

THE CHANGES OF THE (RIGHTS FOR) WORK UNDER THE SIGHT OF THE LIBERAL AND NEOLIBERAL

Dicesar Beches Vieira Junior¹

ABSTRACT: The current article analysis the practice of work within a historic-sociological view. Their conquests and setbacks within the sense of liberal and neoliberal state. The liberal ones pointed out in the text show their thoughts and the reason for their inclinations to the liberalism. It's noticed by its period that in the last decades we've seen the breakthrough of the neoliberalism and thus, particularly an extreme lost of prestige of the workers, not only the brazilian ones but all over the world where such a system has been established. Finally pointing out the neoliberalism in Brazil, one can see the bad willing towards the workers who, must fight for better conditions and that this come true, not allowing the commerce to have louder voice than the legislative. It was nevertheless and likewise not left behind the emphasis on the aspect of the right for work, and not only the work itself, but the laboral legislation.

Keywords: work, right for work, Liberal and Neoliberal State.

AS TRANSFORMAÇÕES DO (DIREITO DO) TRABALHO SOB A ÓTICA DO ESTADO LIBERAL E O ESTADO NEOLIBERAL

RESUMO: O presente artigo analisa o exercício do trabalho dentro de uma ótica histórica-sociológica, suas conquistas e retrocessos, dentro da noção de estados liberais e neoliberais. Os liberais destacados no texto apontam seus pensamentos e o porquê de suas inclinações para o liberalismo. Constata-se, por seu turno, que nas últimas décadas assistimos o avanço do neoliberalismo, e com este, em especial, um acentuado desprestígio ao trabalhador, não só o brasileiro, mas em todo o mundo onde fora implantado tal sistema. Destacando, finalmente, o neoliberalismo no Brasil, vemos o achaque ao trabalhador que, deve lutar por melhores condições e que tal se materialize, não deixando o negociado falar mais alto que o legislado. Não se deixou, evidentemente, de se enfatizar, igualmente, o aspecto do Direito do Trabalho, e não só o trabalho em si, mas a legislação laboral.

Palavras-Chave: Trabalho, Direito do Trabalho, Estado Liberal e Estado Neoliberal.

¹ Mestrando pelas Faculdades Integradas do Brasil – UniBrasil, em Direitos Fundamentais e Democracia. Professor de Direito do Trabalho pela Faculdade Educacional Araucária – Facear. Conselheiro Suplente da Ordem dos Advogados do Brasil, Seção Paraná. This article was translated by Dandara Araujo. This article was authorized for publication by the authors in 12/12/2014. Version in Portuguese received in 21/06/2014, accepted in 20/10/2014

Introduction

It will be analyzed the study about work, specially, and about the Rights for Work, through a perspective of liberal and neoliberal states. In this theme, it will be observed the ideas of the main liberal thinkers, as well as the context of the so-called neoliberal state, and the consequences over the work world.

Although the most part of the great positivists, like Hans Kelsen, have not denied the existence of a Law material source; necessarily, they tended to dispense with a sociological perspective in the comprehension of the theme. Consequently, they searched the legal phenomenon definition limited to the rule, so that they abandoned the analysis of the “material roots” of science or of the object on which this phenomenon raises itself.

In this text, it will be adopted exactly a more sociological perspective, once Law is understood as a “result of social facts tension, which, if observed according to values, will become legal standards” (NASCIMENTO, 2005, p. 5). This idea does not mean the legal framework and, more specifically, the Rights for Work are simples “superstructures”. After all, “there is no substantial separation between [...] normative proposition and fact, or between normative text and real life”². From this concept, it is intended to highlight the social historical origin of the right for work and of work itself. Nevertheless, obviously, the (legal) material aspect will also be object for study and analysis.

1 Liberal State and Social State

Before we study the specific aspects of the changes in the world of work and rights for work, it is important to understand the historical context in which we will immerse, so that a better comprehension of the suggested theme can be obtained.

So, initially, we point out that, generally, according to the liberal doctrine, State should be limited in its powers and functions. If limited in its powers, it becomes the rule of law, which has its legitimacy in law, once public powers are ruled by general standards that,

² Law is an interpretation of reality, but this (axiological) interpretation is not limited to “the comprehension as intellect”, since, as founded in objective elements which are “temporarily offered”, it is first of all a “practical comprehension”. See DERANI, Cristiane. “The comprehension of Law through the Unity between what it is and what should be”. Available on: http://www.ufpa.br/posdireito/caderno3/texto4_c3.html

on their turns, should be materially adequate to “the admission of some fundamental rights which are constitutionally considered”³.

If limited in its function, it becomes the minimal State, which, being a “necessary evil”, should intervene the least in individual actions domain, being in charge just of activities related to safety and justice. This liberal concept of State is historically born from the opposition against the King’s absolute power and it is philosophically based on contractualism and jusnaturalism.

The jusnaturalist doctrine defends the existence of fundamental rights (to life, freedom, and so on) which are older than the State itself, since they are caused by rules that do not come from human will (but that could be recognized through the rational research) (BOBBIO, 2000, p. 12).

The classic liberals, inspired by this jusnaturalist notion of preexisting rights, have defended the idea of a Minimal State - which would have as function just the assurance that such prerogative of all humans would be respected. In a general way, to those thinkers, firstly, there were *individuals*, with all their prerogatives, and only then, society. In this case, State would be based on a *contract*, on an agreement between these individuals and those in whom a tranche of power from each one would be trusted (the power would have been *granted* to king by his subjects). Thereby, State has been rationally justified by liberals as a result of a process that guided men from the total/natural freedom condition to a society where there is a sovereignty that should be limited⁴.

This joint of values, which has based the Liberal State throughout the 17th and 18th centuries, is pretty different from the values that have based the Social State, which have been constructed from the 19th century. It is possible to say this last one is born related to a change of mentality in traditional and Protestant societies, who thought, respectively, indigence situations were “signals of the divine will”, or an evidence of incapacity or “personal lack of merit” (REGONINI, 2000, p. 416).

With the Industrial Revolution - and the *spread* of poverty to levels which were unknown before -, it is thought that *maybe there are situations which escape from the*

³ This comprehension of the rule of law “is an effect of the old doctrine [...] according to which the law government is above humans government”, and so according to which the law government is above the king government. See Bobbio (2000).

⁴ Historically, however, the “movement” that gave rise to the (Liberal) State was, like Norberto Bobbio teaches (2000), exactly against the rationalization described above: it would have been born “from a continuous and progressive erosion of the absolute power of the king [...]”. In other words: “the historical course has a initial status of servitude and successive status of freedom spaces achieved by subjects, through a procedure of gradual increment of freedom”.

individual control. Thus, the welfare (until then considered an immoral diversion from the principle “to each one what is deserved”) starts to be claimed by many people as a (social) right⁵.

Concurrently, *a greater interference of the State, in the social and economic order, is required, in other words, its structure should interfere directly in the improvement of the poorer standard of living*, an idea which, according to Weber, “would rescue an essentially patriarchal structure of power”, once “the intent of an administration free from details and legal formalities, *aiming at the material justice*, is, *first of all*, typical of any princely patriarchal culture” (REGONINI, 2000, p. 416).

From this presented context, it is possible to infer that, if the Social State only completes itself entirely by the middle of the 20th century, its origins can be found some decades before and related to the Industrial Revolution. Such fact has also added to the emergence of the two main and conflicting ideas of State we have nowadays: according to the first, liberal, it should have few power, because only through this way it would be assured the higher level of freedom (economic, religious, civil, ...) to individuals. According to the second and more democratic notion, the State should have considerable power, to spread it and to, so, reduce social inequalities. This antithesis between Social State/Liberal State, on its turn, shows a deep one: the antithesis between the ideas of equality and freedom. If these ideas are taken just by their juridical or formal sense, there is no conflict between them and, so, democracy itself can be considered a continuity of liberalism. If they are taken by a more substantial sense (“equality” as “fair distribution of wealth”, for example), so the contradiction appears:

[...] freedom and equality are antithetical values, which means one cannot totally happen if the other is not strongly limited: a libertarian society, necessarily, is not liberal. Liberalism and egalitarianism are based on deeply different conceptions of man and society [...]. To the liberal, the main goal is the expansion of individual personality, even if the development of a wealthier and more capable personality impose itself against the development of a poorer and less capable personality; to the egalitarian, the main goal is the development of the community in its collective aspect, even if it costs the restriction of the individual domain of freedom (BOBBIO, 2000, p. 39). (free translation)

In other words: in spite of the fact expressions like “liberal democracies” create an impression “liberalism and democracy have a connection of dependency one to the other [...],

⁵ Thereby, at least three phases can be distinguished in the political history of industrial societies: the first (17th - 18th centuries) was the one of the fight for the conquest of civil rights (related to freedom), the second (18th - 19th centuries) was the one of the fight for political/collective rights (right to vote, right to collective organization, right to strike) and the third (19th and 20th centuries) was the one of fight for social rights.

the problem of the relations between them is extremely complex” (BOBBIO, 2000, p. 8). And it is exactly because of the complexity of this relation that the Contemporary State has to break greater challenges than the Modern State. If the second one should, mainly, assure the commercial competition, the Contemporary State should assure, at the same time, freedom and equality; it should put in the same level in the balance the interest of capital and work, by becoming increasingly interventionist - by the way, fact that makes it passes through two crisis: the legitimation one (in relation to this intervention) and the fiscal one (increasing difference between the necessary outs and the insufficient entries to the distribution of resources).

In view of the social-historical aspects above, we can immerse in the work world, in the period of time when we find the liberal State and, later, the neoliberal state.

2 Industrial Revolution, Social State and Rights for Work

As it is known, the idea we have today about “Rights for Work”, appeared with the Industrial Revolution, when during this historical period, the atrocities against workers were innumerable, and these atrocities met against it the organized fight for better conditions of life and humanity. Therefore, talking about Rights for Work means naturally talking about Industrial Revolution.

This text has started with the concept of Law as “result of social facts tension, which, if observed according to values, will become legal standards”. In spite of possible mistakes of this concept, it seems valid through the perspective that it highlights the social and historical origin of this matter and its branches. So, if legally the Right for Work is near from the Civil Law (specially on what concerns to contracts of services lease), historically, it is possible to say that its construction (as well as the one of the Justice for Work itself) is intrinsically related to the Industrial Revolution by the end of the 18th century - episode that pointed out a series of facts, which, in the following years, have provoked deep and dramatic changes across the world.

The First Industrial Revolution can be understood like a change of all British economic references, especially in the last two decades of the 18th century. Such advance of the economic marks had various reasons: the increment of the International Trade from the 16th century on, the Agricultural Revolution (and the expulsion of great quantities of peasants

to cities), the appearance of a British Textile Industry, and so on. These happenings caused what Eric Hobsbawm, the historian, called “the departure to a self-sustainable growth”.

In comparison with the Middle Age, in which the chronic problem of the production was the lack of men and women in the fields (and not the lack of lands), the period that follows the Industrial Revolution is when man becomes a little more dispensable. Or, like Hobsbawm explains, it is a period when, to the great joint of unemployed people and peasants without land, was joined a mechanized factory system, which produced “such great quantities by a cost so quickly descending that it does not depend anymore on the existent demand, but on creating its own market” (HOBSBAWM, 1998).

Exactly because of “taking away the production fetters”, the Industrial Revolution caused true splits in many western (and oriental) societies during the 19th century and later. It caused, dramatically, the fragmentation of dispersed former peasants societies, their big families, and the various solidarity links which were found among their members. It caused the end of many party and holy days - which were until then time to meetings and rest, like Michael Walzer pointed out (2003).

The Industrial Revolution modified, obviously, the work nature and rhythm of million people, since the work rhythm inside a 19th-century-factory was pretty different from the work rhythm in field: Michelle Perrot (1992), the historian, writes that many strikes in France during the 18th century did not happen for salary increases, but for the right of conquering more “free hours” to rest (the work-related lasted 16 hours or more).

The provoked wealth were really enormous; however, it was clear life conditions in the cities used to be horrible. As Hobsbawm says, in the first decades of the 18th century, it was usual to find urban workers who lived in a way totally unrecognizable for their grandparents or even for their parents.

The fragmentation of the traditional dispersed societies of peasants, which gave rise to the great masses in the cities, has caused, according to Hobsbawm,

[...] “nothing would become more inevitable” than the emergence of workers’ movements - because those workers did not have any legal resources, but just some rudiments of public protection:

[...]

In the 19th century, ‘poor people’ did not conflict anymore with the ‘rich’ ones. A particular class, the working class, faced the class of employers and capitalists. The French Revolution gave force to this new class; the industrial revolution provoked in it a permanent mobilization necessity. (HOBSBAWM, 1998, p. 230) (free translation)

Besides the appearance of the workers' movements, these great poor masses of the cities have made it easier, as it was written before, a change of mentality in the Protestant and traditional societies. Thereupon, an increasingly strong pressure has been motivated so that the State enlarged the function which were traditionally conferred to it by the liberal doctrine: in addition to security, justice and the building of public works, the State should share income, improve the life level of the less favored.

The permanent mobilization of the workers' movements encouraged the emergence of an increasingly interventionist State, which, in the middle of the 20th century (also because of other factors), appeared complete: the Social State.

Law and the Justice for Work are, in the last resort, one of the expressions of this Social State (*less liberal and more interventionist*), considering that one of the assumptions of the right for works is that there is, between employee and employer, a power imbalance that should be remedied, even by the juridical action of the State. Hence, it is not too much to say that the pressure made by workers, during the 19th and 20th centuries, helped to *bring democracy to many capitalist societies of the Western* - and that happened because of the emergence, as a consequence of their fights, of the first rules of the Rights for Work, which have been registered in the first agreements between workers and employers.

The existence of workers' movements is, thus, the historical cause of the construction of the Rights for Work in the world. Indeed, the first specialized organisms to solve work conflicts were the *Conseils de Prud'hommes*, which appeared in 1806 in France. Those Consels, until today, are the only specialized organisms of the work justice in France, being appeals judged by the Simple Justice (MARTINS FILHO, 2002, p. 186).

3 Some of the greatest liberal thinkers and their views about work

The liberal thought is characterized by an enormous diversity of ideas, which have been developed according to the society itself. However, the coherence of liberalism itself claimed for opportunities equality between individuals and, consequently, the equality of all people in the law, which also represented an empire in relation to the public powers.

The juridical materialization of the success of liberalism in the several states was expressed in the promulgation of constitutions, fundamental laws that sanctioned the division of powers, rights, individuals' obligations, and the other principles of the new social order.

Obviously, the work laws had importance in this context, specially during the fight of workers for better life conditions, what was better defined in the Industrial Revolution.

Thus, Liberalism is a political tendency that asserted itself by the middle of the 18th century. It fights against the interventionism of the State in all domains. Concerning to economy, it defends property and private enterprise, as well as the economical self-regulation through the market. Concerning to politics, it prescribes a minimal state that has merely legal and defensive functions.

It will be mentioned the tendency defended by four liberal thinkers:

John Locke, who was born in a British village, demonstrates, in the most part of his work, his insurgency against authoritarianism of all levels: individual, political and religious. He believed in the use of reason to achieve the truth and decide the legitimacy of the social institutions.

When Locke wrote “Two Treatises of Government”, his primary work about political philosophy, he had as a goal to object the doctrine of kings’ God given right and the royal absolutism. He said the organization of laws and of the State should be done with the aim of ensuring the respect to the natural rights. The assurance of the natural rights of the people - life protection, freedom and property to everybody - is defined by him as the only reason for being of a government.

The notion of property claimed by Locke is different from the one we have in the market economy. Property is thought linked with the necessity of ensuring the humanity preservation (CERQUEIRA, 2002), i. e., in terms of the common good and not of the private good. Thereby, property and work are understood from a moral point of view. Work is a necessity because it corresponds to the moral duty of ensuring the survival of the species. It is a faculty and a power: the one of ridding the human being of the conditions of the primitive life (LOCKE, 1993, section 128, p. 89).

The work, according to the mentioned author, puts man in what transforms and in what gives his livelihood. The work allows the possession of land fruits and of all that is produced. On its turn, the money, not perishable, allows to store and change fruits of the work. It transforms property into a circulating good: it allows the accumulation and legitimates the disparity of riches. The money emergence unbalances the harmony between money and nature. It makes necessary the intervention that is foreign to this relation: the one by political society.

He continues, telling that work creates property and is justified by it. From work, social organization, political organization and law, which is either the right of property, either

the right of protecting property, are originated. The nature law dictates standards to the reason to ensure fundamental rights (life, property, and freedom).

The social-economic system, such as thought by Locke, rationally allows to work subsistence and freedom. First of all, the work consists of taking fruits from nature and, then, transforming them. The work mobile is the appropriation. Salary is rightful, since I, owner of myself, alienate my property, my body, in exchange for another property that it is indispensable to me.

The gain is justified since it is possible to change the actual property to another that is more advantageous and comfortable. It is work that “provokes the value difference in everything that exists” (LOCKE, 1993, section 40, p. 56). The work defines the value of things. It is an activity, which is simultaneously private, universal and necessary. It has as characteristic the appropriation, the appropriating of the world (ARENDDT, 2000).

What is not clear in Locke is of what exactly consists the work. However, briefs and other written makes it clear that the concept of work in Locke corresponds to the generator or transformer intentional act; it includes physical and mental work; it excludes the slave work and is opposed to leisure (CERQUEIRA, 2002, p. 153).

Adam Smith, who lived from 1723 until 1790, was one of the greatest philosophers of all times. Smith could reunite knowledges about moral economy, which come from Locke, with the practical knowledges of the physiocrats, which were the precursors of the economists, and the political knowledge of Bernard de Mandeville.

He defended the State role in the economy should be reduced, being this one conferred to the market self-regulation. The State should be limited to the function of favoring the private production, maintaining the public order, making the justice respected, and protecting property. Yet, Smith defends the competition among the private ones, in a free market, believing their interest would be naturally harmonized in favor of the collective advantage.

The organizational and harmonizing virtues of the market are concisely synthesized by Smith (1990, p. 104):

So it is that the private interests and feelings of the individuals drive them to convert their capital to applications that, in ordinary cases, are more advantageous to society [...]. Without any intervention of the law, the private concerns and feelings of people naturally guide them to share and spread the capital of each society among all the several applications made, and as far as possible, in the more adequate proportion to the concern of all society. (free translation)

Adam Smith also speaks about the work, but about this one in a perspective it is linked to the real value of the production:

Through this way, every system that search, by extraordinary incentives, to attract a specific type of activity related to the capital of society greater than what would be naturally channelled; or yet that, appealing to extraordinary restrictions, try to forcibly divert part of the capital of an specific type of activity, when, otherwise, it would be naturally channelled to it; in fact, it acts against the great goal that is intended to be achieved. Instead of accelerating, it delays the development of society toward real wealth and greatness and, instead of increasing, it decreases the real value of the annual production of its land and its work. (SMITH, 1990, p. 46-47)

The primary thesis of Smith about the work is the value creation. According to him, it is human work, instead of land or changes, that really produces useful goods. The more work, i. e., the more worked hours and the bigger the number of workers, greater the production of value. The productivity gain is consequence of the labor division and productivity is the key for more expansion of markets, which claim for more products, requiring more work, and so on. Thereby, Smith moves the preoccupation of fisiocrats, which was the agrarian capitalism, to the industrial capitalism, and it bequeathes to the State a negative role: the one of limiting itself to allow the free moves of the economical tools. The expected virtues of the State are that it provides the welfare, acts with caution and justice, in other words, that its protect people against violence, injustice and oppression (SMITH, 2000).

Through this perspective, what is important to a nation is to develop the productive forces. Hence the encouragement for free trade. Hence the objection to rules and laws which intended to protect activities or groups, which prevented individuals to care freely for themselves and for their concerns. Hence, mainly, the ask for deregulation of work.

John Suart Mill (1806-1873): the main function of the State is the search for promoting better opportunities of personal and social development for all, namely through education. The intervention of the State in what individuals are capable to solve for themselves should not be accepted.

The excerpt bellow, taken from Stuart Mill's *Principles of Political Economy* shows well how the author felt the moment, almost one century after the beginning of the Industrial Revolution:

[...] until now it is wondered if all mechanics inventions already made have relieved the fight of the human being. They allowed a bigger population to live the same life of tiredness and imprisonment and a bigger number of manufacturers and others to make a fortune.

[...]

If the choice have to be made between communism, with all its opportunities, and the current situation of society with all its pains and

injustices; if the institution of private property necessarily brings together, as consequence, the sharing of work, as we see nowadays, almost in inverse ratio to the work: the biggest parts to the ones who have never worked for the whole, the following part to the one whose work is just nominal and so on, in a decreasing scale, the salary decreases according to the raise of the work, harder and unpleasant, until the most exhaustive and fatiguing work cannot not be sure of being able to conquer always the minimum need to the existence. If this option, or the communism, are the alternatives, all the difficulties, bigger or smaller, of the communism will be just an atom in the balance (MILL, 1990).

In the domain of Politics, the way followed by Mill was the one of an extreme liberalism, pretty near from anarchism.

Among the contemporary liberals, one of the most important is, without any doubt, **Robert Nozick**. He was born in New York, in 1938, came from a family of emigrated Russians, and died on January 23rd, 2002, when he was 64 years old, in Harvard.

The strategy used by Nozick was the one of supporting libertarian rights, appealing to values that are largely accepted either by libertarian, either by non-libertarian. For example, he pointed out that, since “taking the gains of n hours of work” is essentially equivalent to “forcing the person to work n hours to another aim”, the gains taxation “is seemed to the forced work”, and it is, so, unfair (NOZICK, 2011, p. 169).

This author did not offer any evidence that work, by itself, is something unfair; but was it necessary? The injustice of the forced work is a premise that many of its opposers already accept.

Nozick pointed out that, since it does not exist “any social entity”, but only “different individual people, with their own individual lives”, it makes no sense to describe the sacrifice of an individual right as made for the “general welfare” of the society as a whole; a human being “cannot be used or sacrificed in favor of others”, because this would made that “it was not enough respected” the fact that “he is a specific person” whose life is “the only one he has” (NOZICK, 2011, p. 32-39).

He rejects, so, patterned theories in favor of a “historical” theory, according to which a specific resources distribution, apart from the standard in which it is fit, is only rightful when it results of a process that does not involve the violation of anyone’s rights.

Patterned theories of justice give the impression of promising to share more fairly the same resources the capitalist market partially shares; but if the right of transferring such resources suffer reservations, people ends up not receiving completely the resources in relation to which they would have right, according to the standardized theory. If the initial

standard of resources distribution was really fair, so “it should not exist any questions about the right of each one over the control of resources in their possession” - but such right attribution is exactly what should be questioned, if the standard should be coercively maintained.

After all liberal ideas, and the transformation offered in the work world, we arrive in the next step of the searched context, which talks about the neoliberal state, and related to this one, about what has changed in the history of the rights for work.

4 Neoliberalism, (rights for) work, Brazil and world

Neoliberalism had its origin after the Second World War, in Europe and North America. The great theme of this movement is the rejection to the interventionist policy of the Welfare State. The neoliberals have chosen the union power and worker' movements as guilty for the economical crisis and the high inflation. To him, the pressures that claimed for best salaries and work conditions provoked the universalization of social rights, affecting the bases of the capitalist accumulation.

The golden years of the neoliberalism were, basically, the 80's and 90's. USA, with Ronald Reagan, and England, with Margareth Thatcher, defined political, economical and ideological changes that happened in the whole world. Neoliberalism could be proud of being the only political-economical option of the world, after the fail of the socialist and communist experiences of the century that had threatened to be the century of workers. The 20th century should have been the century of the Fourth State, i. e., the century of the proletariat, and it was not. More properly, it had begun to be and, then, it left off being so (GIANNOTTI, 2007).

The main political change, in a worldwide degree, in that time of neoliberal supremacy, was the downfall of the Eastern Europe countries, called communists, in 1989.

Magical words and expressions of those decades were many, and it is possible to emphasize, among them, “reforms”, “modernization”, “structural adjust”, “reduction of the public expenses”, “decrease of state intervention”, “minimal state”. Many new expressions appeared: “privatization of state-owned enterprises”, “decrease of the state machine”, “reduction of public expenses”. These recipes of the neoliberalism political laboratories quickly will take to the “scrapping of the State”, with the end of public services in health, education, and in the entire protection web of the poorer population (GIANNOTTI, 2007, p. 268).

The neoliberals believe in the superiority of the market regulation, so that the state interventionism represents a factor of trouble and maladjustment of the market economy. However, this incitement for the free market would not be a way of masking an onslaught of the capital against the historical conquests of the working class, expressed in the social democrat agreement of the Social State? Liberating the enterprise would not be, in fact, a way of liberating it from its social functions and of disarming the working class in this new onslaught of the capital, reverting the economy to a surpassed stage? Indeed, is not the liberal purpose incompatible with a defense of a policy of subsidies and state resources transfer to the private sector?

What is more severe seems to be the fact this proposed greater economical freedom is not transformed into an enlargement of the public liberties. The neoliberalism is totally adequate to a strong and authoritarian State, meaning, in the last resort, a subordination of the State policy to the exclusive concerns of the private enterprise.

It was in the called Washington consensus, a meeting that happened in november 1989, that Brazil and the other elected presidents of Latin America joined this movement and the guidelines imposed by the World Bank, the IMF (International Monetary Fund) and the Inter-American Development Bank. The name Washington consensus has become known as a joint of macroeconomic adjustment measures, formulated by economists of financial institutions, like the IMF and the World Bank, in 1989. Among these “rules”, which should be adopted by countries to promote the social and economic development, there were: fiscal discipline, decrease of public expenses, tax reform, market interest, market exchange, trade opening, direct foreign investment by eliminating restrictions, privatization of state-owned enterprises, deregulation and simplification of bureaucracy, right for intellectual property (TAVARES, 2011). According to José Roberto Freire Pimenta, the neoliberalism “is, doubtless, the attempt to change the protective logic of the rights for work to a flexible logic.” (PIMENTA, 2004, p. 216).

Neoliberalism deeply entered in the Rights for Work, intensifying principles that claimed the emergency of the modern citizenship, next to the image of a worker who sells labor force, structurally citizen, and taking away his essential condition, found in the protection principle, as well as his political aspect. Hence, a modern enterprise, today, settles in states which ensure it the annulment of social achievements, of trade union power and civil associations, which insist on the defense of better salaries, work conditions and the environment (SILVA, 2002, p. 17).

In this context, it has been being defended, in the work world, with worrying vehemence and efficiency, the speech of “flexibilization” of labor rights.

According to Amauri Mascaro Nascimento, the flexibilization is “taking away the rigidity of some laws to allow, when it is required, more acceptance to change or reduce their orders, by the parts” (NASCIMENTO, 2003, p. 67).

In the view of Sergio Pinto Martins (2002, p. 26), “in the flexibilization, the existing rules are changed, reducing the State intervention, but ensuring an indispensable minimum of protection to the employee, so that he or she can survive, being it the minimum protection needed”.

What can be noted in the countries that relaxed their labor rights is that such model, like it is established, causes damages to workers. The unemployment keeps high, the salary level reduces a lot, and jobs has a higher degree of precariousness than the ones that does not exist anymore (AGUIAR, 2007). The unsafe worker, afraid of losing his or her work, is more controllable.

In the present Brazil, the motto of businessmen is the flexibilization discussed with the trade union entity. However, the current context goes toward a complete weakening of the union representation, once the employee, in the present Post-Fordist paradigm, is seen as a versatile polyvalent atom, and not anymore as a class or professional category.

Thereby, the fight for a smaller flexibilization of labor laws, in order to not damage the safety of the firm relations and the already conquered fundamental guarantees, is a duty that cannot be forgotten by all workers and by population, in general.

Conclusion

It was necessary to make a historical survey about the changes of work and rights for work, and, from this point, to walk with these tools through a liberal and neoliberal ambiance.

It has been pointed out the liberal state, liberal ideas, along with the defense of some liberals’ thoughts, like Adam Smith, John Locke, John Stuart Mill, and Robert Nozick. It has been presented the structure that ruled, during the period considered liberal, the liberal state.

In the follow, the damages, especially of the neoliberalism, either to the Brazilian worker, either to other countries which adopted the system, have been demonstrated.

The neoliberal thought was born after the 2nd World War in Europe and in North America. The neoliberal motto is the defense of the minimal state, in contrast to the interventionist state of the Welfare State.

Thatcher government, England/1979, was the first neoliberal one. In 1980, came Reagan/EUA and, in 1982, Kohl/Germany. From then on, almost the entire Western Europe adopted the neoliberal guidelines.

It was in Washington consensus, meeting that happened in november 1989, when Brazil and the other Latin Americans joined the neoliberal guidelines imposed by the IMF and the IBRD.

The advent of neoliberalism in Latin America has been caused by the crisis of the Welfare State, which had happened in three levels: crisis of governance, economy, and politics. The Social State had been proposed to satisfy the social claims and it ended up indebted. The Neoliberal State, on its turn, only worries about wealth accumulation, without mattering about social rights and popular legitimacy.

Liberal ideas claims for the flexibilization of work relation, which aim at the deregulation of the Rights for Work, the end of the worker protective principle and the encouragement of flexible ways to cancellation without onus or hire of employees.

Nowadays, in Brazil, businessmen and their associated jurists defend the flexibilization dealt with the assistance of trade unions. Curiously, this happens exactly now, when these entities are discredited and without representation power, considering the atomization policy and the fear of losing the job by the employee.

With neoliberalism, it will happen a reduction of public law, especially of administrative law, and an enlargement of private law, particularly of civil law, commercial law and private international law. Rights for Work will become closer from civil law, so that it should be incorporated by this one.

What should be clarified is that work cannot be another object of trade, that is to say, we cannot accept that the labor force of the Brazilian worker becomes object of bargain and dealings, which do not consider true necessities and real rights of the worker.

The answer to the crisis, different from what many people affirm, is the work, supported in our labor legislation, with safety to the Brazilian population.⁶

REFERENCES

⁶ This article was authorized for publication by the authors in 12/12/2014 . Version in Portuguese received in 21/06/2014, accepted in 20/10/2014

AGUIAR, Marcelo Dias. **A flexibilização das leis trabalhistas**. BuscaLegis.ccj.ufsc.br. 2007. Disponível em: <<http://www.egov.ufsc.br/portal/sites/default/files/anexos/23269-23271-1-PB.pdf>>. Acesso em: 05 dez. 2013.

ARENDT, Hannah. **A condição humana** [1958]. Tradução de Roberto Raposo. Posfácio de Celso Lafer. 10. ed. Rio de Janeiro: Forense, 2000.

BOBBIO, Norberto. **Liberalismo e Democracia**. 3. ed. São Paulo: Brasiliense, 2000.

CERQUEIRA, Hugo E. A. da Gama. Trabalho e política: Locke e o discurso econômico; **Revista de Economia Política**, vol. 22, n. 1 (85), janeiro-março/2002.

DERANI, Cristiane. **A compreensão do Direito pela Unidade Ser e Dever-Ser**. Disponível em: <http://www.ufpa.br/posdireito/caderno3/texto4_c3.html>. Acesso em: 05 dez.2013.

GIANNOTTI, Vito. **História das Lutas dos Trabalhadores no Brasil**. Rio de Janeiro: Mauad X, 2007.

HOBBSAWM, Eric J. **A era das revoluções – 1789 a 1848**. 11. ed. Rio de Janeiro: Paz e Terra, 1998.

LOCKE, John. **Segundo tratado sobre o governo civil** [1690]. Tradução de E. Jocy Monteiro. São Paulo: Abril Cultural, 1993; seção 40 e 128. (Os Pensadores).

MARTINS, Sérgio Pinto. **Flexibilização das condições de trabalho**. 2. ed. São Paulo: Atlas, 2002. p. 26

MARTINS FILHO, Ives Gandra da Silva. Breve História da Justiça do Trabalho. In: FERRARI, Irazy *et al.* **História do Trabalho, do Direito do Trabalho e da Justiça do Trabalho**. 2. ed. São Paulo: LTr, 2002.

MILL, John Stuart. **Princípios de economia política: com algumas de suas aplicações à filosofia social** (2 volumes). Introdução de W. J. Ashley; Apresentação de Raul Ekerman; Tradução de Luiz João Baraúna. São Paulo: Abril Cultural, 1990 (Os Economistas).

MILL, John Stuart. **Sobre a liberdade**. Tradução e prefácio de Alberto da Rocha Barros; Apresentação de Celso Lafer. 2. ed. Petrópolis, RJ: Vozes, 1991 (Clássicos do Pensamento Político).

NASCIMENTO, Amauri Mascaro. **Curso de Direito do Trabalho**. 20. ed. São Paulo: Saraiva, 2005.

NASCIMENTO, Amauri Mascaro. **Iniciação ao Direito do Trabalho**. 29. ed. São Paulo: LTr, 2003.

NOZICK, Robert. **Anarquia, Estado e Utopia**. São Paulo: WMF, 2011.

PERROT, Michelle. **Os excluídos da história – operários, mulheres, prisioneiros**. Rio de Janeiro: Paz e Terra, 1992.

PIMENTA, José Roberto Freire *et al.* **Direito do trabalho**. Evolução, crise, perspectiva. São Paulo: LTr, 2004, p 216

REGONINI, Gloria. Estado do Bem-Estar. In: BOBBIO, Norberto et al. **Dicionário de política**. 5. ed. Brasília: Editora Universidade de Brasília / São Paulo: Imprensa Oficial do Estado, 2000.

SILVA, Antônio Álvares da. **Flexibilização das relações de trabalho**. São Paulo: LTr, 2002.

SMITH, Adam. **A Riqueza das Nações**: Investigação sobre sua natureza e suas causas. São Paulo: Abril Cultural, 1990, v. II.

SMITH, Adam. **Teoria dos sentimentos morais** [1759]. Livro VII. São Paulo: Martins Fontes, 2000.

TAVARES, Kássia. Os efeitos do Consenso de Washington na economia brasileira. **Política & Economia**, 23 out. 2011. Disponível em: <<http://www.politicaeconomia.com/2011/10/os-efeitos-do-consenso-de-washington-na.html>>. Acesso em: 05 dez. 2013.

WALZER, Michael. **Esferas da justiça**: uma defesa do pluralismo e da igualdade. São Paulo: Martins Fontes, 2003.