

Ways to Achieve Social Justice in the World of Work in Brazil

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Lecture presented at the XXIV World Congress of the International Society for Labor and Social Security Law (ISLSSL), in Rome, Italy, from 17 to 20 September 2024, during the first plenary session of the event, held on 18 September 2024. The lecture seeks to deconstruct two myths about labor rights and social justice in Brazil. The first myth claims that the Brazilian labor law system, established in the 1930s and 1940s, is merely an imitation of fascism, characterized by paternalism and economic irresponsibility. This myth disregards Brazil's unique historical influences, including social constitutionalism and the international labor movement, which shaped its labor laws. Despite economic growth and low unemployment during this period, critics argue that labor laws stifle corporate power and free markets. The second myth suggests that labor law hinders economic and social development, promoting deregulation and the precariousness of labor relations. However, historical evidence shows the opposite: labor law strengthens internal markets, distributes income, and reduces unemployment. Despite this, criticisms of labor protections persist, particularly during periods of neoliberal influence, such as in the 1990s and after 2016. The analysis of these myths, within the context of Law and Economic History, highlights how liberalism and neoliberalism have historically failed to protect labor rights and social justice, emphasizing the need to balance labor protections with economic growth, while also warning against neoliberal tendencies that erode these rights. The speaker concluded by offering a dual perspective: Either the centrality of labor in social and economic life is preserved, or the dismantling of social policies and labor protections is allowed, with Brazil's historical experience providing insights into these global trends.

Keywords: labor rights, social justice, dismantling by neoliberalism, Brazilian historical experience, centrality of work

Introduction

This article materializes in text the lecture presented at the XXIV World Congress of the International Society for Labor and Social Security Law (ISLSSL), in Rome, Italy, from September 17 to 20, 2024, during the first plenary session of the event, held on September 18, 2024.

The main theme of the congress concerns the search for labor rights and social justice, with the subtheme of the first plenary session being ways to achieve social justice in the world of work and its contemporary approaches.

Although I do not wish to give any conclusions in advance, as a researcher, intellectual, and jurist from Brazil, a country that is part of the continental region of the Americas, I would like to answer the question posed

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by analyzing some myths that permeate the history of Labor Law in our country. The fact is that Brazil, as the seventh most populous country on the planet, the fifth with the largest territorial extension, the 10th or ninth richest country according to GDP, unfortunately also stands out as one of the most unequal on Earth. Among the 30 richest economies and countries in the world, strictly considering its GDP, Brazil is in fact among the most unequal.

These myths surrounding Brazilian labor legislation are actually quite suggestive of the answer to this question.

In this sense, the text proposes an in-depth analysis of some of the most frequent myths that have formed around Labor Law and Labor Justice throughout the 20th and 21st centuries in Brazil. Such myths, in general, also encompass the national labor system as a whole, albeit with varying degrees of intensity.

Some of these myths emerged between the 1930s and 1945, when both an excessively exalting view of the labor system organized at that time prevailed—the so-called “myth of granting”—and extremely critical perspectives on the same system, represented by other widespread myths.

The oldest myths, especially those of a critical nature, have continued to be reproduced for almost a century. However, their defenders often adapt them to more contemporary narratives. At the same time, new mythical conceptions have emerged with greater vigor in recent times, especially under the influence of neoliberal thought in Brazil. This current, widely disseminated in the West, is characterized by a highly deconstructive stance towards state social policies, with an emphasis on labor and social security policies, a reflection also noticeable in the Brazilian context.

Thus, the article is based on extensive bibliographical research and adopts an interdisciplinary approach, incorporating contributions from different areas of knowledge, such as History, Political Science, Sociology, Anthropology, Economics and Law.

Labor Law and Labor Justice in Brazil: Some Myths

Throughout the history of labor law and labor justice in Brazil, a variety of traditional myths have frequently resurfaced. Some of these myths were created or skillfully disseminated by the first government of Getúlio Vargas, between the 1930s and 1945, as part of a propaganda strategy. Later, these same ideas, with adaptations, were appropriated by critics of the Brazilian labor system, who used them to support different approaches over time.

There are also myths originating from political, social, economic, and ideological forces opposed to the 1930 Revolution and the social policies that resulted from it. These myths are often still used to support narratives that defend a largely unregulated labor market in the country’s economic and social context, contributing to the devaluation of employment and working conditions.

Another set of myths may be associated with the reproduction of traditional narratives without due critical analysis or in-depth analysis of the Brazilian reality. This lack of reflection ignores the importance of labor rights, both individual and social, in strengthening democracy and capitalism in historical contexts less marked by persistent socioeconomic inequality. The perpetuation of these narratives, whether by deliberate intent or thoughtless repetition, ensures their continued influence.

Only two are selected, which will contribute to the elaboration of the answer to the central question of the first plenary session of this World Congress.

The first of these myths, created since the 1930s and 1940s in Brazil, when the Brazilian labor system was structured and gained momentum, consists of the claim that, deep down, the central points of Labor Law, Labor Procedural Law and Labor Justice itself, in the country, are mere imports of fascism by Brazil, being examples of paternalism, populism, demagoguery, economic irresponsibility, among other similar claims—all of which, as seen, dishonor labor rights and guarantees and their legal and institutional system of protection.

It does not matter if the country grew for 50 years in a row, since 1932, right after the end of the First Republic (1889-1930), with only two years of economic contraction in five long decades and high levels of economic growth in the same phase, leading these rates compared to the vast majority of countries in the world in the period. It also does not matter if unemployment levels remained low for 50 years, in addition to residual years of economic crisis.

What matters is the narrative about the inadequacy of the labor system, the irresponsibility of the legal limits imposed on corporate power by Labor Law, the relative (albeit modest) intervention in the free economic market, the supposed rigidity of Labor Law and its related fields and institutions.

The facts of Brazilian history do not support the simplistic thesis of fascism, given the significant influence of several events and institutions typical of the historical period in which labor law was structured in Brazil. For example, the emergence of Social Constitutionalism at the end of the second decade of the 20th century, with the Constitutions of Mexico and Germany, which in Brazil gave rise to the Social Constitution of 1934. Likewise, the emergence of the International Labor Organization in 1919, an entity that generated around 60 international conventions and a similar number of international recommendations in the short 20 years of its existence, until 1939, all of which had a major impact on Brazil. Nor do the significant social movements that occurred throughout the 41 years of the First Republic matter, which deepened and matured severe criticisms of the elitism of this first republican phase (1889-1930), with its serious rejection and isolation of social movements, including labor movements, as well as of public policies of a social nature.

It all came down to the simplistic explanation of the importation of fascism—a movement that had no significant relevance in the historical reality of Brazil.

The fact is that this myth is reproduced repeatedly and increasingly strongly in Brazil, especially at times when democracy is weakening and old or new liberalism is growing in the country. Through or around this myth, all criticisms of Labor Law, Labor Procedural Law and Labor Justice in Brazil are raised and grouped, from the most distant historical moments to the most recent ones.

The second myth, of more recent origin, concerns the supposedly inadequate role of labor law, in its collective or individual dimension, in the economic and social development of the capitalist system and the institutions that make up civil society. If the analytical premise is put in this way, the inevitable consequence of this second myth is the marked deregulation and/or flexibilization of the norms of collective state or private labor law, in favor of a much more attenuated or modest regulation of individual and collective labor rights and guarantees—or of pure and simple job insecurity.

This second myth is not impressed by the fact that historical data from the economy and society show exactly the opposite, in the sense that the advancement of Labor Law strengthens the internal market of the economy, contributes to the distribution of income, and reduces the unemployment rates prevalent in society. The anathema

towards Labor Law and its protective norms, whether private or collective state, remains strong.

The fact is that the Brazilian case is very expressive for reflections in search of an answer to the essential question explained in this panel. Liberalism only had a significant influence on the Brazilian political and institutional imaginary in three specific historical moments. And in none of them was the search for social justice and labor rights and guarantees highlighted.

It should be noted that traditional liberalism, in its original form in the 18th and 19th centuries in the West, only had a significant presence in old Brazil during the phase regulated by the Constitution of 1891, typical of the First Republic and in force until the Revolution of 1930. And during this entire four-decade phase, individual and social labor rights and guarantees did not flourish. Instead, a deeply exclusionary legal order and socioeconomic system prevailed, with no significant margin of protection and inclusion for the working class, for the enormous black population resulting from four centuries of slavery, and also for the enormous population composed of women.

In other words, the mark of the first phase of relevance of original liberalism in Brazilian history was, in short, quite inhospitable to the social field of law.

The second important historical moment of influence of liberal thought in the country, then already known as neoliberalism, occurred in the 1990s, curiously enough right after the 1988 Constitution came into force. There were several governments with a neoliberal dimension between 1990 and 2002, even though the country had, a few years earlier, in 1988, approved a new Constitution with a deep and broad social and humanist base.

This period was also marked, with some small differences, by deep and relentless unemployment and by clear attempts by public policies to weaken individual and social labor rights and the very idea of social justice.

The third relevant historical moment of influence of liberal thought in Brazil, also under the guise of neoliberalism, occurred in 2016, with the overthrow of the democratically elected government 18 months earlier. This critical phase lasted from May 12, 2016 to December 31, 2022. In these more than six years of intensified ultra-liberal government action, numerous measures were approved to destroy individual and collective labor rights and guarantees, in addition to measures that severely restricted trade unionism in the country.

It is worth highlighting that in these two most recent phases of strong presence of the liberalist model, now in the form of neoliberalism, the Brazilian economy did not grow, the income of the working population fell, unemployment rates worsened, and the precariousness of labor relations increased.

In this sense, this myth suggests, contradictorily, that the most advanced capitalist nations in Europe—recognized for decades for their robust systems of labor regulation, often based on a combination of collective agreements and state legislation—have not historically had the conditions conducive to their own development. According to this logic, the underdeveloped countries of Africa and the Americas, marked by the absence of regulation in labor relations, would have found ideal conditions for significant economic progress—something that, evidently, has not been observed in the last 120 or 130 years.

Contrary to this view, historical experience shows that strengthening labor rights, both individual and collective, as well as social security rights, is essential for the formation of a solid internal market. This market, in turn, sustains the growth and stability of the capitalist system, in addition to preparing national economies to face global crises more effectively. A structured internal market, composed of millions of people integrated into a dynamic production system and protected by reasonable rights, constitutes a fundamental basis for capitalist business

operations and the tax collection necessary for the maintenance of the State. In contrast, the impoverishment of the working population—which represents the majority of society—causes a spiral of economic degradation, negatively affecting both the economic system and the indispensable public services that the State must provide.

On the other hand, there are those who argue that legal protection of labor relations would be an obstacle to the efficient functioning of capitalism, indirectly harming workers themselves by limiting their participation in the economic system. This narrative, however, proves to be yet another ideological justification for the implementation of public policies that promote the deregulation or flexibilization of labor relations. This approach seeks to align these relations with the neoliberal paradigm, which results in the continued devaluation of labor in the economic and social spheres.

Conclusions

When reflecting on these two myths from the history of Labor Law in Brazil, one can clearly perceive two relevant aspects in the search for (or fight against) social justice in the world of work—always respecting the historical and cultural peculiarities, including legal ones, of each country, region or even continent.

On the one hand, there is a tendency to develop or preserve social public policies—obviously diverse and current—although one of the axes, to some extent important, is the preservation of the centrality of work in social and economic life, as well as of the working human being, of course, with adjustments, adaptations, improvements, and balances, but without neglecting the essence of this civilizing axis.

On the other hand, there is a tendency towards the tenacious deconstruction of public policies of a social and labor nature, towards the growing loss of the centrality of the human person in the legal order and in socioeconomic life, in search of a prevailing axis of another nature.

With these reflections, the analysis of the paths of Labor Law and social public policies in Brazil brings an interesting contribution to finding answers to the intriguing question posed by the first plenary session of this World Congress.

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