



Erste europäische Internetzeitschrift für Rechtsgeschichte

<https://www.forhisiur.de>

Herausgegeben von:

Prof. Dr. Stephan Dusil M.A., LMS (Tübingen)

Prof. Dr. Elisabetta Fiocchi Malaspina (Zürich)

Prof. Dr. Martin Schermaier (Bonn)

Prof. Dr. Mathias Schmoeckel (Bonn)

Prof. Dr. Andreas Thier M.A. (Zürich)

29. 04. 2021

© 2021 fhi

Erstveröffentlichung

Zitiervorschlag

<https://forhisiur.net/2021-04-lamera-giesta-cabral/>

ISSN 1860-5605

Rafael Lamera Giesta Cabral^{*}

The 1934 Brazilian Constitution and the regulation experience of labor in Brazil (1930-1934)

Abstract

The Brazilian Revolution of 1930 came with a political action program that can be understood by three related dimensions. By rethinking the structures of (i) federalism, which was deemed inappropriate for not unifying all the forces of the nation, it sought to reorganize the bases of representative democracy with the inclusion of (ii) the model of class (or professional) representation. This reorganization allowed workers and employers to take a seat in the central legislative power. In an ongoing act, it practiced (iii) labor regulation towards its social change project, to strengthen the nation's productive ties. The connection between federalism, class representation, and labor regulation resulted from a tension that dragged on for years in Brazil's political and constitutional experience. Its inclusion in the political agenda of the 1930s represents yet another move to question the political and legal bases of the period, which would necessarily anticipate a solution to the country's future problems through the process of reconstitutionalization and its conflicts over constitutional control. In this article, the focus will be on evaluating the labor regulation movement in a two-act course. In the first, it seeks to map out the social changes implemented since the 1930 Revolution. In the second, it seeks to investigate how the provisional government articulated the elaboration of a constitutional draft including labor regulation with a different foundation from previous experiences, incorporating and inaugurating the movement of constitutionalization of social rights and the dialogues with the labor corporatism in the 1934 Constitution. The concluding remarks indicate that this process involved two relevant changes: first, it was that the (re)organizing worker's representation, the government built elements to establish an idea of labor citizenship, more centered on urban workers, to the detriment of rural workers; second, it was to consolidate the role of the State in the process of regulating labor conflicts, within a corporatist format (which lasted until 1999).

1. Introduction

In the handbooks of Brazilian constitutional law, it is not uncommon to find references to the 1934 Constitution as the first in its time to innovate by introducing the phenomenon of social constitutionalism. This model's essential characteristic is the so-called constitutionalization of social rights, exemplified in the regulation of issues such as welfare and social security, labor rights, education, and health. On the other hand, few investigations in the history of law assess how the political context of the time fostered this inclusion of social rights in the constitutional text and what were the conditions for their featuring in that Constitution.

By ignoring this context, the handbooks end up perceiving a hybrid performative level in the 1934 Constitution. This level goes with the narrative that the social achievements of that time were the result of a social project by the provisional government of Getúlio Vargas, which was mainly responsible for managing the interests of an amorphous civil society. The focus on the evolutionary State that began in the post-1930 period ended up substantiating some myths that, surprisingly, have

^{*} Professor of Legal History at Federal University of Semi-arid Region - UFERSA, Brazil. He likes to thank Laila Maia Galvão and Fernando Afonso Marques de Melo for suggestions and discussions in the first Portuguese version of this paper.

survived since then.¹ Maintaining these myths imposes unnecessary risks because they do not allow us to understand the causes and effects that produced the inclusion of regulation in the political and constitutional agenda between 1930 and 1934. Also, they suppress the struggles for labor rights that marked the first republican phase.

Furthermore, there is a more problematic perspective: crediting this Constitution with an effect it did not have. It may sound false to consider the 1934 Constitution as an instrument with enough normative power to give course to the innovations it enunciated for social rights. Therefore, building new interpretations on that context becomes fundamental: in a country where the main decisions are taken by a select group and then established by law/decreed, what would be the function of a constitution, in the middle of the 1930s, for the general understanding of rights? This question is crucial because it sheds light on a profound problem that the work in the field of constitutional history has challenged: a history of this magnitude is not limited only to the legal text, nor to the political area carried out within the framework of the constituent discussions. The general understanding of constitutionalized rights is the outcome of long-standing institutional struggles and developments. With social rights, which had been observed since the 1926 constitutional reform and later inserted in all other Brazilian constitutional experiences, this constitutionalizing development is very representative.

From this viewpoint, the emphasis that underlies this analysis is on labor regulation. The 1934 Constitution was the first in Brazilian history to incorporate workers' rights into its text. However, this statement needs some caution. Labor regulation was not established broadly, for all classes of workers. For example, rural workers were the object of a "special inclusion",² exemplifying the limits of the changes in course. The main labor innovations in the 1934 Constitution were not built within the Constituent Assembly since decrees of the Executive Branch had already incorporated many. These decrees established working hours, assistance and retirement funds, regulation of women's and children's work,³ expensive laws, work permits, and the implementation of a restrictive model of union.

One cannot ignore that a historical moment allows numerous interpretations. What is proposed in this study moves in a broad but well-located sense: if the Constitution marks this process of assuring warranties, how did the pre-constitution context foster these innovations? This question has, in a way, allowed a research reconfiguration. The revolutionary movement of 1930 sought to dictate and guide State and society towards social change through discourse and the introduction of modern mechanisms to bureaucratize the regime. Viewed in this way, it became necessary to

¹ One of these myths was the "Mito da Outorga", which argued that Getúlio Vargas administration granted workers rights and ends up denying the worker's own claim. For further details, see jurists SIQUEIRA, Gustavo Silveira *et. all.* (A lei celerada e os movimentos sociais: uma desconstrução do mito da outorga. *Revista da Academia Brasileira de Direito Constitucional*, vol. 11, 2019).

² The reference to this «special inclusion» can be found in several moments of the constituent assembly of 1933-1934. The most symbolic question arises from the constitutional instrument in which rural workers would have their rights regulated by an ordinary assembly, which did not happen.

³ See more at MARQUES, Teresa Cristina de Novaes. (A regulação do trabalho feminino em um sistema político masculino, Brasil: 1932-1943. *Estudos Históricos*, Rio de Janeiro, vol. 29, n. 59, 2016).

investigate how the legitimization of the 1930 Revolution created a set of experiences that projected a range of future expectations that could overcome the past.

The first Republican experience in Brazil lasted 40 years (1889-1930). The replacement of this experience began with the Revolution of October 1930, when the defeated candidate in the national elections of the same year, Getúlio Dornelles Vargas, was led to the presidency of the Provisional Government, after the fall of President Washington Luís by the military. 6

Getúlio Vargas was the main political leader in this process of reorganizing the national state. Vargas' centrality in the history of Brazil is still the subject of disputes. For those who defend his actions, who bequeathed to the country a modernizing reform in the bureaucratic functions of the State, with control over economic and social development, Vargas was a statesman. On the other hand, Vargas was responsible for the implementation of the Estado Novo dictatorship (1937-1945) and installed authoritarian actions in Brazil that affected the functioning of the institutions, culminating in the violation of fundamental rights. Despite these disputes, the period was responsible for reorganizing the very structure of civil society and the State, as a long-term model in the Brazilian constitutional experience. 7

The first years of the 1930s set a tone for social change that mirrored both politics and economics, drawing complex conflicts of interest from the resignification of the position of various political and social actors who entered the arena of social dispute. Among them were lieutenants, oligarchs, urban workers, unionists, entrepreneurs, and industrialists. 8

In the name of constitutional *status quo*, as the Constitution was the source of power that guaranteed the oligarchic pact during the First Republic, the struggle for the legal text and the dispute for control of the Constituent Assembly (1933-34) formed a space of significant experience for political and constitutional history. Still, it did not necessarily portray what is currently thought to be the function of a constitution. 9

Understanding this context is fundamental for two reasons. First, due to the effect that the constitutions assumed in the West, especially after World War II, a period which invoked a centrality to the national political and legal systems (an effect that, at first, was absent in the 1930s in Brazil and can relativize the meaning this Constitution had in 1934). Second, because of the opportunity, when revisiting the political and constitutional history, to unveil how the struggles for rights were established relatively independently of their inclusion in legal texts. Thus, this research proposal bases on the need to verify how the institutional articulation of the provisional government sought to control the political process by drafting a constitutional plan regarding labor rights configuration. 10

⁴ The timeframe goes from the Revolution of 1930 until the installation of the National Constituent Assembly in 1933. The research sought to ascertain the political context in which social rights and the workers' union organizations were inserted and highlight how this institutional design promoted changes in the constitutional idealism forged in the post-1930 period.

⁴ On the discussions of the time about the preliminary draft and the constituent assembly debates, refer to: T. CAVALCANTI (*A margem do anteprojeto*, Rio de Janeiro, 1933); ANAIS (*Anais da Assembleia Nacional Constituinte*, Rio de Janeiro, 1935); A. DE ALCANTARA MACHADO (*A ação da bancada paulista «Por São Paulo unido na Assembleia Constituinte»*, São Paulo, 1935).

The research will follow two paths that mark the post-Revolution period from 1930 to the 1934 Constitution to achieve this goal. First, i) a brief mapping of the social changes implemented since the Revolution. Second, ii) the government articulation concerning the elaboration of a constitutional draft including the labor law regulation on a different basis than the experiences before the 1930 movement: the corporate project incorporation in the relationship management between capital and labor. **11**

2. The 1930 Revolution's promises unveiled in a double process: from the legitimization to the institutionalization of social change

At the onset of the October 1930 Revolution, the November 11th Decree n. 19.398 installed the provisional government. A revolutionary military junta gave Getúlio Dornelles Vargas its head office. **12**

The Brazilian political, economic, and social background at the beginning of the 1930s was highly fragmented, due partly to social changes in constant transformation. Regarding the political landscape, the government was the result of a *coup d'état*, as President Washington Luís was deposed from power before the inauguration of elected president Júlio Prestes, from São Paulo. In the economic field, the country felt the effects of the crisis of world liberalism. Also, internally, there was a transition from the agrarian-exporting market to industrialization. In the social field, new issues presented themselves, requesting solutions, among which were the conflict between capital and labor, which demanded regulation in their labor and union relations. **13**

The centralization of power promoted by the provisional government prolonged a tense discussion on new organizational models for the country. This tension was due to the practice of federalism. During the First Republic (1889-1930), it became the object of an unprecedented reorientation-conduction; in practice, a transformation that, at the same time, followed an authoritarian and conservative path. **14**

This particular situation of centralization of power also brought into play another vital benefit for revolutionaries. At the same time that the revolution instituted its discretionary powers, it also «assumed a commitment to reviewing the legislation in force with the reintegration of the nation into a legal regime, through the political process of a constituent», as explained by Angela de Castro Gomes.⁵ **15**

The institutional support provided to maintain the regime itself conditioned the establishment of the provisional government. As already pointed out, the historical moment demonstrated a political process in constant fragmentation, which materialized in the general incapacity of the dominant groups or even the elites to take control of the State with a coherent and robust political project for the nation. Thus, to maintain the government, it would be necessary to re-establish **16**

⁵ Originally: 'assumia um compromisso com a revisão da legislação vigorante com a reintegração da nação num regime legal, através do processo político de uma constituinte'. A. M. DE CASTRO GOMES, *Confronto e compromisso no processo de Constitucionalização (1930-1935)*. *O Brasil Republicano: sociedade e política (1930-1964)*, edited by A. M. de Castro, Rio de Janeiro, Bertrand Brasil, 1996.

legitimacy, including sustaining the revolutionary purpose, possibly at risk, with the commitment of political openness to be consolidated in the reconstitution. At that time, the bases supporting the government were the Army,⁶ especially those linked to *tenentismo* (October 3rd Club)⁷ and the regional oligarchies' dissidents. They, during the period of the First Republic, were excluded from the central power. According to Weffort,

None of the participating groups can offer the State the basis for its legitimacy. Not the middle classes, because they do not have autonomy from traditional interests in general. Not the interests of coffee, because their strength and political representativeness have been diminished by the revolution, by the second defeat in 1932 and by the economic depression that has lasted for almost a decade. Not the other agricultural sectors, because they are less developed and less linked to export activities that are still basic to the balance of the economy as a whole.⁸

17

Faced with this imbroglio, the idea of a «power vacuum» began to be politically exploited by dissidents and opponents of Vargas, thus accelerating the idea of an immediate reconstitutionalization in the country.

18

According to the thesis of Francisco Weffort⁹ and the analyses of Boris Fausto¹⁰, the alternative found by the revolutionaries was the establishment of a compromise, which would be able to bring about the numerous confrontations, co-optations, and negotiations necessary to impose institutional changes. On the other hand, the conception of a compromising State, in some respects, was precariously forged, precisely because it did not allow for greater political stability in the post-constitution outcome of 1934.

19

Another relevant possibility would be establishing a specific compromise state (and not a compromising State like the one enshrined in Weffort's thesis) since it is better suited for the period under the effect of troubled hybridism. Thus, compromise solutions through consultation were necessary because

20

⁶ Perhaps one good example of this group was Góes Monteiro and his line of moderate intervention.

⁷ On *tenentismo*, refer to: V. SANTA ROSA (*O sentido do tenentismo*, São Paulo, 1976); H. SILVA (*1931 – Os tenentes no poder*, Rio de Janeiro, 1972).

⁸ Originally 'Nenhum dos grupos participantes pode oferecer ao Estado as bases de sua legitimidade: as classes médias porque não têm autonomia frente aos interesses tradicionais em geral, os interesses do café porque diminuídos em sua força e representatividade política por efeito da revolução, da segunda derrotada em 1932 e da depressão econômica que se prolonga por quase um decênio, os demais setores agrários porque menos desenvolvidos e menos vinculados com as atividades de exportação que ainda são básicas para o equilíbrio do conjunto da economia'. F. WEFFORT, *O populismo na política brasileira. Brasil: Tempos Modernos*, Rio de Janeiro, Paz e Terra, 1968, p. 72. Impende salientar que a ausência de um grupo forte que pudesse oferecer ao Estado as bases de legitimidade para uma condução hegemônica do poder será inexistente (ou pouco efetiva) durante todo o primeiro período do Governo Vargas. Na realidade, quando se observam os debates parlamentares na Assembleia Nacional Constituinte em 1933-34, essa ausência se torna evidente, principalmente, quando o resultado da Constituição tem um formato híbrido pela contemplação de demandas que, embora não fossem imediatamente contraditórias entre si, puderam fragilizar a aplicabilidade de seus efeitos programáticos e modernizantes a médio e longo prazo.

⁹ Ibidem.

¹⁰ B. FAUSTO, *A revolução de 1930: historiografia e história*, São Paulo, Brasiliense, 1970.

- The Revolution had created a break, but due to its autocratic character (the suspension of legal norms brought about by the dawn of the revolutionary government) found resistance (such as the uprising in São Paulo) or difficulty in creating political stabilization mediated by the legitimate legal instruments.¹¹ 21
- The historic moment was a hybrid system between consultation and combat. The military sector was part of the revolutionary forces from the provisional government's beginning to its closure, with the enactment of the 1934 Constitution. Nevertheless, there was no free space for the government to impose state forms and structures.¹² 22
- The realization could only satisfactorily happen on a condition of constant trading. Albeit, an attempt to find harmony between the main political forces in action and their interests represented this political period's instability, considering the heterogeneous forces participating in the movement. At times, the effects of harmonization were considered unsatisfactory by most government members (for example, convening the National Constituent Assembly in 1932). Getúlio Vargas often acted directly to alleviate internal crises, sometimes with requests for «voluntary resignations» from his ministers, sometimes with internal pressures from members of the government, contrary to the course of negotiation established.¹³ 23
- The measure of the revolutionary government's commitment to representative democracy is another point to consider, especially because workers – and the majority of the people – were on the fringes of this commitment. The compromising solutions, indirectly, also promoted a political openness and, consequently, numerous problems arose and awakened the stumbling steps towards the modernization that was beginning in the country. Vera Cepêda states that 24
- This imbroglio was accompanied by the aggravating tensions inherent to the process of economic and political modernization and by the emergence of a framework of upheaval and conflict never witnessed in national history. It was not only the oligarchies that were moving to be included in the power pact or its reversal to its previous control; it was a variation of actors and fractions that emerged in the bulge of the ongoing modernization, all disputing space, and representation. New interests linked to the capital - external market sector (agrarian-exporter) versus internal market sector (industrial and diversified); disputes among the various segments of commercial and industrial capital; agrarian-exporter latifundium versus minifundium focused on supplying the expanding 25

11 Originally: 'A Revolução havia produzido uma brecha, mas devido ao seu caráter autocrático (a suspensão das normas legais promovida na aurora do governo revolucionário) encontrava ou resistência (como a revolta de São Paulo) ou a dificuldade de estabilização política mediada pelos instrumentos legais legítimos' V. ALVES CEPÊDA, *Contexto político e a crítica à democracia liberal: a proposta de representação classista na Constituinte de 1934. Os juristas na formação do Estado-nação brasileiro*, editado por C. G. MOTA, N. SCHIMITT CACCIA SALINAS, São Paulo, Saraiva, 2010, p. 199.

12 This does not mean that the government did not try – there was a high number of decrees regulating sectors of civil society such as administrative reforms and expansion of the bureaucratic activity of the state. Other examples can be found in the way the government acted in the process of reconstitutionalization, either through preparation of the preliminary constitutional draft or with the inclusion of representatives of the Executive to exercise the leadership of the government within the ambit of the constituent assembly.

13 See also: G. DORNELLES VARGAS (*Diário, vol. I*, Rio de Janeiro, 1995a) e G. DORNELLES VARGAS (*Diário, vol. II*, Rio de Janeiro, 1995b).

domestic market. On the labor side, the same scenario was reproduced as workers were incorporated into unequal processes of hiring and remuneration, besides being linked to one or another of the productive sectors mentioned above. Still important in the period are the urban middle-class sectors, the civil service, the liberal professions, and regional inequalities.¹⁴

With the aggravation of the abovementioned tensions, the first years of the provisional government were destined to neutralize these boiling social forces. To that end, the expedients used were instrumental in suspending the rule of law and, in some cases, in coercion itself, mainly by undermining the right of free expression of thought with censorship of newspapers. On the other hand, an extensive regulation of labor rights was also implemented as an instrument of intervention in the relationship between capital x labor. In this respect, the State would achieve a large part of its initial objectives. **26**

At the same time, the State's actions would also become responsible for creating a narrative heading towards the political praxis of legitimacy for the Revolution. According to Getúlio Vargas, **27**

The Revolution was an uncrushable and elaborate march towards nationhood, the impetuous torrent of the will of the people breaking down all resistance, dragging all obstacles, looking for a new path in the crossroads of past mistakes.¹⁵ **28**

The proposed narrative was not only linked to the promotion of measures that would rebuild the nation and also sought to create a historical moment that posed the memory of the past as a burden to be overcome, by representing political practices that marked political and economic backwardness. This narrative also projected a new horizon of expectations to be implemented by the Revolution, which was legitimately responsible for the changes underway. **29**

In this sense, one can highlight the State's actions concerning conflicts between capital and labor and the provisional government. As the latter was at the center of the crisis, the drafting of an intervention pact aimed at not triggering the conflict eventually became an essential topic on the political agenda of the period, thus avoiding the general strikes that marked the 1910s and 1920s. The regulation of urban labor is closely related to the experiences of workers' struggles. These struggles set the tone for the expansion of worker protection with general strikes, organization of **30**

¹⁴ Originally: 'Somava-se ainda a este imbróglio, o agravamento das tensões inerentes ao processo de modernização econômica e política e o surgimento de um quadro de convulsão e conflito nunca antes presenciado na história nacional. Não eram apenas as oligarquias que se movimentavam, pela inclusão no pacto de poder ou reversão deste ao seu anterior controle; era uma variegada de atores e frações que emergiam no bojo da modernização em curso, disputando espaço e representação. Novos interesses ligados ao capital – setor mercado externo (agrário-exportador) *versus* setor mercado interno (industrial e diversificado); disputas entre os vários segmentos do capital comercial, industrial; latifúndio agro-exportador *versus* minifúndio voltado ao abastecimento do mercado interno em expansão. Do lado do trabalho, cenário igual se reproduzia já que os trabalhadores eram incorporados a processos muito desiguais de contratação e remuneração, além de estarem ligados a um ou outro dos setores produtivos acima apontados. Ainda são importantes no período os setores urbanos de classe média, o funcionalismo público, as profissões liberais, afora as desigualdades regionais' CEPÉDA, *Contexto político*, cit., p. 199.

¹⁵ Originally: 'a Revolução foi a marcha incoercível e complexa da nacionalidade, a torrente impetuosa da vontade popular quebrando todas as resistências, arrastando todos os obstáculos, à procura de um rumo novo, na encruzilhada dos erros do passado'. G. DORNELLES VARGAS, *Getúlio Vargas*, edited by M.C. D' ARAÚJO, Brasília, Câmara dos Deputados, Edições Câmara, 2011, p. 312.

feminists fighting for better living and working conditions for women, pressure for the creation of pension and retirement funds for some sectors and organization in trade union associations recognized or not. The regulation between capital and labor carried out by the government would be understood as one of the main milestones in the modernization process established by the country's new constitutional and institutional order, a definite and specific promise of revolutionaries with social justice. Thus, with the inclusion of labor rights, the government demonstrated a departure from previous government inertia.

Among the legal instruments that mirrored the conflict between the productive sectors, it is worth mentioning the performance of the National Labor Council since 1923, that was totally transformed, especially after the creation, in 1931, of the Ministry of Labor, Industry, and Commerce in the composition of conflicts between employees and employers. In the Superior Labor Court's archive, it was possible to rescue part of the labor administrative processes from 1927 to 1945. When analyzing these sources, it became feasible to elucidate the strategies used by workers, such as the letters sent to the Minister of Labor denouncing abuses committed by employers, and the uses they made of politics, law, and the Constitution to expand the recognition of labor rights.

The regulation had been established to attenuate differences between urban sectors and pacify moods between employers and employees who were in sharp conflict since the 1910s, especially after the evolution in the industrial economic structure that would mark the 1930s. The struggle for rights regulating working conditions – primarily urban – marked the First Republic's last years. The social question became the object of political dispute in the 1930s presidential elections, in which the worker, a marginal actor, became central to this new configuration. The regulation would be a way out so that the industry segment could control the production process. At the same time, regulation, by creating parameters to be complied with by employers, opened space for more direct intervention by unions (controlled by the State since the new union law in 1931) in the whole process of negotiation between capital and labor.¹⁶ And, with the development of unions,

[...] also exemplifies the civil rights movement, from the representation of individuals to the representation of communities. This collective representation of the economic interests of union members arises from the inability of workers to safeguard their interests individually. [...] These practical outcomes of trade unions have a far-reaching effect on the position of workers as citizens.¹⁷

¹⁶ For an analysis of the evolution of unions in the State of São Paulo (where most of the strikes of the early 20th century happened) see A. SIMÃO (*Sindicato e Estado: suas relações na formação do proletariado de São Paulo*, 1981). In this sense, Ivi, p. 99 stated that «between 1901 and 1914 there were 81 accounts of strikes in the capital of São Paulo and 38 in smaller cities, this being a scenario depending upon conflicts of a certain size, including establishments from one or several economic sectors [...]. Between 1915 and 1929, in the capital, there were 42 conflicts in isolated premises, 20 in economic sectors, and 2 among different professions, 1 generalized and 1 general».

¹⁷ Originally: 'também exemplifica o movimento dos direitos civis que vai da representação de indivíduos para a de comunidades. Essa representação coletiva dos interesses econômicos dos membros surge da incapacidade dos trabalhadores de salvaguardar seus interesses individualmente. [...] Esses resultados práticos dos sindicatos têm um efeito de longo alcance na posição dos trabalhadores como cidadãos'. R. BENDIX, *Construção Nacional e Cidadania*, Tradução Mary Amazonas Leite de Barros, São Paulo, Edusp, 1996, p. 120.

This way, trade unions were in a special position for allowing workers to organize and give these social and political actors in training a voice. Still, regulation, in a way, also represented the strategy of maintaining the conservative agrarian structure, since rural workers did not experience regulation as such remaining on the sidelines of the regulation project.¹⁸ 34

The regulation also represented a systematic way of legitimizing the State, since the used instruments could count as a means to resolve potential social conflicts between the workers and the entrepreneurs. Meanwhile, it legitimized the provisional government as a regime that, unlike past practices, included this social issue as one of its political guidelines. 35

The government's actions led to the welcoming of a "program of social legislation, in which the protective State while absorbing society's intents and incorporating social questions, defines the strategy of compromise in the relations between labor and capital".¹⁹ 36

The agreement around the strategy of a compromise in the relations between these sectors expressed a Brazilian singularity regarding the social issue. The latter, which at that time was constituted by the appearance of new actors, terrible living conditions and the deterioration of urban sociability, shaped a social actor (mostly represented by urban workers), whom, although could not be idealized as a social class,²⁰ already forged a class consciousness ready to manifest. 37

However, workers' demonstrations were controlled/suffocated throughout the post-revolution period. With the Ministry of Labor's creation in 1931, the model of unionization implemented in the country imposed limitations on union autonomy, and, in this context, unionists' actions were controlled and supervised by the government. 38

Trade unions were only formed as workers' representation after approval and prior registration with the Ministry of Labour, which prescribed various requirements for workers' organization into trade union associations. Thus, without autonomy, the unions were dependent on state actions, and could even lose their registration if they committed acts considered illegal (acts that were analyzed in the administrative sphere and not in the judicial one). 39

In the same sense, the workers also underwent a restructuring in their careers, an opportunity in which citizenship was extended only to those professions classified by the Ministry, through the signature of the Work and Social Security Registry – CTPS (Carteira de Trabalho e Previdência Social). The CTPS is an instrument created in 1932 by the Vargas government and still in force until the present day. 40

The government's initiatives to regulate labor in Brazil, on the other hand, were also due to international pressures. During the transition from the 19th to the 20th century, the social 41

¹⁸ The regulation of rural labor was the subject of a special inclusion in the 1934 Constitution that did not come to fruition in the following years.

¹⁹ Originally: 'um programa de legislação social, em que o Estado protetor, absorvendo os intentos societários e incorporando a questão social, define a estratégia do compromisso nas relações entre o capital e o trabalho'. A. C. WOLKMER, *Constitucionalismo e direitos sociais no Brasil*, São Paulo, Acadêmica, 1989, p. 24. The thesis on the commitment established on the 1933-34 National Constituent Assembly can be seen at the works of A. M. DE CASTRO GOMES (*Regionalismo e centralização política, partidos e constituinte nos anos 30*, Rio de Janeiro, 1980) and (*Confronto e Compromisso no processo de Constitucionalização (1930-1935)*, Rio de Janeiro, 1996).

²⁰ Social class in the meaning of sectors who gather identities and demands and form political groups of social pressure.

issue was beginning to become a permanent agenda for government debates, since labor was already the subject of discussion in the most industrialized societies (Europe). Among the main talks and specific acts, we can mention Pope Leo XIII's *Encyclical Letter Rerum Novarum*, which historically contextualized the terrible working conditions of the workers, at a time when the Church was assuming a conduct aimed at softening the severities of capitalism; or the creation of the International Labor Organization - ILO, established by the Peace Conference (1919), right after the First World War, which directly influenced the country for the creation of the National Labor Council, in 1923.

In Brazil, findings from Angela de Castro Gomes²¹ and Werneck Vianna²², among others, highlight that, in pre-1930 moments, the workers became marginal actors, ceasing to be the subject of the problem. In the post-1930 period, workers became not necessarily marginalized, but objects of a kind of conservative regulation, with the conquest of minimum rights and under strong State presence. 42

In this unpredictability, resistance arose, especially with the time spent without the government promoting the return to the constitutional State.²³ 43

The crisis faced by the interim government could be 44

[...] understood as the transition to modernity and triggered by changes in the economy, the emergence of new actors, and social dilemmas. It is the scenario that mirrors the breakdown of the arc of alliances and the hierarchy of basic social forces for the political architecture of the previous period. [...] The revolution of 1930 and the provisional government would reveal, in turn, the positioning of the new social forces and the pattern of planning of a new pact of alliances. We can observe this characteristic in the strategies and governmental engineering adopted by Getúlio, anchored in dialogue, co-optation, and negotiation among the various sectors of the economy and society, as well as in the transfer of conflicts to the mediating and metamorphic arena of the State.²⁴ 45

The gap resulting from the distance between the political order and the legal order of the early 1930s aggravated socio-political conflicts. In this sense, since the State was at the center of the crisis, along with other interests, it was up to it to promote a reliable platform for conciliation and institutional arrangements capable of sustaining the provisional regime. 46

²¹ A. M. DE CASTRO GOMES, *Burguesia e Trabalho: política e legislação social no Brasil 1917-1937*, Rio de Janeiro, Campus, 1979.

²² L. WERNECK VIANNA, *Liberalismo e sindicato no Brasil*, Rio de Janeiro, Paz e Terra, 1978.

²³ H. SILVA, *A lei e a revolta: 1934-1936*, São Paulo, Editora Três, 1975.

²⁴ Originally: 'entendida como transição para o moderno e desencadeada pelas mudanças da economia, pelo surgimento de novos atores e dilemas sociais, é o cenário que espelha o rompimento do arco de alianças e a hierarquia das forças sociais basilares para a arquitetura política do período anterior. [...] A revolução de 30 e o governo provisório revelariam, por sua vez, o posicionamento das novas forças sociais em emergência e o padrão de ordenamento de um novo pacto de alianças. Podemos observar essa característica nas estratégias e na engenharia governamental adotadas por Getúlio, ancoradas no diálogo, cooptação e negociação entre os diversos setores da economia e da sociedade, bem como na transferência dos conflitos para a arena mediadora e metamórfica do Estado'. CEPÊDA, *Contexto político*, cit., p. 196.

In that timeline, the social and political forces searching for the immediate re-constitutionalization of the State became more latent. If, on the one hand, re-constitutionalization could be analyzed as an imminent risk to the Revolution's interests, it could provide oligarchies removed from power in 1930 with a legitimate return to power through the popular vote. Viewed in this way, the most valid argument was that of the *tenentista* wing, which supported and collaborated directly in sustaining the provisional regime and was opposed to the immediate re-constitutionalization.²⁵ On the other hand, the delay in the re-constitutionalization process could also be a serious problem for two other specific reasons. First, it diminished the provisional government's legitimacy, which was committed to the constitutional normality of the country. Second, it allowed enough time for a more active re-articulation of the oligarchy for the constituent process.

47

Conversely, all the discourses radicalized regarding re-constitutionalization. The *tenentes'* version and the effects produced by the Constitutionalist Revolution of 1932 referenced the Constitution as an instrument and not necessarily as an indispensable element for the structure of the State. The discursive and appealing use of the Constitution was necessary to foster mechanisms of control over the political process, which were opened by the Revolution. Controlling the political process became essential for both the government and the opposition since it would guarantee to be able to establish the limits and advancement that the (inevitable) social changes could set.

48

The struggle for control of the themes in the changes in the political, economic, and social order (that the Constitution could or could not contemplate) would be forged in a specialized arena: the National Constituent Assembly, whose election of constituents took place in May 1933. Faced with this movement, the provisional government created a special subcommittee whose function was to encapsulate the agenda of the time to promote a constitutional draft to be presented by the government to the constituents. The Minister of Finance, Oswaldo Aranha, made it clear that the primary function of the commission would be “to reveal the tendencies of the Government concerning the pact, because the Government that came out of the Revolution of 1930 has responsibilities that originated from that Revolution and those concern the program duly promised by the men who are the governists of today”.²⁶

49

²⁵ See B. FAUSTO (*A revolução de 1930: historiografia e história*, São Paulo, 1970); A. M. DE CASTRO GOMES (*Confronto e compromisso no processo de Constitucionalização (1930-1935)*, Rio de Janeiro, 1996); A.M. DE CASTRO GOMES (*Regionalismo e centralização política, partidos e constituinte nos anos 30*, Rio de Janeiro, 1980).

²⁶ Originally: ‘dar as tendências do Governo em relação ao pacto, porquanto o Governo saído da Revolução de 1930 tem responsabilidades oriundas dessa Revolução e que dizem respeito ao programa devidamente prometido pelos homens que são os situacionistas de hoje’. J. A. DE MENDONÇA AZEVEDO, *Elaborando a Constituição Nacional*, Atas da Comissão Itamarati, Brasília, Senado Federal, Conselho Editorial, 2004, p. 10. All speech references by the Itamarati subcommission members will hereby be referenced in the work of José Afonso de Mendonça Azevedo who, in a *facsimile* edition, consolidated the minutes in a book published by the Senate.

In the regulation of labor rights, it is possible to highlight that the main innovations were in the Itamarati subcommittee work,²⁷ but which reflected a link to the decrees issued by Vargas since the beginning of the Revolution. The constituent debates and the 1934 Constitution itself did not deviate from the principles established in the draft. This fact does not mean that it was not the subject of controversy in the Constituent Assembly. Although the labor issue was a painful issue at the time, various sectors of the political and social communities gathered their desired regulation. 50

The following section will address how the government's constitutional draft included the proposal to regulate labor rights in the future Constitution and what parameters established this regulation. 51

3. The preliminary constitutional design by the provisional government, the theoretical influence, and the Labour Law regulation proposal

After the electoral reform of 1932, the provisional government summoned general elections to form the National Constituent Assembly (ANC) in 1933. Concurrent to the summoning act, Vargas determined the creation of a commission responsible for preparing a constitutional draft to be presented to the elected constituents. 52

The activities of this commission became known as the Constitutional Draft of the Itamarati Subcommittee, as they were produced in successive meetings at the official residence (Itamarati Palace) of the Minister of Foreign Affairs of Brazil. Vargas objective was to include and maintain the main actions of the provisional government within the new constitutional arrangement. Thus, innovations would be limited to the government's achievements, expanding Varga's leadership in the constituent process. 53

This constitutional draft, produced by men of notorious legal knowledge, in fact, instituted the main characteristics of the social rights of the future Constitution of 1934, especially in the area of labor regulation. In 51 sessions, the Itamarati Subcommittee ended up constitutionalizing the ongoing labor regulations, focusing on the world of urban work to the detriment of rural workers. 54

In charge of the economic and social order in the studies for the draft, José Américo, João Mangabeira, and Oliveira Vianna were responsible for the most significant innovations in the field of constitutional regulation of social rights. These issues, hitherto unpublished in Brazilian constitutional language, are precursors of the social constitutionalism movement when they were incorporated into the 1934 Constitution, as Antônio Carlos Wolkmer²⁸ points out. 55

The main issue in this regulation concerns labor rights. In this institutional design, since the creation of the Ministry of Labor, Industry, and Commerce in 1931, the regulation of capital and labor relations did not occur without the touch of «modernizing centralization» so characteristic of the time. In this particularly regulation, it was possible to identify the theoretical matrix that 56

²⁷ R. LAMERA CABRAL, *Constituição e sociedade: uma análise sobre a (re) formulação da arquitetura do Estado-Nação na Assembleia Nacional Constituinte de 1933*, Dissertação de Mestrado em Ciência Política, São Carlos, UFSCar, 2011.

²⁸ WOLKMER, *Constitucionalismo*, cit., 1989.

points to a possible corporate project within the government's actions. The leading exponent was Oliveira Vianna.

The corporate State matrix was based on its organic conception of society, in which social bodies were privileged. Because it was organic, this model of State moved away from liberalism. The organic perspective

[...] it represented a set of formulations that emerged in the first decades of the 20th century that rejected partisan-electoral representativeness and the appreciation of individual interests of liberalism as the basis of national political organization. More than merely corporate (close to the European connotation) or authoritarianism, the organic thought postulated a particular social interpretation (production classes), social groups (municipal bases), and, consequently, another principle for representation and another function for State action.²⁹

There was no support to build the best political decision from the dispute of several projects that were anchored in the perception of individuals about their interests. On the contrary, in the corporate State, the holders of interest would be the social groups and not individual citizens.

The observation made by Bolívar Lamounier³⁰ of the First Republic's critical intellectuals with the functionalism of the State would also be valid for Oliveira Vianna. The author dedicated a significant part of his life to the public service and intellectual production and, from the 1920s to the 1950s, integrated himself into the great nucleus of thinkers of Brazilian social reality.³¹ Author of several analyses, such as the categories of organic idealism and constitutional idealism, Oliveira Vianna would eventually recover and, at the same time, project a relevant debate for the knowledge of the relations between State, society, and nation. To think of organic idealism and constitutional idealism already assumed the recognition of the centrality given to the State throughout Brazilian constitutional history, mainly in its social formation. These conceptions of idealism strengthened Vianna's interpretations of the national reality.

²⁹ Originally: 'representava um conjunto de formulações surgidas nas primeiras décadas do século XX que recusava a representatividade partidário-eleitoral e a valorização dos interesses individuais do liberalismo como base da organização política nacional. Mais que simplesmente corporativo (próximo da conotação europeia) ou autoritarismo, o pensamento organicista postulava uma interpretação social particular (classes produtoras), grupos sociais, (bases municipais) e, por consequência, um outro princípio para a representação e a outra função para a ação do Estado'. V. ALVES CEPÊDA, *Contexto político e a crítica à democracia liberal: a proposta de representação classista na Constituinte de 1934*, in «Workshop do Grupo Temático: linhagens do pensamento político e social brasileiro», São Paulo, (2008), p. 2.

³⁰ B. LAMOUNIER, *Formação de um pensamento político autoritário na Primeira República. Uma interpretação. História Geral da Civilização Brasileira – Tomo III – O Brasil Republicano*, editado por B. Fausto, São Paulo, Difel, 1985. In this chapter, Lamounier offers an interpretation of the main historical-sociological essays that are part of the tradition of authors (many, linked to the civil service) who present critical interpretations of the constitutional model of 1891. Among them are Alberto Torres, Oliveira Vianna, Azevedo Amaral and Francisco Campos.

³¹ Among his most important works, notice *Populações Meridionais do Brasil* (1920); *Pequenos Estudos de Psicologia Social* (1921); *O idealismo na Evolução Política do Império e da República* (1922); *Evolução do Povo brasileiro* (1923); *O idealismo da Constituição* (1927 – essa obra foi revisada e ampliada, surgindo nova edição em 1939); *Problemas de Política Objetiva* (1930); *Problemas de Direito Corporativo* (1938); *As novas diretrizes da política social* (1939) e *Instituições políticas brasileiras* (1949).

This dichotomy generated by these idealisms referred their analysis to the previous understanding that organic idealism would relate to “the very organic evolution of society and would [be] nothing else but anticipated visions of future evolution. [...] organic idealism is that which only forms reality, which is based solely on experience, which is guided only by the observation of the people and the environment”.³² Nevertheless, the constitutional or utopian idealism would be the result of a false organic perception of society, consisting, for Vianna,

[...] any and every doctrinal system, any and every conjunction of political aspirations which is in intimate disagreement with the reactive and organic conditions of the society it intends to govern and direct. What really characterizes and denounces the presence of utopian idealism in a constitutional system is the disparity between the greatness and the impressive concert of its structure and the insignificance of its effective income - and this when its complete sterility is not verified.³³

From this observation, Oliveira Vianna intensified his criticism of the Constitutional Charter of 1891 with the formulation of an alternative political model that could promote the approximation between the legal country and the real country.³⁴ That is, a model whose expression would be the national reality.³⁵

The foundation of the corporative State would be the “[...] organized social groups, the corporations, as to become the expression of their economic interests and the cultural forces that guide them”.³⁶ In that case, the political system, particularly the parliamentary system, would be made up of professional corporations. The corporate State refuses the individual as a bearer of interest because of social groups with an identity - hence the preponderance of organicism.

With this new political dimension, which would necessarily bring changes to the political entire system, it was noticeable that the nationalist theses present in the period were enshrined. In the strong conception of nationalism, the State should be the instrument that directed itself to the interests of the national ideal. There was no room for segmented interest groups, many of them in

³² Originally: ‘própria evolução orgânica da sociedade e não [seriam] outra coisa senão visões antecipadas de uma evolução futura. [...] idealismo orgânico é o que só se forma de realidade, que só se apoia na experiência, que só se orienta pela observação do povo e do meio’. F. OLIVEIRA VIANNA, *O idealismo da Constituição*, Rio de Janeiro, Companhia Editora Nacional, 1939, p. 11.

³³ Originally: ‘todo e qualquer systema doutrinário, todo e qualquer conjuncto de aspirações políticas em intimo desacordo com as condições reaes e orgânicas da sociedade que pretende reger e dirigir. O que realmente caracteriza e denuncia a presença do idealismo utópico num systema constitucional é a disparidade que há entre a grandeza e a impressionante eurythmia da sua estrutura e a insignificância do seu rendimento effectivo – e isto quando não se verifica a sua esterilidade completa’ Ivi, p. 10.

³⁴ For Vianna, the biggest factor in Brazilian de-nationalization was this «being apart from reality, which compromises the participation of the elites in the organization and direction of the country. Their ineptitude arises, before anything else, from the adoption of liberalismo», highlighted E. VIEIRA (*Oliveira Vianna e o Estado Corporativo*, São Paulo, 1981)

³⁵ Another differentiation between organic idealism and constitutional idealism can be found in A. BOTELHO (*Entrevista para a Revista Sinais*, Vitória, 2009). According to him, the difference would be that, for «organic idealists», a strong State would make itself needed due to the inorganic character of Society and its association fragility, while, for constitutional idealists, an all-powerful State would smother society and break it apart..

³⁶ Originally: ‘[...] grupos sociais organizados, as corporações, de modo a tornar-se a expressão dos interesses econômicos dos mesmos e das forças culturais que as orientam’. E. VIEIRA, *Oliveira Vianna e o Estado Corporativo*, São Paulo, Cortez, 1981, p. 21.

total disarticulation with the *common good* (a category that already creates a certain discomfort, given the difficulty of defining the sense of the common good, and also because it identifies with liberal logic), to exercise control over the country, to the detriment of the others.

According to the aforementioned conservative authors,³⁷ these disarticulations would be immediate correlations of the parochial practices of the oligarchic elites that would have distorted the ideals of the Republic, radically separating the reality from the political institutions in force.

The corporate State's proposition came about through a direct opposition to the liberal State (a model in which the source of power was not the State but individuals).³⁸ According to Vieira³⁹, the logic of this opposition would present itself as follows: “the liberal State has only one source of public power, itself, while the corporate State opens itself in the plurality of sources of such power, represented by corporations”. Despite this observation, it is not credible to affirm that, in the liberal State, the source of public power is found in the State itself. Determining the State as the source of its power would represent a totalitarian State, for example, and not a liberal State, as Vieira alleged. Oliveira Vianna's reaction to the corporate state was a response to the liberal democracy practiced in Brazil in the First Republic.

In this theoretical context, much of the social rights were formulated in the tension between capital x labor. Although regulation foresaw this corporate experience, in practice, this action's weaknesses did not allow pacification between the two productive sectors to take place in ways other than the conception of modernization from above.

The main proposals for social regulation were aimed at establishing minimum standards to be observed by the constituent body concerning labor legislation. The innovations would allow the federal State, by law, to define working conditions in the city and the countryside, intervening in the relations between capital and labor, in an attempt to balance the always conflicting labor relations.

Part of these discussions can be revisited from the main historical source used in this section, the debates between members of the Itamarati Subcommittee, published in an edition organized by José Affonso Mendonça de Azevedo.⁴⁰

There was concern among the members of the Itamarati subcommittee to define beforehand the norms that should guide the future Assembly at the exact moment of establishing state intervention in the relationship between capital and labor. This concern was evident in the writings of Castro Nunes, who offered substitute amendments to the main articles presented by the subcommittee, to delimit the bases of this regulation, contemplating a second intervening objective: the social protection of the worker and the interests of the country (linked to capital).

³⁷ The conception of the term «conservative» could be subdivided into two contexts: one linked to tradition, in the sense of an appeal to traditional domination - M. WEBER (*Protestant ethics and the spirit of capitalism*, São Paulo, 2000), and the other, in opposition to the former, in the sense of modernity, of the rational-legal, individual and competitive system. Albeit, the word «conservative» can assume solely its political meaning and not necessarily mean an appeal to tradition, returning to the *status quo ante*.

³⁸ To see more: VISCARDI, Cláudia M. R. (Corporativismo e Neocorporativismo. Estudos Históricos, Rio de Janeiro, v. 31, n. 64, 2018).

³⁹ VIEIRA, *Oliveira Vianna*, cit., p. 35.

⁴⁰ AZEVEDO, *Elaborando*, cit., 2004.

- In this regard, Castro Nunes intended to 72
- [...] stress that its objective in labor legislation is for the legislator to consider, on the one 73
- hand, the protection due to the worker, and on the other, the economic interests of the
- country. This is not Bolshevik legislation intended to favor only the proletariat, but [it is]
- that of a country with high economic interests to be safeguarded.⁴¹
- While considering the ideological proposals that circulated and manifested in the subcommittee 74
- members' political and social thinking, João Mangabeira also demonstrated his direct concern with
- the absence of objectivity in the definition of guiding criteria that should mirror the social issue
- in Brazil.
- Mangabeira's first manifestation in this sense ratified his initial concern of establishing a norm 75
- that could have immediate application in the social body, with the support of the Constitution's
- validity. This concern was intertwined with the possibility of relegating to the law the establishment
- of intervention measures in the relationship between labor and capital, to prevent the worker from
- being helpless if the Assembly did not promptly vote on the law.
- Mangabeira announced that 76
- So that these [labor protection measures] will only be established after the ordinary law 77
- has been voted by the Assembly, which may happen 20 years later or even not, leaving the
- worker destitute. In the bill, however, there are a series of articles and guarantees that will
- come into force immediately after the Constitution is enacted. To replace a constitutional
- guarantee, which comes into force immediately, with the hypothesis of future legislation,
- which Congress may or may not vote on, is the same as leaving the worker without
- that guarantee. The change seems substantial to him because it becomes a constitutional
- guarantee, which can only be altered by a constitutional amendment, an ordinary law that
- depends on the National Assembly, a law that may take time to come or not, a law that
- depends on the majority of the Assembly.⁴²
- It remained clear that Mangabeira would prefer the solution of giving constitutional character to the 78
- principles of labor regulation so that they could have an immediate application with the enactment
- of the Constitution. On the other hand, the subcommittee opted only to recognize that the *caput*
- of the article to be enshrined would record that the fundamental principles of labor legislation are
- those already established, in addition to other measures that were deemed useful.

⁴¹ Originally: 'frisar ser seu objectivo, na legislação do trabalho, que o legislador considere de um lado, a protecção devida ao trabalhador, e de outro lado, os interesses económicos do paiz. Não se trata de uma legislação bolshevista, destinada a favorecer somente ao proletariado, mas a de um paiz, com altos interesses económicos a acautelar'. J. A. DE MENDONÇA AZEVEDO, *Elaborando*, cit., p. 743.

⁴² Originally: 'De modo que estas [medidas de protecção ao trabalho] só serão estabelecidas depois de votada a lei ordinária pela Assembleia, o que poderá succeder 20 annos depois ou mesmo não succeder, deixando o trabalhador desamaparado. No projecto, entretanto, há um série de artigos e garantias que entrarão em vigor immediatamente após decretada a Constituição. Substituir uma garantia constitucional, que entra, desde logo, em vigor, pela hypothese de uma legislação futura, que o Congresso pode ou não votar, é o mesmo que deixar o trabalhador sem essa garantia. A mudança se lhe afigura substancial porque se transforma, assim, uma garantia constitucional, que só poderá ser alterada por uma emenda constitucional, numa lei ordinária que depende da Assembléa Nacional, numa lei que pode demorar a vir ou não vir, numa lei dependente da maioria da Assembléa'. *Ibidem*.

The Castro Nunes amendment intended to establish a minimum wage, without distinction of sex and age, to be set following the conditions of each region and the typical needs of the worker's family, with working hours set at eight daily hours,⁴³ to be established according to the nature of the work. 79

The defining of the working day would lead to a deadlock among the committee members regarding its applicability to all urban and rural workers. Castro Nunes did not understand the limitation of the working day to rural workers since there could be unforeseen events that would determine the work in more than eight hours. João Mangabeira, on the other hand, explained that the purpose of the regulation was to avoid going back to the recent past, in which slaves worked up to 24 hours: "every time one demands more than eight hours of work from a man, one demands more than what the individual can physiologically give and tires them".⁴⁴ 80

Attempting to minimize the deadlock, the subcommittee's president, in solidarity with Oswaldo Aranha and recognizing that work could not be excessive for the worker, intended to establish a measure of prudence, granting an elasticity to these principles: "Our social legislation must progress, based on international achievements, but in such a way that the organization of work is not in a sense that makes it practically inferior to other competing countries".⁴⁵ 81

Mello Franco aimed to allow Brazil to develop its technical and industrial sectors, taking into account the needs of the trade issue, just as did other countries that had ratified international agreements such as Versailles and the International Labour Office. Counter-arguing this orientation, Oswaldo Aranha claimed that Brazilians should not follow these same guidelines, which were "difficulties created by a commercial situation, fructed by capitalist errors, profoundly harmful to the country itself and humanity".⁴⁶ 82

The solution found was to limit the working day to eight hours and, in the industries deemed as unhealthy, to six hours, which may, in extraordinary cases, exceed up to three hours a day in a period not exceeding three consecutive days. In this sense, in these debates, it was possible to observe that the regulation of labor relations always presented a limitation when the objective was to extend labor rights to rural workers. This tendency represented the underdevelopment of social rights in force, and the idea that labor regulation in the countryside would be one more regulation 83

⁴³ The proposals regarding the establishment of a fixture for the working day represented points of disagreement among the members of the subcommittee. In the same way, there were opinions, such as Castro Nunes', that it would be impracticable for the Constitution to establish the regulation of this device, and João Mangabeira restructured in order to understand that this regulation was compatible because it was the social warranty of the workers, adding or giving them this warranty from the outset, or else the Constitution remains in the program of 91. «The law, as such as it is on the text, is the jubilee of patrons» J. A. DE MENDONÇA AZEVEDO (*Elaborando a Constituição Nacional*, Brasília, 2004).

⁴⁴ Originally: 'toda vez que se exige do homem mais de oito horas de trabalho, exige-se além do que fisiologicamente o indivíduo pode dar e exgota-o'. J. A. DE MENDONÇA AZEVEDO, *Elaborando*, cit., p. 747.

⁴⁵ Originally: 'A nossa legislação social deve progredir, baseada nas conquistas internacionaes, mas de forma a que a organização do trabalho não se faça num sentido que a torne praticamente inferior à de outros países concorrentes'. Ivi, 748.

⁴⁶ Originally: 'procurava alegar que os brasileiros não deveriam obedecer a essas mesmas implicações, «difficuldades creadas por uma situação commercial, fructo de erros capitalistas, profundamente nefastos ao próprio paiz e à humanidade'. Ivi, 749.

to turn ineffective was suggested. The interests of rural workers were not adequately represented in the subcommittee, so much so that the initial concern was to establish public standards that would balance labor rights and economic development.

Therefore, many opinions, such as Solano da Cunha's, when discussing the proposal to limit the working day for the rural worker, "consider[ed] the article in the Constitution dead for the interior of the country. Only those who do not know the countryside can believe that it has been fulfilled".⁴⁷

The subcommittee's tendency to present a draft bill that would address the social issue – and, in this case, specific to an organization of social security relations – was proved by the discussion of the article that sought to ensure the worker, as well as the pregnant worker, the necessary assistance in case of illness. Here, the law would be able to institute compulsory insurance against sickness, old age, unemployment and risks, and accidents at work. The approval of this article was unanimous, without debate.

In the social organization of labor, one of the main expedients used by the subcommittee would be to regulate the right of each individual and all professions to organize themselves for the defense of working conditions and economic life.

The permission of the constitutions of both employers' and workers' organizations would continue to be recognized under the law.⁴⁸ It is essential to point out that these transformations were already the object of intense administrative regulation by specific organs of the Ministry of Labor, Commerce, and Industry, created by the provisional government of Vargas.

The restrictions imposed by administrative regulations on the functioning and operation of trade union organizations limited workers' actions thanks to pre-established rules and were always closely monitored by commissions from the Ministry of Labour. An example of this is the establishment of solutions in labor disputes between employees and employers who submitted concrete cases to a collegiate composed of employer and employee representatives (class judges). Hence the initial recognition that the Labor Justice⁴⁹ was an administrative justice, as it was linked to the direct bodies of the Executive Branch.⁵⁰

⁴⁷ Originally: 'considera[vam] o artigo letra morta na Constituição para o interior do paiz. Só quem não conhecer o interior pode acreditar seja elle cumprido'. Ivi, 750. To see more: WELCH, Clifford Andrew. (Vargas e a reorganização da vida rural no Brasil (1930-1945), *Revista Brasileira de História*, v. 36, n. 71, 2016).

⁴⁸ Góes Monteiro, one of the *tenentista* leaders, was against the possibility of a broad unionization of all workers, under the allegation that, if they are corporate, even the military classes could join. Monteiro fought for a restriction of this right, just as the law did with the military. Another point to be challenged by Monteiro was the possibility of foreigners joining the union ranks; he feared that, among a short time, foreigners would join unions and propose conditions, when only nationals would have this right. Although Themístocles Cavalcanti remembered that it would be impossible at that time, since trade unions could not be organized without having two-thirds of nationals and without having their board composed of nationals, Monteiro thought it was a mistake for the law to give foreigners the right to belong to trade unions, because among them were the agents who proved and instigated disorder. J. A DE MENDONÇA AZEVEDO (*Elaborando a Constituição Nacional*, Brasília, 2004, p. 740).

⁴⁹ The use of the institutionalized Labor Justice must be understood within the National Labor Council, the body that preceded the Labor Justice created in the 1934 Constitution, maintained in the 1937 Constitution, and only institutionalized in 1941. For more details, see R. LAMERA GIESTA CABRAL, E. K. GOMES PEREIRA, V.V. GIRÃO CHAVES (*Processo Histórico de formação da Justiça do Trabalho no Brasil: do Conselho Nacional do Trabalho ao Tribunal Superior do Trabalho*, Revista Jurídica – UNICURITIBA, Curitiba, 2019).

The analysis of labor complaints within the National Labor Council is very representative of how workers responded to social legislation promoted by the government, as well as using this administrative/legal instrument for the recognition and expansion of activities linked to the exercise of citizenship. **89**

Social order should be supervised by the Public Prosecutor's Office of the Union and of the states so that they may ensure strict application of the protective rules of urban or rural workers, as well as the provision of free assistance, without prejudice to the attributions belonging to the specialized organs created by the law for this purpose. **90**

In general terms, the proposal presented by the Itamarati subcommittee to regulate the economic order and especially the social order would be an attempt to contemplate, to a greater or lesser extent, issues related to the political-constitutional structure. This structure was marked by conservative, authoritarian and reformist liberal legality, but also "an innovative and no less revolutionary declaration of social rights, which protected the masses of workers in the large urban and industrial centers and the workers of the agrarian interior",⁵¹ according to Wolkmer.⁵² **91**

At that time, countless models of constitution were in dispute, and these limitations, for the time being, could even have created a constraint to the actions of the subcommittee's effective members. This fact does not mean that the subcommittee was more concerned with form than content, on the contrary. After all, it was noticeable that the real concern of the members was to elaborate a draft constitution in synthetic form, without allowing thematic restraining, that is, to provide ample space for the exercise of Vargas' governability in parliament. **92**

The arrival of the constitutional draft to the constituent deputies in 1933 was not peaceful. Despite the resistance of the congressmen, the preliminary project ended up being used as a starting point for the constituent discussions. The success of this adherence to the draft is directly related to the ministers of the provisional government of Getúlio Vargas, who acted directly in the negotiations between the parliamentarians. **93**

The regulation of urban work ended up being welcomed with occasional changes, as they already reflected the current government policy. Rural workers, on the other hand, would have their rights regulated by a future law, to be produced by Congress after the promulgation of the 1934 Constitution. This law was only drafted in 1963, after two Constitutions (1937 and 1946), with the **94**

⁵⁰ To check on labor tensions at the time, see C. E. FRANÇA, R. LAMERA GUESTA CABRAL (*Direitos sociais e identidade operária: o poder da ideologia trabalhista no Governo Getúlio Vargas (Brasil, 1930-1945)*, Santa Maria, 2016); R. LAMERA GUESTA CABRAL (*Da resistência ao ajuste: o trabalhador na década de 1930*, Rio de Janeiro, 2017).

⁵¹ Despite the assertion that there is support for workers in the agrarian interior of Brazil, this work highlights the necessary relativization of this assertion, mainly because it glimpses that rural workers are excluded from the negotiation process by several interests of political and social actors at the time of the construction of the 1934 social contract.

⁵² Originally: 'uma inovadora e não menos revolucionária declaração de direitos sociais, que amparava as massas operárias dos grandes centros urbanos e industriais e os trabalhadores do interior agrário'. WOLKMER, *Constitucionalismo*, cit., p. 51.

Statute Rural Worker; the rights of urban and rural workers were only equated with the Constitution of 1988.⁵³

4. Concluding remarks

In general terms, it is possible to emphasize that, from the Revolution of 1930 until the Constitution of 1934, the provisional government established numerous strategies that were subdivided into broad and specific layers for the legitimation of the regime established. The regulation of labor rights may reflect one of these layers. 95

The social question, infiltrated in the national political agenda since the end of the 1920s, innovatively appears for the conflictive agreement between (urban) labor and (industrial) capital at the beginning of the Vargas government. These issues are of extreme relevance to the analysis of that time. However, it is always possible to envisage a gamble. The provisional government's work internalized, in national political culture, a new relationship between State and society, as to fix it in a constitutional language. It did so by promoting the corporatization of interests, the nationalization of social relations, the building of a bureaucratic-administrative apparatus of intervention, regulation, and control that organizes on new bases the "general interest" and "social domination".⁵⁴ 96

By giving institutional form to a wide range of changes in the political, economic and social order, it has made possible to redefine and update the actions of the State in the name of nationhood, of a new commitment to progress, of structural development and diversification in the modus operandi of understanding reality. These issues added exponential value to the conduct of politics, the economy, and the social question that would be organized on transparent but constitutionally uncertain bases after 1937.⁵⁵ 97

By invoking all the forces of the nation, linked to the principle of solidarity and national unity, the government's actions promoted cooperation between the interests of urban workers and the urban employer sectors. The reason can be listed by the intense movement and organization of the urban proletariat, which, in boiling heat, each day more combative to the violations of its newly inaugurated labor rights, could repeat the strikes that shook the structures of the country in the 1910s. Thus, as much as some authors may explain government actions as the model of 'Revolution from above,' the very trajectories of urban labor sectors show that labor warranties reflect a maturing of interests charged by political struggles for recognition and expansion of their warranties. 98

⁵³ POCHMANN, Marcio (Tendências estruturais do mundo do trabalho no Brasil. *Ciência & Saúde Coletiva*, vol. 25, n. 1, Rio de Janeiro, 2020).

⁵⁴ Themes highlighted by S. DRAIBE (*Rumos e metamorfoses: um estudo sobre a constituição do Estado e as alternativas da industrialização no Brasil 1930-1960*, Rio de Janeiro, 1985).

⁵⁵ For more details, check FRANÇA; CABRAL, *Direitos Sociais*, cit. e R. LAMERA CABRAL. (*Uma leitura do legado constitucional brasileiro entre 1930-1937*, Oviedo, 2015).

Thus, one cannot ignore the contribution of Wanderley Guilherme dos Santos⁵⁶, when he characterizes the period, specifically concerning social policy from the Vargas administration, as the unfolding of “regulated citizenship”. In the name of the harmonious relationship that should be constituted between capital and labor, the regulation of the rights of urban workers was organized within the State, which presented itself as the leading regulating agent and arbitrator of conflicts. The National Labor Council, the predecessor of the Labor Justice, through its boards of conciliation and trial, forged in the model of class judges, is the primary example that marked that time. This model lasted throughout the Vargas government, which would extend until 1945. Classist judges perpetuated themselves in time, even going through to the 1988 Constitution, closing their actions in 1999. **99**

Vargas’ social policy, as Carvalho⁵⁷ explains, “appears as a privilege and not a right. If it was conceived as a right, it should benefit everyone in the same way”. The reference here is to the non-extension of rights to rural workers. The Revolution of 1930 did not reach the gates of the large estates. Rural workers were excluded and, at the time, they formed the majority of Brazilian workers. **100**

These changes generally indicate two significant movements. The first refers to the unionizing maturity of urban workers and the political pressures that were established until the recognition and expansion of labor rights. The second refers to the political use of the provisional government to control the political process of recognition and expansion of these warranties through the constitutional draft of the Itamarati subcommittee. The latter, by incorporating social rights already recognized and established in the laws in force into the Constitution, encapsulates the tone of change, in a way that is not necessarily democratic, but that imposed advances and limits on Brazilian workers’ citizenship in that period. **101**

⁵⁶ W. G. DOS SANTOS, *Ordem burguesa e liberalismo político*, São Paulo, Duas Cidades, 1978.

⁵⁷ Originally: ‘surge como privilégio e não como direito. Se ela fosse concebida como direito, deveria beneficiar a todos e da mesma maneira’. J. M. DE CARVALHO, *Cidadania no Brasil: o longo caminho*, Rio de Janeiro, Civilização Brasileira, 2010, p. 114.