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THE FIRST BILLS ON WORK ACCIDENTS IN BRAZIL: FROM CIVIL LIABILITY TO PROFESSIONAL RISK THEORY (1904-1919)

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ABSTRACT:

This article investigates the legal discussions and political-economic interests of the first decades of the 20th century that provided the ideological and legal grounds for the Decree-law 3.724/1919, the first statute to regulate the compensation for work accidents in Brazil. To fulfill this end, four bills on work accidents that preceded the decree are analyzed: the Medeiros e Albuquerque (1904), Graccho Cardoso (1908), Adolpho Gordo (1915), and the Labor Code bill (1917); the parliamentary discussions regarding these bills and the decree of 1919 proper; and the works of Brazilian labor and civil law scholars from the first two decades of the 20th century. These bills represented the first attempt to apply, in Brazil, the professional risk theory to accidents at work. The legislative reception of this theory, however, was hampered by the employer elites of the time, especially by the political use of parliamentary commissions and technical arguments, such as maintaining the unity of private law.

KEY WORDS:

Legal history. Labor law. Work accidents. Professional risk theory. Brazil.

RESUMEN:

Este artículo investiga como el Decreto-ley 3.724/1919, a pesar de ser el primero en regular las indemnizaciones por accidentes de trabajo en Brasil, reflejó discusiones jurídicas e intereses político-económicos que se iniciaron al menos quince años antes. Para ello, analizamos cuatro proyectos de ley sobre accidentes de trabajo que precedieron al decreto: Medeiros e Albuquerque (1904), Graccho Cardoso (1908), Adolpho Gordo (1915) y el Código del Trabajo (1917); las discusiones parlamentarias sobre estos proyectos y el propio decreto de 1919; y los trabajos de los estudiosos del derecho laboral y civil brasileño de las dos prime-

ras décadas del siglo XX. Estos proyectos de ley representaron el primer intento de aplicar la teoría del riesgo laboral a los accidentes de trabajo en Brasil. La recepción legislativa de esta teoría, sin embargo, fue obstaculizada por las élites patronales de la época, especialmente mediante el uso político de las comisiones parlamentarias y de argumentos técnicos, como el mantenimiento de la unidad del derecho civil.

PALABRAS CLAVE:
Historia del derecho. Derecho laboral. Accidentes de trabajo. Teoría del riesgo laboral. Brasil.

1. INTRODUCTION

Brazil regulated the compensation of accidents at the workplace with the Decree-law 3.724 of 1919. This legislation appeared lately when compared to most European and even some South American countries, such as Peru and Argentina[1]. This paper goes back in time, starting in 1904. It was on this date that the deputy Medeiros e Albuquerque presented the first Brazilian bill on this topic. The objective is to understand how the previous projects reverberated in the 1919 decree, as well as to analyze how this discussion developed in parliament helps to understand the process of formation of labor law in Brazil.

In these fifteen years between the first project and the Decree-law 3.724/1919, many events took place. In summary, there were four main bills presented to the parliamentarians during these years, some of them being discussed simultaneously in parliament. The first one was the Medeiros e Albuquerque bill, proposed on September 4, 1904 in the Chamber of Deputies. Treated as a "humanitarian duty" by its author (Brazil 1905, 105), this project was a pioneer in several themes, such as professional risk theory and accident insurance. A few years later, in 1908, another bill was presented to the Chamber of Deputies, authored by deputy Graccho Cardoso. In June 1915, the senator Adolpho Gordo proposed another bill to the Senate. Finally, a Labor Code bill was proposed in 1917, containing provisions on workplace accidents, which would be the basis of the substitutive bill Prudente de Moraes, the one that would originate the Decree-law 3.724/1919.

The main idea of this article is to understand what happened during these fifteen years from the Medeiros e Albuquerque bill until Decree-law 3.724/1919, in the political context within the Brazilian National Congress and in the theorical sphere of law, regarding the way Brazilian jurists dealt with the introduction of the newly developed professional risk theory in the Brazilian legal system.

[1] About this cf.: Brazil 1918g, 65.

This article has two guidelines. The first one, explained by Antônio Manuel Hespanha (2012, 24), is the critical legal history, which means understanding the object of study in integration with society. It can be successful with the help of some strategies like: the overthrow of the institutional perspective, consideration of law as a social product, and the escape from the linear, progressive, and evolutionist perspective. The second one is to avoid the so-called ideology of granting. As Luiz Werneck Vianna (1978, 31-32), a Brazilian sociologist, explains, Vargas Government (1930-1946) created this "ideology of granting" to apprehend the history of labor legislation emphasizing on; i) granting character of laws, a process of state concession; ii) dealing with social issues, previously understood as criminal issues. The development proposed here aims to avoid this myth in reconstructing the history of Brazilian social legislation.

The sources used were the Annals of the Chamber of Deputies and Federal Senate, containing the parliamentary discussions regarding the four bills and the decree, as well as the main Brazilian works of the first two decades of the 20th century on labor law, such as those by Evaristo de Moraes, Andrade Bezerra, Carvalho Neto, among others, and on private law, such as Antônio Joaquim Ribas, Teixeira de Freitas, Carlos Augusto de Carvalho, Clóvis Beviláqua, and Jorge Americano. Other sources were legal journals, such as *Revista de Direito Civil, Commercial e Criminal* and *Revista dos Tribunaes*, and non-legal ones, especially *Correio da Manhã* and *Jornal do Commercio*, which frequently highlighted workers' issues.

2. BRAZILIAN LABOR MOVEMENT AND LEGISLATION AT THE BEGINNING OF THE 20TH CENTURY AND THE REGULATION OF WORK ACCIDENTS BEFORE 1919

Decree-law 3.724 is considered a landmark because it established, although symbolically, a period of attention to social issues and social legislation (A. M. C. Gomes 1979, 87-88). Symbolically because if, on one hand, this law marked the establishment of social legislation, which would be strengthened in the following years, it was, on the other hand, the end of another process, which had originated in the early years of the 20th century.

Brazilian historian Ângela Maria de Castro Gomes (2012) studies the historical process of the constitution of workers as political actors during the 20th century in Brazil. She demonstrated that the establishment of the Republic at the end of the 19th century strongly intensified the diversification of national political actors and the first labor organizations, closely related to socialist and anarchist ideas, began to be articulated at a discursive and practical level.

According to Gomes, the labor movement in the first 20 years of the First Republic (1889-1930) was generally not a focus of political tension for the

regime in Brazil. However, it should be noted that the spread, by popular newspapers and small popular conflicts, of socialist and anarchist ideas, coupled with interclass conflicts, in which the *Revolta da Vacina* in 1904 stands out, generated a certain climate of political instability, especially in the city of Rio de Janeiro, then capital of Brazil.

Two points that need to be highlighted concerns the diversity of political actors, with great popular insertion, and their direct influence on the labor movement. Political figures that previously had no voice, at that moment began, albeit incipiently, to form organizations and movements capable of influencing political decision-making and demanding previously unattainable rights (A. M. C. Gomes 2012).

This brings us to the second point, concerning the goals of these conflicts. Gomes (2012) raised an example regarding a strike that took place in the city of Rio de Janeiro in August and September 1903. Besides the already explained popular and almost spontaneous nature of this conflict, it is also possible to say that despite the variety of objectives, including wages and workload, one can see a common thread to these claims: the improvement of the quality of life of a portion of the population long overlooked by the public authorities.

To understand the content and importance of Decree-law 3.724/1919, it is necessary, therefore, to go back to 1903-1904. This decree was not an isolated normative act but a final point in a long process of consolidation of ideas and legal institutes and the formation of a national working class and intellectuals of the labor movement. But what was the legal issue of work accidents?

Until the early 20th century, the compensation for accidents was treated as one type of civil liability (*responsabilidade civil*), that is, the employer should only compensate the employee if guilty, which made it practically impossible to hold him liable. It is necessary to consider that the concept of a contract of employment, as we know it today, did not exist in this period: contracts between workers and employers were governed by private law (Fonseca 2002). Evaristo de Moraes (1986, 39) states that in the 19th century and a fraction of the 20th, in Brazil and most of the western world, there was no disagreement on how to understand the liability of employers for work accidents: everyone maintained that this was a case of subjective liability (*responsabilidade civil subjetiva*), a responsibility that depends on proof that there was negligence, imprudence or disregard for regulatory determinations.

A decision of the Second Chamber of the Court of Appeals of Rio de Janeiro from 1908, published at the *Revista de Direito Civil, Commercial e Criminal* (1908, 153-156), describes how the liability of the employer for accidents at the workplace functioned before the Decree-law 3.724/1919:

> A fault is always the result of an act or omission from which an injury to the right of other arises, and those who claim compensation for the injury

> to their right must demonstrate that the damage was the effect of the act or omission of the offender. The relations of the parties were established between the litigants in a contract of rent of services, but, as in this contract the joint obligations are those of payment of wages and rendering of services, except for special stipulations that the contracting parties may agree upon, and which it does not appear in the case file that the litigants made, it follows that in the case in question it is only a question of fault arising from a *quasi-delict* arising from the duty not to harm another person: Aquilian fault-without attention to a contractual fault, which arises from an obligation dependent on the will of the parties. (…) Now having not been proven that the Appellant company acted with negligence, and not being licit to attribute to the employer guilt by act or omission of another worker, by the effect of unforeseeable circumstances, or inability or carelessness of the victim, the Appellee's complaint could not have been attended as did the sentence appealed. Thus, judging condemns the Appellee in costs[2].

According to this decision, the Appellee, the worker, had not proved that the appellant (employer) had committed an illicit act. According to another part of the decision, the worker had only presented as evidence medical certificates and listed one witness, whose testimony could prove that the company was guilty, so that, following private law, it was impossible to sentence the company to compensate for the work accident.

A new law that recognizes the employer's liability, including in situations of unforeseeable circumstances or force majeure was necessary. It was in this context that, according to Evaristo de Moraes (1986, 41), the professional risk theory was created in Europe. According to this new theory, developed in the late 1890s, the cause of accidents must not be investigated, neither the person is responsible for them, since the employment contract itself includes the obligation to compensate the damage caused by accidents, which are understood as part of the risk of the enterprise, as expenses inherent to industrial activity.

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[2] My translation. Original: "A culpa é sempre resultante de um acto ou de uma omissão de que nasce uma lesão ao direito alheio, e aquelle que reclama a reparação da offensa ao seu direito deve demonstrar que o damno foi effeito do acto ou da omissão do inculpado. Entre os litigantes estavam estabelecidas as relações de partes em contracto do locação de serviços, mas, como neste contracto as unidas obrigações são as do pagamento do salário e da prestação dos serviços, salvas as estipulações especiais que os contractantes entendam assentar, e que não consta dos autos que os litigantes tivessem feito, segue-se que no caso em questão só se trata da culpa oriunda de quasi-delicto proveniente do dever de não prejudicar a outrem: culpa aquiliana--sem attenção á culpa contractual, que nasce de uma obrigação dependente da vontade das partes. (…) Ora não tendo ficado provado que a empresa Appellante procedeu com negligencia, e não sendo licito attribuir-se ao patrão culpa por acto ou omissão de um outro operário, por effeito de caso fortuito, ou impericia ou descuido da propria victima, a reclamação do Appellado não podia ter sido attendida como fez a sentença appellada. Assim julgando condemnam o Appelado nas custas".

Despite being applied in Europe since the late nineteenth century, in Brazil, the reality was somewhat different. Notable private law jurists working in the country, such as Teixeira de Freitas and Carlos de Carvalho, discussed very little the civil liability for non-criminal acts.

Teixeira de Freitas, in his *Consolidação das Leis Civis*, one of the most important sources of Brazilian private law of the 19th century[3], established that civil liability could only be claimed for intentional acts. Carlos de Carvalho (1899, 299-300) goes a little further. In his *Nova Consolidação das Leis Civis*, from 1899, he writes that the obligation to compensate for damages is regulated by fault (*culpa*) or intention (*dolo*). Despite the addition of the expression fault, this text did not establish criteria for determining fault.

Those who best developed the topic of civil liability were Antonio Joaquim Ribas, in *Curso de Direito Civil Brasileiro*, 1880, and Clovis Beviláqua, in *Direito das obrigações*, 1896. According to Ribas (1880, 440-441), liability could arise from a crime, being therefore regulated by Chapter IV of the First Part of the 1830 Criminal Code, or in a private context, as accidents at the workplace. Clóvis Beviláqua (1896, 239) adds, though discreetly, the hypothesis of liability without culpable or intentional acts for the one who contributes to damage due to their duties of guard, authority, and direction. But, in lawsuits on work accidents, the hypothesis developed by Beviláqua of liability independent of fault or intention was not applied.

It was in this legal context of little protection to those injured during work that a new way to deal with this problem began to be discussed, the professional risk theory, which would end this debate once and for all, creating a type of civil liability that today is usually called "objective". Since the first bill on occupational accidents, in 1904, it was proposed to eliminate the need to prove guilt and, therefore, the illicit act, since this obligation, in the case of accidents, would result from the contract itself and the risks of the enterprise (E. Moraes 1986, 40-41).

3. FIRST WORK ACCIDENTS BILLS IN BRAZIL

3.1. Medeiros e Albuquerque bill (1904)

On September 3, 1904, a little more than a week after becoming a federal deputy from the state of Pernambuco, Medeiros e Albuquerque presented a bill to the Chamber of Deputies dealing with an unprecedented topic for the Brazilian legislation: work accidents. José Joaquim de Medeiros e Albuquerque was already a well-known public figure. He had already been elected a federal deputy in 1894

[3] About this cf.: Samuel Rodrigues Barbosa (2008).

and later, in 1901, as a substitute for Herculano Bandeira, who became a senator. The 1904 mandate did not start traditionally. A few days before presenting the work accidents bill, Medeiros e Albuquerque was sworn in as a federal deputy in place of the recently deceased Ermídio Coutinho (R. H. Lopes 2019a, 1).

In the September 3, 1904 session of the Chamber of Deputies, Medeiros e Albuquerque stated that there was an urgent need for the creation of a new law since the old structure of Roman law (private law) was insufficient for modern civilization. It is important to remember that Brazil still did not have a Civil Code, which was promulgated only in 1916. The deputy explained that, within three to five years, thousands of workers would arrive in Rio de Janeiro, forming a very large worker population, so that their demands would assume an extreme degree of severity. "What will not be done by then, will then be done, yielding to demands of the moment, perhaps inconvenient or dangerous ones"[4] (Brazil 1905, 104). This strategy of social pacification through social rights is cited by the legal historian Pietro Costa (2011, 42) as one of the ways to break a possible even great and deeper social-political conflict within 19th century liberal legal and political thought.

The deputy argued that the classical system of private law made liability possible only in situations where the worker could prove the guilt of the employer, which would entail a mere legal fiction of equality, given the impossibility of such proof (Brazil 1905, 104). It is worth remembering that in late nineteenth-century Europe, the legal historian Paolo Grossi (2016, 189) identifies a movement, called legal solidarism, which criticizes precisely these abstractions of formal equality found in civil codes, which ignore emerging social problems. Closely related to this, there is another movement called socialization of private law, an orientation that sees norms as instruments of social change[5]. The professional risk theory, adopted by the Medeiros e Albuquerque bill, is presented as a second solution to this problem. In the words of the deputy:

> The theory that is being adopted everywhere is that of professional risk. It is no longer a question of fault. Workers' accidents are risks of the same nature as any other risks that weigh upon the industry. As a machine, an instrument, the building of a factory, everything, in short, that is used in industry, can deteriorate and, whatever the reason, it is necessary to repair the damage, also the human instrument is susceptible to deterioration and among the expenses, the professional risks, it should be included the repair of these damages (Brazil 1905, 104)[6].

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[4] 1 My translation. Original: "O que se não tiver feito até lá, far-se-ha então, cedendo a exigências de momento, talvez inconvenientes, talvez perigosas" (Brazil 1905, 104).

[5] On the socialization of law in Brazil in the 1930-1940s, cf.: M. M. Silveira 2016.

[6] My translation. Original: "A theoria que está sendo adoptada em toda parte é a do risco profissional. Não se trata mais de averiguar culpas. Os accidentes dos operários são riscos

The author of the bill closed his speech stating that the legislation on work accidents is, more than the consecration of an idea, a "humanitarian duty, an imperative duty, to reduce a little the roughness of the unhappy life of the proletariat" (Brazil 1905, 105). In short, the thought of the deputy had a double nature: if, on one hand, there was a humanitarian concern with the workers, as this specific excerpt shows, one cannot ignore his concern with the possible revolts arising from dissatisfied workers.

Despite this very optimistic first speech by Medeiros e Albuquerque about Brazil's need to adapt to new trends coming from Europe, the path to legislative change concerning accidents at work would be troubled.

After this presentation, on September 3, 1904, the project was cited only once more on the Chamber of Deputies; on September 24 of the same year, when the deputy Medeiros e Albuquerque complained about the lack of attention of the deputies to such a relevant issue as accidents at the workplace, and even insinuated that his presence as the author of the project was hindering its progress (Brazil 1905, 511). This happened, according to the deputy, because he worked in several different branches of legal knowledge. In previous years he had proposed bills on copyright law and economic law (protection of national industries), causing other deputies to believe that his forays into such different areas were "mere fantasy". Perhaps the "bad name" of its author or other reasons not so clear in the few discussions may have influenced the fact that this bill was sent to the Constitution, Legislation and Justice Commission in its first discussion and, did not return to the plenary session.

The jurist who sketched the most important comments on the Medeiros e Albuquerque bill was Evaristo de Moraes, socialist and the most active Brazilian jurist in labor causes at the beginning of the 20th century.[7] Later, several authors made comments on Decree-law 3.724/1919, and some of them, including Evaristo de Moraes, cited the Medeiros e Albuquerque bill. Moraes even wrote a book in 1919 entirely on work accidents, *Os accidentes no trabalho e a sua reparação*, in which he traced the history of the bill, comparing and demonstrating the differences and similarities between previous bills. One of the bills analyzed was that of Medeiros e Albuquerque.

The first book of Evaristo de Moraes on labor law was *Apontamentos de Direito Operário*, published in 1905, one year after the Medeiros e Albuquerque bill. At the end of the fourth chapter, about work accidents, Evaristo de Moraes

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da mesma natureza de quaesquer outros que pesam sobre a indústria. Como uma machina, um instrumento, o edifício de uma fabrica, tudo em summa que se usa na indústria, se póde deteriorar e, seja qual for o motivo, é necessário reparar o damno, também o instrumento humano é susceptível de deterioração e entre as despezas, os riscos profissionaes, se deve incluir a reparação destes damnos" (Brazil 1905, 104).

7 Cf.: Mendonça (2007).

(1986, 46) added footnote n. 18, in which he wrote: "This chapter was already written when deputy Medeiros e Albuquerque presented the bill that we have presented as an appendix"[8]. In the appendix, the author fully reproduced and praised the bill.

Differently from the modest repercussion of the bill in law books, the Brazilian press closely followed what was happening in the Chamber of Deputies. The *Correio da Manhã*, a daily newspaper from Rio de Janeiro with regular collaboration with Evaristo de Moraes, published on September 4, the day after the presentation of the bill in the Chamber of Deputies, a long article summarizing the main arguments raised by Medeiros e Albuquerque and the full– text bill (*Correio da Manhã* 1904a, 2).

In this same newspaper, on September 11, 1904, an interesting article was published, signed by Pedro de Lima Valverde, João Honório de Carvalho, José Hermes de Olinda da Costa, and Arthur Celeste Corne, alleged representatives of the working class from several Brazilian centers, as they called themselves, with intense criticism of the bill. Initially, the authors explain that the bill was going against two basic premises: the 1891 Federal Constitution and the interests of the workers. The first, because according to them, the Constitution ensured complete freedom of labor, and this proposal was grounded on state intervention, involvement of the public power in contracts and transactions between employers and workers, taking away their freedom (*Correio da Manhã* 1904b, 2). Regarding the second point, the authors wrote that, despite enabling a "miserable advantage" in cases of work accidents, considered as those situations in which, there is no fault of either party, on the other hand, it does not prevent employers from claiming compensation from workers in situations where there is negligence of the latter.

On September 18 of the same year, the *Correio da Manhã* published a note discussing an opinion of the Constitution, Legislation, and Justice Commission. According to the newspaper, the Minas Gerais deputy Estevão Lobo, rapporteur of the bill in the commission, had already written his report favoring approval. The report, as stated in the note, begins by pointing out that regulating accidents at work is not only a legal but also a moral duty, and that this model of state intervention is positive, citing as the main example the United States, a country considered economically liberal, and which had already regulated the work of women and limited working hours (*Correio da Manhã* 1904d, 1). However, the report also points out small mistakes in the Medeiros e Albuquerque bills, such as the absence of compulsory insurance, which was adopted in several countries, the exclusion of the labor regime of firefighters, artists, and soldiers, and the absence of legal representation for the worker. All these points, according to the rapporteur, would still be debated at the Commission (*Correio da Manhã* 1904d, 1).

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[8] My translation. Original: "Já estava escrito este capítulo quando o deputado Medeiros e Albuquerque apresentou o projeto que demos em apêndice" (E. Moraes 1986, 46).

Despite the favorable opinion from deputy Estevão Lobo, there are no other records in the Chamber of Deputies about discussions on the Medeiros e Albuquerque bill, a fact that, combined with statements from deputies years later and the repetition of the strategy in other bills on work legislation, leads us to believe that this bill has been paralyzed in the Constitution, Legislation, and Justice Commission.

The structure of the Medeiros e Albuquerque bill is quite simple when compared to Decree-law 3.724/1919. Some aspects of this bill are worthy of attention. The first, as pointed out by *Correio da Manhã*, is the absence of compulsory insurance. It simply stimulated the buying of insurance (art. 10) but leaves the decision to the employer, who can at will assume the risk. Also related to mandatory insurance, it is noteworthy how this law defines the role of the State. This bill, unlike the others, foresees the State only as a supervisory body and not as a possible provider of insurance.

How the professions covered by the bill were defined is also one of the most striking differences between this first bill and the others. Medeiros e Albuquerque opted for general, non-restrictive formula (art. 4) so that any other options that fit the idea of industrial work can be inserted into this formula. Also linked to this, there was no provision on accident-related diseases or occupational illnesses, which gain relevance in the following bill.

Finally, another topic that generated great discussion in the following years: payment of the indemnity, by a single payment or a monthly pension. Without discussing this point too much, Medeiros e Albuquerque opted for a mixed system, in which, a lump sum should be paid to the worker or his descendants (in case of death), but in article 8 he admitted, as a substitute, the possibility of the employer to pay the indemnity as a pension for life.

Despite the efforts of its author, Medeiros e Albuquerque, the last record of the first bill on work accidents was the sending, still in 1904, to the Commission of Constitution, Legislation and Justice. Even with the interview of the project's reporter in the commission, Estevão Lobo, who indicated a positive report for its approval, the bill never returned to the Chamber.

3.2. Graccho Cardoso bill (1908)

Four years after the first attempt to regulate work accidents in Brazil, deputy Graccho Cardoso filed in 1908 another bill dealing with this matter in the Chamber of Deputies.

Maurício Graccho Cardoso was elected for the first time in 1906 as a federal deputy from the State of Ceará, where he built his entire political career. After a successful two-year mandate, he was reelected in 1908, the same year he presented his bill on work accidents. In addition to his political career, he was also

recognized for his participation, in his youth, in workers' causes, having been a reporter of the newspaper *O operário*, in 1891 (A. A. Abreu 2019, 1-2). In his presentation to the Chamber, on August 22, 1908, Graccho Cardoso explained that judging by the remarks raised against the previous bills, there were two main oppositions to the legislation on work accidents (Brazil 1908, 191-192).

The first was the thesis that it would still be premature and inconvenient, in a country of still underdeveloped industries, the invention of interventionist legislation, which would still increase the costs of industries in layout in Brazil. Against this, he argued that the costs resulting from eventual accident compensations would not ultimately fall on the workers since they would enter as regular factors in the product's resale price, weighing, therefore, on the consumers. In addition, the author pondered that the fact that they are still incipient industries would not alter the number of victims of work accidents, which had increased in recent years in all corners of the country. So, the accident legislation would depend, above all, on the number of victims of accidents and not the degree of development of the national industry.

The already mentioned criticism that the law of accident is the consecration of the principle of state intervention in labor contracts and personal freedom: as opposed to the doctrine of contractual and labor freedom. A classic argument against social rights, as pointed out by Pietro Costa (2011, 41). According to Graccho Cardoso, the response of his project to this criticism was the idea of reconciling these two principles. The author defends that the State's action cannot replace individual movement, but, in some situations, intervention is necessary to direct and regulate specific activities. Specifically concerning labor protection, the State, by social intervention, aims for justice, defending the weak, as well as, in its economic aspect, defends the national labor force, a vital need of the economy, in a similar mission of protection and stimulation of property and capital. To reaffirm his argument of trying to reconcile freedom of labor and the need for state intervention, Graccho Cardoso cited that even several territories of the United States, a great exponent of the liberal state, chose to protect labor with legislation on accidents (Brazil 1908, 193).

Differently from Medeiros e Albuquerque, who adopts the discourse that legislating on work accidents is a humanitarian duty, aiming at minimizing the problems of the working class, Graccho Cardoso ends his presentation affirming that the labor problem, related to work accidents, is, above all, an economic rather than social problem.

Similarly different from the previous bill, the repercussion was smaller in the media and legal doctrine. While several authors, such as Evaristo de Moraes (2009), Alexandre Francisco (1930), and Carvalho Netto (1926), cite the Medeiros e Albuquerque bill as the pioneer of the legislation on accidents in Brazil, the Graccho Cardoso bill is remembered, at best, as one of several legislative attempts. Only Evaristo de Moraes, in *Os accidentes no trabalho e a sua repa-*

ração, analyzes some of its provisions. Among the principal newspapers of the period, the only reference was in *Correio da Manhã*, on August 22, 1908, which reproduces the already mentioned justifications from deputy Graccho Cardoso and, after that, the complete bill text.

The Graccho Cardoso bill was more complex and detailed than the previous one. With 48 articles, this bill reinforces some themes that went almost unnoticed in the Medeiros e Albuquerque bill. The first is the explicit exclusion of accident-related illnesses as a cause of indemnity for professional risk (art. 3) which was not even mentioned in the first bill. About what we previously called the role of the State, between inspecting and intervening, the Medeiros e Albuquerque project only foresaw the possibility of the State inspecting private insurers. Graccho Cardoso opted for a system in which the State is authorized to create a Social Security Fund. In other words, the State not only has to supervise the insurers, but it can also intervene directly, creating the Social Security Fund, whose main objective is to manage the payment of pensions to the victims, especially in cases of bankruptcy of the entrepreneur. A more interventionist and protective posture for the workers. A third and important difference arises from this. The compensation in the Graccho Cardoso bill should be paid exclusively in the form of a pension, temporary or for life, depending on the harshness of the accident. This clarifies the previous topic, since, as the payment would no longer be made in the form of a single transference of money, the Social Security Fund was a way to assure the employee that the pension would continue to be paid even in cases of bankruptcy or disappearance of the employer. Despite this new guarantor fund, the Graccho Cardoso project chose not to provide mandatory insurance, as did the previous project.

Besides authorizing the State to create a Social Security Fund for injured workers, the project also determined that the payment of compensation should be made in the form of a pension and not in a single payment, as in the previous project, including ensuring a lifetime pension for the family in case of death of the worker. It is also a more protective posture.

On the day of its presentation, the project was forwarded to the Constitution, Legislation, and Justice Commission, from which it never returned.

3.3. Adolpho Gordo bill (1915)

On June 25, 1915, approximately seven years after the legislative failure of the Graccho Cardoso bill, the topic of work accidents returned to the Congressional agenda. Adolpho Gordo, jurist and senator from the State of São Paulo, who was prominent in Parliament for what became known as the "Adolpho Gordo Laws": the Law of Expulsion of Foreigners (1907 and 1921) and the Press Law (1923) (A. B. S. G. LANG, 2019), presented a bill to address this issue.

In his introductory speech in the Senate, Adolpho Gordo revealed that the project was formulated by the São Paulo State Department of Labor, an agency created in 1911, which, as explained by the Brazilian historian Marco Antônio Chaves (2012, 22), was somewhat of a prototype of what would become the Ministry of Labor in 1931, with its proposal for state intervention in favor of the workers' cause, based, at first, on legislation on industrial activity.

After its presentation, the bill was firstly discussed in the plenary on July 5 of the same year, being approved and sent to the Commission of Justice and Legislation (Brazil 1917, 119). Unlike the others, which were stuck in the commissions, the Adolpho Gordo bill had fast progress and, on October 7, 1915, the commission presented a long opinion about the bill. The opinion concluded that the draft was worth approval by the Congress on two main grounds: first, from a legal-theoretical point of view, the bill would reflect the principles of the doctrine of professional risk, "the last phase in the evolution of the responsibility for accidents at the workplace" (Brazil 1917, 65)[9]. According to the annex attached to the opinion, this theory was already enshrined in some American countries, and a fragment of the opinion provided a detailed analysis of the laws of the U.S., Canada, Peru, and Argentina. Second, the good reception of the bill in the media. The opinion cited an article, published at the *Jornal do Commercio* on July 3, in which Castro Menezes, a famous journalist, and professor of economics in Rio de Janeiro, praised the Adolpho Gordo bill. According to the author of the article, the bill manages to reconcile the interests of both employers and workers.

After this favorable opinion from the Justice and Legislation Committee, the project was discussed twice in the Senate, approved, and then sent to the Chamber of Deputies. On December 20th of that year, the Adolpho Gordo bill was presented to the Chamber of Deputies by its rapporteur, deputy Maximiano de Figueiredo. After analyzing its provisions, especially regarding the form and values of compensation, the deputy said that the absence of a law on work accidents in Brazil would have two consequences: i) it would attract foreign investment in Brazil, which, in other countries, would bear the responsibility for the compensation of work accidents, and, on the other hand, ii) it would decrease the advantages offered to immigrants who wished to come to work in Brazil. The most correct path, according to the rapporteur, was to defend industrial labor, and therefore, he was in favor of approving the bill (Brazil 1917, 279-280).

Regarding immigration, Brazilian historian Luiza Horn Iotti (2010, 15) explained how from 1907 onwards, after a series of laws and state incentives, immigration in Brazil increased, reaching high levels in the triennium 1911-1913, to decline again in 1914, due to the First World War. According to the author, 190.333 immigrants entered legally in Brazil in 1913, while in 1914 and

[9] My translation. Original: "A ultima phase na evolução da responsabilidade pelos accidentes no trabalho" (Brazil 1917, 65).

1915, this number fell to 79.232 and 30.333, respectively. Therefore, the concern of deputy Maximiano de Figueiredo with immigration was consistent with the falling rates reported by Iotti.

However, after this rapid progress in the Senate, the advancement in the Chamber of Deputies was slower than expected. After its presentation in the Chamber in December 1915, the bill was sent to the Legislation and Justice Commission, where, in 1916, a favorable opinion was issued.

The bill was discussed again only in 1917, after two relevant events. The first was the collapse of the construction site of the New York Hotel on Carioca Street in Rio de Janeiro, on June 10 of that year, in which forty workers died. This incident had great repercussion in the period, making the front page of the *Correio da Manhã* for a few days, and was commonly called the Great Catastrophe of Carioca Street. The second was the interview of Jorge Street, president of the Industrial Center of Brazil (*Centro Industrial do Brasil* – or only CIB), to the *Jornal do Commercio*, on September 10, 1917.

Ângela de Castro Gomes (1979, 151) explains that the CIB was a national association, with a large representation of businessmen from the Federal District and the State of Rio de Janeiro. One of the main lines of the CIB was the idea of conciliation of interests of employers and workers. There is, first, formal recognition of the need for social legislation protecting the interests of workers and the participation of employers. And, "true representatives of the workers" was necessary to avoid possible "excesses" and "deviations" influenced by recent events, like the collapse of the New York Hotel, which would end up causing great damage (A. M. C. Gomes 1979, 159). Jorge Street, in turn, was an industrialist who gained national projection in 1912, when he sat as the president of the CIB. He was usually known as a spokesperson by the employers on labor claims and a great advocate for the adoption of workers' legislation in Brazil (S. Dias 2019).

Jorge Street's interview with *Jornal do Commercio* in 1917 represents this stance explained by Gomes. Street reaffirmed his agreement on the need for workers' legislation, as long as "there are no exaggerations or pernicious excesses"[10] (E. Moraes 2009, 62). After praising greatly the Adolpho Gordo bill, stating that it was perfect under the point of view of jurisprudence, he remarked, however, that from a practical point of view some adjustments were needed, especially regarding two central topics of the project: the form of payment of compensation and insurance. About the form of payment, Street argued that it should be done by the form of lump sum, while on insurance, he argued that it should not be mandatory.

[10] My translation. Original: "(…) não haja exageros ou demasias perniciosas" (E. Moraes 2009, 62).

Despite the attempt to resume the debates on this bill, which even went to the Chamber in 1917, it was possible to notice that discussions regarding work accidents were naturally redirected to the recently filed bill of the Labor Code. The Adolpho Gordo bill, as well as the other two that preceded it, was never formally rejected by the Chamber of Deputies, so that even after its resumption in 1917, after Jorge Street's interview to *Jornal do Commercio*, the draft was rarely discussed and without the same breath as before.

The Adolpho Gordo bill has some important differences in comparison with the Graccho Cardoso bill. For the first time, the concept of work accident would also consider accident-related illnesses, i.e., illnesses acquired at work, but not resulting from a single and instantaneous fact, which was textually excluded by the previous bill.

Aiming at greater protection of the employee, the definition of the professions covered by the law was modified. While the Graccho Cardoso bill used a very restrictive criterion, citing explicitly all professions supposed to be covered by the law, the latter opted for a broader system, in which professional groups were mentioned, in a general formula, that could include others.

Its more protective trait also appeared in the method of payment of compensation, in which, despite great criticism from the CIB, which defended a single payment, the Adolpho Gordo bill opted for a monthly pension.

However, despite this greater tendency to protect employees, the Adolpho Gordo bill chose a more liberal stance concerning the worker's guarantees about the payment of the compensation. The main difference is the exclusion of the possibility of creating a public Social Security Fund, which appeared in the Graccho Cardoso project, being replaced by private guarantee funds. The role of the State under the 1915 project was only to supervise these funds, without any participation in their creation. Also, as explained above, the mandatory insurance system was not adopted.

In short, the Adolpho Gordo bill was the most protective, even more than the Decree-law 3.724/1919. The cited absence of State participation in the guarantee of the workers can be explained by the approximation of this bill with the mandatory insurance system, as mentioned in the report of the Senate Committee of Justice and Legislation, which, however, chose to reject the insurance, because of the supposedly high cost that would fall on the national industries, still in formation.

3.4. Labor Code bill (1917) and the approval of Decree-law 3.724/1919

The year 1917 ended with two important proposals on work accidents proceeding together in the Chamber of Deputies, the recently presented bill of the Labor Code, and the Adolpho Gordo bill, which was resumed after a long paraly-

sis. However, with the increasing discussions of the Labor Code, the Adolpho Gordo bill did not return to Chamber in 1918, although it was mentioned at some points so that throughout that year the discussions on social issues focused entirely on the Labor Code bill.

Additionally, in 1918, the Commission of Social Legislation was created, focusing on the social question, because of the accusations that the discussions in the Chamber of Deputies were being distorted by the intense interference of the employers (A. M. C. Gomes 1979, 87).

Before having an appropriate discussion of the bill, it is convenient to make a brief parenthesis to explain the composition of the Chamber of Deputies at the time. Ângela de Castro Gomes identifies three main currents that schematically and effectively illustrate the parliamentary context in this period: the Labor, *Gaúcha*, and *Paulista* benches[11].

The first, the Labor bench, was, according to Gomes, mainly represented by Maurício de Lacerda, Nicanor Nascimento, and Deodato Maia (A. M. C. Gomes 1979, 64). There are three main grounds for the argumentation of this group: a) first, they aimed to demonstrate that the labor and union movement was concerned with larger problems that affected the entire urban population and not only workers. For them, the State and Congress should go beyond the limits of the labor issue itself, regulating domestic market issues, customs tariffs, and acting to solve problems that affected other layers of the population; b) second, the defense of workers' specific labor claims and their most elementary manifestation, strikes. Until then, in their opinion there were no legal means to solve the conflict between capital and labor. The only option left for the workers was a strike; c) third, the role of the State between capital and labor, especially concerning legislation.

The *Gaúcha* bench, one of the most representative of this period, had as its core exponent Borges de Medeiros and was the one that offered more resistance to labor regulations, not accepting State intervention in the social question. However, they did not deny social problems. They merely disagree about the State's position regarding the social issue, which, for them, should be of total abstention. It is also worth saying that the *Gaúcha* bench defended the unconstitutionality of the labor laws (A. M. C. Gomes 1979, 74).

About the *Paulista* bench, Gomes (1979, 64) writes that it was responsible for the cover of economic interests. Concerning the social legislation, the *Paulista*

[11] It is worth saying that Angela de Castro Gomes's option of dividing the Chamber of Deputies by benches rather than political parties have an interesting foundation. During the First Republic, the independent candidacy was allowed. Only in 1932, with the Electoral Code, did affiliation become a requirement for eligibility (M. R. Ferreira 2001). In the context discussed here, the connection of political parties with a particular ideology to be defended could leave large gaps in this scheme.

bench even recognized the importance of state intervention as means to calm the workers' agitation. Labor laws, in this way, are seen as a way to relieve pressure and make changes to defend private interests and, above all, social peace.

What can be seen in 1918 in the Chamber of Deputies is an intense movement against the Labor Code, especially on the part of the *Gaúcha* bench, particularly regarding the establishment of minimum wage and the regulation of working hours. These were strategic points of the project, which, according to the oppositionists, meant the rejection of its most basic premise: the non-intervention of the State (A. M. C. Gomes 1979, 79). This firm position of the *Gaúcha* bench on the discussion of accidents at the workplace and the protection of women and minors, however, was not so movable. According to Ângela de Castro Gomes, on these two points there was a necessary collaborative effort on the part of the *Gaúcha* bench, in an intervention that could be conceived as philanthropic, a moral duty, on behalf of the unprotected:

> The fact that it is the protection of women, minors, and the disabled (the injured) that are the aspects of the legislation accepted by the *Gaúcha* is not without suggestion. The reason is that the first two cases, deal with non-citizens (women and minors do not vote), and the latter one, dealing with those who practically withdraw from the labor market. Thus, the intervention of the State is being made concerning the "unprotected" who would be on the margins of the political and even the economic system. In this sense, such action can be realized, not as a conquest of rights by the workers, but as an almost philanthropic achievement, not constituting an undue intervention by the state and not clashing with the liberal conception of the market (A. M. C. Gomes 1979, 77)[12].

That may explain the fact that in these two points, work accidents and protection of women and minors, there was not much opposition from the *Gaúcha* bench, is that this type of intervention sounded to the congressmen as help for extremely needy individuals, still compatible with a conception although not orthodox of the liberal State[13]. deputies of the so-called Labor bench. In con-

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[12] My translation. Original: "O fato de ser exatamente a proteção às mulheres, aos menores e aos inválidos (os acidentados) os aspectos da legislação aceitos pelos gaúchos não deixam de ser sugestivos. Isto porque nos dois primeiros casos trata-se de elementos que não são cidadãos (as mulheres e os menores não votam) e no último caso trata-se daqueles que, praticamente, se retiram do mercado de trabalho. Assim, a intervenção do Estado está se fazendo em relação aos "desprotegidos" que estariam à margem do sistema político e, até mesmo, econômico. Neste sentido, tal atuação pode ser concebida, não como uma conquista de direito por parte do operariado, mas sim como uma realização quase que filantrópica, não constituindo uma intervenção indébita do Estado e não se chocando com a concepção liberal de mercado" (A. M. C. Gomes 1979, 77).

[13] Especially on the issue of women's protection, cf.: the article by Olga Paz and Guilhermo Garcia (2011), who demonstrate how the protection of women's work in early 20th century

clusion, the chaos in the labor field, strikes, and inflation that occurred in Brazil during this period was temporary and, according to the deputies, the Brazilian social legislation could be held hostage by this scenario. Deputy Andrade Bezerra suggested:

> I do not mean that I am opposed to all regulations; I only want to avoid a complete and thorough rule of labor [a Labor Code] which, at the moment, seems to be inconvenient. (…) So, Mr. President, regarding the bill in question [project n. 284, of the Labor Code,], my personal opinion is the following: I think we should highlight three main aspects for regulation at the moment. Firstly, the rules on work accidents; secondly, measures to protect minors employed in factories; thirdly, measures to protect women workers (Brazil 1919a, 706)[14].

A day after this first idea was presented to the Chamber of Deputies, deputy Nicanor Nascimento, considered by Gomes (1979, 64) one of the active participants of the Labor bench of the Parliament, proposed the urgent separation of work accidents from the Labor Code bill and its approval as a special law.

Throughout 1918, the idea of singling out work accidents for a special law was maturing as the opposition from the *Gaúcha* bench to the Labor Code bill grew. The most remarkable point in this process occurred on August 31, 1918, when the opinion of the Finance Commission on the several amendments proposed to the Labor Code bill by deputies Álvaro Baptista[15] and João Pernetta[16] was presented to the Chamber of Deputies. Before discussing and rejecting almost all the proposed amendments, the opinion presented an overview of the social legislation, with a conclusion that echoes the previous manifestations of the deputies:

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in Spain (1900-1912) can be understood as a way of perpetuating a traditional family model, in which the natural role of women is to take care of the home. The application of this theory in Brazil deserves to be studied, however, it is interesting to note that, in some points, those injured at work in Brazil are also classified similarly to women and minors. Besides the strongly political option in relation to the accident protection law, a deeper study is needed about the common characteristics among these groups (women, minors and injured in work accidents) that allow them to be classified, in Brazil, in the same sector deserving of state assistance.

[14] My translation. Original: "Não quero dizer que seja contrario a toda regulamentação; quero evitar somente uma regulamentação completa e minuciosa do trabalho [um código do trabalho] que, no momento, me parece inconveniente. (…) Assim, Sr. Presidente, quanto ao projecto em questão [projeto n. 284, do Código do Trabalho], a minha opinião pessoal é a seguinte: penso que devemos destacar delle três aspectos principais para uma regulamentação no momento. Em primeiro logar, as regras sobre os accidentes de trabalho; em segundo logar, as medidas de protecção aos menores empregados nas fabricas; em terceiro, as providencias de proteção à mulher operaria" (Brazil 1919a, 706).

[15] Deputy for Rio Grande do Sul and president of the Finance Commission in Parliament. He was a member of the *Gaúcha* bench (R. H. Lopes 2019c).

[16] Deputy for Paraná, who during his mandate was one of the defenders of labor organization in Brazil (L. Pinheiro 2019).

> It is not possible, therefore, to vote now on a complete law, with lasting effects, so many and so complex are the problems that are linked to the labor legislation and from its precepts await solution; but a work that satisfies the needs of the country and the current conditions of relations between employers and workers must be carried out, to prevent the disorganization of the national economic environment. It cannot be a labor code; but an accident law (Brazil, 1919a, 787)[17].

This suggestion was mentioned to the Chamber of Deputies on December 3, 1918, voted and approved with urgency on December 17 of that same year, is quickly sent to the Senate, where it was also approved quickly. On January 15, 1919, Decree-law 3.724 was sanctioned by President Delfim Moreira, containing 30 articles regulating the work accidents and their compensation after a long process, with several bills proposed in the Chamber of Deputies and Senate.

Comparing to the Adolpho Gordo bill, there are two points in which there was a regression, with less worker protection. The first is the abandonment of the private guarantee funds, present in the 1915 project. Differently from the Graccho Cardoso project (1908) that established the possibility of creating a public Social Security Fund, the Adolpho Gordo bill (1915) opted for a system based on the invention of private guarantee funds. Decree-law 3.724/1919 not only did not adopt the mandatory insurance system, as the previous ones, but did not guarantee in any form that the employee would be receiving compensation for the accident.

The second topic concerns the form of payment, an element already explained above. Considering Jorge Street's criticism towards the Adolpho Gordo bill, in 1917, which determined that the disbursement of the indemnity would occur employing a monthly pension, Decree-law 3.724/1919 opted for a model more beneficial to the employers' interests, excluding the pension system in favor of a single payment, as advocated by Jorge Street.

4. STRATEGIES TO AVOID THE IMPLEMENTATION OF A LEGISLATION ON WORK ACCIDENTS IN BRAZIL: USE OF PARLIAMENTARY COMMISSIONS AND THE "FISSURE" OF PRIVATE LAW

In the fifteen years between the Medeiros e Albuquerque bill and Decree-law 3.724, several reasons prevented the approval of the bills regulating acci-

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[17] My translation. Original: "Não é possível, pois, votar agora uma lei completa, para effeito duradouro, tantos e tão complexos são os problemas que se ligam á legislação operaria e de seus preceitos aguardam solução; mas deve-se realizar uma obra que satisfaça ás necessidades do paiz e ás condições actuaes das relações entre patrões e operarios, de modo a prevenir que se desorganize o meio econômico nacional. Não poderá ser um código do trabalho; mas sim, uma lei operária e de accidentes do trabalho" (Brazil 1919a, 787).

dents at the workplace. Two strategies of parliamentarians and jurists, however, stand out.

First, the role of the committees, especially the Justice and Legislation Committee. As it is moderately evident by the facts presented above, a similar scenario was present in all bills on work accidents in the early 20th century: they were given to the Chamber of Deputies, or Senate, in the case of the Adolpho Gordo bill, and after a few days of discussion they were sent to the Justice and Legislation Commission. The formal objective of the commission was to issue an opinion about the adequacy of that bill to the Brazilian legal system and, eventually, to propose amendments to the draft law. However, what we saw in the years between the Medeiros e Albuquerque bill (1904) and Decree-law 3.724 of 1919 was the use of commissions as means to abandon the bill, avoiding the wear of rejection in the plenary. The deputies, in general, including those opposed to social legislation, such as the *Gaúcha* bench, welcomed these bills on accidents at work at discussion, probably fearing possible retaliation by their electors, but in the obscure commissions they did not strive for the progress of the bill.

This strategy did not go unnoticed by some deputies who, eventually, made questions through their discussions, the delay in the elaboration of the opinions of the bills about work accidents. I highlight two of the most notable examples.

In 1908, deputy Graccho Cardoso, while presenting his bill on work accidents, harshly criticized the way the project of deputy Medeiros e Albuquerque was handled, stating that the latter would have "slept" for four long years in the Commission of Constitution, Legislation, and Justice, "making the delights of moths and never maturing for debate" (Brazil 1908, 191)[18]. Three years later, in 1911, deputy Barbosa Lima criticized the role of the commissions in projects related to the workers' cause in general. According to the deputy, the four main workers' bills in Brazil, the two on work accidents that had been filed until then, the one on women's and children's work, and the one limiting working hours, were sent and remained permanently in the Commissions' folders, delaying in years the legislative advance of this matter (Brazil 1915, 640).

Lucas Ribeiro Garro (2019, 1.107), a Brazilian legal historian, in his article on the crime of cattle theft and the birth of public criminal action conditioned to representation in Brazil, demonstrates that this strategy is not, in fact, exclusive of the 20th century and debates on work accidents. Garro describes how deputies criticized the sending of bills on cattle theft to parliamentary commissions in 1850 since they further delayed legislative progress. They were sometimes used as a defensive strategy by the opposition, quite similar to what happened to work accidents.

Another strategy used to delay this discussion about work accidents concerns private law, specifically the Civil Code of 1916. Maurício de Lacerda, a

[18] My translation. Original: "(…) fazendo as delícias das traças e jamais amadurecido para o debate" (Brazil 1908, 191).

member of the so-called Labor bench, wrote in his book, *Evolução legislativa do direito social brasileiro*:

> Thus [with its approval], the Civil Code soon became the clapper and shield of the opponents to labor law, as a special law, in the face of the Code, which was common law, although on its margin there were other laws or even codes such as the commercial and criminal ones, and even one of private international law, not to mention the military ones (M. Lacerda 1980, 82)[19].

The author recalled that, after the approval of the Civil Code at the beginning of 1916, there was a clash between codified civil law and social legislation still in formation. A middle ground was desired, a "consolidation" or even a "compilation" of labor laws. However, before the acceptance by deputies and jurists of the possibility of creating special laws on labor, there was, at first, a complete denial by those who believed that the recently approved Civil Code should be able to cover all social issues.

When the Labor Code was presented in 1917, in one of the many discussions in the Chamber of Deputies, a member of the *Gaúcha* bench, identified as Osório, argued that the creation of a Labor Code in Brazil[20] would put the worker "outside the general law", and that there was no need for further regulation since all labor matters were already regulated in the recent Civil Code, either by the contract of rent of services and, for work accidents, civil liability. In the words of Maurício de Lacerda (1980, 158), Osório insisted that, by creating labor laws, "the Civil Code was being revoked". Similar tension to this also occurred, for exemple, in Italy when the law on work accidents was created in 1898. Giovanni Cazzetta (2012, 46-50), an Italian legal historian, stresses that the creation of special laws to regulate labor in Italy was preceded by an intense debate about the unity of the 1865 Civil Code, especially because the Code was a particularly important political unifying element.

The *Gaúcha* bench spread early an idea that the creation of legislation on workers would relegate them to an inferior position and cause the downfall of work originated on so much sacrifice, the Civil Code. Different treatment from that given by private law, as in the case of liability for accidents at the workplace according to the professional risk theory, would not be the best solution to the social question.

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[19] My translation. Original: "Assim [com a sua aprovação], o Código Civil passou logo a ser a clava e o escudo dos oposicionistas a uma lei do trabalho, como lei especial, frente ao código, que era uma lei comum, não obstante à sua margem existirem outras leis ou mesmo códigos como o comercial e o penal e até um de direito internacional privado, sem falar nos militares" (M. Lacerda 1980, 82).

[20] On the issue of codification of labor law in Brazil, cf.: Victor Hugo Boson Criscuolo (2019).

The logic, at that first moment, was that labor law was not yet mature enough to become a "proper law", a condition for its codification. This would be a natural process, as it happened with commercial law, for example. In addition, labor law could also not be regulated by a special statute, considering that the recent enactment of the Civil Code, with its new provisions on contracts of rent of services and civil liability, would already be sufficient to regulate labor. Whether as a purely rhetorical defensive strategy or as a genuine concern for the cohesion of the Brazilian legal system, it is certain that, at this first moment, one of the main obstacles to the creation of a law on accidents at work was the concern not to "escape" the general law, especially after the approval of the new Civil Code. Paolo Grossi (2007, 99) explains how the notion of Code and codification, in the early nineteenth century in Europe, was closely linked to the reduction of legal experience to an articulated and detailed system of rules. This conception of code as a closed system resonated in early 20th century Brazilian to reinforce the rejection of labor law as a special branch.

However, as the Labor Code was being considered and the inevitable need for a response to social issues became apparent, this discourse changed significantly. This led to the separation of the provisions on work accidents from the body of the draft code and turning it into a separate law. Even the members from the *Gaúcha* bench, who previously criticized the so-called special labor laws, recognized that it was better to enact a special law on a topic that was more mature, like work accidents, than to create a hurried codification.

5. CONCLUSIONS

The regulation of accidents at the workplace was one of the principal demands of workers in the early 20th century and the source of the debate about the theory of professional risk, a major theoretical innovation in the field of civil liability, and even the formation of labor law as an autonomous branch *vis-à-vis* to private law. Notwithstanding some historiographic research on the labor and legal context of work accidents in the early 20th century in Brazil[21], none of them had effectively treated in depth the parliamentary and legal-theoretical discussions on accidents. This article tried to fill at least partly this gap in Brazilian legal historiography on such a relevant theme.

Besides contextualizing the interests of the workers in Brazil in the early 20th century, I discussed the legal foundations and principles and how a lawsuit

[21] Besides the already mentioned Ângela de Castro Gomes (1979), there are other compelling works specifically about work accidents, cf.: the articles by Fernanda Cristina Covolan and Carlos Eduardo Oliveira Dias (2008); Eduardo Luís Leite Ferraz (2010), the master's dissertation by Maria Elisa Lemos Nunes da Silva (1998) and the doctoral thesis by Esmeralda Blanco Bolsonaro de Moura (1984).

for compensation for accidents at work was structured before 1919. The employer's liability relied on the proof of his guilt for the accident, a fact that, in practice, made any responsibility virtually impossible.

I also tried to demonstrate how, for almost fifteen years, the legislative procedure, from the Medeiros e Albuquerque draft onwards, was marked by some central characteristics. The first one is the advance towards the approval of Decree-law 3.724/1919 is both a way to "silence" the movements of workers, which gained strength in the streets from 1917 onwards and also an achievement of the workers. In this context of popular agitation, the Labor Code bill ended up being rejected in favor of the law on work accidents. The Labor Code would represent a profound transformation in several other issues, while the special law, although not well regarded by the industrial elite, was a less harmful solution for the employers' interests. However, as is quite evident in the discussions of the Adolpho Gordo bill and of the Labor Code in 1917, popular and media pressure, as in the case of the collapse of the New York Hotel in Rio de Janeiro, were successful in their goal of pressuring parliamentarians to approve laws with social nature.

Another topic concerns the two strategies for rejecting the labor legislation in the parliamentary debate: the sending of the projects to parliamentary committees and the use of private law as a theoretical shield against this "new branch of law".

Of the seven bills presented to the Chamber of Deputies and the Senate in this period, only two of them, the Adolpho Gordo bill and the Labor Code were not kept "stuck" in the parliamentary commissions. As for the others, the strategy was always quite similar: the projects were presented at the legislative house and, after a few discussions, sent to the Justice and Legislation Commission, where they stayed indefinitely.

The second strategy consists in the argument, defended by some deputies and jurists, that the creation of a workers' law, based on the professional risk theory, would be an offense to the unity of private law, recently achieved in Brazil with the Civil Code of 1916. It is interesting to see how this argument was used by the deputies, especially from the *Gaúcha* bench. At first, during the discussion of the Labor Code in 1917, part of this bench argued that the creation of separated labor legislation would mean the institution of special legislation concerning private law, which provided for contractual freedom and civil liability for fault. However, as the debate matured and the inevitability of protective measures for the workers was perceived, the *Gaúcha* bench changed its position, turning in favor of law on indemnity for work accidents, a measure that, in a certain way, would stop the workers' demonstrations at the end of the 1910s. In other words, the deputies initially opposed to the legislation on accident and the corresponding theory of professional risk in favor of the unity and conservation of the private law, changed their thinking during the negotiation of the Labor Code, adopting a position in favor of the creation of a special law on accidents.

In summary, therefore, the study of the first bills on labor accidents helps to reconstruct the history of the formation of labor law in Brazil, especially regarding its process of breaking away from private law, from civil liability to professional risk. It is a history, which tells us about how the parliamentary commissions were used as opposed to the bills, about the way the argument of the "fissure" of private law, even if it was surrounded by a deeper theoretical discussion, was sometimes used according to the employers' interests.

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