 2014: developing with jobs*. Geneva: ILO, 2014, p. XX. Available at <http://ilo.org/global/research/global-reports/world-of-work/2014/lang--en/index.htm>. Access on January 12, 2015.

<sup>37</sup> DINIZ, Arthur José de Almeida. A fúria de um mundo agonizante. *Revista Brasileira de Estudos Políticos*, Belo Horizonte, n. 90, p. 7-31, jul./dez. 2004, p. 9.

<sup>38</sup> A good panorama of major responses to the issue of poverty, among specific initiatives and large questions can be found in BANERJEE, Abhijit W., DUFLO, Esther. *Repenser la pauvreté*. Trad. Julie Maistre. Paris: Seuil, 2012, p. 19 *et seq.*

exploitation”<sup>39</sup>. Once clearer, the oppositions between exploiters and exploited are fragmented and, in the face of an inaccessible real autonomy, individuals enter into “a sort of struggle of all against all”<sup>40</sup>. On this illusory diffusion of the conflict, “the competition between the workers themselves in contention for a more advantageous situation”<sup>41</sup> is implanted, as pointed out by Coutinho. Many of them are then raised to the virtual status of self-employed or autonomous workers. Those few who can stay there, victorious, access the condition of true citizens, while those who remain factually dependent remain doubly excluded, both by the individualization of failure and by the lack of social protections of collective or public background.

Besides the myth of radical autonomy, an unreachable idealization of work as pure pleasure arises, leading the overwhelming majority of those who cannot live in such a way to the oppressive condition of systemic misfits, both in socio-cultural representations and, not infrequently, in the institutional dimension. From a legal point of view, once again, the non-inclusion of work situations that are evidently vulnerable in the normative spaces for the expression of citizenship, freedom and protection crystallizes a contemporary restatement of the non-subjects from preterit experiences, denied in their social and legal existences by the absence of recognition of the materiality of their conditions of life and work.

In this framework, in order to reach the recovery of a dynamic and lived sense of freedom, Supiot considers it necessary to “reveal the social face of a freedom understood so far only in its economic sense”<sup>42</sup>. From this point, work would be reconstructed as an anthropological category, in its meanings for those who work and those who want to work. For those who already work, freedom at work would result in the possibility of performing activities that are associated with talent and ability, more control over time and improvement in the performed function. In addition, it would mean the expansion of voluntary activities, such as in the family, community and

---

<sup>39</sup> In the original version: “La liberté de jeu laissée aux agents est la condition de leur contribution à leur propre exploitation”. Translation by the authors. BOURDIEU, Pierre. *La double vérité du travail. Actes de la recherche en sciences sociales*, Paris, v. 114, p. 89-90, set. 1996, p. 89.

<sup>40</sup> In the original version: “dans une sorte de lutte de tous contre tous”. Translation by the authors. D’IRIBARNE, Philippe. *Vous serez tous des maîtres: la grande illusion des temps modernes*. Paris: Seuil, 1996, p. 198.

<sup>41</sup> COUTINHO, Aldacy Rachid. Efetividade do Direito do Trabalho: uma mirada no “homem sem gravidade”. *Revista do Tribunal Regional do Trabalho da 3ª Região*, Belo Horizonte, v. 45, n. 75, p. 93-105, jan./jun. 2007, p. 103.

<sup>42</sup> In the original version: “Dévoiler la face sociale d’une liberté entendue jusqu’alors sous son seul sens économique”. Translation by the authors. SUPIOT, Alain. *Le travail, liberté partagée. Droit social*, Paris, n. 9-10, p. 715-723, set./out. 1993, p. 717.

political arenas, and the incorporation of a *right* to change work, based on voluntary conversions that are institutionally eased. Regarding those who want to work, the transformation conveys the expansion of freedom of choice between work and non-work, and between the type of work and the form of its execution, be it to others or independent<sup>43</sup>. For that purpose, in a scenario of misery, significant advances in material equality are still indispensable and largely pending.

## 5. SUBSTANTIAL EQUALITY (STILL) AS A CONDITION TO FREEDOM

“In the social production of their existence, men inevitably enter into definite relations, which are independent of their will”<sup>44</sup>, absorbed in the process of economic constitution of society. Marx’s disconcerting observation eliminated, from the dawn of industrialism, any possibility of purists or innocent analysis of the idea of freedom. The “will” of becoming subjected, associated to necessity, does not translate at all into an experience of freedom. Or, as Messias Pereira Donato pointed, “freedom in misery could mean nothing more than a legal fiction”<sup>45</sup>.

All progress made in the contemporary reflection of freedom reveals that the experiences, even if partial, heavily depend on the materiality of equality to be realized. After the classic denial of the relationship between work and freedom, its modern affirmation and the unveiling of the varnish of pure form in the relations of production, it is clear that only substantive equality will be able to promote freedom of work at the present. The question then becomes: *what does this substantial equality mean and how it should be operated?*

There are many possible layers of analysis. From a generalized equality of treatment before the law, through the prohibition of discrimination based on various reasons (such as gender identity, ethnicity, religion, sexuality) and policies for the reduction of social inequality and poverty, the idea unfolds. And all these dimensions matter to the work relationships. However, in view of the materiality of relations, in the framework of inequality and poverty, as well as its systemic appropriation in global capitalism, a structural dimension arises as a path of potentially radical transformation

---

<sup>43</sup> SUPIOT, *Le travail, liberté partagée*, cit., p. 718.

<sup>44</sup> MARX, Karl. *Contribuição à crítica da economia política*. Trad. Florestan Fernandes. 2 ed. São Paulo: Expressão Popular, 2008, p. 47.

<sup>45</sup> DONATO, Messias Pereira. *O movimento sindical operário no regime capitalista*. Belo Horizonte: Edições da Revista Brasileira de Estudos Políticos, 1959, p. 28.

in the way of thinking equality at work. Facing the operating logic of the world of production, *human work will only be truly free if it is set apart from the totalizing sign of the market as either the only or main determinant of its choice and expression, both regarding its content and the conditions of its execution.*

For this purpose, the idea of a *guaranteed basic income* arises as a possible platform for advances in the intensity of social equality, precisely by tackling the limitations always posed by necessity (and its economic use) in the work relations. With origins in the eighteenth century<sup>46</sup>, the notion of basic income is strongly developed in the last two decades, with theoretical proposals and institutional experiences that provide a rich substrate for the conception and questioning of formats, effects on the economy, social ethics and its results in terms of inclusion and poverty eradication. The theoretical models and national practices are very diverse in terms of direct allocations and social protection<sup>47</sup>. There are social security benefits or conditioned direct cash transfers, associated with the fulfillment of certain requirements (often of social vulnerability) and possible counterparts, in terms of work or education. Some initiatives, in a way, communicate with the classic standards of social security, expanding assistance measures and allocations for meeting basic rights such as work<sup>48</sup>, housing and health, or even as direct strategies to combat unemployment.

In this scenario, a format that goes further becomes noteworthy: the notion of *unconditional basic income*. The concept by Van Parijs, one of the main contemporary theoreticians (and defenders) of the model, is quite simple. “A basic income is an income paid by a political community to all its members on an individual basis, without means test or work requirement”<sup>49</sup>. The idea here is an income paid in cash, in an individual, regular and uniform way, with various funding sources (from general government expenditures, through specific funding, with directed taxes, up to models of dividends in special funds), and *without requiring counterparts*. From that simplicity in

---

<sup>46</sup> For a detailed history of the idea of basic income in its origins, with roots on the thought of Thomas Paine, see BATISTA JÚNIOR, Onofre Alves. *O outro leviatã e a corrida ao fundo do poço*. São Paulo: Almedina, 2015, p. 202 *et seq.*

<sup>47</sup> The Brazilian model of *Bolsa Família* is an international reference on the subject. See CAMPELLO, Tereza, NERI, Marcelo Côrtes (orgs.). *Programa Bolsa Família: uma década de inclusão e cidadania*. Brasília: Ipea, 2013.

<sup>48</sup> It is the case of the *Mahatma Gandhi National Rural Employment Guarantee Act* from 2005 in India, recognizing a right to work and establishing an obligation for the government to guarantee at least 100 days of work per year in rural areas, observing minimum wage. Regarding the advances and problems of the program, see GHOSE, Ajit K. *Addressing the employment challenge: India's MGNREGA*. Geneva: ILO, 2011.

<sup>49</sup> VAN PARIJS, Philippe. Renda básica: renda mínima garantida para o século XXI? Trad. Miguel Araújo de Matos. *Estudos Avançados*, São Paulo, n. 14 (40), p. 179-210, 2000, p. 189.

the design, massive challenges to better understand the dynamics and effects of its implementation remain.

It is certain that the *unconditionality* and the *universality* concentrate much of the controversy and the force of the proposal. At first glance, it may seem illogical from the point of view of the economy (and also from the ethical and legal reflection on distributive justice) to implement cash transfers for those who do not need it<sup>50</sup>. However, a basic income program can substantially change the dynamics of taxation and redistribution, in such a way to achieve formulas that prevent rich from getting richer by the simple direct transfer of income. For those who defend the model, it is better to grant transfers equally to rich and poor, because (i) the actual use rate would increase, given the universal dissemination of information and access; (ii) the stigmatization of beneficiaries who rely on the program would be neutralized, since the income is a direct consequence of a universal citizen existence; (iii) negative interactions with the insertion in the labor market would be mitigated, avoiding the trap of “voluntary” unemployment for benefits that depend on the measurement of the worker status and income<sup>51</sup>.

As to the model, André Gorz goes even further. Changing position at the end of his life, Gorz became a devoted advocate of the unconditional feature of what he called the *existence income*, for various reasons, among which *the possibility of a complete reconstruction of the relationship between people and work* is remarkable, promoting the centralization of benevolent, cultural, artistic and political activities. For Gorz, “only its unconditionality [of the income] can preserve the unconditionality of the activities”<sup>52</sup>. In addition, the author innovates when he defends a minimum income of a more robust value, actually sufficient for decent survival, once, if the income is too low, it would only indirectly subsidize employers. Thus, the income should be enough to release individuals from the “coercions of the labor market”<sup>53</sup>.

---

<sup>50</sup> As to the theoretical fundamentals of the discussion, rooted on the idea of justice as a possibility for the search of realization of a good life, see VAN PARIJS, Philippe. Why surfers should be fed: the liberal case for an unconditional basic income. *Philosophy & Public Affairs*, Nova Iorque, v. 20, n. 2, p. 101-131, 1991.

<sup>51</sup> VAN PARIJS, Renda básica: renda mínima garantida para o século XXI?, *cit.*, p. 185-186.

<sup>52</sup> In the original version: “Car seule son incondicionalité pourra préserver l’inconditionnalité des activités”. Translation by the authors. GORZ, André. Pour un revenu inconditionnel suffisant. *Transversales: Science, Culture*, Paris, n. 3, p. 82-85, 3 sem. 2002, p. 83.

<sup>53</sup> GORZ, André. *Misérias do presente, riqueza do possível*. Trad. Ana Montoia. São Paulo: Annablume, 2004, p. 95.

These paths are still in formation. They are brought up to this paper as a possibility for an institutional direction with a considerable transformative potential, in association with the structures of work protection legally consolidated in domestic and international orders. They seem to promote a line of maximizing the experiences of freedom, precisely because they advance *directly* towards the substance of equality in social and work relations. These are, then, theoretical and practical contributions to free lives. They may not cease completely the logics of subjection and oppression, ensuring its eradication from the world. And they certainly do not exempt the strengthening of other structures of equalization, such as the classic guarantees of Social Law. They may, however, serve as part of a project of maximizing the experiences of freedom, within lines such as those Amartya Sen has designed for his idea of justice: not as an essentialist or absolute construction, but as a project for removing clear injustices and inequalities<sup>54</sup>.

As to the relationship between work and freedom, egalitarian advances help, at last, to conjure the ghosts that a distorted ideal of autonomy still carries in itself. If it is very difficult to define freedom in a categorical way, the oppressive relations at work have very well shown what freedom is not. It is neither individualism, nor abstract will contractually expressed. It is a dimension built on sociability and on the overcoming of asymmetries, so that choices and paths related to work attend a sense of humanity that is inherent to it. Personal choices, talents, wishes and social needs, built together in platforms for maximizing equality, which may finally contribute to the substance of the idea and experiences of free and humane work.

## REFERENCES

- ARENDR, Hannah. *The human condition*. 2 ed. Chicago: University of Chicago Press, 1998.
- BANERJEE, Abhijit W., DUFLO, Esther. *Repenser la pauvreté*. Trad. Julie Maistre. Paris: Seuil, 2012.
- BATISTA JÚNIOR, Onofre Alves. *O outro leviatã e a corrida ao fundo do poço*. São Paulo: Almedina, 2015.

---

<sup>54</sup> SEN, Amartya. *A ideia de justiça*. Trad. Denise Bottmann e Ricardo Doninelli Mendes. São Paulo: Companhia das Letras, 2011, p. 09.

- BOURDIEU, Pierre. La double vérité du travail. *Actes de la recherche en sciences sociales*, Paris, v. 114, p. 89-90, set. 1996.
- CAMPELLO, Tereza, NERI, Marcelo Côrtes (orgs.). *Programa Bolsa Família: uma década de inclusão e cidadania*. Brasília: Ipea, 2013.
- CASTEL, Robert. Trabajo y utilidad para el mundo. *Revista Internacional del Trabajo*, Ginebra, v. 115, n. 6, p. 671-678, 1996.
- CÍCERO. *Dos deveres (de officiis)*. Trad. Carlos Humberto Gomes. Lisboa: Edições 70, 2000.
- CORREIA, Marcus Orione Gonçalves. Os conflitos de princípios e as falácias da liberdade. *Revista Brasileira de Direito Constitucional*, São Paulo, n. 17, p. 199-208, jan./jun. 2011.
- COUTINHO, Aldacy Rachid. Efetividade do Direito do Trabalho: uma mirada no “homem sem gravidade”. *Revista do Tribunal Regional do Trabalho da 3ª Região*, Belo Horizonte, v. 45, n. 75, p. 93-105, jan./jun. 2007.
- D’IRIBARNE, Philippe. *Vous serez tous des maîtres: la grande illusion des temps modernes*. Paris: Seuil, 1996.
- DELGADO, Mauricio Godinho. *Capitalismo, trabalho e emprego: entre o paradigma da destruição e os caminhos de reconstrução*. São Paulo: LTr, 2005.
- DINIZ, Arthur José de Almeida. A fúria de um mundo agonizante. *Revista Brasileira de Estudos Políticos*, Belo Horizonte, n. 90, p. 7-31, jul./dez. 2004.
- DONATO, Messias Pereira. *O movimento sindical operário no regime capitalista*. Belo Horizonte: Edições da Revista Brasileira de Estudos Políticos, 1959.
- ELLUL, Jacques. *Pour qui, pour quoi travaillons-nous?* Paris: La Table Ronde, 2013.
- FONSECA, Ricardo Marcelo. *Modernidade e contrato de trabalho: do sujeito de direito à sujeição jurídica*. São Paulo: LTr, 2001.
- GHOSE, Ajit K. *Addressing the employment challenge: India’s MGNREGA*. Ginebra: ILO, 2011.
- GIDDENS, Anthony. *As conseqüências da modernidade*. Trad. Raul Fiker. São Paulo: Editora da Universidade Estadual Paulista, 1991.



- GORZ, André. *Metamorfoses do trabalho: crítica da razão econômica*. São Paulo: Annablume, 2007.
- GORZ, André. *Misérias do presente, riqueza do possível*. Trad. Ana Montoia. São Paulo: Annablume, 2004.
- GORZ, André. Pour un revenu inconditionnel suffisant. *Transversales: Science, Culture*, Paris, n. 3, p. 82-85, 3 sem. 2002.
- HESÍODO. *Os trabalhos e os dias*. Texto bilíngue Grego e Português. Trad. Alessandro Rolim de Moura. Curitiba: Segesta, 2012.
- HONNETH, Axel. Trabalho e reconhecimento: tentativa de uma redefinição. Trad. Sobottka e Saavedra. *Civitas – Revista de Ciências Sociais*, Porto Alegre, v. 8, n. 1, p. 46-67, jan./abr. 2008.
- INSTITUTAS DO IMPERADOR JUSTINIANO. 2 ed. São Paulo: RT, 2005.
- INTERNATIONAL LABOUR ORGANIZATION. *World of work report 2014: developing with jobs*. Geneva: ILO, 2014. Available at <http://ilo.org/global/research/global-reports/world-of-work/2014/lang--en/index.htm>.
- LE GOFF, Jacques. Au Moyen Age, une pénitence rédemptrice. *L'Histoire*, Paris, n. 368, Dossier 'Le travail: de la Bible aux 35 heures', p. 58, out. 2011.
- MARCUSE, Herbert. *A ideologia da sociedade industrial*. Trad. Giasone Rebuá. Rio de Janeiro: Zahar, 1967.
- MARX, Karl. *Contribuição à crítica da economia política*. Trad. Florestan Fernandes. 2 ed. São Paulo: Expressão Popular, 2008.
- MARX, Karl. *Manuscritos econômico-filosóficos*. Trad. Jesus Ranieri. São Paulo: Boitempo, 2010.
- MARX, Karl. *O capital: crítica da economia política*. Livro I: o processo de produção do capital. Trad. Rubens Enderle. São Paulo: Boitempo, 2013.
- MAUSS, Marcel. *Sociologia e Antropologia*. Trad. Paulo Neves. São Paulo: Cosac Naify, 2003.
- MÉDA, Dominique. *Le travail: une valeur en voie de disparition?* Paris: Flammarion, 2010.

- MERCURE, Daniel, SPURK, Jan. *O trabalho na história do pensamento Ocidental*. Trad. Patrícia Reuillard e Sônia Taborda. Petrópolis: Vozes, 2005.
- MIGEOTTE, Léopold. Os filósofos gregos e o trabalho na Antigüidade. In MERCURE, Daniel, SPURK, Jan. *O trabalho na história do pensamento Ocidental*. Trad. Patrícia Reuillard e Sônia Taborda. Petrópolis: Vozes, 2005.
- PACHUKANIS, Evgeni Bronislávovich. *A Teoria Geral do Direito e o marxismo*. Trad. Sílvio Donizete Chagas. São Paulo: Acadêmica, 1988.
- PETIT, Eugène. *Tratado elementar de Direito Romano*. Trad. Jorge Luís Custódio Porto. Campinas: Russell, 2003.
- SEN, Amartya. *A ideia de justiça*. Trad. Denise Bottmann e Ricardo Doninelli Mendes. São Paulo: Companhia das Letras, 2011.
- SUPIOT, Alain. *Critique du Droit du Travail*. 2. ed. Paris: Quadrige / PUF, 2011.
- SUPIOT, Alain. Le travail, liberté partagée. *Droit social*, Paris, n. 9-10, p. 715-723, set./out. 1993.
- VAN PARIJS, Philippe. Renda básica: renda mínima garantida para o século XXI? Trad. Miguel Araújo de Matos. *Estudos Avançados*, São Paulo, n. 14 (40), p. 179-210, 2000.
- VAN PARIJS, Philippe. Why surfers should be fed: the liberal case for an unconditional basic income. *Philosophy & Public Affairs*, Nova Iorque, v. 20, n. 2, p. 101-131, 1991.
- VATIN, François. *Le travail et ses valeurs*. Paris: Albin Michel, 2008.
- VERNANT, Jean-Pierre, VIDAL-NAQUET, Pierre. *Trabalho e escravidão na Grécia antiga*. Trad. Marina Appenzeller. Campinas: Papyrus, 1989.
- VERNANT, Jean-Pierre. Trabalho e natureza na Grécia antiga. In VERNANT, Jean-Pierre, VIDAL-NAQUET, Pierre. *Trabalho e escravidão na Grécia antiga*. Trad. Marina Appenzeller. Campinas: Papyrus, 1989.
- VIANA, Márcio Túlio. Da greve ao boicote: os vários significados e as novas possibilidades das lutas operárias. *Revista da Faculdade de Direito da UFMG*. Belo Horizonte, n. 50, p. 239-264, jan./jul. 2007.