

THE ADVANCE OF GLOBAL CAPITALISM AND THE CAPITULATION OF BRAZILIAN LABOR LAW

O AVANÇO DO CAPITALISMO GLOBAL E A CAPITULAÇÃO DO DIREITO TRABALHISTA BRASILEIRO

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ABSTRACT

In this paper we analyze the current process of the surrender of social rights in Brazil in the view of historical classes, that lead to clarify the commitment of global capitalism in modern times and the protection as opposed to the instability of labor relations. We seek to gain a better understanding of the type of relationship that exists between the market society, the welfare state and democracy, that has shaped the National State's innovation plan. However, the experience of fascism has shown that its power, under certain circumstances, can be used to establish a totalitarian system. The thematic profile of this research is the critical theory of reality which is present in the bibliography and in the phenomenological approach involving outsourcing in its current form. The results point to the progress of globalization and a gradual process of deconstruction of the social project, especially the parts of which that are of labor nature and of the very idea of citizenship.

Keywords: Capitalism. Social rights. Globalization. Work relationships. Outsourced services.

RESUMO

Nesse trabalho analisamos o processo atual de capitulação dos direitos sociais no Brasil sob a perspectiva de categorias históricas que levam a elucidar o compromisso do capitalismo global na pós-modernidade e a proteção versus precarização das relações de trabalho. Buscamos obter maior entendimento do tipo de relação existe entre a sociedade de mercado, o

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Estado-Providência e a democracia que moldou o plano de modernidade do Estado Nacional, todavia, a experiência do fascismo mostrou que o seu poder, em certas circunstâncias, pode ser usado para instaurar um sistema totalitário. O recorte temático desta pesquisa é a teoria crítica da realidade presente na revisão bibliográfica e no método fenomenológico envolvendo a terceirização em sua atual configuração. Os resultados apontam para o avanço da globalização e um processo gradual de desconstrução do projeto social, mormente os de natureza trabalhista e a própria ideia de cidadania.

Palavras-chave: Capitalismo. Direitos sociais. Globalização. Relações de trabalho. Serviços terceirizados.

1 INTRODUCTION

In the historical context of innovation, the economic transformation of the western world has inevitably produced profound changes of social character that completely revolutionized the way of organizing the production of goods and the provision of services. This long and complex process of substantial changes has forged the economic dimension, especially the labor area.

This paper aims to analyze what kind of relationship exists between the globalized phase of the capitalist economy and its immediate effect on labor markets and Brazilian social welfare, with a historically developed structure based on the State, which became more directly involved as the provider of vital social services and essential economic infrastructures. Therefore, it is necessary to question the connection between the advance of globalization and the gradual unmaking of the social rights, especially those of a labor nature and of the very concept of citizenship.

The direction of this analysis is the historical and rational process of the advances and setbacks of the access to social rights, a situation in which workers lose fundamental rights and how this process reacts to western capitalism, especially in Brazil. The effects of the so-called globalization of the economy seem to directly affect not only social care, but also the very mixture of elements forming the contemporary state. In the era of global capitalism, the economic system undercuts labor and generates unemployment by rattling the historical pact of innovation of the national state between democracy, market society and the welfare state (HESPANHA, 2002, p. 169). This exploratory research investigates facts from everyday life that are present in the law concerning outsourcing, in a way that work has acquired a new meaning. The nature and meaning of work will be examined in the context of a changed employment structure as a result of reducing working hours and expanding the time available for free activities.

The methodology has a markedly theoretical character of analytical reading and bibliographical research, in light of the unstable social scene during this turbulent political moment. Through an approach critical of the reality, fascism attempts to organize the newly

emerged proletarian masses without changing the relationships between production and property which these masses are trying to abolish.

Along the sections of this paper, the process of giving up social rights will be discussed and whether the constitutional guarantees, conquered during a given conjuncture of the Brazilian democratic process, can stop the voracity of economic capital. In this sense, it is clear that outsourcing undermines the fundamental social rights of workers, and is an unequivocal proof of the process of surrendering these rights.

2 TEMPORARY TRANSFORMATIONS OF PRIVATE LAW

The modernity of Law (the one which was defined in the 19th century) is linked to the bourgeois revolution in France. The immediate reflection of this legal modernity is the liberal ideology (bourgeois liberalism) founded on three pillars: property, civil equality and economic freedom. The result of this adaptation is expressed in the equation: free and equal individuals have autonomy of their will and are able to hire (PALMISCIANO, 2009, p.60).

What has to be observed is that private legal relations are based on the idea of a law, which is free and possessing a certain autonomy of choice. This last pillar is directly related to the modern labor contract – created during the Industrial Revolution, based on the various dependencies, among which the economic one, by implying that one of the contracting parties depends on salary as a compensation for the work provided as well as for the technical skills, outlining the superiority of knowledge and production. However, legal subordination brings to the labor agreement, the elements that constitute the contract theory: freedom, equality, autonomy and supremacy of the will.

To this extent, would the individual will be the sole “raison d’être” of legal obligations? The pact takes place through two individual wills, wrapped in an absolute and subjective right (freedom and equality) in which the contract becomes the instrument that enables the flow of wealth (STORER, 2009, p. 57). However, the contract is detached from actual reality, being wrapped in an abstract manner that closes in long superseded theoretical classifications, since at the present time the new contract established between capitalists and workers is disadvantageous for the latter.

The idea of a free agreement between the parties and the lack of state intervention in the sphere of the private contract, in its form of bilateral and equal participation, has lost all meaning. Indeed, such an imbalance between the contracting parties was already disregarded in the face of full contractual freedom by reason of the very idea of a free manifestation of the freedom of choice, now surpassed by objective good faith (SILVA; SILVA, 2012, p. 271).

In fact, the effects of the Industrial Revolution changed from infrastructure to the social superstructure, given that until 1850 the companies did not have great importance in the life of the majority of the world population. Most of the people still lived in villages in rural

areas, most of them living in a system of self-sufficiency and buying from local craftsmen the few products that they did not produce themselves, while in the cities, almost all the companies were small businesses (FERREIRA, 2016, p. 43). We emphasize this to affirm that nothing was indicating that in the near future companies would assume an increasing role in the economy and social life.

In this way, European society emerges from this transformation of the capitalist mode of production and also faces new legal consequences as a result of these changes (ARGERICH, 2005, p. 52-57). Thus, a new legal model was established. After all, the institutions and concepts of Private Law were formulated by a bourgeois, industrial, liberal society that disregarded social divisions and cultural diversities.

In Brazil, the private law had adopted, in a round and about way, a model of civil law based on the experience of a slave-owning monarchy and the lack of effective citizens as a result of the “Oligarchic Republic.” The legal culture of the Old Republic (including the constitutional area) was filled with the individualistic liberalism advocated in the freedom of contracts (BATISTA; POPP, 2010, p. 122).

Faced with this, the law of contracts was reoriented by the new constitutional guidelines. It should be noted that the forecasting of objective good faith is not described in the Federal Constitution, however it is applicable to any Brazilian legal-contractual system. It is related to the constitutional principle of solidarity and does not confine itself to consumer relations, since the concept of objective good faith is open to hard reality.

3. THE RELATIONSHIP BETWEEN ECONOMY, STATE AND FASCISM

The emergence of the modern state can not be disassociated from the birth of the capitalist economic system itself. In addition, the State is the mirror image expression of the production (supply) seen in the social infrastructure, hegemonized by the capitalist bourgeoisie which has made the labor force a commodity and is going further by turning everything into merchandise. After all everything has a price and can be bought and sold.

The historical context in which this process was forged in Western Europe, is the one that brings us back to the second half of the 15th and 16th centuries with the supply of goods, products and consumer services. Hence the emergence of a new urban class of merchants, speculators and other investors (the commercial bourgeoisie) who begin the first steps of the capitalist system in a mercantile form (VERBICARO, 2007, p. 40).

Thus, the colonization of the “new lands” became the first large organized capitalist enterprise beyond the borders of Europe, especially by the exploitation of slave labor (PRÉCOMA; FERREIRA, 2017, p. 36). In this phase of capital accumulation, one can see a gradual economic decline of the nobility, since land, as an economic value, ceases to be the model of the productive system.

The small-scale industry was represented by the little workshops within the urban areas originating from small autonomous producers who lived by making goods, without intermediaries (SULZ; TEODORO, 2014, p. 99). The craftsman quickly lost control of the market and of the goods he produces, since the means of production and the raw materials were to be supplied by the capitalist trader (from an independent producer to a salaried producer).

The state played an important role as a facilitating agent in the accumulation of capital, and in the creation of the capitalist system itself (POLICARPO; MENDES, 2013, p. 93). Protectionism, monopoly, the guarantee of products and markets, the conquest of new colonies (which includes raw materials), all for the benefit of a budding industry, and the emerging class, the bourgeoisie. Here exists a connection between the capitalist economic system and modern political power.

With the Industrial Revolution, the technical division of labor or of functions took hold and from then on any simple or complex thing could involve dozens or hundreds of tasks. In general, the rationalization of work had an inevitable effect on this process.

Once the industrial capitalist way of production was consolidated, the so-called “bourgeois order” emerged. It legitimized itself ideologically and legally through the Liberal State (BUNCHAFT; RISSI, 2014, p. 467). As Pavão and Pignata (2016, p. 154) explained, the new contract between capitalists and workers was disadvantageous for the latter, given the imbalance between the parties. The State, and therefore the law, by far favors the employers.

In the face of these considerations, fascism was accepting the exploitation by the capitalist system, but criticizing its materialism, its lack of interest for the population and its ineptitude to stir up the people. The classical fascism – Mussolini's Italian fascism – was not properly anti-capitalist (or antisemitic), but was proposing a new way of managing capitalism, which did not exclude the Jewish merchants, some of whom figured as promoters of the Fascist Party (PAXTON, 2007, p. 15).

For its founders and theorists, fascism was a political idea, with a weight similar to that of socialism or liberalism; that is, an idea that would not have arisen from theoretical abstractions, but from the need for action and from the will to conquer. Mann (2008, p. 13) warned that fascist ideology should be taken seriously, as it could be criticized as much as other ideologies, while presenting “plausible solutions to modern social problems”.

The inability of the capitalist system to respond to the disturbances of the economy, brought about by increasingly acute crises, forced the state to seek to discipline it as a whole (SARLET, 1999, p. 118). The Social State would be interventionist based on democratic norms that do not violate the values of citizenship, nor abolish individual rights that occur through state control in correcting the failures of the liberal model.

On the other hand, the decline of the nation-state (considered to be a crisis of sovereignty), as a more visible consequence of the advance of globalization and neoliberalism, was implicated with adverse effects in the political sphere and in the juridical

dimension (TEIXEIRA;FERRONATO, 2015, p. 334). To take over, even partially, the vacuum left by the State, we have the leading role of large multinational corporations.

There is no “decline of the nation-state” in general (KENNEDY, 1988, p. 246-247). However, the “global” economy remains, as before, under the control of a few powerful players, almost all of them domestic and of the First World. The policies and decisions of nation-states (at least the most powerful ones, acting alone or together) can affect, and indeed affect, the international economy. Above all, they will have a more powerful impact on the poorer, developing nations, those which have to position themselves according to the new/old social division of work.

4 THE ECONOMIC MODEL AND THE DIGNITY OF THE HUMAN PERSON

Historically, the idea of a conjuncture of three decades emerged shortly after the end of World War II and was called the Welfare State. At this stage, it was involved in individual and collective rights in a stable way, which during that period acquired a promotional character, especially in those of a labor nature (OLIVEIRA;SAMPAIO, 2016, p. 311-313).

It can be said that certain aspects that were supposedly buried historically, reappear in the framework of the so-called globalization also known as the era of “consensus” and “single speech”. In this sense, the neo-liberal wave of global reach has a mandatory agenda based on the withdrawal of social rights from the scene (BEDIN, 2008, p. 100)

There is a growing consensus that global capitalism, driven by cross-border corporations is driven by the culture/ideology of consumerism. There is, however, much controversy over its long-term consequences in the sense of a crisis of class polarization (the idea that the rich are getting richer and the gap between rich and poor societies is widening) and a crisis of unsustainability which considers that the persistence of capitalist globalization will ultimately make the planet uninhabitable (SCOTT, 2010, p. 97). These controversies indicate an urgent need to consider alternatives to capitalist globalization.

It is worth remembering that the Welfare State consisted of a grant from the western European (capitalist) countries to the soviet socialism, providing basic issues during the reconstruction of postwar Europe in order to avoid mass migration to the socialist-communist model (MUNERATTI, 2013, p.33). Consequently, the Welfare State has resulted in the liberation of the economic and financial system, unrestrained privatization, deregulation of the economy, retraction of public expenditures from burdens such as social welfare, fiscal adjustment, full mobility of capital and the subjection of labor markets simultaneously with a strict international control.

In the field of Labor Law, the precariousness of contractual ties and the segmentation and dualization of labor markets were significantly affected. Still, if under the old welfare state there was a rise of the working class led by a solid union structure, in times of extreme

globalization what is perceived is exactly the opposite, that is, the union movement sees the dwindling of its members, a good part motivated by the flexibilization and deregulation of labor rights, in particular, Law 13.429/2017 (BRAZIL, 2017; PRIORI, 2001).

It remains clear that, at the outset, social rights have emerged from a citizens' conception in the womb of the welfare states whose struggle arises and originates from a social and political territoriality, the rural field, and turns to question the state and capital. It exposes contradictions in the external and governmental agenda of the globalization of capital, in the context of citizenship and the consolidation and universalization of public law (BORTOLOTTI; MACHADO, 2017, p. 432).

Nowadays, the role of the state would be to guarantee order and economic freedom, including from the constitutional texts (TEIXEIRA; CUNHA, 2011, p. 301-304). In the Brazilian case, it can be stated as a general rule that the positive social effects of the provision of public services were much more an expected but not necessarily a desired result of the management of public infrastructure services in the country, based on developmental strategies rather than principles of social solidarity policies aimed at building a welfare state, with national wealth expansion policies synchronized with the implementation of social rights.

Baptista (2013, p.133) illustrates the constitutional provision of the dignity of the human person (Article 1, III) with the case of collectors of recyclable materials in relation to the National Solid Waste Policy, which must be recognized by the society as well as by entrepreneurs and public authorities, through public policies, institutions and legal protection, as the work of these citizens. Thus, considering the long Brazilian history of violation of rights of the most varied nature and the rejection of a substantial majority of the population, Andrade (2016, p.189) asserts that society must oppose the non-fulfillment of a minimum role for social rights. because this would be contrary to the very idea of democracy.

Maurício Júnior (2016, p. 213) acknowledges the immense difficulty of making social rights effective, but, looking at structural problems in the traditional legislative process, proposes, even in part, the overcoming of representative democracy (partly obsolete and inefficient) through a model that favors effective direct popular participation through plebiscites and referendums.

The person is the beginning and the end of society and the state and the dignity of the human person is the basis of all fundamental rights (PADILHA;BERTONCINI, 2016, p. 233-234). The members of the Constituent Assembly have chosen to guarantee free individual/corporate initiative, as well as to defend the valorization of human work (Article 1, IV). Therefore, the analysis of the activities of an economy based on the free initiative can be used to analyze the activities of a political democracy.

Urban and rural free enterprises, especially the ones represented by large corporations (agribusiness, banks, contractors, multinational corporations, media groups) have lobbies in the National Congress, parliamentary benches that subvert the meaning of "parliamentary representation" (BAIRD, 2016, p.889). The reason for this distortion is

essentially economic since the powerful employers' associations have the power to elect a large majority of representatives to promote their interests. Therefore, the legal clash between the “Economic and Financial Order” versus “Social Rights”, which is really of a political and economic background, will inevitably result in an absolutely asymmetrical relationship between the two poles. To rely on, throughout a gradual process of solid struggles within a broad range of social movements, to try to reverse the hegemonic pole in the correlation of forces within Brazilian society.

5 GLOBAL DIMENSION AND WORK

The phenomenon of worldwide integration of the economy, or the so-called globalization, from the academic point of view and with a social emphasis, has several aspects or perspectives. One of them is the territorial borders that gave way to the political and administrative arrangements of political unions such as the European Union and the common markets, such as Mercosur, practically to the extent that the nation-state is being replaced by economic blocs.

From an analysis of the theoretical aspects, the old state theory, which is based on the main concepts of politics such as territory, nation, government, nationality and even the state itself, is replaced by the concept of public policies under the argument of bankruptcy of the State. At the same time, citizenship and popular participation gave way to the exercise of user/client rights and social responsibility. For Silva and Rocha (2014, p. 122), economic globalization generates a structural exclusion, beyond the limits of the rights guaranteed by the state structures, in which the laws prove to be ineffective, having the “social rights, such as labor rights, which had been institutionalized a long time ago, become increasingly relaxed or deconstitutionalized”.

Despite employers' actions to improve the situation of the workers through the "human relations movement", an attempt to reconcile this objective with the re-humanizing of labor, entrepreneurs did not abandon the principles of Taylorism or Fordism, as this would imply reducing productivity.

It is being discussed the extent to which the deepening of the globalization process has transformed the world of work, specifically with regard to the tightening of labor guarantees in relation to labor standards, in particular, the effects of outsourcing. Therefore, globalization would profoundly change the relationship between capital and labor.

Broadly speaking, the result of these economic and political transformations, most visibly affects the economy, but it also affects politics, social relations and the law. Olsson and Tumelero (2016, p. 1290-1293) asserted that the phenomenon of globalization has broadened the “neoliberal consensus” which affirms the end of traditional models (revolution or reformation), the end of ideologies (fascism/communism), the absolute hegemony of liberal democracy and of the market economy (minimum state regulation), among others.

The social consequences arising from globalization are well-known and independent of which continent or country they are produced in. The outsourced labor system is the clearest example of this endeavor, which expands with the idea according to which the labor legislation and the norms of labor law are always the undesirable “cost Brazil” (cost of doing business in Brazil) (SILVA; FREITAS, 2016, p. 177-179).

Outsourcing of the end activity is the major symbol of this framework of diminishing guarantees and social rights, already endorsed by Law 13.429/2017 (BRAZIL, 2017). Take as an example the case of automobile manufacturers who, under legal protection, and therefore, by the State itself, already outsource their entire automotive production line. More than that, automakers and other multinationals are the direct beneficiaries of the workers' effort and the consequent physical degradation under the cover of outsourcing.

6 WORK CRISIS BEFORE THE TERMINATION OF END ACTIVITY

Law 13.429/2017 (BRAZIL, 2017) regulated the outsourcing of the core activity in Brazil. Previously, the employee rendered services directly for the benefit of the company that hired him and through it placed himself in a certain work environment. If at any time he had his rights violated, he could charge the employer with what he owed.

Conceptually, outsourcing is an institution originally developed within the Administration sciences, qualifying as the possibility of a company or public entity delegating to another company the execution of part of its activities (GARCIA, 2016, p.138). In this way, outsourcing is a modern phenomenon that happens in most countries of the world and it has been used as a way to make labor relations more flexible, since it transfers to others the administration of activities that demand time and wear and tear and increase the hierarchical levels of the company.

The option to outsource to a third company is to maximize results, together with the reduction of costs in activities considered to be of medium level (SENHORAS, 2013, p.150). In practice, it even implies cuts in labor expenditures, as a mechanism for lowering guarantees and rights for a good number of outsourced employees, who receive lower wages and have fewer benefits when compared to non-outsourced workers.

It should be remembered that in outsourcing there are the figures of the service taker and the service provider, the worker being the employee of the latter, who owes him the labor rights, but is subordinated functionally to the former, to which he provides services (PIETROSKI, 2016, p. 187). In this way, the service provider only bears the labor rights, usually salaries, after the attempts to collect against the former have been exhausted, making it difficult for the employee to receive what is due to him.

It is interesting to highlight that the main economic advantage in outsourcing is the reduction of labor and social security charges, however, the said costs and the profit margin

will be incorporated in the amount that will be charged by the outsourced company to the state, which may in the end entail a financial disadvantage to the state. In addition, another advantage of outsourcing would be the escape from the limits of public expenses with the remuneration of personnel, provided for in article 19 of the Fiscal Responsibility Law (BRASIL, 2000). According to Dias and Silva (2017, p. 150), the reduction of costs with the intermediation of this type of labor, has sacrificed investments not only in remuneration and other additional benefits, but also in the health and safety conditions of these people.

In this sense, the outsourcing of services in any activities, including those that are essential or of key importance to the companies' activities (end activities), allows the contractor to deliver to others the direct fulfillment of the activity which justifies its existence, it could outsource to itself the cost of sacrifice of labor rights. It should be pointed out that the new legislation seems to have overcome the traditional distinction between “basic activity” and “end activity”, but the issue will certainly still bring about controversy within the scope of Labor Justice and will only be definitively resolved by the Federal Supreme Court.

Therefore, Law 13.429/2017 (BRAZIL, 2017) allows unrestricted, unlimited outsourcing, without any regulation, that is, in all the activities of the company, however, the regulation provides that the contracting company (service taker) bears secondary responsibility, in case the labor leasing company fails to pay the salaries and legal consequences.

Given this situation, Law 13.429/2017 (BRAZIL, 2017) does not give any guarantee to the workers as to the formation of a link directly with the company that receives the services. Among the disadvantages, we can mention the greater volatility of the outsourced worker's labor contract, since he usually stays in the same contracting company for several years without wage evolution and linked to different employers (SANTOS;HAJEL FILHO, 2017, p. 847).

Under these bases, there should be a greater uncertainty at work, because it is not common practice for the outsourced worker to develop a career, salary progression, qualitative professional growth and even holiday enjoyment. The panorama of the current outsourced worker in Brazil is a worker with no self-identity in his or her work environment, without a career plan, who does not possess technical knowledge and who, in the current framework, is not able to evolve professionally and materially.

7 CONCLUSION

A reading of capitalism, in its various phases since the 18th century, demonstrates that we are moving contrary to the reduction of social inequalities at the global level, thanks to the market economy. This supposedly evolutionary view of the history of capitalism seems to be wrong.

Social inequality between countries has sharply risen since the 70s and 80s, coinciding with the end of the welfare state, deregulation of the financial system, fiscal adjustment, the cutting of public spending on health, education and social security and of the privatization of work. The globalization process and the recipe of the “Washington Consensus” resulted in the structural crisis of capitalism in 2008, which had very serious social consequences for the poor.

The increase in the poverty of the many and the growing opulence of the few, has increased the inequalities among the social classes, starting from the capitalist mode of production, looking at the struggle concerning social rights, full citizenship and the effectiveness of the dignity of the human being, which are permanently threatened by the use of the current capitalist system through the gradual withdrawal of protection standards.

In other words, the corrosion of social rights, especially those in the sphere of labor, is the result of the attack of the large national and multinational economic corporations and their interests. In any aspect, the surrender of these rights means the decrease of human dignity, a situation even worse when considering the Brazilian scenario.

REFERENCES

ANDRADE, Júlio Thalles de Oliveira. Os direitos fundamentais sociais à luz do princípio da vedação ao retrocesso social. **Revista Eletrônica Direito e Política**, Itajaí/SC, v.11, n.1, 1º four-monthperiodof2016. Available in: <<http://dx.doi.org/10.14210/rdp.v11n1.p180-199>>. Access in: 10 fev. 2018.

ARGERICH, Eloísa Nair de Andrade. A globalização e a organização do processo de trabalho. **Revista Direito em Debate**, ano XIII, n. 23, jan./jun. 2005. Available in: <<http://dx.doi.org/10.21527/2176-6622.2005.23.%25p>>. Access in: 10 fev. 2018.

BAIRD, Marcello Fragano. O lobby na regulação da publicidade de alimentos da Agência Nacional de Vigilância Sanitária. **Revista Sociologia e Política**, Curitiba/PR, v. 24, n. 57, p. 67-91, mar. 2016. Available in: <<http://revistas.ufpr.br/rsp/article/view/45997>>. Access in: 14 fev. 2018.

BATISTA, Neimar; POOP, Carlyle. Ações afirmativas nas relações contratuais. **Revista Estudos Jurídicos da Universidade Estadual Paulista**, Franca/SP, a. 14 n.19, p. 01-404, 2010. Available in: <<https://is.gd/4R3Sub>>. Access in: 10 fev. 2018.

BAPTISTA, Vinícius Ferreira. Liberdade pelo trabalho ou trabalho pela liberdade?: o caso dos catadores de materiais recicláveis. **Revista Brasileira de Políticas Públicas**, Brasília, v. 3, n. 1, p. 119-135, jan./jun. 2013. Available in: <<http://dx.doi.org/10.5102/rbpp.v3i1.2061>>. Access in: 15 fev. 2018.

BEDIN, Gilmar Antonio. A transformação da modernidade e a emergência do estado de segurança: uma análise a partir da obra de Zygmunt Bauman. **Revista Direitos Culturais**, Santo Ângelo/RS, v. 3, n. 4, junho 2008. Available in: <<https://is.gd/5rycQQ>>. Access in: 10 fev. 2018.

BORTOLOTI, José Carlos Kraemer; MACHADO, Guilherme Pavan. Direitos sociais como fundamentais: um difícil diálogo no Brasil. **Revista Prisma Jurídico**, São Paulo/SP, v. 16, n. 2, p. 429-455, 2017. Available in: <<http://dx.doi.org/10.5585/PrismaJ.v16n2.7962>>. Access in: 10 fev. 2018.

BRASIL. Lei nº 13.429, de 31 de março de 2017. Altera dispositivos da Lei nº 6.019, de 3 de janeiro de 1974, que dispõe sobre o trabalho temporário nas empresas urbanas e dá outras providências; e dispõe sobre as relações de trabalho na empresa de prestação de serviços a terceiros. **Diário Oficial da União**, Brasília, 31 mar. 2017. Available in: <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13429.htm>. Access in: 5 fev. 2018.

BRASIL. Lei Complementar nº 101, de 4 de maio de 2000. Estabelece normas de finanças públicas voltadas para a responsabilidade na gestão fiscal e dá outras providências. **Diário Oficial da União**, Brasília, 4 mai. 2000. Available in: <http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp101.htm>. Access in: 14 fev. 2018.

BUNCHART, Maria Eugenia; RISSI, Rosmar. Lutas por reconhecimento, esfera pública e direitos fundamentais: uma reflexão sobre a perspectiva de Jürgen Habermas. **Espaço Jurídico Journal of Law**, Chapecó/SC, v. 15, n. 2, p. 463-478, jul./dez. 2014. Available in: <<https://is.gd/s1P3iV>>. Access in: 10 fev. 2018.

DIAS, Jefferson Aparecido; SILVA, Tiago Nunes da. A reforma trabalhista como mecanismo de reestruturação da economia brasileira. **Revista Meritum**, Belo Horizonte/MG, v. 12, n. 2, p. 146-157, jul./dez. 2017. Available in: <<https://is.gd/pAYd10>>. Access in: 13 fev. 2018.

FERREIRA, Roberto Martins. **Sociedade e empresa**: sociologia aplicada à administração. São Paulo: Saraiva, 2016.

GARCIA, Bruno de Pinho. As parcerias entre terceiro setor e estado na área da saúde pela ótica das relações laborais. **Revista Direito & Paz**, Lorena/SP, ano XVIII, n. 34, p. 136-155, 1º sem. 2016. Available in: <<https://is.gd/2EB4Lj>>. Access in: 10 fev. 2018.

HESPANHA, Pedro. Mal-estar e risco social num mundo globalizado: novos problemas e novos desafios para a teoria social. In: SANTOS, Boaventura de Souza (Org.). **A globalização e as ciências sociais**. São Paulo: Cortez, 2002.

KENNEDY, Mark C. The New Global Network of Corporate Power and the Decline of National Self-Determination, **Contemporary Crises**, v. 12, p. 245-276, 1988. Available in: <<https://doi.org/10.1007/BF00728649>>. Access in: 21 fev. 2018.

MANN, Michael. **Fascistas**. Tradução de Clóvis Marques. Rio de Janeiro: Record, 2008.

MAURÍCIO JÚNIOR, Alceu. O estado constitucional e o paradigma social do risco. **Revista da Academia Brasileira de Direito Constitucional**, Curitiba/PR, vol. 8, n. 14, p. 194-219, Jan.-Jun/2016. Available in: <<http://abdconst.com.br/revista15/estadoAlceu.pdf>>. Access in: 21 fev. 2018.

MUNERATTI, Rafael Ramia. **A democracia na União Europeia: o Parlamento Europeu e a redução do déficit democrático**. Dissertação – Programa de Pós-Graduação Stricto Sensu em Direito, Centro Universitário de Brasília, p. 214. Brasília, 2013. Available in: <<http://repositorio.uniceub.br/handle/235/5902>> Access in: 14 fev. 2018.

OLIVEIRA, Robson de; SAMPAIO, Simone Sobral. Estado-providência: chega de odes e críticas neoliberais. **Revista Serviço Social & Sociedade**, São Paulo, n. 126, p. 302-317, maio/ago. 2016. Available in: <<http://www.scielo.br/pdf/sssoc/n126/0101-6628-sssoc-126-0302.pdf>>. Access in: 10 fev. 2018.

OLSSON, Giovanni; TUMELERO, Naína Ariana Souza. A crise do projeto filosófico da modernidade e o futuro do estado como ator internacional. **Revista Quaestio Iuris**, Rio de Janeiro/RJ, v. 9, n. 3, 2016. Available in: <<http://dx.doi.org/10.12957/rqi.2016.21145>>. Access in: 20 fev. 2018.

PADILHA, Elisângela; BERTONCINI, Carla. O caráter relativo da dignidade da pessoa humana na teoria alexyana. **Revista da Faculdade de Direito do Sul de Minas**, Pouso Alegre/MG, v. 32, n. 1: 229-244, jan./jun. 2016. Available in: <<https://is.gd/zrUkHy>>. Access in: 12 fev. 2018.

PALMISCIANO, Ana Luísa de Souza Correia de Melo. Para além da cidadania liberal: algumas reflexões sobre o republicanismo e o liberalismo. **Revista Videre**, Dourados/MS, ano 1, n. 1, p. 53-64, jan./jun. 2009. Available in: <<https://is.gd/7RsIh3>>. Access in: 14 fev. 2018.

PAXTON, Robert Owen. **A anatomia do fascismo**. Tradução de Patrícia Zimbres e Paula Zimbres. São Paulo: Paz e Terra, 2007.

PAVÃO, João Bosco; PIGNATA, Emília Karla de Araújo Amaral. Da Individualidade da Natureza Humana ao Imperativo de Ser Coletivo. **Revista Campo Jurídico**, Barreiras/BA, v. 4, n. 1, jan./jun. 2006. Available in: <<https://is.gd/9UvOMU>>. Access in: 9 fev. 2018.

PIETROSKI, Rogério Burkot. A terceirização bancária: uma violação dos direitos humanos. **Revista Direito UFMS**, Campo Grande/MS, v. 1, n. 2, p. 175-205, jan./jun. 2016. Available in: <<http://dx.doi.org/10.21671/rdufms.v1i2.734>>. Access in: 13 fev. 2018.

POLICARPO, Douglas; MENDES, Carolyne Silvestre Oliveira. Do direito contratual liberal ao (um pouco) social: apontamentos sobre a imprevisão contratual e os direitos humanos. **Revista Interfaces Científicas – Direito**, Aracajú/SE, v. 1, n. 3, p. 81-97, jun. 2013. Available in: <<https://is.gd/qeocFU>>. Access in: 10 fev. 2018.

PRÉCOMA, Adriele Fernanda Andrade; FERREIRA, HeleneSivini. Do estado-nação ao estado plurinacional: uma análise a partir das constituições da Bolívia e do Equador. **Revista Direito e Liberdade**, Natal/RN, v. 19, n. 3, p. 13-42, set./dez. 2017. Available in: <<https://is.gd/GtuVKP>>. Access in: 10 fev. 2018.

PRIORI, Angelo. Sindicalistas e o debate sobre a CLT. **Revista Espaço Acadêmico**, ano 1, n. 7, dezembro de 2001. Available in: <<https://is.gd/WepxE3>>. Access in: 10 fev. 2018.

SANTOS, Enoque Ribeiro dos; HAJEL FILHO, Ricardo Antonio Bittar. **Curso de direito processual do trabalho**. 1. ed. São Paulo: Atlas, 2017.

SARLET, Ingo Wolfgang. O Estado Social de Direito, a Proibição de Retrocesso e a Garantia Fundamental da Propriedade. **Revista da Faculdade de Direito da Universidade Federal do Rio Grande do Sul**, Porto Alegre/RS, v. 17, 1999. Available in: <<https://is.gd/fe7DVj>>. Access in: 10 fev. 2018.

SCOTT, Jonh. **Sociologia: Conceitos-chave**. 1. ed. São Paulo: Zahar, 2010.

SENHORAS, Eloi Martins. Controvérsias sobre as relações negociais com o setor público: um estudo sobre a terceirização no Brasil. **Revista Scientia Iuris**, Londrina/PR, v. 17, n. 2, p. 149-166, dez. 2013. Available in: <<http://dx.doi.org/10.5433/2178-8189.2013v17n2p149>>. Access in: 10 fev. 2018.

SILVA, Henrique dos Santos Vasconcelos; FREITAS, Ana Carla Pinheiro. Terceirização e acesso à justiça: o papel da justiça do trabalho na efetivação dos direitos sociais. **Revista do Curso de Mestrado em Direito da Universidade Católica de Brasília**, Brasília/DF, v. 10, n. 2, p. 159-195, jul-dez, 2016. Available in: <<https://is.gd/zWa4MN>>. Access in: 10 fev. 2018.

SILVA, LenaraGiron da; ROCHA, Leonel Severo. Aspectos relacionados à organização internacional do trabalho e a Organização Mundial do Comércio para efetividade dos direitos trabalhistas na globalização. **Cadernos de Direito**, Piracicaba/SP, v. 14, n. 27, p. 117-138, jul.-dez. 2014. Available in: <<http://dx.doi.org/10.15600/2238-1228/cd.v14n27p117-138>>. Access in: 10 fev. 2018.

SILVA, Jacqueline Guimarães da Cruz; SILVA, Sérgio Alex Sander. A evolução e a realidade atual do contrato no direito brasileiro. **Revista da Faculdade de Direito de Uberlândia**, Uberlândia/MG, v. 40: 267-279, 2012. Available in: <<https://is.gd/GtuVKP>>. Access in: 10 fev. 2018.

STORER, Aline. Autonomia da vontade: a ficção da liberdade. Considerações sobre a autonomia da vontade na teoria contratual clássica e na concepção moderna da teoria contratual. **Revista Em Tempo**, Marília/SP, v. 8, set. 2009. Available in: <<https://is.gd/JK5jCM>>. Access in: 10 fev. 2018.

SULZ, Ana Rita; TEODORO, António. The evolution of the Technical Drawing and the division of the industrial labor, in the global core and periphery. **Revista Lusófona de Educação**, Lisboa/Portugal, n. 27, sept. 2014. Available in: <<http://www.scielo.mec.pt/pdf/rle/n27/n27a07.pdf>>. Access in: 10 fev. 2018.

TEIXEIRA, Rodrigo Valente Giublin; FERRONATO, Elias Bruno. Os reequilíbrios entre estado de direito, democracia e capitalismo. **Revista Thesis Juris**, São Paulo, v. 4, n. 2, p. 321-337, maio-agosto 2015. Available in: <<https://is.gd/7b0yKR>>. Access in: 10 fev. 2018.

TEIXEIRA, Osvaldo de Freitas; CUNHA, Belinda Pereira. A liberdade econômica como pressuposto para o desenvolvimento nacional. **Revista Direito e Desenvolvimento**, v. 2, n. 2, p. 297-310, maio 2017. Available in: <<https://is.gd/FNLqKp>>. Access in: 11 fev. 2018.

VERBICARO, Loiane Prado. Os direitos humanos à luz da história e do sistema jurídico contemporâneo. **Revista Jurídica Cesumar**, Maringá/PR, v. 7, n. 1, p. 31-56, jan./jun. 2007. Available in: <<http://dx.doi.org/10.17765/2176-9184.2007v7n1p31-56>>. Access in: 10 fev. 2018.

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