DOI: 10.15691/0719-9112Vol10n1a4

LABOR RIGHTS OF CREATION: A PRINCIPLE FOR PROTECTING POWER AT WORK

Derechos laborales de creación: Un principio de protección laboral de la potencia

DIEGO ALONSO RAMÍREZ PÉREZ*

Abstract

In this article, a new philosophical-normative framework is presented for redefining the principle of labor protection, which, faced with the paradoxical relations between neoliberalism and labor law, urges replacing the passive, abstract and obedient concept of "subject of rights", with an active, immanent and creative concept such as that of "legal power" to define the worker. Thus, the main thesis is to legally justify that the worker be able to create rights under his mode of existence. In the first section, an examination of the doctrinal principle of labor protection will be carried out through a genealogical understanding of the neoliberal phenomenon, in order to point out a coalescence between the two. Secondly, we will attempt to offer a new legal conception to define the worker, leading to a regulative ideal of the power to create rights as a way out of "the neoliberal". In our third section, we will offer an account of certain normative and philosophical guidelines so that the current principle of protection can ensure creation at work through "rights of creation". In our fourth section, an "institutional" definition of "company" will be outlined, in which worker and employer must have equal power to create norms. In the last section, we will argue for the legal necessity of creation as an essential element of labor protection against neoliberal advances.

Keywords: *Neoliberalism; Labor Protection; Legal Power; Rights of Creation; Labor Deterritorialization*

Resumen

En el presente artículo se ofrece un nuevo andamio filosófico-normativo para resignificar el principio de protección laboral, en el que frente a las paradójicas relaciones entre el neoliberalismo y el derecho del trabajo, urge sustituir el concepto pasivo, abstracto y obediente de «sujeto de derecho», por un concepto activo, inmanente y creativo como el de «potencia jurídica» para definir al trabajador. De este modo, la tesis principal es justificar jurídicamente en que el trabajador pueda crear derechos al alero de su modo de existencia. En la primera sección se realizará una reconstrucción doctrinaria del principio de protección laboral mediante un entendimiento genealógico sobre el fenómeno neoliberal, con el objeto de marcar una coalescencia entre ambos. En segundo orden, pretenderemos ofrecer una nueva concepción jurídica para definir al trabajador, conllevando a un ideal regulativo de la potencia de crear derechos, como salida a «lo neoliberal». En nuestra tercera sección, daremos cuenta de ciertos lineamientos

* Bachelor of Legal Sciences and Master in Private Law (2021), Universidad Adolfo Ibáñez. Doctoral Student in Political Processes and Institutions (2021), School of Government, Universidad Adolfo Ibáñez, Santiago, Chile (diramirez@alumnos.uai.cl). ORCID: https://orcid.org/0000-0003-4918-6259. Article received on April 29, 2021 and accepted for publication on September 10, 2021. Translated by Ernesto Riffo Elgueta.

normativos y filosóficos para que el actual principio de protección pueda asegurar la creación laboral, a través de "derechos de creación". En nuestra cuarta sección, se esbozará una definición «institucional» de la empresa, donde el trabajador y el empleador deben tener el mismo poder de crear normas. En la última sección, concluiremos sobre la necesidad jurídica de la creación como un elemento indispensable para la protección laboral frente a los avances neoliberales

Palabras Clave: *Neoliberalismo; Protección Laboral; Potencia jurídica; Derechos de Creación; Desterritorialización Laboral*

I. INTRODUCTION

Faced with the global and domestic advances of neoliberalism in economic production, labor law has entered into crisis.[1] It is a widely shared hypothesis in European, Latin American and North American labor law scholarship, that in the face of the latest technological and economic advances, and in order to achieve greater labor flexibility to accommodate productivity demands, labor law is unable to effectively respond furthering the interests and the protection of workers.[2] In this sense, large part of labor law scholarship maintains that the great crisis of labor law is due to a frenzied advance of neoliberalism.[3]

In this work, we will carry out a genealogical reconstruction of neoliberalism, which seems to us the most appropriate and accurate way to understand the relation between labor law and "political economy", on which neoliberalism emerges in the 20th century.

According to this view, neoliberalism can be characterized, following the ideas of Michel Foucault, as: (a) a proposal for an economic life that under certain scenarios intends to apply a privatization and adjustment program; (b) a type of capitalism that recommends certain subjective and individual commitments for individuals via competitive practices; and (c) an entrepreneurship of the subject.[4] For this reason, neoliberalism has infused a way of life into the worker, that is, a free development of ways to perform their own work and life, but always leading them toward the "*contemporary form of the enterprise*".[5]

In this sense, labor law has considered that these privatization schemes translate *into labor flexicurity* that has resulted in "*flexicariousness*".[6] Thus, it could be said that the worker is placed at a neoliberal fork in the road: "*entrepreneurship or precariousness*", which means that the legal-economic conditions lead the worker to having to live in an employment relationship that is precarious with regard to productive demands, or else undertake independent work that involves transforming their work into a personal enterprise, turning their own life into a business.

[1] GAMONAL (1996), p. 81.

[2] COLLINS (2010); MÚÑOZ LEÓN (2013); CAAMAÑO (2005).

[3] Véase KLARE (1982); UNGER (1976); KENNEDY (1973).

[4] FOUCAULT (2018).

[5] VATTER (2014); BROWN (2015); PATTON (2015); FOUCAULT (2016).

[6] GAMONAL (1996), p. 83.

This process has been labeled as the great innovation of neoliberalism, in which "diverse" ways of life are offered within the enterprise for the realization of human behavior. Against this situation, this paper aims to offer a new understanding of contemporary phenomena. The purpose of this work is to articulate a new look at labor rights, through an *immanent understanding* of the relationship between labor law as a paradigm of worker protection and economic productivity in the form of the enterprise as a manifestation of politico-economic "knowledge".

Thus, the main hypothesis of this text is that the principle of worker protection is too abstract, because by thinking only about the constitutional principles of a public order of labor and about (un)specified labor rights that refer to a legal subject, it becomes passive and powerless to effect labor protection in neoliberal conditions. That is, labor law, by presenting the worker only as a subject of rights, leads to replicating a series of productive understandings that are actually contrary to labor protection. In opposition to such a scheme, an immanent model of labor protection will be presented, which understands the worker as an active legal power, which is explained by constructing rights that create rights, that is, rights of creation.

In this way, in our first section we will present a brief reconstruction of the principle of protection, in order to account for its deep connection and dependence to neoliberal governmentality. In our second section, we present an immanent and pragmatic approach to labor protection, which is defined as protecting the legal power of the worker. In the third section, we will offer some basic guidelines on the basis of which labor rights of creation could materialize through certain fundamental institutions of labor law. In our last section, we will explain how creation rights entail a "*re-signification*" of the legal concept of worker, and of certain democratic advantages for its institutional recognition.

II. The Principle of Protection and Neoliberalism: The Significance of Productivity

2.1 The Narrative of Labor Protection: Protecting a Subject of Rights

The principle of protection is the constitutive meaning of labor law, that is, it is what allows the existence and justification of this legal discipline. It is based, precisely, on the initial and subsequent lack of freedom of the worker. This lack of freedom –due to the need to work– is the immediate cause of the inequality of employees and explains labor law protections.[7]

It is relevant to understand that labor law has a narrative of protection:

> We understand as foundational tale the essential narrative of an area or branch of law, for example, in labor law, the protection of the weak party within the employment contract, that is, the worker. (...) Legal narratives can be explicit, implicit, strategic, and pre-legislative. Legal narratives are more or less informal. Their higher degree of formality is given when the narrative is part of a foundational tale of an area of law, which generally implies that it manifests itself as a principle of that area. (...) The protective idea, as a foundational tale, is

[7] Gamonal (2019b); De la Villa (2002); Caamaño (2005).

> expressed in the principles of labor law such as those protection, continuity, nonforfeitabilty and the primacy of reality.[8]

This idea of a narrative of protection is hegemonic in contemporary legal systems.

In countries such as Chile, Uruguay, Brazil and Argentina, the principle of protection is enshrined as a general public order, which is defined as an institutional arrangement that includes non-forfeitable fundamental rights.[9] In this Latin American scenario, Gamonal has identified that the adoption of labor protection is due to "employment law, procedural labor law, and oversight by administrative agencies, for the correct execution of labor legislation".[10]

In Mexico, the principle of protection is strongly linked to human rights in the exercise of a multidimensionality.[11] In other words, the multidimensionality of the labor law norms "includes the manifestation of the various legal dimensions" in order to regulate the most humane labor relations for the benefit of persons.[12] What defines the principle of labor protection are essentially the principles of "*pacta sunt servanda*, *pro homine* or *pro persona*, *in dubio pro operario* and the *erga omnes* effect".[13]

In Europe, French labor doctrine emphasizes a connection of the principle of protection to anthropological and humanist ideals to justify favoring the worker. In other words, French legislation plainly understands that labor law must protect the worker as a human being with regard to exploitation and domination.[14]In the same way, this understanding of the worker as a "person" has been widely recognized and extended within the French legal system, implying a hegemonic regulatory model for modern legal systems, based on the subject of human rights.[15]

In Italy, the principle of protection as linked to a conception of personhood and humanity is patent the work of Riva Sanseverino, which state that the employment contract is a device that binds persons, who as possessors and workers, are considered to be endowed with a personal humanity, which differentiates it from civil contracts.[16] Currently, Italian jurisprudence has understood this principle of protection of the worker as a person, as a flexible principle which allocates a series of individual costs within market transactions, which materializes in the employment contract to protect the modern worker.[17]

In Great Britain, Hugh Collins' extensive studies are well known, in which he manages to clearly identifies that labor protection has the function of not commodifying the worker, and

[8] GAMONAL (2019a), pp. 75-76

[9] GAMONAL (2019b), p. 74.

[10] GAMONAL (2019b), p. 78.

[11] BONILLA & FLORES (2020), pp. 109 ff

[12] DRNAS DE CLÉMENT (2015), p. 101.

[13] PLÁ RODRÍGUEZ (1998), p. 84.

[14] SUPIOT (1996), p. 136.

[15] GARDES (2013) p. 5

[16] SANSEVERINO (1980) p. 76.

[17] GIANFREDA & VALLANTI (2020), pp. 42 ff.

protecting his identity as a human being. In this sense, he understands that "social inclusion, competitiveness and citizenship" are what shape the worker as a human being.[18]

In the United States, we follow the succinct investigative works on "employment at will" of Gamonal and Rosado, to interpret that the principle of protection in the United States is the only way to achieve a milder and prolonged capitalism through free competition, necessarily forging the protection of the weaker party in the employment relation.[19]

In California legal doctrine, labor law scholar Katherine Stone has defined the principle of protection throughout the West in the 20th century, sharing the common denominator of the existence of a subject of rights that is the personhood of "job security, decent wages [...], a generous package of health, retirement, and other job-linked benefits".[20]

In Australia, it is understood that the principle of labor protection has had to be adapted during the last twenty years due to high migration flows, leading to the main subject to be protected to be a subject of rights who has the feature of being a "*guest-worker*".[21]In the same way, Australian critical labor law scholarship claims that labor protection based on an abstract subject of rights has caused it to be a malleable concept that is functional to the productive and migratory needs of human capital and the efficiency required by neoliberalism.[22]

From this diverse comparative analysis of modern labor law doctrine, we highlight as a cross-cutting hypothesis and lowest common denominator the regulative ideal of labor law. The idea that the worker is a subject of rights who must be protected, since he is the weaker party and does not possess the same initial freedom as the employer. In this way, we will stand on that scaffold in order to put it into question as a factor that has led to the crisis of labor law in the face of the advances of neoliberalism and globalization.

2.2 A Permanent Crisis: Neoliberalism and Protection

Perspicuously, Gamonal in a recent article on the differences and similarities between the South and the North of labor law in the history of its crises, remarks that:

> Currently there is a serious crisis after more than 30 years of neoliberalism and Globalization, because inequality has increased, workers feel that they every time they are in a worse situation, unions have lost power and parents see that their children will probably have a lower standard of living.[23]

[18] COLLINS (2010) p. 21.

[19] GAMONAL (2017), p. 60

[20] STONE (2015), p. 572.

[21] STONE (2015), p. 575.

[22] MAYES (2020), p. 52.

[23] GAMONAL (2019b), p. 115.

In the same way, he adds that there have always been crises of labor law, and that these have the quality of being cyclical and regular, but always at different speeds.[24] However, Gamonal identifies a particular fact of the current crisis of labor law, in which market fundamentalism has been predominant,[25] that is, the ideology that argues that the law must allow a "spontaneous market" order to operate,[26] without interference that limits its efficiency, resulting in a dimension of labor flexibility.[27] In this context, the crisis of labor law in the South has been constant, due to poverty, informality, and exploitation in conditions of precariousness.[28] Gamonal concludes that labor law is not dying, given that both the South and the North have been able to adopt a strategy against neoliberalism, insofar as there is a strong structure of both individual and collective labor law.

Contrary to Gamonal's claim, we differ with regard to causal relation and the current state of the crisis of labor law.

In fact, because labor law has been "*territorialized*" by neoliberalism. While it is true that the highest ideal remains intact, the recourse to labor principles and human rights, denouncing serious violations of them, and urging an interpretation that favors the weak as constitutive of labor law, it is no less true that these have become powerless in the face of "neoliberal governmentality". By constructing competitive markets in order to set up enterprises, Neoliberalism places itself as the rationality of labor law in executing labor rights toward subjects. We argue that the crisis of labor law is due to the fact that it has emerged from an epistemic and governmental field of neoliberalism, more specifically, the crisis of labor law is that a "subject of rights" has been created that only produces value, agency and justice within a neoliberal rationality.

To demonstrate this critical hypothesis about neoliberalism and the law, we will have to apply the genealogical and archaeological studies of Michel Foucault and its current treatment.

Foucault understands that the concept of the "subject" proper to modern knowledge is fully functional to the way in which the law and the "knowledge" of an era start to be conceived. In this way, it is understood that the notion of a subject of rights is a normative element that allows the legitimizing and founding of "economic productivity" as a concept that defines the functions of the law and the modern State.[29] That is, the law is an element that emerges from a "knowledge" that defines the anthropological identity of the human being.

The key argument is that, precisely, the legal subject, when constituted on top of this "human anthropology" that knowledge provides, entails that it is a form of legal agency within a government produced by the concepts of *political economy*.

Applied to labor law, it is precisely that the anthropological and humanistic spirit of labor law produce a device for the direction of economic productivity whose normativity is legally

[24] GAMONAL (2019b), p. 115.

[25] GAMONAL (2019b), p. 119.

[26] GAMONAL (2019b), p. 120.

[27] GAMONAL (1996).

[28] GAMONAL (1996), p. 83.

[29] FOUCAULT (2006) p. 139

regulated, producing a subject of rights obedient to that motto. That is, the protection of the subject of labor rights and economic productivity constitute two sides of the same paradigm, that is, they result in a subject that is to be directed, which implies that their direction translates into being bound by the legal rationality defined by the State.[30]

Therefore, we will see that the legal subject of labor law is an anthropological figure that emerges from a knowledge functional to productive practices, and which is a "sovereign figure" that makes possible the legitimation, acceptance and passive subjection for the constitution of rights functional to the State model.

In "*Personhood in the Age of Biolegality (2020)*",[31] Margaret Davies, from a genealogical perspective, manages to demonstrate how the traditional scaffolding built by Alain Supiot in labor law, in which he states that the person, the worker and the human being constitute the subject of law, therefore, the meaning of modern law is to preserve and protect that anthropological identity, is true, but emphasizing its character which is functional and coalescent to neoliberal governmentality.[32]

Precisely, Davies demonstrates that the human is a *co-emergence* of the significant triad between property (an innovation of political economy), person (a concept of modern biology) and positive law (a linguistic normative system), which is why it is understood that they form an assembly that enables thinking legal agencies and freedoms that are constitutive of sovereignty within governmentality. That is, as Jeannine Hortòneda commented on the works of Foucault and legal neoliberalism, "the legal subject allows the construction of an *abstract-neutral rationality* in order to constitute a labor identity, that is, a model of agency and freedom that is linked with productivity".[33]

Now, although it is true that within the geopolitical dimension of the 20th century there was a discourse on productivity which is identified according to Michael Mann, in a global world made up of nations that have (i) economic power, (ii) ideological power, (iii) military power, (iv) political power and (v) leadership,[34] which meant merging productivity into a complex system of nations and their Globalization for the industrialization of capitalism; our link from "productivity" to neoliberalism is more profound since it also connects a process of the production of subjectivity that refers to a pragmatic field where "political economy, governmentality and an ethics of human capital" form, respectively, elements that are "true, legal and of self-recognition" so that productive subjects emerge.

In other words, neoliberal productivity builds labor law through the concept of the "subject of right" that already contains an epistemic nature of political economy, a neoliberal

[30] GAMONAL (2018), p. 11.

[31] DAVIES EN DE LEEUW & VAN WICHELEN (2020), pp. 205 ff.

[32] DAVIES EN DE LEEUW & VAN WICHELEN (2020), pp. 207-208.

[33] "By 'governmentality' I understand the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument". FOUCAULT (2017) p. 111.

[34] MANN (1993) pp. 260-261

governmentality in which behaviors are regulated through the law to produce value, and human capital as an ethical normative imperative.

Paul Patton clearly states that "[t]he juridical subject functioned as 'an essentially and unconditionally irreducible element against any possible government" and "the subject of interest [of political economy] was defined by a certain number of irreducible or non-transferable choices or preferences".[35] In this way, an ambivalence results between a subject that is only given rights, and that this act is justified by its being sovereign, but that is filled by the individual interest of political economy. That is to say, as Miguel Vatter argues in his readings on neoliberalism and law, the (neo)liberal economic subject implies a certain type of legal subject[36], and –*contrario sensu*– the legal subject is the form of a correct content of human behavior, of an economic "nomos".

In addition to what has already been said, Delphine Rabet has established that the legal subject implies an ethics of autonomy, which is defined by the values of "liberating the individual from the rules and regulations imposed by state" constituting at the same time the use of positive law to create sources of "*self-regulating behavior*".[37]

In labor law, these analyses have not been direct. However, Hélène Landemore and Isabelle Ferreras –a reader of Foucault–, understand that there is a clear labor relationship between man, productivity and the right to universalize that subject as a guarantee to the worker.[38]

Indeed, the subject in labor law, being a merely productive element that must be protected, means that it is only a piece for constituting the transcendence of labor law. That is to say, it highlights the two veins of labor law: protection and efficiency, so that they become one and the same,[39] a "neoliberal labor subject".

Put succinctly, labor law, by simply thinking about protection on the basis of the regulative ideal of productivity, entails that labor law will have a strong neoliberal imprint, in which the subject of labor rights is under the protection of the imperatives of the "knowledge" of political economy, and at the same time, of neoliberal governmentality. Therefore, the subject of rights is a product that involves a normative structure of productivity, because its self-reference is completely economic and functional to neoliberal practices. That is the element of the crisis: a matter of passive agency and of justice, a justification of productivity.

In particular, we hold that the causal relation between the crisis of labor law and neoliberal governmentality is due to the fact that the regulative ideal of labor law itself refers to an abstract, productive, passive and profoundly "legalistic" resource to protect the worker, that is, the subject of rights. Under this model, the relationship between "political economy and labor law" with respect to the crises of the latter in order to be effective and protect the worker, does not differ from the historical relationship that part of labor law scholarship has already

[35] PATTON (2015), pp. 9-10.

[36] VATTER (2018), pp. 371-372.

[37] RABET (2020), pp. 32 ff.

[38] LANDEMORE & FERRERAS (2016), pp. 55 ff.

[39] GAMONAL (2019b), p. 74.

shown in this regard, in that it is due to the economic crises inherent to capitalism and the way in which the enterprise/factory organizes labor.[40]

But it does differ absolutely from past crises out of which neoliberalism emerges, given that the contemporary crises that have arisen in the relationship between neoliberalism and the legal labor subject, lead to labor protection becoming impotent, abstract and passive to act, outside of the productivity of workers, since it seeks to lead them to a way of life in which they are entrepreneurs of themselves.

2.3 Neoliberalism: The Entrepreneurship of Labor Protection

Neoliberalism[41] innovates with regard to the relation between law and the economy, precisely in that labor law must produce protection that is effective for productivity. That is, the same inner rationality of labor law is expressed through a *regulative idea*[42] within the economic order of competition, that is, "[i]t is necessary then [...] not to intervene on the mechanisms of the market economy, but on the conditions of the market",[43] labor law is a regulatory action of the State[44], on the basis of which it must protect the individual worker to favor them toward a trend of competition.

Neoliberal economics has begun to blur the boundary between capital and labor, and has made it possible to explain both through the notion of *human capital* as a constitutive element of the contemporary economy. Economist Mariana Mazzucato has established that the theory of *human capital* is the radicalization of a "*homo oeconomicus*"[45] insofar as the individuality of the worker requires that he be in constant innovation through profit. In this sense, human capital maintains that the individual is no longer just an individual, but also part of the innovation processes through their own consumption and investment of the self. In the

[40] GAMONAL (2019b), p. 124

[41] FOUCAULT (2018), p. 176. "[Neo-liberalism] has to intervene on society as such, in its fabric and depth. Basically, it has to intervene on society so that competitive mechanisms can play a regulatory role at every moment and every point in society and by intervening in this way its objective will become possible, that is to say, a general regulation of society by the market".

[42] FOUCAULT (2018), p. 174. Foucault presents a neo-Kantian interpretation of the "regulatory principle", in this case governmental intervention in neoliberalism "must be light at the level of economic processes them-selves, so must it be heavy when it is a matter of this set of technical, scientific, legal, geographic, let's say, broadly, social factors which now increasingly become the object of governmental intervention".

[43] FOUCAULT (2018), p. 170.

[44] In neoliberalism, according to Wilhlem Röpke, regulatory action in a market economy consists in the strengthening of a "third way", since, within the legal and institutional permanent framework the economic process will always produce certain frictions which are temporary by nature, changes which will bring hardship to certain groups, states of emergency and difficulties of adjustment. FÈVRE (2015); FOUCAULT (2018), p. 150.

[45] MAZZUCATO (2019). Mazzucato's explanation consists in understanding that the worker's labor began to be define through consumption, within the framework of neoclassical theories. In this sense, "[t]here is, therefore, no 'objective' standard of value, since utility may vary between individuals and at different times. Second, this utility decreases as the amount of a thing that is held or consumed increases [...] This concept of marginalism lies at the heart of what is known today as 'neoclassical' theory –the set of ideas that followed the classical theory developed by Smith and Ricardo and was extended by Marx. The term neoclassical reflected how the new theorists stood on the shoulders of giants but then took the theory in new directions" pp. 65-66.

end, Mazzucato explains starting from *political economy* what Foucault had already developed from the idea of *neoliberal governmentality*,[46] in that:

> The individual's life must be lodged, not within a framework of a big enterprise like the firm [...] but within the framework of a multiplicity of diverse enterprises connected up to and entangled with each other [...] the individual's life itself –with his relationships to his private property, for example, with his family, household, insurance, and retirement– must make him into a sort of permanent and multiple enterprise.[47]

In this way, the "neoliberal governmentality" tells us that labor law, when it refers to a subject of rights, this is a legal element that leads to being driven toward competitive entrepreneurial imperatives that involve effectively increasing productivity. That is, legally, the subject of rights must be protected from abuses arising from being the weaker party, but that protection is driven at the same time to produce an efficient legal subject. Neoliberalism has placed within labor law the form of the enterprise as a principle of intelligibility and protection of labor relations and the conducts of the worker.

Human capital[48] is the expression of a new concept of labor in modern economics, in which the worker is required to no longer be just an individual, but rather an *entrepreneur of himself*,[49] human capital is, precisely, the gauge with which the sovereignty of the subject of labor law is measured today.[50] The "freedom to work" and the (un)specified labor rights, when framed along the lines of productivity, form a sovereignty, independence and protection of the worker, and at the same time and for the same reason, result in the production of an entrepreneurial subject.

It seems to us that within labor law the clearest relation between human capital and the idea of rights is found in Collins himself, who understands that human capital is a benefit inherent to the worker, and which must be protected.[51]

Stone in her works on labor law has lucidly referred to the regulatory change in recent times regarding the substantive content of the principle of protection in relation to the

---

[46] According to Foucault, neoliberalism is a way of governing that allows an explanation in genealogical terms in continuity of liberal *art of government* and *political economy*.

[47] FOUCAULT (2018), p. 277.

[48] Gary Becker (1930-2014), Theodore Schultz (1902-1998) and Jacob Mincer (1922-2006) were the main economists who thought of the *theory of human capital*. The essential formula we will work with is: "The distinctive mark of human capital is that it is a part of man. It is *human* because it is embodied in man, and capital because it is a source of future satisfactions, or of future earnings, or of both". FOUCAULT (2018), p. 266.

[49] In neo-liberalism there is no partner of exchange. *Homo oeconomicus* is an entrepreneur, and an entrepreneur of himself. See FOUCAULT (2018), p. 264.

[50] Currently part of European (German, English and French) labor law scholarship and legal sociology has perfected the term human capital and expressed it legally through "work competencies". See BROCKMANN (2011). For the purpose of our research, we prefer to keep the notion of human capital, since it concatenates the proper meaning of *obedience*, however when we speak of "competencies" they will be homologous terms.

[51] COLLINS (2010), p. 260.

regulation of the productive needs of the company, transforming its nature.[52] Thus, with the vast genealogical literature that we have discussed, we offer an alternative view of the relation between labor protection and entrepreneurship, claiming that the first is the "specific legal configuration" of the neoliberal regulative ideal, in which labor entrepreneurship is protected. The problem, then, is in our opinion the following.

The worker's *entrepreneurship*[53] leads to the establishment of an obedience that becomes blind through an interplay with the *legal experience* of freedom and sovereignty of the legal subject. That is to say, a labor law that is functional to "neoliberal governmentality" entails that the ideals of protection refer to an entrepreneurial subject, who form a "self-government" that is incessantly led toward neoliberal behavior.

In other words, the connection between neoliberal governmentality and the labor subject is a relationship of productivity. The former needs the latter for its legitimacy and autonomy, and the latter needs the former to mark its rights of sovereignty and independence; therein lies the contemporary aporia that forms an obedience and subjection of the subject to governmentality.

Thus, the labor subject established by an anthropological and humanist principle of protection constitutes the precise object, susceptible of protection and management, with a view toward a more efficient production, carried out by himself, in entrepreneurship. In this way, labor law defined within a neoliberal legal framework lies in leading, feeling, and, precisely, in guiding the behaviors, labor attitudes, competencies, and free behaviors of workers toward an end, the goal of incessant entrepreneurial production. Thus, Chignola has suggested that a "*government of self*" such as an enterprise, results in a "governmental discipline in terms of an impalpable direction of the self-reflective consciousness".[54]

Neoliberal labor law anchored to the subject produces a subject obedient to the neoliberal imperatives of the enterprise of the self, which translates into a particularly important point: it is no longer simply a specific way of reacting to an order. Obedience is not just a response to the other. Obedience *is and must be* a way of being, prior to any order, more fundamental than any command situation and, therefore, the state of obedience anticipates in a way the relations with the other: the legal subject is already a device of obedience to the enterprise.[55]

The *principle of protection*, in its genealogy with regard to neoliberalism, has formed an obedient worker. The problem is that the principle of protection protects a worker that has been arranged by labor law itself to be an entrepreneur, leading to a contradiction of the founding principles of labor law. Therefore, there is the need for a pragmatic, active,

---

[52] STONE (2015).

[53] Rabet has emphasized the following phenomenon of the self-regulatory formation of the company within the subject: "it values freedom and liberty as paramount and advocates for liberating the individual from the rules and regulations imposed by state while at the same time, it leads to further regulations [...] more control and more surveillance of the individual both from institutional sources [as well as] from the individual himself self-regulating his behavior". RABET (2020), p. 48.

[54] CHIGNOLA (2018), p. 51.

[55] FOUCAULT (2014), p. 339.

(dis)obedient and creative concept to protect: the worker no longer as an obedient subject of the right to productivity, but as a legal power that creates new legal obligations.

III. Principle of Labor Creation: The Worker as Power

In this section, a new legal definition of the labor agency will be presented, that is, an understanding of the worker as no longer a legal subject, but as a legal power [*potencia*]. In this way, a new ontological foundation will be given to account for the legal recognition of the worker, through a critique of the notion of subjective right prevailing in legal theory. In what follows, an interpretation of the subject of rights in the workplace will be proposed, based on the thought of Baruch Spinoza, Gilles Deleuze, Félix Guattari and Paul Patton, aiming to conceive of the worker as a normative creator, characterized by a creative right that enables legally securing a field of immanence as the genesis of labor norms.

3.1 From Subject of Rights to Legal Power: A New Model of Labor Agency

The legal subject of labor law that has become neoliberal not only responds to a genealogical question, but also responds to a normative dimension of "how" protection is constituted through rights, that is, a specific legal mode in which the agency of that legal subject is thought. The connection to our genealogical dimension of the neoliberal subject and the legal formulation can currently be found, within politico-legal theory, in Geoffroy de Lagasnerie –a disciple of Foucault. He has made fundamental connections to the conceptual connection between "sovereignty, the subject of rights and obedience", in which the subject of rights is a figure of subjection, and not of liberation.[56] For our purposes, we take the idea that the legal subject is the political unit that allows the legitimation of the sovereign in order to constitute a legal reason that manages a governmentality.[57]

For this reason, it is imperative to clarify the legal notion of "subjective right" on which the concept of subject of rights is criticized. In effect, reference is made to the positive theory of Thomas Hobbes. The conception of subjective right outlined by Hobbes is defined as:

> *Right* and *Law*; yet they ought to be distinguished; because Right, consisteth in liberty to do, or to forbeare; Whereas Law, determineth, and bindeth to one of them: so that Law, and Right, differ as much, as Obligation, and Liberty; which in one and the same matter are inconsistent.[58]

Therefore, for Hobbes a right is the guarantee of a freedom that is not impeded by external determinations, guaranteeing the power to act, therefore, a right is a kind of freedom. According to Eleanor Curran, this concept of subjective right has had an influence on modern

[56] De Lagasnerie (2015), pp. 88-89.

[57] De Lagasnerie (2015), pp. 91.

[58] Hobbes (1660), p. 169.

legal theories because it guarantees a moral and political justification of the sovereignty of the subject for his own protection,

> [...] while the sovereign does not hold direct duties to protect subjects' rights, he or they do hold *indirect* duties of protection, such as those described previously. Such duties are held as part of the *office* of the sovereign and may be characterized as being duties to the office they hold or duties held as part of the requirements of that office, rather than directly to subjects.[59]

In addition to that, there are the constitutional works of David Dyzenhaus in which he understands that Hobbes's positive theory involves a rational basis for justifying the sovereignty of the subject and his right, because it allows them to ensure a peaceful coexistence,

> that basis is rational only if consent is conditional in the following sense. Individuals consent to the sovereign's rule on condition that he rule in accordance with the laws of nature. Hobbes says that one must infer the liberties and constraints implicit in a subject's submission to his or her sovereign from that covenant's end, that is, the personal security and the opportunity for commodious living afforded by peaceful coexistence.[60]

As we see, according to Hobbes and his impact on legal theory, the concept of legal right defines a legal freedom through the sovereignty of the subject that materializes an immunity, obligations, and power in order to build peace.[61]

The problem that arises with the concept of legal right is that by definition it is not conceived as a right of resistance that can constitute new realities according to the situations of domination in which they are formed. That is to say, the purpose of legal rights is securing the sovereignty of the subject, which means constituting a series of rules of protection over a specific quality. The normative structure of rights aims to guarantee the existence of an identity and its agency, and not of the power relations that define, produce and drive said identity in a specific productive field.

In our case the model of subjective right is the agency of the "subject of labor law" that has become neoliberal, since through our genealogy of labor law with respect to neoliberal governmentality, it has formed the protection and production of a legal identity obedient to the ideals of entrepreneurship.

On the contrary, our legal philosophy is completely vicarious of Baruch Spinoza, which seeks the need to regulate and protect the *mode of existence*[62] and the *power* [*potencia*] of the

[59] CURRAN (2011), p. 30.

[60] DYZENHAUS (2010), p. 459.

[61] HAMPTON (1986), p. 91; CURRAN (2011), p. 31; GAUTHIER (1969), p. 63.

[62] SPINOZA (2009), p. 233; GARRETT (1995), p. 6; DELEUZE (1996), p. 190 and ff; SHARP (2011), p. 132; SKEAFF (2018), p. 118.

worker.[63] We understand that the worker's body affects and is affected[64] in the labor relation with the employer; however, all the power of the worker is reduced to impotence insofar as there are no legal mechanisms to affect the power relationship, subjecting the worker to only a power to produce value, but not to legally create rights corresponding to their way of being.

What the protectionist ideal has not been able to resolve through legal rights on which the public order of labor of the neoliberal era is based, is what concerns "*the amplification of power*".

That is to say, the current normative justification points to an intensification in the increase of the power of the worker against the power of the employer through the labor law, that is, getting labor regulations to transform said impotence of the worker (the difference in power vis-à-vis the employer and being limited to producing) into a legal power that can create immediate protective legal conditions, that is, protecting a mode of existence.[65] The worker's *mode of existence*[66] has been completely devalued, in that the intensity of his power to affect the labor relation itself is weakened, which results in his being driven only toward neoliberal governmentality. In this way, labor law has been completely blind to the immediate possibilities of the subject of regulations, thus disregarding power as an element of human behavior to be regulated.[67]

The "*legal power*" model is more democratic than the "subject of rights" model, since it manages to break with its own consistency the link between "subject, productivity and neoliberal obedience" because it understands the inherent mobility of legal insofar as it affects and is affected by a particular legal field. From this perspective, Paul Patton has understood that law must be attuned to the very movement of agent relations; must be an expression of the power of the mode of existence itself:

> so too must rights refer to the 'immanent modes of existence' of the people concerned [...] The establishment and protection of particular ways of behaving or being treated is part of the ongoing struggle to maintain human freedom.[68]

---

[63] SPINOZA (2009) 236; Spinoza has a particular conception of affection and power: "Affection is therefore not only the instantaneous effect of a body upon my own, but also has an effect on my own duration—a pleasure or pain, a joy or sadness. These are passages, becomings, rises and falls, continuous variations of power [*puissance*] that pass from one state to another. We will call them affects, strictly speaking, and no longer affections. They are signs of increase and decrease, signs that are *vectorial* (of the joy-sadness type) and no longer scalar like the affections, sensations or perceptions". DELEUZE (1996), p. 193.

[64] This idea is completely Spinozist, that is, a "*radical realism*", since the interpreted signs express that power is measured by a body that has the power to affect and be affected, a power shared by all individuals. On this interpretation, see SPINOZA (1987), p. 210; ISRAEL (2001); DELEUZE (2008), p. 37; SKEAFF (2018), p. 37; ZACHARY (2018), p. 94; VINCIGUERRA (2020), p. 135.

[65] SPINOZA (1987), p. 334; DELEUZE (2008), p. 40; VINCIGUERRA (2020), p. 13.

[66] The mode of existence refers to understanding that "body and mind" are one and the same thing at the same time in order to effect agency. In this way, "every individual as a mode, cannot exist if not modified by others. Mind and body always exist as affected, that is, as modified by a constitutive relation that makes them stay unconditionally together to the extent that they are sustained by another", see VINCIGUERRA (2020), p. 165.

[67] SPINOZA (1987), p. 57; (2009), p. 235; DELEUZE (2008), p. 78; CURLEY (1994), p. 55.

[68] PATTON (2012), p. 29.

In this way, rights should have the *potential* to be lines of flight to the extent that they are singularly creative and positive: they constitute an affect of the legal field, no less complete, no less total than the opposite affect. The law must be able to place the abstraction of rights not on the subject, but on the natural and pragmatic difference that emerges in each territoriality of productivity.

Through Spinoza's philosophy of law, it appeals to the way in which rights guarantee the natural need to increase power through its human artificiality, always involving an logical connection between desire and the protection of its expansion.[69] In other words, Spinoza's positivity lies in the fact that law is not defined by a type of abstraction that ensures only one form of protection, but rather must appeal to a mobile legal rationality that differentially guarantees the means to increase the power of those who comply with the law, that is, it is a normativity of power.

Following Hans Kelsen, it is understood that the law in its normativity appeals to a rationality that justifies actions for its obedience[70]. Indeed, as Kelsen remarks, the idea of a "legal relation" rests on the creation and application of norms, and not on the reflexivity of the obligation that correlates to the legal right[71], therefore, positioning the normativity of the law in the legal relationship point to,

> Between one individual who is authorized to create a norm and another individual who is authorized to apply this norm; and also between one individual who is authorized to create or apply a norm and an individual who is obligated or entitled by this norm. [...] the legal power of the individual entitled to bring an action against another individual consists of his capacity to participate in the creation of the individual norm, which orders a sanction against the obligation-violating individual.[72]

The interpretation presented appeals to the reasons for creating and affecting the employment relationship in order to give form to actions within said practice. That is, we move from a rationality of the person and rights, toward a rationality of difference and the creative movement of rights that transforms labor relations. As Miguel Vatter adds, it is understood that the rationality of the law does not point to the personal authority of the subject to constitute legal acts, but rather to the power of transformation of said legal relationships,

> power as republicans understand it is never "personal" but collective, or, as it is said today, power is "relational" –it does not belong to any "person". [...) they are

[69] SPINOZA (2009), p. 48-49.

[70] KELSEN (1967), p. 15.

[71] KELSEN (1967), p. 166

[72] KELSEN (1967), pp. 163-167.

> laws that allow for a different organization of the people in order to obtain more power, not only laws that grant more rights to citizens.[73]

What we want to offer as a foundation is precisely the concept of *right* with its immanent relationship and not that of a *personal subject* that grounds the actions, powers and fields of application of the right itself. What interests us is to recognize the immanent facts that cause the impotence in the worker's mode of existence through the concept of "subject of rights" in order to transform them into legal facts[74] that have the capacity to affect, –through the creation and application of norms– and to be the definitive expression of legal labor relations, and in this way, put the labor relation in a dynamic state creative of legal obligations.

3.2 The "Right to Create Rights": Labor Territoriality

It is in this way that we begin to define our understanding of *rights of creation*. *Rights of creation* are defined by the legal assurance for creating different legal behaviors that do not require a systematic unit for their operation, in which a legal subject is not needed. Thus, opening the possibility of new legal forms of expression implies *immanent legal actions* of construction of those institutional forms. Indeed, it is to understand the dynamic movement that constitutes a legal relationship, that is, the becoming of the labor relation so that it produces rights.

The inclusion of "becoming" means that rights are legal mechanisms that do not guarantee a fixed identity for the figure of the subject of neoliberal law, but rather *legal territories* for the appropriation, creation and power of multiple identities that have not yet been established. been created in law. Becoming is the ontological expression of a subjectivity that is defined by the *lines of differentiation* and *resistance* in the labor relation itself, but with the aim of translating it into law, into being able to create normativity.

Therefore, the worker is no longer defined by how he is legally structured, but rather by what he can do with the law in his workplace. In this way, rights would be defined through movements of *deterritorialization* and *reterritorialization*, that is:

> [D]eterritorialization is defined as the movement or process by which something escapes or leaves a given territory [...], where a territory can be a system of any kind: conceptual, linguistic, social or affective. By contrast, reterritorialization refers to the ways in which those deterritorialized elements recombine and enter into new relations in the constitution of a new assemblage or the modification of the old.[75]

The inclusion of becoming within *rights* consists of exhausting what prevents the transformation of the subject: the reference to the neoliberal subject, to its very identity locked

[73] VATTER (2017), p. 154.

[74] KELSEN (1967), p. 168.

[75] PATTON (2012), p. 143.

within labor law. The *rights of creation* are based on the power of the worker, which in turn, is defined by two constitutive elements. On the one hand, the creation of legal actions immanent to social relations that make it possible to guarantee new conditions of "non-domination",[76] and thus be able to affect the relation; and, on the other hand, the possibility of instituting new legal forms of behavior, regularities and work structures based on the power of the worker. Put in our terms, the *rights of creation* ensure *labor deterritorializations* (immanent conditions of absence of neoliberal domination) and *labor reterritorializations* (new legal forms for the organization of behavior).

IV. IMMANENT LABOR PROTECTION: A TWIST ON SINZHEIMER

Now, how can we set up a new scaffolding for a principle of protection that does not correspond unequivocally to the figure of the subject of right, but rather to the creative power? In principle, the answer stems from Fernando Atria's analysis of legal theory and the functional dimension of legal concepts: "the function of the legal concept is to make probable the pre-legal concept, which would be impossible or at least improbable without it".[77]

In this way, the possibility that the concepts are resignified according to their own experience accounts for their intrinsic mobility. Deleuze and Guattari argue that the concept "is defined by *the inseparability of a finite number of heterogeneous components traversed by a point of absolute survey at infinite speed*".[78] This entails that concepts are essentially mobile and incorporeal, since in their space-time coordinates they possess an intensity that manifests their nature being "essentially contestable because they are complex and involve a number of component features, the relative importance of which may be weighted differently".[79] In this way, the decisive aspect is found in Spinoza's *Ethics*, to the extent that he understands that concepts are the selection of affects that allow increasing the power of the bodies involved. For Spinoza, the "concept" is the result of an experience in which confused ideas of mixtures between bodies are randomly found, abrupt imperatives to avoid such a mixture or search for a different one.[80]

For this reason, the important thing about the "concept" is the manifestation of the growth of existence, it is a mode of existence that seeks to project at a relative speed of increasing growth vectors. They are ideas that seek to adapt sufficient power.[81] Therefore, legal concepts present a functionality that accounts, on the one hand, for their mobility to be

[76] This is a republican dimension of the concept of non-domination, dealt with in the works of Miguel Vatter and Gonzalo Bustamante. In this sense, the worker's freedom must be understood not only as the mitigation of an unequal relationship, but rather as "non-domination", understood precisely as the movement of affecting the labor relation. See VATTER (2017); BUSTAMANTE (2017); BUSTAMANTE (2018).

[77] ATRIA (2016), p. 362

[78] DELEUZE & GUATTARI (1993), pp. 27-28

[79] PATTON (2000), p. 14.

[80] SPINOZA (1987), p. 168 and ff.; DELEUZE (1996), p. 199.

[81] SPINOZA (2009), p. 135.

resignified, and, on the other hand, for the intensity shown by the connection between the experience and the possibility of growth of the power of a mode of existence.

Traditionally, the concept of labor protection responds to the mitigation of inequality between the worker and the employer[82], enabling protective actions that require being entitled to fundamental rights. In this way, that protection aims to make probable, through the figure of the subject of right,[83] the identity of an experience of power in the worker through a discourse of fundamental rights. However, under a Spinozist reading, this protection has been myopic with regard to neoliberal immanence and the power to affect the employment relationship.

Therefore, we are faced with the same question as Spinoza about the concept, but with regard to conceptualizing the power of the worker and his protection in law: How can we come to form a concept of protection that can exercise the power of the worker? How can legal protection be understood according to its function, mobility and intensity of power? Paradoxically, the answer can be found, in principle, in Sinzheimer, to the extent that the first labor law scholar stated regarding the real and not abstract protection of the worker:

> Labor law dispenses with the essence of man, and finds, precisely in the reality of man, the basis for its regulation [...] the fundamental right is not abstract freedom, but a determination of its real existence which guarantees freedom from certain material needs of man. It does not guarantee man the capacity to acquire all his rights. Labor law takes on the responsibility not only to achieve the abstract situation of man's being, but to achieve a determinate and concrete human existence.[84]

Although it is true that this eternal postulate of labor law has been subjected to regulation and improvement, to the extent that it seeks to guarantee a freedom for the worker far from a formal and abstract[85] conception, entailing the formation of constitutive principles that aim to benefit the worker in reality[86], above the abstract and legal dimension, its abstract dimension contained in the "*subject of right*" is no less true. Therefore, it is here where we twist the logic of the protection inherited from Sinzheimer, in order to make labor protection even more "real" and "concrete".

Superseding Sinzheimer and what a large part of the labor law scholarship has built atop the principle of protection,[87] lies in twisting the protective rationale of the labor law of the

[82] PLÁ (1998), p. 66; LASSANDRI (2012), p. 480.

[83] SUPIOT (1994), pp. 108-121. The French author presents the same humanist justifications for the vindication of the worker.

[84] SINZHEIMER (1984), pp. 112-114.

[85] GAMONAL (2014), p. 57; PLÁ (1998), p. 56; STOLLEIS (2010), p. 45.

[86] GAMONAL (2014); UGARTE (2007). On this idea rests the function of primarily guaranteeing that reality and immediate experience of the worker, provided that it benefits him economically or legally.

[87] The principle of protection is a broad concept with an array of principles connected for its operation. See the works by GAMONAL (2014); PLÁ (1998); LASSANDRI (2012); UGARTE (2007).

subject of right and of legal rights, toward a normative rationality of the movement that allows the creation of rights within the very immanence of the worker.

That is to say, labor protection should not only be the finding of improvement with respect to a power relation for the sake of mitigating a situation of inequality and lack of freedom[88], nor does it lie in moving toward the resignification of that labor relationship for the transformation of the economic system;[89] that is a false dichotomy. Labor protection, in its emergence, presupposes the protection of a worker's mode of existence, which entails immanent legal actions that allow the worker's power to be translated into legal power for a relation of non-domination and for establishing different legal behaviors.

In this way, the twist on Sinzheimer is to affirm a principle of labor protection that is immanent and not merely transcendent, that is, to think of protection as a legal *emergence* of the movement of the bodies constituted in the labor relation, and not as vicarious of the humanist metaphysics of the subject of right that leads to making impossible different forms of legal protection.

4.1 Labor Regulations: The Deterritorializing Movement of The New

Patton and Vatter have reflected on the relation between movement and normativity, through an active conception of rights. In this way, the rights of creation are active rights to the extent that they are meant to increase the power of those who submit to the law, that is, to increase the power of the worker.[90] Therefore, the first principle of labor protection must be justified on a normativity that requires criteria of deterritorialization of the same norm. The normative foundation of labor protection must provide not only norms to denounce abuses of power by the employer, but also a means to denounce norms that have become abuses of power in their immanence.

In this way, labor deterritorialization is a normative framework that allows us to describe and evaluate the movements or processes[91] for protecting the existence of the worker. Therefore, deterritorializing norms means that labor protection must be able to make connections and disjunctions in order to be mobile for its own pro-worker transformation. Concretely, it is a pragmatic normativity that in its legal operation must recognize the field of immanence for its own adoption. This means: (a) that it should be self-reflective in its application, and (b) that its adoption should allow for the creation of new behavioral regularities. Labor deterritorialization, in other words, must protect simultaneously protect the immanent exercise of the employer's power as a principle of criticism and legal limitations, and as a principle for the creation of legal forms for establishing new behaviors, it is a method for generating norms.

[88] PLÁ (1998), p. 56; ACKERMAN (2002), p. 321

[89] KLARE (1981), p. 462; KLARE (1982), p. 254

[90] BUSTAMANTE (2017), p. 22; VATTER (2017), p. 18.

[91] PATTON (2000), p. 9.

That labor regulations should be deterritorializing shows that the guiding principle to be protected:

> is the ability to critique and transform existing norms: that is, to create something new [...] One cannot have pre-existing norms or criteria for the new; otherwise it would not be new, but already foreseen.[92]

In other words, labor deterritorialization is essentially active and novel. To say that deterritorialization is an act of creation means precisely to establish a condition of possibility for what is different, it is to diversify the power of the worker not only in order to produce, blindly following the modern imperatives of productivity, but also to have the power to create law according to the modes of existence. The second characteristic is that the normativity of deterritorialization manifests in the creation of "*lines of flight*" (Deleuze) or "*resistance*" (Foucault) that allow freedom from a given norm, or the transformation of the norm.[93]

What "must" always remain normative is the ability to critique and transform existing norms, that is, to create something new, the act of creation is a process that occurs out of necessity. As Deleuze rightly said about *acts of creation*, the creator does nothing more than what he has an absolute need for,[94] and it is here that the creation of law by the worker is based on the need for protection.

Therefore, the new is presented as that normative automation to be established, that is, it is not possible to have pre-existing norms or criteria for the new; otherwise, it would not be new, but something already planned. The basis of labor protection for this new normativity consists of understanding that the worker is defined by what he is capable of doing or by what he is capable of becoming, according to the current dimensions of protection, that is, he is determined by the lines of flight or resistance that he can hold for the affirmation of his power.[95] In other words, the movement of *deterritorialization* would be the legal translation that allows enhancing the power to affect the employment relation: it is providing legal power to create immanent resistance to domination in the mode of existence.

This could be justly criticized as not being normativity, since from a "normative" understanding of law,[96] or even from Habermas's criteria for the normative justification of social systems the criterion of universality and equality cannot be dispensed with, emphasizing precisely its loss of normative efficacy.[97] However, Patton has lucidly replied that, for this very reason, it is deterritorialization what must be seen as a normative concept, even if that implies a new concept of what normativity is. From the point of view of labor law, we state that we can

[92] SMITH (2012), p. 347.

[93] PATTON (2000), p. 13.

[94] DELEUZE (2007), p. 281.

[95] JUN & SMITH (2011), p. 103.

[96] RAZ (2007) 85; SHAPIRO (2014), p. 251.

[97] HABERMAS (2008).

keep speaking of the protective normativity of labor law, under the condition that the normative is what is new in the deterritorialization movement.

Therefore, rights of creation are active rights that can by themselves create rights, and which have immanent material content. A deterritorialization of workplace norms, of codifying that eager production into something more than mere productivity, and the legal instatement of the constituting of new formulas to guide behaviors. Consequently, it has been shown that it is possible to think of new forms of protection that are not vicarious of the transcendence of the subject and its universality, and to provide forms of protection that give power to the movement of the very existence of the worker.

However, it is relevant to understand that rights of creation respond to a new logic of understanding labor law in its positivity, that is, returning to the positivist foundations of labor law, and deterritorializing its protective rationale to enhance labor law under such adverse current conditions.[98]

Therefore, it requires moving from a legalistic understanding of labor law toward an "institutional" dimension of the legal definition of legal concepts, which is based on David Hume's understanding of the institutional normativity of law:

> The institution, unlike the law, is not a limitation but rather a model of actions, a veritable enterprise, an invented system of positive means or a positive invention of indirect means [...] The social is profoundly creative, inventive and positive.[99]

Therefore, understanding the principle of protection through a labor deterritorialization that is defined as a *normative movement* immanent to the worker that is characterized by being (i) the condition of the new, and (ii) being a legal means of resistance, that is, it means increasing the power of the worker to the extent that he can affect and not only be affected, allows the materialization of a "*ius creature*". In this way, the *rights of creation* justify a creative legal behavior and, at the same time, suspend the anthropological dimension in order to affirm labor protection upon a subject that only produces. This new scaffolding requires *deterritorializing* labor law toward an "*institutional labor regime*".

V. INSTITUTIONAL LABOR REGIME

Proposing that contemporary labor law should advance toward institutional legal forms means choosing a principle of protection that is grows within the very life of the worker. This is due to what we have demonstrated with respect to labor law having been the object of a

[98] On the early relation between the future of labor law and neoliberalism, GAMONAL (1996); on the Latin American experience with neoliberalism for the construction of a domination that puts freedom at its center, SZTUWALRK (2019).

[99] DELEUZE (1953), p. 15.

"neoliberal deterritorialization",[100] deploying legal forms that represent the complex phenomenon of "*labor flexicurity*".[101] For this reason, it becomes imperative to "*protectively reterritorialize*" the worker in order to allow the transformation of his own working life into a life that resists and flees from the "ways of making people live"[102] that neoliberal freedom in the workplace proposes.[103]

Therefore, it is necessary to transform the rationality of legalistic protection into an institutional rationality of protection. In this way, as we have argued, the current idea entails that rights of creation point toward a protective normativity through constant labor deterritorialization that means intervening normatively within the organization of work, which, in the end, involves the construction of an "*immanent legal system*" within the workplace.

This idea, by emerging from the origins of labor law, certainly borders on the notion of corporatism presented by Otto von Gierke, since the aim of understanding the worker as a power is that "the protection of personhood rights must be emphasized all the more within 'associations of domination', as hierarchically organized enterprises typically are".[104] In this way, conceiving of companies as an institutional regime points to a notion of social right[105] that is present both in Sinzeheimer through a protection of the power of the worker, and in von Gierke through his notion of "corporate companies", in effect:

> Corporations are central to this new society (Gierke 1887, p. 142). They are, by their nature, most fully realised kind of association. To von Gierke there was little difference between trade union, cooperative and company as long, as they use the model of corporation. The latter is organic and sovereign. Such association is self-governing entity, that has its own interest and rights.[106]

Therefore, thinking about the corporate dimension by protecting the power of the worker, to be sure, implies a new understanding of the distinction between the law and the institution. It appeals to an institutional dimension of law in which the company is the legal form that seeks to enhance the power of its agents, not just the limitation of power through labor protections that is driven by the power of the employer. Indeed, the institutional dimension of labor law calls for the worker and the employer to have the same legal power.

From the present legal understanding we also refer to the legal philosophy of David Hume on the idea that the law is only a restriction on behavior and actions, and captures only a negative aspect of the company.[107] The contractualist error that we have inherited in labor law

---

[100] On the neoliberal impact on labor policies, see: KLARE (1982); GAMONAL (1996); GAMONAL (2019a); GAMONAL (2019b); UGARTE (2007); MUÑOZ (2013).

[101] GAMONAL (2013), p. 18.

[102] SZTUWALRK (2019), p. 45; ŽIŽEK (2006), p. 339.

[103] FOUCAULT (2018), p. 150.

[104] MONEREO PEREZ (2020), p. 691.

[105] VON GIERKE (1934), p. 195

[106] ZAPALA (2011), p. 8

[107] HUME (1987), p. 474.

scholarship lies in understanding that the law is the essence of each society, and particularly, that the law is the only way to regulate and protect the conflicting interests of the productive parties. Labor law has no other purpose than to guarantee certain fundamental rights protected in the public order of labor, and other rights originating in the individual employment contract or collective agreement.

What is strictly "positive" of the law is left outside of workplace rules, because inside the company and in the factory there is nothing that can be "posited" by the worker, there are no legal actions that allow the creation of ways of life different from merely productive modes of existence. In this way, Hume's theory of the promise shows us that the usefulness of the same institution is found in conventions and not only in contracts.[108] Convention is the immanent and binding field that creates the law, that creates norms, that creates new forms of production, that allows the creation of new modes of existence that do not reduce the worker to merely producing. As Hume rightly says, convention is the *system of means* that represents the institution. It is an indirect, oblique, invented system; In one word, it is cultural.[109]

In this way, understanding companies as institutions requires us to understand that their usefulness results from the fact that they constitute a positive and functional system, not in order to limit the existence of agents and their desires, but rather to promote and create new modes of existence and desires of the imagination. For Deleuze, every institution imposes on our body, even its involuntary structures, a series of models, and confers on our intelligence a knowledge, a possibility of forecasting in the form of a project.[110] What Hume and Deleuze tell us is that institutions are organized forms of a possibility for satisfaction. Therefore, the institutional nature of the company understands that there are positive means to enhance the protection of the worker.

The means of this institutional system seem to already exist in some way. We know that the traditional sources of labor law are the regular legal ones,[111] collective or trade union autonomy,[112] customary law,[113] precedents,[114] and company policies,[115] however, for our purposes with regard to the issue on labor immanence, there are only three sources of labor law that display the power to regulate modes of existence. On the part of the employer, there is the already problematic *ius variandi* that we have presented, but, similarly, there is *individual bargaining* which is ontologically subject to the power of the employer, and *collective bargaining*, and it is in this last phenomenon what we will examine.

[108] HUME (1987), p. 475.

[109] HUME (1987), p. 480.

[110] DELEUZE (2007), pp. 29-30.

[111] Labor codes have a normative essence for the arrangement of plans, strategies and legal objectives to be carried out. On the idea of plans and the emergence of normative practices, see Shapiro (2007) 245. On the specific idea of plans for establishing labor norms, consider the example of the 1987 Chilean Labor Code and with the so-called "labor plan" [*plan laboral*] emphasizing individual private autonomy. For a more succinct treatment, see GAMONAL (2014), pp. 122-124.

[112] BAYLOS (2012), pp. 23-4.

[113] GAMONAL (2014), p. 130.

[114] UGARTE (2007), P. 45.

[115] GAMONAL (2014), p. 134.

Collective bargaining has been considered as, and confirmed to be, the collective power of workers in which they exercise trade union autonomy.[116] It is a three-sided view (union, strike, bargaining) that, under certain conditions, effectively allows the interests of workers to be represented for the improvement of their working conditions.[117] The same national and international legislation has protected it as a constitutional (civil and political) right since it results from the freedom of association that allows the creation of normatively binding collective instruments.[118]

In this way, we could be criticized on the basis that unions that carry out collective bargaining, exercise a power on behalf of the worker who has the power to influence the organization of the company,[119] since there are rules created by collective bargaining which join the laws of the State and, in certain cases, displace them, which gives a decisive character to collective labor law.[120] However, this criticism would imply a misunderstanding of the concepts of *power* and *mode of existence* that are affected in the *immanent* relation, and the way in which the solution is not a legal one, but rather *institutional*. It is known that the function of collective contracts resulting from negotiations between workers and employers crystallize in three aspects: (a) wage redistribution,[121] (b) industrial democracy,[122] and (c) economic efficiency.[123]

Indeed, we return to the initial problem concerning the legal subject and his rights, in which only an "impotent power" is guaranteed in the employment relation, since he does not have the possibility of affecting the employment relation itself. That is to say, it only protects fundamental categories of improvement and well-being, but a labor deterritorialization is not achieved, that is, there is no condition of the new and it is not fixed on the immanent conditions of domination. It could be argued against this, with some reason, that industrial democracy enables decisions to be made within the company, from unilateral to bilateral,[124] and, moreover, that they have turned into work councils and co-determination,[125] and furthermore, that it has made it possible to mitigate the "fear or concern" of the workers, facilitating their safer expression, without fear of reprisals,[126] and it is here that the novel dimension of labor deterritorialization becomes evident.

The "*ius creatur*" results from a legal regime that differs radically from that which characterizes the power of trade unions, given that the rights it creates are binding within the framework of the employment relation and make it possible, precisely, to affect it, insofar as it

[116] KAHN-FREUND (1987), p. 57.

[117] GAMONAL (2020), p. 338.

[118] GAMONAL (2020), p. 340.

[119] ROJAS MIÑO (2016), p. 100.

[120] GAMONAL (2020), p. 384.

[121] DAVIDOV (2016).

[122] WINDMULLER (1987) quoted by GAMONAL (2020), p. 343.

[123] STIGLITZ (2012) quoted by GAMONAL (2020), p. 345.

[124] WINDMULLER (1987) quoted by GAMONAL (2020)

[125] POOLE (1993) quoted by GAMONAL (2020), p. 347.

[126] GAMONAL (2020), p. 346.

transforms and changes it. Conceiving of the "*ius creatur*" means outlining an active power that the worker has to deterritorialize the company in its institutional dimension.

Deterritorialization results from not being subjugated in immanence and from creating the new, which presupposes that those rights are not the result of negotiations that are agreed to by the employer, but rather are the result of an automated exercise of rights, which have the power to be a resistance to the power of the *ius variandi*. The rights of creation have an institutional and non-legal legal nature, this means that they have the force of law with regard to their enforceability, but they emerge from the mode of existence of the worker, it is precisely to give the worker the power to give rise to a normativity that allows connecting him to the movement of the new, and the protection of the very life of the worker. Thus, the present approach is not an "overcoming" of subordination as such; it is to think of an immanent labor protection that demands, in the face of the neoliberal crisis, a new normative source: that the worker have the right to create rights according to the way in which he exists and is located in the company.

VI. CONCLUSIONS

The objective is to rethink the company and the factory with a view to forms of organization that can be analogized to "legal regimes" in themselves, because the concatenation of these diverse positive means would allow equating the legal tools of the worker and those of the employer, in order to form the same power.

Transforming the company into an "immanent legal system" presupposes that the power of the worker has the same nature as the power of the employer. What does this mean? That both have the possibility of affecting the labor relation, that both have the capacity to create rights within an institutional framework that can *counterbalance* subordination. It is to argue that the power of the worker and the employer must be on the same organizational rail. Thus, our normative proposal is that the power of the worker no longer be a supplement or an attribute that comes to improve or oppose the power of the employer, but that they must be naturally equal, have the same power, becoming a system of positive means for their own organization. To say it once more, our normative proposal of legal power is not an overcoming of subordination, but a neutralization through a democratic definition of the labor institution, which puts the worker and the employer on an equal treatment[127] and power in which both create rights to organize a productive model.

Therefore, as final comments, we think –without presenting a systematization and a fleshed out foundation, as it is not the purpose of this article– that specific examples of rights of creation are: (i) that the general rule for the covenant on individual labor contracts be an agreement of the powers of both parties, (ii) that the organization of work with its norms be a covenant of labor deterritorialization, (iii) that legal processes systematically allow transforming and criticizing the norms of conduct, whether their source is the State or a collective agreement, and that they be not just the result of a negotiation, but rather of the exercise of the same right, and (iv) that disciplinary measures always be bilateral, disallowing its unilateral exercise by the

[127] MENKE (2006), p. 44

employer, that is, that the exercise of disciplinary power be a consequence of a content put in place by both powers.

Under these considerations, "*beyond*" having offered new legal concepts for labor law and ensuring the legal protection of the worker in a novel way, we care precisely about the "*here*".

The immanence of having been able to initiate a new way of thinking about labor law with the creative dimension of the worker to form his own life, and herein is the imperceptible dimension on which our work is justified. The vital importance of creation, and why it becomes essential to protect the worker in his pragmatic existence, is that he should have the art of crafting concepts for his life.[128] Because precisely as Spinoza and later Foucault claimed, forming concepts is a way of living and not of killing life; it is a way of living in relative mobility and not an attempt to immobilize life, and that is the basis to be protected, it is creating a concept of life.[129]

[128] DELEUZE & GUATTARI (1993), p. 53.

[129] FOUCAULT (2015), p. 395.

BIBLIOGRAPHY CITED

ATRIA, Fernando (2016). *La forma del derecho*. Madrid: Marcial Pons.

BAYLOS, A. (2012). *¿Para qué sirve un sindicato?* Madrid: Catarata.

BROCKMAN, M. (2011). *Knowledge, Skills and Competence in the European Labour Market: What's in a Vocational Qualification?* Londres: Routledge.

BROWN, W. (2015). *Undoing the Demos: Neoliberalism's Stealth Revolution*. Cambridge, Londres: Zone Books.

BONILLA, C. y FLORES, L. (2020). "El derecho humano al trabajo y su dimensión protectora en la norma laboral mexicana", *Revista del Instituto de Ciencias Jurídicas de Puebla*, México, Vol.14, N° 45, enero/junio 2020, pp. 107-126

BUSTAMANTE, G. (2017). "Republicanismo y democracia agonal: una presentación genealógica", *Pléyade*, N° 20, julio-diciembre (2017) , pp. 17-31

BUSTAMANTE, G. (2018). Skinner's Methodology: A Weapon against Liberalism. *Res Publica. Revista De Historia De Las Ideas Políticas*, *21*(1), pp. 109-122.

CAAMAÑO, E. (2005). "Transformations in the labour market, the crisis of the traditional employer-employee relation and the development of the new forms of jobs", *Revista de Derecho* (Valdivia), Vol. 18, pp. 25-53

CHIGNOLA, S. (2018). *Más allá de Foucault.* Buenos Aires: Cactus.

COLLINS H. (2010). *Employment Law. Clarendon Law Series*. Oxford: Oxford University Press.

CURRAN, E. (2011). Hobbes's Theory of Rights: A New Application. *"Theorising Rights in the 21st Century: Neo-Hobbesian Possibilities.," March 2011*, 25–48.

DAVIDOV, G. (2016). *A Purposive Approach to Labour Law*. New York: Oxford University Press.

DAVIES, M. (2020) Distributed Cognition, Distributed Being, and the Foundations of Law, in DE LEEUW, M. & VAN WICHELEN, S. (eds.). *Personhood in the Age of Biolegality, Brave New Law* (Palgrave Macmillan), pp. 205-225

DE LAGASNERIE, G. (2015). *La Última Lección De Michel Foucault*. Buenos Aires: Fondo De Cultura Económica.

CURLEY, E. (1994). *A Spinoza reade: The ethics and other works*, Princeton University Press.

DELEUZE, G. (1953). *Empirismo y subjetividad*. Barcelona: Gedisa.

DELEUZE, G. (1996). *Crítica y clínica*. Barcelona: Anagrama.

DELEUZE, G. (2007). *Dos regímenes de locos; Textos y entrevistas* (1975-1995). Valencia: Pre-Textos.

DELEUZE, G. (2008). *Course: En medio de Spinoza*. Buenos Aires: Cactus.

DELEUZE, G. & GUATTARI, F. (1993). *¿Qué es la filosofía*? Barcelona: Anagrama.

DELEUZE, G. & GUATTARI, F. (2004). *Mil mesetas: Capitalismo y esquizofrenia* (II) Valencia: Pre-Textos.

DRNAS DE CLÉMENT Z. (2015), "La complejidad del principio pro homine", *Doctrina*, 25 de marzo, 2015, JA 2015-I, fascículo 12, [Consulta: 22 de abril, 2018. Disponible en http://www.corteidh.or.cr/tablas/r33496.pdf], p. 101

FÈVRE, R. (2015). "Du libéralisme historique à la crise sociale du XX e siècle: La lecture de Wilhelm Röpke", *Revue économique*, 66 (5), Retrieved on 03/29/2021 from http://www.jstor.org/stable/43587518, pp. 901-931.

FOUCAULT, M. (2006). *Seguridad, territorio, población, Course Collège de France* (1978). Buenos Aires: Fondo de Cultura Económica.

FOUCAULT, M. (2014). *Obrar mal, decir la verdad: la función de la confesión en la justicia*. Buenos Aires: Ed. Siglo XXI.

FOUCAULT, M. (2015). *La ética del pensamiento: para una crítica de lo que somos*. Madrid: Biblioteca Nueva.

FOUCAULT, M. (2018). *Course Collège de France: El Nacimiento de la Biopolítica* (1978-1979). Buenos Aires: Fondo de Cultura Económica.

GAMONAL, S. (1996). "La Flexibilidad Laboral", *Serie Cuadernos Jurídicos*, Nº 5, Santiago de Chile: Facultad de Derecho UAI, pp. 81-86

GAMONAL, S. (2014). *Fundamentos de Derecho Laboral*. Santiago de Chile: Legal Publishing.

GAMONAL, S. (2017). "El despido libre en el contrato de trabajo estadounidense", *Revista Chilena de Derecho Privado*, Nº 28, pp. 53-89

GAMONAL, S. (2018). "De la eficacia horizontal a la diagonal de derechos fundamentales en el contrato de trabajo: una perspectiva latinoamericana", *Latin American Legal Studies*, Volumen 3, pp. 1-28.

GAMONAL, S. (2019a). "El futuro del derecho del trabajo: una mirada desde el sur", *Latin American Legal Studies*, Volumen 5, pp. 111-132-

GAMONAL, S. (2019b). "Narrativa laboral y principios del derecho del trabajo chileno", *Revista de la Facultad de Derecho de México* Tomo LXIX, Número 273, Enero-Abril 2019 http://dx.doi.org/10.22201/fder.24488933e.2019.273-1.68631, pp. 66-88

GAMONAL, S. (2020). *Derecho Colectivo del trabajo*: *Tercera Edición actualizada con ley 20.940*. Santiago de Chile: Ediciones DER.

GAMONAL, S. & GUIDI, C., (2015). *Manual del contrato de trabajo*. Santiago de Chile: Legal Publishing.

GARDES, D. (2013). *Essai et enjeux d'une définition juridique du travail.* Nouvelle édition [en ligne]. Titre 2. La protection juridique de la personne au travail. Toulusse: Presses de l'Université Toulouse.

GARRETT, D. (1995). "Introduction", in D. GARRETT (ed.), *The Cambridge Companion to Spinoza*. Cambridge: Cambridge University Press, pp. 1-12

GAUTHIER, D. P. (1969). *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes* (Oxford University Press) https://doi.org/10.2307/2218403

GIANFREDA, G. & VALLANTI, G. (2020) "Labor Courts and Firing Costs: The Labor- Market Effects of Trial Delays", *Industrial Relations*, Vol. 59, No. 1. DOI: 10.1111/irel.12250, pp. 40-81.

HABERMAS, J. (2008) *Facticidad y Validez*. Madrid: Trotta.

HAMPTON, J. (1986). *Hobbes and The Social Contract Tradition*. Cambridge: Cambridge University Press.

HOBBES, T. (1660). "Leviathan; or, The matter, form, and power of a commonwealth ecclesiastical and civil." In *Morley's universal library. [21]*.

HUME, D. (1987). *Essays moral political and literary.* Indianápolis: Liberty Classics Indianapolis Press.

ISRAEL, J.I. (2001). *Radical Enlightenment: Philosophy and the Making of Modernity* Oxford: Oxford University Press.

JUN, N., & SMITH, D. (Eds.). (2011). *Deleuze and Ethics*. Edimburgo: Edinburgh University Press), Retrieved September 15, 2020, from http://www.jstor.org/stable/10.3366/j.ctt1r23c3.

KAHN-FREUND, O. (1987). *Trabajo y derecho.* Madrid: Ministerio de Trabajo y Seguridad Social.

KARSTEN, S. (1985). "Eucken's 'Social Market Economy' and Its Test in Post-War West Germany: The Economist as Social Philosopher Developed Ideas That Parallelled Progressive Thought in America". *The American Journal of Economics and Sociology*, 44 (2) [Retrieved on 03/29/21, from http://www.jstor.org/stable/3486836], pp. 169-183.

KELSEN, H. (1967). *Pure Theory of Law*. California: University of California Press, Londres: Cambridge University Press. https://doi.org/10.1525/9780520312296

KLARE, K. (1981) "Labor Law as Ideology: Toward a New Historiography of Collective Bargaining Law", *Industrial Relations Law Journal*, pp. 450-481

KLARE, K. (1982). "The Public/Private Distinction in Labor Law", *University of Pennsylvania Law Review*, 130(6), DOI:10.2307/3311975, pp. 1358-1422.

LASSANDARI, A. (2012). "The forms of subsidiarity in labour law". [Le forme di sussidiarietà e l'ordinamento del lavoro] *Lavoro e Diritto*, 26(3-4), doi:10.1441/37998, pp. 479-496

MANN, M. (2011). "The sources of social power: Volume 2: The rise of classes and nation-states", 1760-1914, en *The Sources of Social Power: Volume 2: The Rise of Classes and Nation-States, 1760-1914*. https://doi.org/10.1017/CBO9781139381314

MENKE, C. (2006). *Reflections of Equality* (T. by H. R. and A. Denejkine (ed.)). California: Stanford University Press.

MONEREO PÉREZ, J. L. (2020). "El derecho social y los sujetos colectivos: la construcción jurídica fundacional de Otto Von Gierke", *Lex Social: Revista de Derechos Sociales*, *10*(2), 682–735. https://doi.org/10.46661/lexsocial.5080

MUÑOZ LEÓN, F. (2013). "Ciudadanía Laboral: Crítica y Defensa de un concepto jurídico-político", *Revista de derecho (Coquimbo)*, *20*(2), pp. 373-404. https://dx.doi.org/10.4067/S0718-97532013000200014

PATTON, P. (2000). *Deleuze and the political* (Routledge Series Press)

PATTON, P. (2012). "Deleuzian Concepts: Philosophy, Colonization, Politics", *Symploke*, *20*(1-2), 420.

PATTON, P. (2015). "Government, rights and legitimacy: Foucault and liberal political normativity", *European Journal of Political Theory* 0(0) 1–17. DOI: 10.1177/1474885115582077 ept.sagepub.com

PLÁ, A. (1998). *Los principios del Derecho del Trabajo*. Buenos Aires: De Palma.

RABET, D. (2020). "The Political Economy of Neurolaw: Can Neurolaw Destabilize the Neoliberal Discourse About Human Behavior?", en DE LEEUW, M. y VAN WICHELEN, S. (edit.). *Personhood in the Age of Biolegality, Brave New Law*, (Palgrave Macmillan), pp. 39-55

ROSADO, C. (2017). "Dignity Takings and Wage Theft", *92 Chi.-Kent L. Rev. 1203*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2403498, pp. 1203-1223

ROSADO, C. (2018). *The limits of human rights for labour rights: a retrospective at the case of Chile* (International Labour Organization)

SANSEVERINO, R. L. (1980). *Elementi di Diritto Sindacale e del Lavoro* (4ª edición) Padova: CEDAM.

SINZHEIMER, H. (1984). "La Crisis del Derecho del Trabajo", en *Crisis Económica y Derecho del Trabajo* (publicado originalmente en 1933) (Instituto de Estudios Laborales y de la Seguridad Social), pp. 87.

SHAPIRO, S. J. (2014). *Legalidad*. Madrid: Marcial Pons.

SHARP, H. (2011). *Spinoza and the Politics of Renaturalization*. Chicago: The University of Chicago Press.

SKEAFF, C. (2018). *Becoming Political: Spinoza's Vital Republicanism and the Democratic Power of Judgment*. Chicago: University of Chicago Press.

SMITH, D. (2012). *Essays on Deleuze*. Edimburgo: Edinburgh University Press. Retrieved September 15, 2020, from http://www.jstor.org/stable/10.3366/j.ctt3fgqq7

SPINOZA, B. (1987). *Ética demostrada según el orden geométrico*. Madrid: Alianza.

------- (2009). Theologico-Political Treatise (Barnes & Noble Library)

STOLLEIS, M. (2014). "History of Social Law in Germany" (trans. By Thomas Dunlap), DOI 10.1007/978-3-642-38454-7

STONE, K. (2015). "Employment and Labor Regulation", *UCLA School of Law*, Los Angeles, CA, USA, pp. 571-576

SUPIOT, A. (1996). *Crítica del derecho del trabajo* (Madrid, España: Ministerio del Trabajo y Asuntos Sociales Subdirección General de Publicaciones)

SUPIOT, A. (2007). *Homo juridicus: ensayo sobre la función antropológica del derecho*. México: Siglo XXI Editores.

DE SUTTER, L. y MCGEE, K. (Edits.) (2012). *Deleuze and Law: Deleuze connections* (Ian Buchanan). Edimburgo: Edinburgh University Press.

SZTULWARK, D. (2019). *La ofensiva sensible: Neoliberalismo, populismo y el reverso de lo político*. Buenos Aires: Caja Negra editores.

UGARTE CATALDO, J.L. (2007). "La tutela de derechos fundamentales y el derecho del trabajo: de erizo a zorro", *Revista de Derecho*, p. 49-67.

VATTER, M. (2014). *The republic of the living: Biopolitics and the Critique of Civil Society* Nueva York: Fordham University Press.

VATTER, M. (2017). "Poder constituyente, autoridad de la constitución y nuevos inicios", *Pléyade*, N° 20, julio/diciembre 2017, pp. 137-161.

VATTER, M. (2018). "Neoliberalism and republicanism: economic rule of law and law as concrete order (*nomos*)", en D. Cahill M. Cooper & M. Konings (edit), *The Sage Handbook of Neoliberalism* (Sage Publications), pp. 370-383.

VINCIGUERRA, L. (2020). *La semiótica de Spinoza.* Argentina: Cactus.

VON GIERKE, O. (1934). *Natural Law and the Theory of Society: Vol. I.* Cambridge at the University Press.

ZACHARY, H. (2018). "La fenomenología de la percepción en Spinoza", *Revista de Filosofía*, Volumen 74, pp. 91-108.

ZAPALA, J. M. (2011). "Otto von Gierke and his early corporatism". Disponible en: https://www.researchgate.net/publication/328829526_Otto_von_Gierke_and_his_early_corporatism

ŽIŽEK, S. (2006). *The parallax view*. Cambridge: MIT Press.