

## PHILOSOPHY OF LAW AND WORLD OF WORK<sup>1</sup>

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*Philosophy belongs to desire even more than anything else that is not of a nature different from any other simple passion, but simply the desire, passion that is bent upon itself, reflected; that desire ultimately to be<sup>2</sup>.*

### ABSTRACT

For neo-liberal economic theories, the world of work is regarded as a commodity the worker's individual. Its value is determined by the law of supply and demand without Smith's<sup>3</sup> invisible hand to intervene in the labor market<sup>4</sup>. In labor law, this relationship is reflected by deregulation of labor called, or easing of the employment relationship. It believes that human work should leave the labor protection stan-

dards produced by the State as minimum rights for workers. The purpose of this report the research "The World of Work in the XXI Century" is to demonstrate the need to strengthen the protective principle as a regulatory axis of Labor Law from the philosophy of law.

**Key words:** philosophy of Law, Labor Law, protective principle, Human Wor, Flexibility, Deregulation.

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2 Lyotard, J. F. (1994). *¿Por qué filosofar?* (G. González. Trad.) p. 145. Barcelona: Altaya. [Trabajo original publicado en 1964]

3 Es el concepto clave en la economía clásica de Smith, referente al equilibrio del mercado a través de la ley de la Oferta y la Demanda. Según Smith, la búsqueda del beneficio individual redundará a favor de toda la sociedad a través de una mano que ajusta los desequilibrios temporales del mercado, generando un proceso de autorregulación.

4 Es dable señalar que se le puede llamar Proteccionismo Laboral a la mano invisible de Smith cuando interviene en el mercado para lograr el equilibrio de éste. Esta mano invisible es entendida como aquella intervención que hace el Estado para lograr un equilibrio entre capital y trabajo, y así evitar que el valor de la fuerza de trabajo sea determinado por la Oferta y la Demanda, sino que, por el contrario, al ser protegida la mano de obra se establezcan unos derechos laborales mínimos que deben ser reconocidos por el mercado de trabajo.

## RESUMEN

Para teorías económicas neoliberales, el mundo del trabajo es considerado como una mercancía para el individuo-trabajador. Este valor es determinado por la ley de la oferta y la demanda sin la mano invisible de Smith que intervenga en el mercado laboral. En Derecho Laboral, esta relación es reflejada por la liberalización del trabajo o la también llamada flexibilización de la relación de empleo. Se cree que el trabajo humano debería dejar los estándares de la protección laboral establecidos por el Estado como derechos mínimos de los trabajadores. El propósito de este reporte de la investigación "El mundo del Trabajo en el Siglo XXI", es demostrar la necesidad de fortalecer el principio protectorio como un eje regulador del Derecho Laboral de la Filosofía del Derecho.

**Palabras clave:** Filosofía del Derecho, Derecho Laboral, Principio Protectorio, Trabajo Humano, Flexibilidad, Desregulación.

## INTRODUCTION

Philosophy of Law -in the case of labor law- to analyze the science of law stating the reasons and justifications of its principles, behaviors and reading empirical social normative discourse that sets the order of human behavior as defined by Hans Kelsen<sup>5</sup>. If philosophy belongs to desire, as manifested by Jean François Lyotard<sup>6</sup>, then philosophy allows for a reading of the Labor Law from the man in your entire environment, passions, desires, and ideas. The

world of work can be analyzed from the philosophy of law as part of, but also, as the central idea that the world must be protected by society to not become a commodity in consumer society<sup>7</sup>.

From the philosophy of law may be interpreted -analyze this case- the legal science of Labour Law. For this report, **it will** define the philosophy of law as a study taking the moral legitimacy of law and legal policy. In the words of Carl Joachim Friedrich: "The philosophy of law gives us a reflection of legal science, not only from the so-called-normative judgments but also from the analysis of such judgments, values, opinions and beliefs"<sup>8</sup>; this means criticism of law since its validity and effectiveness. Philosophy of law requires us to accumulate knowledge, interpret and above all, requires thinking about contemporary legal science and the influences reflected in it: technological society, the information society and the socio-economic<sup>9</sup>.

Through this thinking, establishing coherent and sensible relations between things. So to think of the Labor Law is to philosophize about the world of work from the perspective of labor protectionism; otherwise, analysis of this protectionism, correspond to state that the workplace is just another commodity in the consumer society, where individuality and selfishness are human desires and human passions prevail, considered a human work activity produced by a machine.

In developing the philosophy of law, Carla Cordua says the concept of law in Hegel's

5 Kelsen, H. (1987). *Teoría pura del derecho*. (M. Nilve. Trad.) p. 88. Buenos Aires: EUDEBA. [Trabajo original publicado en 1934]

6 Lyotard, J. F. Ob. cit.

7 Es a partir del siglo XIX que el trabajo humano comienza a ser considerado como una mercancía más y obliga a la sociedad, representada en los Estados, a establecer su protección a través de la Ley.

8 Friedrich, C. J. (1997). *La filosofía del derecho*. (M. Álvarez Franco. Trad.) p. 14. México: Fondo de Cultura Económica. [Trabajo original publicado en 1955]

9 Méda, D. (1998). *El trabajo: un valor en peligro de extinción*. (F. Ochoa de Michelena. Trad.) p. 5. Barcelona: Gedisa. [Trabajo original publicado en 1995]

philosophy and shows that philosophy does not deal with abstract objects such as mere concepts; Cordua says the matter of philosophy are the ideas that are concrete. In the field of Labour Law<sup>10</sup>, the human being is concretized in the workplace - with that achieved by strengthening the labor protectionism, as part of the reason for Labor Law<sup>11</sup> -in the words of Carlos Manuel López Palomeque<sup>12</sup>, "a cultural category" - the result of the industrial capitalist system and not a regulation to resolve labor disputes<sup>13</sup>.

However, his author clearly states that labor law historically had to arise as a result of paternalism initial work<sup>14</sup> of the nascent bourgeois class subsequently, emerged as the need of the bourgeois system to produce a labor market control from a salaried job<sup>15</sup> protection legislation. This protectionism is the label that identifies the Labour Law of other laws, from the need for state intervention in the labor market, protecting the human labor of the laws of supply and demand in such an intervention.

## RESEARCH PROBLEM

This report raises the following question: How long the philosophy of law, it is possible to argue the need to strengthen the

protective principle of the working world to counter the labor market deregulation?

The need to strengthen the labor protectionism as a way to counter the ideas of neo-liberal economic theories can be done from the philosophy of law, to analyze and interpret labor law not only from the historical development of philosophy, but also from the contemporary reading of the changes undergone by the world of work.

In contemporary times, an analysis that is the philosophy of law from the reading of the Labor Law is the labor market problems in the understanding that it is dynamic and supplier issues that improve the lives of people; Theodor Adorno<sup>16</sup> would say; a philosophy that does not refer to large systems is not Philosophy: "Philosophy passes the lie to avoid being hypnotized by the superpower, keeps at bay at all angles of the social mechanism"<sup>17</sup>. Theodor Adorno says that philosophy believes that the division of labor exists for men and that progress leads to freedom

## METHODOLOGY

For the development of this report will use the research method and argumentative

10 Cordua, C. (1992). *Explicación sucinta de la filosofía del derecho de Hegel*. p. 3. Bogotá: Temis.

11 Diez, F. (2001). *Utilidad, deseo y virtud: la formación de la idea moderna del trabajo*. 304 pp. Barcelona: Ediciones Península.

12 Palomeque López, M. C. (1995). *Derecho del trabajo e ideología: medio siglo de formación ideológica del derecho español del trabajo (1873-1923)*. (5ª ed. rev.). p. 3. Madrid, España: Tecnos.

13 En el vocabulario de Foucault, la noción de <<norma>> está ligada a la de <<disciplina>>. En efecto, las disciplinas son extrañas al discurso jurídico de la ley, de la regla entendida como efecto de la voluntad soberana. La regla disciplinaria es al contrario una regla natural: la norma. REVEL, Judith. *Le Vocabulaire de Foucault*. Paris: Ellipses Édition Marketing, 2002. p. 20.

14 "La calificación como «paternalistas» de ciertas prácticas de los patronos decimonónicos suscita inmediatamente la sospecha de tratarse de un burdo enmascaramiento de la explotación de la fuerza de trabajo por el capital, en las relaciones de producción del capitalismo industrial" Alemany: 2006, 33.

15 Le Goff, J. (1983). *Tiempo, trabajo y cultura en el occidente medieval*. (M. Armiño. Trad.) p. 65. Madrid, España: Taurus. [Trabajo original publicado en 1977]

16 Adorno, T. W. (1991). *Actualidad de la filosofía*. (J. L. Arantegui Tamayo. Trad.) Barcelona: Paidós Ibérica. [Trabajo original publicado en 1931]

17 Horkheimer, M. y Adorno, T.W. (1987). *Dialéctica del iluminismo*. p. 285. (H. A. Murena. Trad.) Buenos Aires: Sudamericana. [Trabajo original publicado en 1944]

documentary allows us to reflect on the philosophy of law to answer the question raised. Similarly, the method used was interpretive, dogmatic, systematic, historical and logical legal sciences, to address the reading of the Labor Law from normative discourse.

## RESULTS

Can be declared that, throughout history, the real world of work has had different models of rationality in which ideas and categories have been established. In the world of work, the rationality model constant from century XIX - which originates in the Labour Law in Europe- is precisely, by the State, protect the labor of mere liberality of the market.

In the XXI century, a new rationality that has changed due to the effects of technological and social models and including due to the ideas of conceiving formerly called "Working class"; from the sociological point of view new rationality that has paid these categories. Today, the social subject in the world of work is different for workers in the nineteenth century; including social psychology and organizational forms that are different social subject. However, over time, the rationality of the concept of market capitalism by reading has not changed from the world of work; This argument can establish that the labor protectionism - born in the nineteenth century rationality- today is effective because it is the way to counter the labor market of the law of supply and demand.

The Labor Law has received numerous designations and definitions from legal

science. For Francisco Suárez<sup>18</sup> and according to St. Thomas, the definition of law is a certain rule and measure by which one or is induced to act or is separated from action. Hence, St. Thomas also states that a provision is bad law but inequality. Rightly, Francisco Suarez comes to analyzing the problem of IUS<sup>19</sup>, their significance and comparison with the law, likening it to what is fair and equitable, this being the object of justice. Thus, justice means a particular virtue, a virtue that gives the other what is yours. The IUS is another concept of law itself, because this is a fair term, otherwise it would not be law.

This allows to point out that just produce an element -as protectionism of its contractual object- is inherent to the Labor Law produced by the State or the subjects of the employment relationship; otherwise, ignore this protection as part of re-IUS is the phrase of St. Augustine "I do not think law which is not fair"<sup>20</sup>. In this case, when the law or common law governing violent and there is a breakdown of the social, society has the right to reveal against the law goes against the common good. The rationality of the rebellion of the people is a valid argument against neoliberalism, by denying labor protection, produces only go against the common good of the world of work<sup>21</sup>.

With the birth of the Welfare State<sup>22</sup> and from state protectionism, Labour law acquires a new dimension in the overall context of public social policies; an old argument that goes from contemplating the Labour Law as a law or legislation, to give names such as industrial and labor legislation, labor

18 Suárez, F. (1967-1968); Vol. 3: 6. *Tratado de las leyes y de Dios legislador*. (F. Lodos Villarino. Trad.) Madrid, España: Instituto de Estudios Políticos. [Trabajo original publicado en 1612]

19 *Ibid.* p. 9.

20 *Ibid.* p. 10.

21 Calvillo, M. (1945). Francisco Suárez: La filosofía jurídica. El derecho de propiedad. *Jornadas*, 43, 71. México: Colegio de México.

22 Bauman, Z. (2008). *Trabajo, consumismo y nuevos pobres*. (V. de los Á. Boschioli. Trad.) (1ª ed.). p. 73. Barcelona: Gedisa. [Trabajo original publicado en 1998]

legislation, social work legislation, Labour Law and Labour, Labor Law, Labour Law, Industrial and Labor Law, Economic Law, New Law, and Labor Law, among others. Today, the discussion about its name is not important; as to its purpose or its definition, all authors agree that labor law is "World of Work." Authors such as Henri Guillaume and Gerard Camerlynck Lyon-Caen<sup>23</sup> claim that labor law has a dynamic that makes it a historical right, a right to expand, a right constant differentiation and, ultimately, a right whose object of study is the world of work within the context of society<sup>24</sup>.

Mario de la Cueva<sup>25</sup> said that the Labour Law can no longer be conceived as regulatory standards, but as the status of the working class. The new law is the rule that proposes to carry out social justice in the balance of relations between labor and capital<sup>26</sup>. Wolfgang Däubler<sup>27</sup> takes up this issue and states that the Labor Law's main purpose is several functions, to say: the peacekeeping role, the protective function of the market linked to the control<sup>28</sup> work to establish that human labor can not be considered a commodity, and therefore, it behooves the State to establish the labor protection; and also as a function, called pacification of social conflict<sup>29</sup>.

Article 427, Section II of the Treaty of Versailles (1919): "But as they are persuaded

that the work should not be regarded simply as an article of commerce," and "1.- The guiding principle above enunciated, that work should not be regarded simply as a commodity or article of commerce<sup>30</sup>; The Article states that universal peace as the main regulator of the world of work, must be based on social justice, social justice and this can be achieved as long as the work ceases to be regarded as a commodity.

Labour law originates with the Treaty of Versailles (1919) and the emergence of what is known as the welfare state; about, Lord Beveridge<sup>31</sup> says: "The State, in establishing the social protection should not stifle the incentives nor the initiative or responsibility. The guaranteed minimum level to leave room for voluntary action by each individual so you can get more for himself and his family. "The development of the Welfare State<sup>32</sup> on the basis of the criteria cited author, arises from the need that the state had greater involvement in the market in the world of work; such intervention will be known later as the so-called Social Rights manifested not only as protection against market risks, but as part of the rights of human beings.

From these postulates, manifestations of Human Rights and the world of work are known. From Article 68 of the Charter of

23 Camerlynck G.H. y Lyon-Caen G. (1974). *Derecho del trabajo*. (J. M. Ramírez Martínez. Trad.) (5ª ed.). p. 10. Madrid, España: Aguilar. [Trabajo original publicado en 1974]

24 *Ibid.* p. 15 y ss.

25 Cueva, M. de la. (1988); Tomo I: 42. *El nuevo derecho mexicano del trabajo*. (11ª ed.) México: Porrúa.

26 *Ibid.* p. 85.

27 Däubler, W. (1994). *Derecho del trabajo*. (M. P. Acero Serna y P. Acero López. Trads.) p. 101. Madrid, España: Ministerio de Trabajo y Seguridad Social. [Trabajo original publicado en 1976]

28 Gregg, S. (2007). *La libertad en la encrucijada: el dilema moral de las sociedades libres*. (M. de los Á. Barros Cabalar. Trad.) p. 182. Madrid, España: Ciudadela Libros. [Trabajo original publicado en 1969]

29 *Ibid.* p. 90. y ss.

30 Ostau de Lafont de León, F. R. (1996). *Tratado de derecho laboral internacional*. p. 13. Bogotá: Ciencia y Derecho.

31 Beveridge, W. H. (1943). *Seguridad social y servicios afines; informe presentado al Parlamento de Gran Bretaña, el 22 de noviembre de 1942*. (J. Arce. Trad.) Buenos Aires: Losada. [Trabajo original publicado en 1942]

32 Bauman, Z. *Ob. cit.*



the United Nations<sup>33</sup>, state intervention in the world will become part of what is now known as Human Rights. Labor rights have been considered as part of Human Rights<sup>34</sup>; thus have strengthened the obligations to deliver or do, the rights of freedom related to the principle of equality, the protective principle in nature that produces performance based standards, and the rights of absolute and universal character that are considered as minimal elements in human existence.

As part of the capitalist economic system, these rules are born on the basis of the social struggle of the proletariat of Europe regulations that required protective conditions of life and work. The full will of the employer<sup>35</sup>, ultimately, fusion has occurred between a criterion of democracy and free markets, creating a monster that has dissolved all the labor protectionism; this neoliberalism is where ideologies and philosophies of Justice, Freedom and Equality attempt to explain -centuries- social imbalances through practice and through harmonically cohesive societies. In this way, yet his speech was vague, unsuitable to

contribute to undermine the real centers of economic and political power, which, on the contrary, extracted from the vague possibility of the liberal use of the flag to serve their interests. Thus, we face conceptions- the very name of justice and liberalism of alleged popular-legitimize results of a few real one.

The work, object of Labour Law, is one that is made for compensation for use in developing socially just freedom from the voluntary worker. Similarly, work is also all human action aimed at producing effects in accordance with their own interests; this work has been excluded from labor law. There are other activities that, as constructions of society in social relations, are jobs<sup>36</sup> lacks the element of compensation, such as, work of women in the home. The protectionism of the State has not established standards to protect both this work<sup>37</sup> other socio labor situations have been occurring in recent years: economic insecurity, fear of workers losing their jobs; and retreat of the welfare state in terms of labor protection. Apparently, the welfare state, like Democracy, has been kidnapped by the real power of the market<sup>38</sup>.

33 NACIONES UNIDAS - CENTRO DE INFORMACIÓN, (1945, 26 de Junio). *Carta de las Naciones Unidas*. Extraído en 2007 del sitio Web del Centro de Información para México, Cuba y República Dominicana: <http://www.cinu.org.mx/onu/documentos/cartatxt.htm>

34 Hunt, L. (2009). *La invención de los derechos humanos*. (J. Beltrán Ferrer. Trad.) p. 25. Barcelona: Tusquets. [Trabajo original publicado en 2007]

35 Palomeque López, M. C. Ob. cit. pp. 13, 87.

36 Es necesario recordar que la primera parte de *Crítica al Programa de Gotha* de Karl Marx (1976/1875) justamente está dedicada a la definición del mundo del trabajo, estableciendo que el trabajo es sólo fuente de riqueza y cultura como trabajo social; es más, Marx también analiza que hay otros tipos de trabajo. En el artículo "*De memoria nos llenan el olvido. Revisión histórico-cultural de la doctrina jurídico laboral*" se considera que Francisco Lafont y Francisco Ostau De Lafont son personas diferentes, a lo que hay que señalar que se trata de la misma persona. Igualmente, se crítica no haber profundizado o analizado el mundo de trabajo de los aborígenes del territorio colombiano; si bien eso es cierto por cuanto no fue objeto de estudio en las obras públicas, debe quedar claro que el mundo del trabajo aborígen es tan valioso como el mundo del trabajo que surge en la racionalidad europea del siglo XVI, el cual es trasladado a América. Por eso, la hipótesis que se ha trabajado en los citados escritos es la afirmación de que el mundo del trabajo americano, su concepto y lectura hacen parte de la racionalidad europea desde el Derecho Indiano. (2008, Mayo-Agosto).

37 Montoya Melgar, A. (1997). *Derecho y trabajo*. (1ª ed.). p. 87. Madrid, España: Civitas.

38 Phelan, A. (1990). *El dilema de Weimar: los intelectuales en la República de Weimar*. (J. M. Domingo. Trad.) p. 13. Valencia, España: Alfons el Magnánim. [Trabajo original publicado en 1988] La última

According to historical events and social developments, the concept of work in the Labor Law must be understood from different points of view. Thus, we arrive at work today, considered a moral obligation, which originates on the basis of man's personal freedom to define what is considered human labor.

In addition to the name of the Labour Law<sup>39</sup>, is necessary to highlight the difference between the right to work -understood as the right to freedom to choose work, paid work- And rights at work -that is, the right to work in decent conditions and favorable-, and the right to protection work. That said, addressing both the right to work and rights at work, argumentative capacity allows him the very essence of the Labor Law. This, from the philosophy of law, which has in common with the general philosophy and legal<sup>40</sup> science fundamental nature of their problems. The labor market protectionism is against considering the workers as a commodity market. In the XXI century, savage capitalism<sup>41</sup> wants (or set as a general rule) the world of work and its value<sup>42</sup> must be the sway of supply and demand - as part of the free play of markets, as protecting the profits of the employer-, contradicting the social character of human labor as range of this fundamental<sup>43</sup>.

When analyzing social economic ideas such as the problems of neoliberalism and its

relation to social policies that characterized this century and the labor market, can establish that they attempt to restore the philosophy of the slave, where there is another world; hence the only possible world is one market that transforms society, having as a core belief that all aspects of society will be enhanced by the market and competition, becoming the arbiter of all social matters.

This neoliberal approach forgets that the market is a product of culture, society and its individual components. These components become essentially a facade for individual benefits -specifically, the gain- to produce a market that reflects their own values and ethical components. Submit the job market, allowing a greater gain in the value of the workforce, is the freedom of the neoliberals. Therefore, the analysis from the reading of the legal philosophy of the labor market admits to having a new ethical dimension of social life from a labor market -operated by the state- correcting deviations, the social exclusion and values human work in its social dimension. This is called job protection.

From the Greek classics to the new neoliberal, the conceptualization of human labor has been performed from different readings (economic, social, metaphysical, political, etc.). Therefore, considering the world of work, from legal

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página del último número de *Die Weltbühne* (1933) contenía: "Quizás sea el momento de recordar que siempre hemos alzado una voz de advertencia, que nunca hemos temido cargar con el calificativo de eternos descontentos para los que nunca está bien nada. Por doloroso que sea decirlo, nuestras críticas y advertencias estaban más que justificadas. Sin embargo el trabajo prosigue, pues el espíritu triunfará a pesar de todo".

39 Montoya Melgar, A. Ob. cit.

40 Coing, H. (1961). *Fundamentos de filosofía del derecho*. (J. M. Mauri. Trad.) p. 19. Barcelona: Ariel. [Trabajo original publicado en 1950]

41 "El fin del capitalismo no es otro que satisfacer su imperativo de goce, a saber, generar lucro incesante" Alonso Rodríguez: 2010, 65.

42 Smith, A. *Lecciones de Jurisprudencia*. Trad. Alfonso Ruiz Miguel. Madrid: Boletín Oficial del Estado. Centro de Estudios Constitucionales, 1996. p. 138. Adam Smith considera "no debemos juzgar el coste del trabajo por el dinero o moneda que se paga por él"

43 Capella, J. R. (1997). *Fruta prohibida: una aproximación histórico-teórica al estudio del derecho y del estado*. p. 26. Madrid, España: Trotta.

philosophy, it is to establish that human activity can not be separated from its conception of being, because he identifies this activity as being is, precisely physical and intellectual activity of man and his actions, not only in social life but in their individuality. For her part, Hannah Arendt<sup>44</sup> differentiates the work of our hands and our bodies: the first is that it makes, where he works, who does something that produces something, which for Marx<sup>45</sup>, is evidence of human nature. According to Paul Schrecker<sup>46</sup>, human characteristics are given to work from an expenditure of energy that transforms an object, thus the work is analyzed from different aspects such as religion, aesthetics, economics and language.

Today, human work is framed in what Jose Antonio Zamora Zaragoza<sup>47</sup> categorized as Fordist capitalism and neoliberal, which has the following logic: Having as a basic principle that the law of supply and demand prevails over any market protectionism (labor market or general market), capital is allowed to have the greatest potential gains in the market law of supply and demand, thus causing the most damage to devalue human labor.

The so-called Labour Law of postmodernity is characterized by the multiplicity of its analysis, flexibility to adapt to new conditions of work organization and speed of this adaptation. For flexibility (ability to change the rules without destroying the organization) is perhaps the most striking feature of the network as a paradigm of information technology: the network, says Manuel Castells is a "flexible and open structure" able to expand without limits<sup>48</sup>. The current crisis is characterized by a crisis of representation of the work, understood as bankruptcy, el derrumbe, la fragmentación del significado de aquellas actividades que hasta ahora eran símbolo, stigma, and significant that we talked about ourselves, denoting all that were or could be, that made possible our work into the material world and receive technical direction on the role played in the social division of labor, rather than analytical distinctions and the generation of mechanical solidarity affinity<sup>49</sup>.

Similarly, is characterized as a crisis of political representation of labor, induced loss of consciousness of one's labor activity of the visible sign of our inclusion, of belonging to society. How are we to say who we are

44 Arendt, H. (1993). *La condición Humana*. (R. G. Novales. Trad.) p. 157. Barcelona: Paidós Ibérica. [Trabajo original publicado en 1958]

45 "La forma general del valor, forma que presenta los productos del trabajo como simples cristalizaciones de trabajo humano indistinto, demuestra por su propia estructura que es la expresión social del mundo de las mercancías. Y revela al mismo tiempo que, dentro de este mundo, es el carácter general y humano del trabajo el que forma su carácter especialmente social" Marx: 1981/1867, 33.

46 Schrecker, P. (1957). *La estructura de la civilización*. (B. P. Leone y E. C. Frost. Trad.) México: Fondo de Cultura Económica. [Trabajo original publicado en 1948]

47 Zamora Zaragoza, J. A. (2010). Fetichismo e ideología en el capitalismo avanzado. En, Colección Ítaca (Eds.) *Triunfo y fracaso del capitalismo: política y psicoanálisis* (p. 127). España: Gómez & Navarro Comunicación.

48 Castells, M. (1999); Vol. 1: 87-92, 506-507. *La era de la información: economía, sociedad y cultural. La sociedad red*. (C. Martínez Gimeno. Trad.) Madrid, España: Alianza. [Trabajo original publicado en 1996]

Con respecto a la rigidez y flexibilidad de los modelos jurídicos, vid. Ferrari, V. (1989). *Funciones del derecho*. (M<sup>a</sup> J. Añón. y J. De Lucas. Trads.) pp. 150-155. Madrid, España: Debate. [Trabajo original publicado en 1987]

49 Cfr. Moscoso, L., (2003). De Trabajadores a Ciudadanos y Viceversa: La Crisis del Trabajo en la Perspectiva de Dos Fines de Siglo. *Cuadernos de Relaciones Laborales*, 21(1), 20.



through our laboring activity if the company no longer has space for it can cope and have people who represent it? And, Why another channel through what must be understood by those who no longer have to participate in the division of labor?<sup>50</sup> In the words of Pierre Bourdieu, and the above:

(...) Despite all the academic discussion on the distinctiveness of the human sciences, they are subject to the same rules that apply to all sciences. You have to produce systems of explanatory variables and consistent, propositions together in discrete models that explain a large number of empirically observable facts and that can only oppose more powerful than other models obey the same conditions of logical consistency, systematic and empirically refuted (p. 60)<sup>51</sup>.

The Philosophy, as the provider of the issues that improve the lives of people, is a dynamic element. From this principle is the philosophy of law when analyzing the world of work, that is, the Labor Law.

## CONCLUSION

The philosophy of the Labour Law determines that the Labor Law is an eminently cul-

tural. In a democratic political process of society and aiming at protecting the world of work, labor law emerges as a normative discourse of the state in legal science in order to not continue to exclude the emerging working class, but, by contrast, integrate into society. Despite the contradictions between capital and labor is where the capital itself recognizes the abuses can be committed if it is controlled by the state. Therefore, it is not surprising that today, the labor protectionism -originated from the conflict of the nineteenth century must be born of the conclusion of the XXI century social actors.

Juan Antonio Garcia Amado says that the labor law has been unknown or ignored by philosophers. Therefore, a need to renew the philosophy of law from the analysis of a discipline; suggests, also approach the study of the legal reality with a practical and a more or less scholarly capacity ... somewhat higher than comfortable and nothing compromising coating a few principles and a few references to justice and goodness<sup>52</sup>. In this case, proposes an analysis of labor law from the philosophy of law. This ensures that the protective principle<sup>53</sup> or state intervention -from-developed legal philosophy of human freedom in society and what society has constructed cultural economic, political and ideologically. Part of this construction is the

50 *Ibid.* p. 20.

51 Bourdieu, P. y Wacquant L. (2005). *Una invitación a la sociología reflexiva*. p. 262. Buenos Aires: Siglo Veintiuno. [Trabajo original publicado en 1992]

52 García Amado, J. A. (1999, 15 y 16 de Abril). El individuo y los grupos en el derecho laboral: Los dilemas del vínculo social. *Cuadernos Electrónicos de Filosofía del Derecho*, 2. Extraído en Marzo de 2010 desde <http://www.uv.es/CEFD/2/gamado.html>

53 Dirigiéndose a los operadores judiciales colombianos, con relación a la mezquindad con que ellos han dado lectura, el profesor Antolín Díaz Martínez señala: "La ciencia jurídica debe adquirir una dimensión más universalista de los conceptos jurídicos como único modo de contrarrestar «el provincialismo abogadil»...ese pírrico criterio jurídico que en algunos países, específicamente del llamado mundo capitalista y sobre todo de Latino América, ha llegado a convertir los juzgados civiles en oficinas de cobranzas de los agiotistas y expertos en despojo y, por otro lado, los juzgados penales en sedes de venganza personales donde la dignidad y la libertad humana se llevó a la feria; donde, al amparo de legislaciones acomodaticias, hasta la más exigua deuda se paga con cárcel; y donde los Derechos Humanos más elementales son vilipendiados en aras de los avatares políticos". Díaz Martínez: 1977, 4.

ability to decide by rational will, for this, the state sets the rules in order that the decision is not subject to the law of the jungle.

The need for society to produce protective rules of the world of work, as regulator of social behavior, emerges from the reading that legal philosophy of the Labor Law does. In turn, such regulatory element must be allowed freedom to ethics, values and free will, among others, should also allow the value of work can be determined from the ratio of the components of the tripartite labor market<sup>54</sup>, analyzing from what has been termed post-modern labor law.

In the visions of Paco Puche, many human needs are immaterial; there are others that are of substance, but all lead to the maintenance of life or joy of living. Puche out that one of the axiological needs of the human right protection is represented in being with care, adaptability, autonomy, balance, solidarity, through social security, health care, savings, insurance system, family, work, Law and Justice, in the making, cooperation, prevention, planning, care, heal, defend, a vital boundary, a social boundary and a dwelling<sup>55</sup>. According to Tony Judt, one must rethink the current state, its role, its interventionism and protectionism. Similarly, either rethink the Labour Law, either restate existing law protecting elements of the work produced by the welfare state. Therefore, to reconsider the role of the State requires us to rethink labor law from legal philosophy. This, in order to strengthen the value of human work: that is no longer determined by the labor market to become a social value that produces the balance of the conflict. Otherwise, social conflict intensifies, becoming the Labour Law in the pecking order.

In terms of philosophy of law must prevail primacy of practical reason<sup>56</sup> over the theory on which the economic elements of modernity are linked to the reality of the worker and society. The contradiction between the model generates economic, social justice and human needs, have fractured legal culture gave way to the economic model against its reason for being, namely, social justice as part of living together in society. Therefore, in modern law must reach the solution of these contradictions and practical elements that may not resolve to be totally contrary interests.

Reasonableness must establish that the labor protection and the protection of the world of work must prevail against the economic models as part of the element of social justice and coexistence in society.

From the philosophy of law can strengthen the argument of labor protectionism, which besides being consecrated in the Colombian Constitution is the Constitution of the International Labour Organization and its development through international agreements.

Ultimately, examining the problems of the world of work from the philosophy of law may have broader institutional contributions to labor law to more clearly understand what sense it in the moral and political.

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