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1 Professor da Faculdade de Direito da Pontifícia Universidade Católica de Minas Gerais. Pós-Doutor junto à Universidade de Roma I La Sapienza e à Universidade de Roma II Tor Vergata

https://orcid.org/0000-0002-5134-2014

2 Professor do Instituto de Economia da Universidade Estadual de Campinas. Doutor em Economia Social e do Trabalho pela Universidade Estadual de Campinas. Pesquisador do Centro de Estudos Sindicais e Economia do Trabalho da Universidade Estadual de Campinas (CESIT).

https://orcid.org/0000-0002-4277-2290

Dossier entitled “Meaning and impacts of the labor reform in the labor world”

Presentation: the labor reform, between fraud and hope

***Márcio Túlio Viana*[1]**
***José Dari Krein*[2]**

Much has been said and written about labor reform. The very term "reform" has already undergone a sort of reform: there are those who write it with quotation marks, while others translate it as "deformity", that is, exactly its opposite.

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1 Professor at the Faculty of Law at the Pontifical Catholic University of Minas Gerais. Post-Doctorate at the University of Rome I La Sapienza and the University of Rome II Tor Vergata

2 Professor at the Economics Institute at the State University of Campinas. Doctor in Social and Labor Economics from the State

In fact, mankind in our time has not only invented sheep clones, but it has produced counterfeits of all kinds. Many are explicit and innocent, as are the groups that imitate the Beatles. Others are hidden and willful, like branded sneakers made in a clandestine yard.

Among the latter counterfeits are also immaterial, not palpable ones, as, for example, in the case of the politician who is a democrat but encourages violence; or in the press that reports an environmental crime as if it were an accident.

> In the same hypothesis, we could include the avalanche of fake news that invaded the country, to the point of convincing crowds that in the Netherlands babies are trained for sex or that, in Brazil, teachers have traded research activity for practices such as encouraging “turmoil”, the communist revolution and even pedophilia.

Now, I do not think it is an exaggeration to say that labor reform – or deformity – belongs to the second hypothesis, that is, to the willful counterfeits, practiced for the purpose of misrepresenting reality, while making it even more cruel. Legislators not only sin for specific misconceptions, slight distractions or lack of technique; they substantially play with fraud.

Thus, knowing the growing number of hires of false autonomous professionals, they take advantage of that to facilitate the wave, coming up with the figure of the "exclusive autonomous professional"; knowing that the norms of Civil Legislation have, as a rule, a different spirit, they suppress the words that demanded compatibility for their application to the Labor Law; not ignoring that in Brazil there is almost a tradition of violations of the law, they blame workers themselves for the number of lawsuits, seeking to reduce them by hindering access to justice and so forth.

In all, or almost all, legislators ignore the lesson of the best doctrine, in the sense that Labor Law principles are not useful only for interpreters or enforcers. They act, or ought to act, also at the pre-legal moment, when the law is about to be implemented[1], not only inspiring but conditioning its authors.

Reform still makes use, in an un honest manner, of some elements of our time that celebrate participation, freedom and equality. In this sense, it revalues the contract in various ways, whether at the collective level or at the individual level, but pretending that power

[1] In this sense, the lessons by Jorge Luiz Souto Maior (2019) and Maurício Godinho Delgado (2018)are being applied, just to mention two renowned authors.

relations are equal, in a very historical period when they are once again especially unequal. Therefore, also here, it fantasies neutrality to act to the detriment of the weaker[2].

However, the most destructive effects of the new law may be different. On one hand, it accentuates the tendency for the widespread and massive marketing of human labor and the working man himself, especially through outsourcing. On the other hand, it deeply hurts the main source of labor law – that is, the collective struggle – in a context in which the union was already weak due to so many important causes.

As for the last aspect, it is worth noting that the labor law has always been largely a working-class construction. Even in Brazil, where the state's presence was undeniably important, unions were always present. Moreover, even the standards we have imported in the past brought the blood marks of European workers; thus, whether here or there, the protégé wove or helped weave his own protection.

This is perhaps the most striking feature of labor law; It is your strength that accounts for your autonomy. However, paradoxically, this is also its weak point, its Achilles Heel. For it indicates that labor law depends on strong unions not only to grow, but to become effective, that is, to live.

Thus, as can be seen, the division usually made in the labor area between individual and collective law has not only didactic or methodological purposes; nor is it explained by the fact that in the first case the protagonists are employees and bosses, and in the second one they are the company and the professional trade union. The biggest difference is that the Collective Law is an instrument of construction of the Individual Law, whether it be in direct or indirect terms, or in terms of precept or sanction.

And reform – or deformity – does not act only in the Positive Law sphere. It also acts in the ideological field, and even in the psychological aspect, giving the idea that workers no longer need protection, and reinforcing the false thesis that Labor Law undermines the right

[2] For a more thorough examination of this aspect, check VIANA, 2019.

to work. For these and other reason, and as it occurs today, in the field of weapons, the Government tacitly authorizes the employer to practice even more violence, further violating the law.

Well, as we had said, much has been written and said about this topic – and in various areas of knowledge, from the right to sociology, to history, and to economics. However, rarely has a mixture of sciences and outlooks been produced, as we are proposing.

In this sense, our dossier contemplates articles that discuss the social and economic meanings of the new law, showing, for example, that – despite the speech that promoted it – the economy keeps going sideways, also due to the fall of the income mass.

And the labor market, therefore, continues its trajectory – started with the 2015 crisis – further worsening the indicators of employment and the formalization of contracts. Thus, in addition to denying the arguments and theses of its propagators, the reality of the reform points to the breakthrough of precarious work and the vulnerability of workers.

On the other hand, and with the same objective of incorporating different perspectives, we do not limit ourselves, in this collection, to collecting surveys and studies done in our territory. Always attentive to the criteria of the double blind review, we have selected excellent texts from foreign colleagues, who – by a fortunate coincidence – all carry in their veins the same Latin blood that is contagious to us, and thus carry in their hearts sensitivities similar to ours.

Although, of course, the different countries have also built distinct labor relation systems over time, what prevails today is the logic of deconstruction of rights, based on assumptions that are very similar to those of the Brazilian reality. Nevertheless, there are also contradictions about the effects of real-world legislative change - as well as minority reactions.

As we know, protective laws have not vanished away, and the CLT itself, even when violated, still shows, fortunately, some of its most striking features. In the end, it is even likely

that the rules of protection that escaped dismantling have taken on a new role, pressing – by contrast – those that the legislature has produced by default of the principle of protection. Even new forms of resistance have started emerging.

Among the selected articles, some are particularly purposeful. Whether specifically or broadly, they formulate new hypotheses and imagine some pathways.

Now, finding solutions from a law that has already been drawn up – that is, from something created in theory, precisely to solve problems – may seem contradictory. Yet, we know that is not so.

By the way, once a brilliant jurist compared judges to prisoners in prison: although the bars impose limits on them, they have room to move, and in this move they are able to find justice (COURTURE, 1998, p. 32).

This does not mean, of course, one is despising the law, but that one finds in the law itself new doors, new windows, even to escape – when necessary – the cold and rigid letter of the law, in search of a less unequal society, even inside the capitalist system.

Indeed, if there is the legislator's moment, there is also the interpreter's moment. The legislator dictates their words. Nonetheless, the interpreter recreates them, and does so even when they literally confirms them – for in this case, they add their own legitimating force to them. Of course, the more important the role of the interpreter is, the less respectable the formal background of the legislator is. And that is exactly what takes place here.

In our language, as we know, the verb "to wait" has different meanings. It can mean, for example, "being expectant", or "guessing" or "trusting in the help or protection of" (MICHAELIS, 2019).

Nevertheless, if these senses somehow suggest passivity, so many may indicate almost the opposite. "Waiting" can be the same as "hoping," and hopeful people are often fighting for something good to happen.

As a common feature, all our employees – Brazilians and foreigners, legal or non-legal – share the dream of a fairer society; and conjugate the verb "to wait" in that second sense, of having hope, and a living, concrete, achievable hope.

After all, history is a social construction, which – through tensions and contradictions can be rewritten. Thus, despite adversity and seemingly irreversible defeats, the future is open. So everyone is certain that – as Chico Buarque's song goes – all of this will "pass".

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