Apprenticeship as an instrument for the implementation of the fundamental human right to professionalization

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RESUMO

O presente artigo visa fixar os contornos da profissionalização como direito humano fundamental e demonstrar como a aprendizagem é um instrumento apto a efetivá-lo. A aprendizagem e a profissionalização rompem as fronteiras do Direito do Trabalho, permeando o Direito Constitucional. A aprendizagem, por meio do seu sistema de cotas, é vista como ação afirmativa, forma positiva de intervenção estatal, visando concretizar os objetivos fundamentais da República, estando igualmente umbilicalmente jungida à ordem econômica. Rápida evolução histórico-brasileira é feita acerca do tema. Expõem-se também as dificuldades enfrentadas para implementação da aprendizagem. Mas, o que se almeja é demonstrar a contemporaneidade do tema - que vai além da ordem jurídica pátria, atingindo diplomas internacionais, o que demonstra também a sua universalidade.

Palavras-chave: Aprendizagem. Profissionalização. Direito Humano Fundamental.

ABSTRACT

This study aims to establish the contours of professionalization as a fundamental human right and to show how apprenticeship is an instrument able to accomplish it. Apprenticeship and professionalization transcend the boundaries of labor law to also involve constitutional and human rights law. We view apprenticeship, through its quota system, as a type of affirmative action, a positive state intervention in order to achieve the fundamental objectives of the Brazilian Republic, but it is also inextricably tied to the economic order. We chart the brief historical evolution of the subject in Brazil. The article also exposes the difficulties faced in the implementation of apprenticeship programs. But, above all, we wish to demonstrate the contemporaneity of apprenticeship as well as the fact that it transcends the national legal order, reaching an international scope and thus showing its universality.

Keywords: Apprenticeship. Professionalization. Fundamental Human Right.

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INTRODUCTION

This article approaches the right to professionalization as a fundamental human right and, in a parallel manner, apprenticeship, which is consecrated in Article 7, Line XXXIII, articles 225 and 227 of the Federal Constitution of Brazil (1988); article 62 of the Act of Transitory Constitutional Dispositions and articles 428-433 of the Consolidated Labor Laws (CLT). Decree n. 5.598/05 is an instrument to implement these laws. Various other clauses in the Brazilian constitution and other Brazilian legal norms also deal with apprenticeship. We will also focus on the principal problems confronted in the implementation of apprenticeship programs.

Various international organs and documents have also recognized the right to professionalization such as the Universal Declaration of the Rights of Man (1948), the Philadelphia Declaration in the Constitution of the International Labor Organization (1944) and the International Covenant on Economic, Social and Cultural Rights (1966).

The concretization of the right to professionalization is directly coupled with the valorization of human labor that is a fundamental provision of the Federative Republic of Brazil (art.1, line IV), as a social right (art.6), as a foundation of the economic order (art.170, caput) and as a base of the social order (art.193). Professionalization is also a right of the family, society and the state (art.227).

Apprenticeship is an instrument for the distribution of social justice, permitting the effectuation of the fundamental objectives developed in Art.3 of the national constitution. The state, aiming to valorize human labor, as well as reduce social inequalities and ensure human dignity, makes use of affirmative action to facilitate professionalization. The system of quotas provided for in apprenticeship legislation is an affirmative action as is the system of quotas for the disabled, as Oris de Oliveira (2009, p.307) and Gláucia Gomes Vergara Lopes (2005, pp.83-92) have shown. In this way, the question echoes the principle of the equality of opportunities in the overall legal concept of a social state of rights.

PROFISSIONALIZATION AS A FUNDAMENTAL HUMAN RIGHT

Professionalization is a fundamental human right that should not be treated as a redundant concept in relation to the concept of human rights. In juridical terms, a human right and a fundamental right, which are frequently used indiscriminately, are not synonymous according to Sarlet (2003, p. 33, 34):

> In as much that both terms ("human rights" and "fundamental rights") are commonly used as synonyms, the colloquial explanation […] for the distinction is that the term "fundamental rights" is applied for those rights of human beings recognized and established in the sphere of positive constitutional right of a determined state while the expression "human rights" is related to the documents of international law, referring to those juridical positions that recognize a human being as such, independently of their link to a determined constitutional order and, therefore, aspiring to a universal validity, for all peoples and times, in such a way that it reveals a unequivocal supranational character (international).

Human rights are also linked to a range of rights derived from the theory of natural law. They possess a strong philosophical significance and are not coupled to a particular juridical order. They are supranational, perennial and linked to respect for the human being. We should, however, separate the conception that human rights are static and arise with the birth of a human being. They accompany the evolution of society and increase with social conquests. Thus, it is not possible to speak of an exhaustive list of human rights for all times.

Professionalization is a human right. It transcends the limits of a particular juridical order and is present in innumerous treaties, declarations and international pacts. Through labor, the human being searches not only to guarantee survival, but also a dignified life through obtaining the range of goods necessary for a healthy life. The search for a dignified life transcends the gaining of material goods and even reaches a philosophical aspect. Labor dignifies humanity in a moral sense, through redemption and creation.

Fundamental rights are connected to the values of the constituent bodies that determine constitutions. They are consecrated by states. Thus, they have a validity in a concrete juridical order, that is, with a temporal and territorial delimitation. The right to professionalization, for example, is consecrated in the Brazilian Constitution of 1988 (article 7º, line XXXIII, articles 225 and 227). In addition, professionalization permits the maximum realization of other diverse fundamental principles, taking part in an integrated and indivisible complex of rights that are interlinked by their activation. In each fundamental right, there is a content or a projection of dignity of the human being. Human rights and fundamental rights thus possess key points of contact since both project the dignity of the human person. Perhaps such a fact leads to the indiscriminate use of the terminology.

The link between professionalization and the dignity of the human person is unquestionable. That is, dignity in the sense of choice, with the young person co-responsible for the destiny of his/her proper existence. Exclusion should not be accepted by society as the price in a labor market that counts on a strategically surplus labor force, generating

insatisfaction, inequality, marginalization and precariousness of working conditions. For being a social right, the lack of professionalization damages not only the singular individual considered, but also leaves a stain on all of society. We may note that the very constituent legislator recognized professionalization, under the incarnation of apprenticeship, as a social right, including it in Article 7, line XXXIII, Chapter II – Of Social Rights of the Brazilian Constitution.

In inserting the young person in a skilled form into the labor market, he/she is able to develop their potential and establish life projects. Skilled work leads to an adequate remuneration, permitting the achievement of a range of rights that are inextricably coupled to the dignity of the human person (minimum conditions for a healthy life, food, leisure, housing, health and education). In general, apprenticeship permits the social inclusion of the young person from the lower social classes. It brings a new long-term direction sometimes to the whole family.

Learning job skills is an instrument that helps reduce social inequalities within a country. More than just helping reduce social inequality within national frontiers, it is worth thinking of job training skills as a guarantee of work within a globalized, computerized and dynamic market.

It is also worth remembering that social conquests are not mere gifts from the government, but true advances for humanity. Human rights are not created by states, they are preexistent to legal systems; states declare such rights, but do not constitute them. However, more than just establishing human rights, the problematic resides in implementing them and even fighting for them so that a retreat does not occur.

The lack of qualifications of the labor force annihilates the formation of an employee/thinking being. The worker becomes disassociated from the productive process. They are just given merely repetitive tasks, which causes the mechanization of the figure of the employee. The principles of Taylorist-Fordist behavior are particularly important in the repartition of the productive process as a way to maximize production. The employee knows his/her part in the process, literally to exhaustion. They do not know the whole. They lose the sense of their work by not knowing how to map out the complete job or make innovations.

“Toyotism”, for its part, brings “lean production”. It is based on the organization of production in teams of polyvalent workers with a guarantee of total quality and continuous production. However complete the knowledge the work teams have of the total process, toyotism also brings the negative feature of contracting out. Such a failing comes in the wake of a lean production line determined by the demands for particular products. In countries like

Brazil, there has been no complete substitution of older models of production. Taylorist-Fordist, toyotism and, unfortunately, the vestiges of slave systems, all exist concomitantly.

Faced with current technological transformations and globalization, national economies need to produce dynamic and highly skilled workers. Professionalization/training has been the response. Unskilled workers would be substituted by machines or would perform tasks in conjunction with machines (in a process of the objectivation of the human being into a machine). Professionalization brings to the employee the conscience of being an active, thinking being, that is, a sense of the rescuing of dignity.

Despite all the government apparatuses, the constitutional and infra-constitutional rights conquered, the principal defenders of the employees are they themselves. Once they are conscious, professionalized workers will not permit themselves to be bound to the chains of slavery nor allow themselves to be objectified into machines; they will not let the history of humanity retrocede.

THE PROHIBITION OF SOCIAL RETROCESSION

The security of fundamental rights is highlighted in moments of social, economic and institutional instability, which may lead to calls for reforms of existing legislation. The prohibition of this process of social retrocession is linked to the principle of confidence and good faith. The most elementary rights that were gained through great social conquests have a continuity of existence and the legitimate expectations created by government acts in the past should not be rescinded.

Thus, the protection of confidence acts as an important benchmark of the constitutional legitimacy of laws and acts of a retroactive nature (which affect acquired rights, juridical acts and judgments, as well as fundamental rights). However, more than affecting consolidated juridical positions, by way of legislative reform, retrocession may occur in a more subtle form by the simple non-implementation of conquests already won. In this way, fundamental rights do not enter into the factual field at all. Retrocession may be accomplished through acts of so-called prospective effects that should warn legislators and other state organs to not desist in the concretization of fundamental social rights.

Aiming to justify social retrocession, its advocates offer fragile arguments that social rights, as a rule, are not defined at the constitutional level and, moreover, are indeterminate without the intervention of the legislator, giving the latter almost complete freedom to decide questions in this area. This critique even includes the limits of what is possible. Such freedom

cannot be given to the legislator and to other state organs, since they would gain the power to decide fundamental social rights mainly through the process of whether they are effectively implemented or not. In legislating social protection, politicians should respect the commands of the Constituent. To allow the legislator or other state organs to disrespect the maximum levels already reached in social rights would be a fraud of the Constitution, since it would effectively lead to their non-implementation.

Prohibition of retrocession is dealt with in the principles of the maximization of efficacy of the all the norms of fundamental rights in the constitution (Article 5, par.1, c/c art.60). It protects fundamental rights not just from the powers of constitutional reforms, but also from ordinary legislators and other state organs. Administrative measures and jurisdictional decisions may also infringe on juridical security and the protection of confidence since they cannot purely and simply suppress or restrict the essential nucleus of fundamental rights. The maintenance of minimum levels of social security already reached is necessary, which is the corollary of the maximum efficacy of fundamental rights, from law to juridical security, as well as the very dignity of the human being.

However, it must be observed that the prohibition of social retrocession does not have an absolute character. The fact that it is a principle allows the criteria of the application of measures of ponderance (the systematization of the hierarchy between the damage provoked by a restrictive or suppressive measure and the objective intended by the legislator for the good of the collectivity). It does not revert to the logic of everything or nothing.

It should be emphasized that the essential nucleus already achieved should be maintained, since it is directly related to the principle of human dignity as well as the right to juridical security. The latter in the sense of the protection of the establishment of juridical positions, of confidence in the maintenance of the basic conditions of life, mainly in a democratic state of law committed to social justice.

If such problems exposed above were not enough, there is also the crisis confronted by state institutions faced with the strengthening of the spheres of globalized economic power. On the one hand, there has been pressure to adapt social gains due to such changes and, on the other, the clamor of society for social justice. There have been more and more calls for weakening social rights and the social state. Perhaps, the best path forward is to remember that human rights are universal and advance through the strengthening of international rules to be followed and implemented in a globalized world, creating strong customs barriers to products produced in non-dignified contexts.

Fundamental rights are divided in dimensions and not, properly speaking, in generations. Dimensions, to the contrary of generations, do not succeed themselves. As such, fundamental rights accumulate in the measure that they are recognized. In this respect, Sarlet (2003, p.50) argues:

> There is no way to deny that the progressive recognition of new fundamental rights is a cumulative process, and not alternating, so that the use of the expression "generations" of fundamental rights could give rise to the false impression of the gradual substitution of one generation by another. For this reason, there are those that prefer the term "dimensions" of fundamental rights, a position that we adopt here, in the wake of a more modern doctrine. In this context, we allude in a notably ironic form what is called "the fantasy of the so-called generations of rights" that, in addition to being terminologically imprecise, leads to an erroneous understanding that fundamental rights are substituted over time and not through a permanent process of expansion, accumulation and strengthening.

In a very succinct form, 1st dimension rights guarantee freedom of private life in the face of a totalitarian state (the abstention of the state). Historically, as Sarlet (2003, p.51) traces, they are the peculiar product of "liberal-bourgeois thinking of the seventeenth century with a marked individualist streak".

Rights of the 2nd dimension deal with positive social gains. They are characterized by the granting of social state protections to the individual and include political, social, economic and cultural rights. They incorporate more than just positive rights, but also social freedoms such as the right to unionize and the right to strike. In respect to their historical development, Sarlet (2003, pp.52-53) assures us that:

> These fundamental rights, which were embryonic and isolated, had already been contemplated in the French constitutions of 1793 and 1848, in the Brazilian Constitution of 1824 and in the German Constitution of 1849 (that did not end up effectively being implemented) and are still characterized today by the granting of state social protections to individuals such as social assistance, healthcare, education, labor rights, etc. revealing a transition from abstract formal freedoms to concrete material liberties, utilizing the formulation preferred by the French doctrine. It is in the twentieth century, however, especially in the post-Second World War constitutions that these new fundamental rights ended up being consecrated in a significant number of constitutions as well as being the object of diverse international pacts. As P. Bonavides opportunely observes, these fundamental rights, distinguished from the classical rights of freedom and formal equality, were born "embracing the principle of equality" in the material sense.

3rd dimension rights are linked to mass society, coupled to the collectivity. Citing Sarlet (2003, pp.53-54):

> Fundamental rights of the third dimension, also called rights of fraternity or solidarity, bring as a distinctive feature the fact that they are detached, in principle, from the figure of a person – an individual as the holder – and are destined to the protection of human groups (family, people, nation), being characterized, consequently, as rights with collective or diffuse holders.

A new intellectual strand even speaks of 4th dimension rights, arising from the advent of globalization. They are rights that need to be universalized since they are existent in diverse countries of the same economic bloc. They are inserted in categories such as democracy, pluralism and the right to information. On this, Sarlet (2003, p.56) mentions the following:

> However, it is worthwhile referring with regard to public utility law, the position of the notable Prof. Paulo Bonavides who, with his particular originality, positions himself favorably with respect to the recognition of the existence of a fourth dimension, sustaining that it is the result of the globalization of fundamental rights, in the sense of the universalization of the institutional level that corresponds in his opinion to the last phase of the institutionalization of the social state.

It is necessary to remember that such dimensions are not closed. As such, depending on the focus, a right may be contextualized in more than one dimension. The right to professionalization may be obtained as a social right (right to work – Art.6 of the Brazilian Federal Constitution), since it is linked to a positive state protection, to the public policies of employment. It may also be seen as a 3rd dimension right. For example, in a determined municipality that does not have a professional training school, employers contribute to the S System (the name of the group of 11 professional categories established by the Brazilian Constitution) so that the very collectivity is injured by the inexistence of the professional course. Or it could be seen in the clothes of 4th dimension rights, considering that faced with globalization, the right to professionalization permeates the entire economic bloc, for example. Actually, the right to work, at least in its essential nucleus, should be seen as fundamental right of the 4th dimension, breaking from a merely national character, which would closely approximate the concept of human rights itself.

Great strides were made in the advance of human rights after the world wars. In this respect, Piovesan (2000, pp.17-18) explains:

> The movement for the internalization of human rights constitutes an extremely recent movement in history, arising in the post-war period as a response to the atrocities and horrors committed during Nazism. If the Second World War signified a rupture with human rights, the post-war period should signify its reconstruction.

The end of the First World War culminated with the Treaty of Versailles and the creation of the International Labor Organization (ILO). The results of the Second World War, in turn, saw the necessity of an effective organ of world peace. The United Nations was created, adopting the Universal Declaration of Human Rights in 1948.

The Treaty of Versailles brought responses to anxieties that had surged since the Industrial Revolution such as limitations of the workday, prohibition of child labor and, fundamentally, the premise that labor should not be considered a simple commodity or article of trade. The Constitution of the ILO, created by the Peace Conference in 1919, was converted into Part XIII of the Treaty of Versailles. This international organization of labor was built on three pillars, according to Durand and Jaussaud (1947, *apud*, Sussekind, 2000, p.1467):

> a) a sentiment of social justice for the fact that there still existed working conditions that implied misery and privation for a great number of people
> b) the maintenance of peace due to the threat of discontentment that social injustice generated
> c) similarity of conditions on an international scale in order to avoid the efforts of certain nations, who, desiring to improve the conditions of its workers, obtain labor through other countries who do not have truly human regimes of labor. The actions of the ILO would not have a universal conception that guided them if it did not reach the great majority of human beings.

We may note that these pillars on which the ILO was built are incredibly current. The question of the similarity of working conditions has gained a new life in these times of globalization and, not by accident, are highlighted in the 1998 ILO Declaration on the Principles and Fundamental Rights of Labor and its Follow-up:

> Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic

> and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;
> Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential; (ILO, 2002, p.73)[2]

The Declaration has an interesting perspective on globalization. Rather than sticking to the overpowering aspects of free competition, it focuses on the opportunity to create a global strategy with an amply based social development. Since globalization has the peculiar effect of homogenization, of the elimination of differences, it should aim for a superior ceiling with regard to the social conditions of labor and not "social dumping".

The text also reaffirms professional formation as a form of guaranteeing social development, underscoring a beautiful conception that the concretization of the fundamental rights of labor brings the voice of their subjects as well as permitting the full development of human potential. Convention 142, Article 1 of the ILO in 1975 establishes that countries should adopt and development complete and coordinated programs of orientation and professional formation (Ministério do Trabalho e Emprego, 2002).

Returning to the historical/chronological evolution, immersed in the context of the end of the Second World War as well as the depression, the ILO adopted the Declaration of Philadelphia as an appendix to its constitution. This declaration was not just important in itself but also served to influence the Charter of the United Nations and its Universal Declaration of Human Rights.

The Declaration of Philadelphia of 1944, according to Süssekind (2000, p.1468-1469):

> Enumerates quite widely, various questions pertinent to the dignity of persons and to the socioeconomic security of people who live from their work. For this purpose, in Article 3, it recognizes:
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> the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve: (a) full employment and the raising of standards of living; (b) the employment of

[2] Translator's Note: Existing original translations from documents of international organizations were used in this article if available. They are duly cited.

> workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being; (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;[...] (j) the assurance of equality of educational and vocational opportunity (ILO, Declaration of Philadelphia, 1944).

The United Nations Charter of 1945 reflects the movement of the internationalization of human rights. In Article 1, it establishes that one of the purposes of the UN is to achieve international cooperation for the solution of economic, social, cultural or humanitarian problems and encourage human and fundamental rights for all without distinction of race, sex, language or religion (United Nations, 1945).

The Universal Declaration of Human Rights of 1948 resuscitates the ideas of the French Revolution (liberty, equality and fraternity), one of the birthplaces for human rights. Thus in Article 1, it pronounces: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (United Nations, 1948).

The preamble of the Declaration practically reveals an act of post-war confession. A confession of humanity in the sense that the treaties enacted with the ending of the First World War were not implemented, that barbarous acts imposed themselves over human rights. Humanity, in search of redemption, reaffirmed the human rights so precious to it.

PREAMBLE

> Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
>
> Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
>
> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

> Whereas it is essential to promote the development of friendly relations between nations,
>
> Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
>
> Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,
>
> Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge [...] (United Nations, 1948).

The human rights that were proclaimed in this declaration included the right to work, the free choice of work and technical/professional instruction. It also developed the affirmation of work as the realization of human dignity as a way to obtain the range of essential rights for a full life.

Article 23.

> (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
>
> (2) Everyone, without any discrimination, has the right to equal pay for equal work.
>
> (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
>
> (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Ample access to professionalization is also contemplated in the Declaration and is considered a human right endowed with a universal character

Article 26.

> (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

> (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
> (3) Parents have a prior right to choose the kind of education that shall be given to their children.

The International Covenant on Economic, Social and Cultural Rights, ratified by Brazil in 1992, recognizes in Article 6, the right of every person to gain a life through a job freely chosen or accepted and provides that member states should enact measures that safeguard this right, within which professional technical orientation and formation are included (United Nations, 1966).

Since apprenticeship permits the conquest of a dignified job, the development of the potential of young people, the opening up of options, the increase in the possibility of insertion in the labor market with dignified remuneration, it is unquestionable that it is in full consonance with the effectuation of human rights. Moreover, apprenticeship is an instrument for the reduction of social inequalities, the motor of conflict and oppression, within both national and international environments.

It should also be underscored that, according to line III, paragraph 4 of Resolution 615/2007 of the Ministry of Labor and Employment, altered by article 1 of Resolution 1.003/2008 of the same organ (see Ministério do Trabalho e Emprego, 2008), that human and scientific formation should be included in the context of professional apprenticeship courses. Therefore, professional schools have included in their programs theoretical notions of moral and civic education with the aim of rescuing the moral concepts and educators that are so lacking nowadays in families. In addition to the specific content of each course, they transmit teachings on the correct posture in the workplace, notions of labor and pension rights, occupational health and safety, prevention of the abuse of alcohol, tobacco and other drugs and consumer education. They retrieve young people from the alienating chain of consumption and marginalization that sometimes surrounds them. They create social engagement linked to the formation of a true citizen.

Among the various achievements of the Declaration of Human Rights, we may also cite the revision of the notion that the protection of human rights is solely restricted to the state. After the World Wars, this theme became a question of international interest. According to Flávia Piovesan (2000, p.19): “The idea that the protection of human rights

should not be reduced to the dominion of the state was strengthened, that is, it should not be restricted to exclusive national competence or domestic jurisdiction since it is a legitimate theme of international interest".

Brazil is a signatory to the American Convention of Human Rights (Pact of São José, Costa Rica) (see Ministério do Trabalho, 2009) and therefore recognizes and is subject to the Inter-American Court of Human Rights. It may be condemned to secure the enjoyment of a violated human right, repair the consequences of the violation of this right and even pay compensation to a person harmed.

APPRENTICESHIP /QUOTA SYSTEM – STATE INTERVENTION

In Article 429 of the Consolidated Labor Laws (CLT), the following is stipulated:

> Establishments of any nature are obliged to employ and register in courses of the National Service of Apprenticeship a number of apprentices equivalent to 5%, minimum, and 15%, maximum, of the number of workers in each establishment whose functions require professional formation.

Many of the criticisms routinely heard of apprenticeship involve the question of the state interfering in the free initiatives of the employer. The state, in fact, is interfering in entrepreneurial freedom, however, it does so with constitutional backing, attempting to implement significant principles. One may even approach the question under the light of safeguarding a fundamental right in the private sphere (the concept of the horizontal efficacy of fundamental rights).

State intervention is not a new question; indeed, it was broached by the Encyclical *Rerum Novarum*, written by Pope Leo XIII in 1891 (Vaticano, 1891). This document, whose name signifies "new things" unquestionably recognized the necessity of state intervention in the relationship between employers and employees to guarantee social justice. There are criticisms of its context, for example, by the Labor Judge of the 6th Region (Barbosa, 2009), but they majority of theorists recognize its importance for social rights. Criticisms are based on the fact that the Encyclical arose during the crisis of liberalism and as a response to Marxism. Indeed, the text condemns socialism and exalts private property. But such positions such not surprise us since the church was one of the largest owners of property in that era. However, its recognition of social rights is undeniable. Unfortunately, it is in moments of

crisis that the recognition of human rights advances. This was true of the Treaty of Versailles and the Universal Declaration of Human Rights, concessions of capitalism to social conquests aiming to ameliorate latent conflict.

Such recognition was reaffirmed 100 years later with the launching of the Encyclical *Centesimus Annus* during the pontificate of John Paul II. Various relevant excerpts are reproduced below:

> These general observations also apply to the *role of the State in the economic sector.* Economic activity, especially the activity of a market economy, cannot be conducted in an institutional, juridical or political vacuum. On the contrary, it presupposes sure guarantees of individual freedom and private property, as well as a stable currency and efficient public services. Hence the principle task of the State is to guarantee this security, so that those who work and produce can enjoy the fruits of their labours and thus feel encouraged to work efficiently and honestly [...]
>
> The State could not directly ensure the right to work for all its citizens unless it controlled every aspect of economic life and restricted the free initiative of individuals. [...]
>
> By intervening directly and depriving society of its responsibility, the Social Assistance State leads to a loss of human energies and an inordinate increase of public agencies, which are dominated more by bureaucratic ways of thinking than by concern for serving their clients, and which are accompanied by an enormous increase in spending. In fact, it would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbours to those in need (Vatican, 1991).

Note that there is recognition of state intervention, but in such a form that society does not lose its engagement. It is exactly this that apprenticeship legislation foresees: an intervention of free initiative (in calling for obligatory quotas for companies), but with the due social engagement of society. If it were only state intervention, without societal participation, quotas would be established in a way that employers would simply be paying a kind of tax without the benefits through the work and advancement of knowledge of apprentices.

Article 227 of the Federal Constitution also recognizes that it is the duty of the family, society and the state to secure the right to professionalization for adolescents. That is, it hints at interrelated actions by diverse social actors to allow for state intervention.

We may add that the most intense action of the state in economic activity came with the First World War and the crisis of 1929. Up to this point, the liberal state was not

preoccupied with the control of economic agents (Petter, 2008). However, the free actions of economic agents may generate conflicts with other principles of the economic order, whether they involve the freedom of initiative of others, the growth of social inequalities or protection for the worker. Aiming to rectify such distortions, the state must intervene in the economy. In the first instance, the action comes in a prohibitive manner (a negative intervention), leading to the prohibition of certain behaviors. Yet currently, the intervention is more finalistic, oriented towards the achievement of determined targets of progress.

Article 3 of the Federal Constitution of 1988 reflects this finalistic intervention. There is not a mere affirmation of rights, but a constitutional clamor for a pro-active state posture, according to Ricardo Tadeu Marques da Fonseca (2006, pp.244-267). In this respect, the verbs are even included in the infinitive form in Portuguese that clearly evokes actions:

> I. Construct a free, just and harmonious society;
>
> II. Guarantee national development;
>
> III. Erradicar poverty and marginalization and reduce social and regional inequalities
>
> IV. Promote the welfare of all without discrimination of origin, race, sex, color, age or any other form of discrimination.

It thus opens space for affirmative actions with the objective of concretizing the fundamental objectives of the Federative Republic of Brazil.

A reading of Article 170 of the same constitution demonstrates that the intended economic order is to be based on the conciliation of the valorization of human labor with free initiative, that is, the incessant search for the pacification of the labor-capital relationship. Free initiative and valorization of human labor also advance side by side in the conception of Article 1 of the Constitution.

Similarly, Article 170 presents labor and free initiative as instruments for the practical implementation of human dignity. Notwithstanding the fact that they are situated side-by-side, they sometimes remain distant as if they were opposite forces. How may we valorize human labor through firm guidelines, sometimes in an interventionist form, without confiscating private property? The constituent legislator gave us this measure in the caput of Article 170; it is known as social justice.

Furthermore, it does not stop there. The resolution of this question is indicated by the principles that guide the economic order, among which the following are relevant for this study: the reduction of social and regional inequalities; the aim of full employment and

favorable treatment for small business. The three principles mentioned above are interrelated with apprenticeship as we show in the following paragraphs:

a) Reduction of regional and social inequalities, Article 170, Line Vii, Federal Constitution:

The setting of quotas to be accomplished by companies is effectuated by establishment (Article 429 of the CLT). Thus, in a company with diverse branches in the country, the quota must be achieved for each branch in each respective municipality.

What appears to be a juridical filigree is actually not. Such a form of setting quotas enables professional-technical formation in a pulverized form in the whole country, according to the distribution of the companies. To permit a concentration of apprenticeship only in the main branch, for example, would be to cripple qualification in more distant, but needy regions. If the legislation permits the establishment of quotas and the apprenticeship programs based only on the number of workers in the main branch, it would run counter to the reduction of social and regional inequalities. Opportunities to offer spaces for the qualification of the labor force in apprenticeship programs would be limited to the large cities, aggravating the great socioeconomic distortions in our country.

In this regard, we also need to read Paragraph 3, Article 23 of Decree 5.598/2005 that only permits the centralization of the practical activities of apprenticeship in cases where the establishments are located within the same municipality.

Any reading disassociated with this context constitutes a vehement affront to the Constitution, distorting the fundamental objectives of the country outlined in Article 3 of the Constitution above as well as the principles of economic order stated in Article 170 above.

b) The aim of full employment provided for in Article 170, Line VII of the Federal Constitution:

In the current world, to be in the condition to exercise a productive activity does not mean to be only disposed to work. More than this, it is necessary to have qualifications for such an activity. In this way, training and skills development have public policy consequences. Full employment after all is an inclusive benefit to the capitalist system as Petter (2008, p.92) shows:

> the aim of full employment desires to provide work to those who have the conditions to exercise a productive activity; it is a directive principle of the

> economy that opposes itself to recessive policies. Labor is at the base of the economic system, participating in the production of wealth and income. The aim of full employment incurs enormous benefits for the capitalist system itself, since, as we know, up to a determined level of income, almost all remuneration "returns" to the market in the form of the consumption of goods and services essential to the internal market.

It is even possible to establish a bridge between the objective of full employment and the social function of property: "Property endowed with a social function obliges the proprietor or their representative the power of control that they exercise in this function-right (power-duty) even in order to accomplish full employment". (GRAU,1997, apud Petter, 2008, p.91).

b) Favorable treatment for small business, provided for in Article 170, Line IX of the Federal Constitution:

Article 11 of the repealed Law 9.841/99 dictated that:

"The micro-company or small business are dispensed from the accessory obligations that are referred to in Articles 74; 135, § 2º; 360; 429 e 628, § 1º, of the CLT." Yet Article 14, Line 1 of Decree 5.598/05 made the hiring of apprentices compulsory in micro-companies and small businesses.

The Complementary Law n.123/2006 expressly revokes, in Article 88, the Law 9.841/99. In relation to apprenticeship, the repealed law in Article 51, Line III dispensed micro-enterprises and small businesses from employing and enrolling their apprentices in the courses of the National Service of Apprenticeship. Yet the article does not infer that such businesses are dispensed from hiring and enrolling apprentices, but the specific necessity of enrolling them in the courses of the National Service of Apprenticeship since they do not pay the social contribution required by Article 240 of the Federal Constitution. As such, they may not benefit from a structure that they do not financially support. These companies, then, need to contract apprenticeship programs through other qualified entities in the form decreed in Article 430 of the CLT, that is, non-profit institutions.

Since it is supervening, Decree 5.598/05 does not regulate Complementary Law 123/06. In addition, a decree may not negate in a diverse form a law, but only regulate it.

Apprentices should not be seen as an onus; they are important for the formation of the labor force and favorable to the very employer. Thus, they cannot be linked to the simplistic argument of the reduction of the onus on micro- and small enterprises.

Actually, the real justifying criteria of exclusion is based on the small number of employees, that, as a rule, micro-enterprises possess, making it impossible to mount a professional-technical formation and incurring the utilization of apprentices as substitutes for the existent workforce. Yet such a fact does not lead to the exemption of such businesses from the legislation since it may be included in the percentages called for in Article 429 of the CLT. Therefore, a small business with an elevated number of employees is not exempt from such a legal obligation. We may cite, for example, a restaurant with a large number of employees. The employer would benefit from the training of its labor force, for example, with a cook's apprentice.

Everyone will benefit from apprenticeship requirements if it is seen as an instrument for the qualification of the labor force and not as an onus (as in Law 9.841/99). It is essential to mention the fact, however, that the Ministry of Labor and Employment does not understand the question in this way, still basing itself on the negative arguments of the repealed law and in Decree 5.598/05.

PROFESSIONALIZATION AND APPRENTICESHIP: EVOLUTION

In 1809, the College of Factories was founded in the colony of Brazil, chronologically the first public institution in the country to attend to workshops and apprentices. This opportunity attracted mainly Portuguese workers. Later, and preoccupied as well with the anxieties of the Portuguese mother country to develop industry, there were calls for the Portuguese officials to teach print workers, diamond polishers and install textile factories. During the constitution of the national state after 1821, the colonial inheritance was still felt with apprenticeship continuing only in the military arsenals of the Army and the Navy.

In Brazilian national law, the Constitution of 1937 was the first to engage with the question of apprenticeship, mentioning "schools of apprentices" for the sons of workers or their associates. The Constitution of 1946 inserted apprenticeship into the chapter on education and not labor rights, extending it to commercial activities since until then it was restricted to industry. The Constitution of 1967 embraced the notion of the social

responsibility of the company and commercial and industrial apprenticeship (OLIVEIRA, 2009).

The Federal Constitution of 1988, notwithstanding the little attention specifically given to the question, referred to apprenticeship in Article 7, Line XXXIII, linking it unquestionably to labor contracts. This national constitution was succinct in its treatment of apprenticeship since first, it was not possible for the makers to examine all the material related to the question. It traced the foundations and qualifications essential to the juridical origins that instituted it. The Constitution thus dealt with the most important rights, leaving ordinary legislation to deal with the less important issues. The second reason relates to the fact that a reading of the Constitution cannot be accomplished in an isolated form. Faced with the principle of unity, its dispositions should be interpreted as a logical-teleological whole. As such, the foundations for apprenticeship permeate other diverse constitutional norms. The principle of maximum efficiency must be kept in mind in such a way that the determined right gains concrete form, having the widest possible effects.

APPRENTICESHIP X INTERNSHIP – JURIDICAL NATURE

It must be stressed that although apprenticeship focuses on work-related features, it should not be separated from its educational character. Such an educational character is encountered in Article 68 of the Statute of the Child and Adolescent (Law 8.069/90) and should serve as a guide for the application of an apprenticeship contract that serves as a special type of work contract.

For the professor and jurist, Homero Batista Mateus da Silva, the apprenticeship contract should be regarded as educational work. He asserts as well that “the apprentice is effectively inserted in an economic activity, soon producing goods and services apt for the production of wealth” (SILVA, 2008, p. 238). With all due respect to this prominent author, the production of wealth does not serve as a differentiator between apprenticeship and other educational activities. According to another professor and jurist, in considering an internship:

> [...] the most important thing is not to know if the employer is earning (or not) economic gains with the internship – since such gains will always exist in any situation of labor provision from one to another (even the non-onerous provision of labor, it should be insisted). Such gains are inevitable in any provision of labor.
> (DELGADO, 2007, p.327)

Since wealth is produced, the gains are inherent in any provision of labor and may not serve to differentiate between apprenticeship and other educational work.

Apprenticeship is inserted among educational work dressed in the clothes of an employment contract. The fact that it is configured as a work contract does not take away its educational character. An internship is also inserted among educational works, but is not characterized by an employment contract. The heart of the question in the differentiation between these different modalities is in the larger objective of each type of educational work. Apprenticeship aims at a professional-technical formation with the concomitant presence of theory and practice. Its objective is the formation of an employee, of a professional, who already provides labor to the company. An internship involves a civil-schooling nature: the final objective is the practical experience of the worker who has already had a theoretical formation. It is the practical phase that complements theoretical teachings. As such, its greater objective is to complete the schooling of a worker.

With the advent of Law 11.788/08 the social rights of internships were increased since they were being used as cheap labor, a patent affront to the larger objective of the educational character of such legislation. They won rights to holidays, all rights related to occupational health and safety, formal remuneration, transport auxiliary in the case of a non-obligatory internship and a maximum duration of two years. The law set limits for the number of interns at the high-school level, permitting the true accompaniment of the formation of the intern.

With the growth in a range of rights for interns, some companies who has used them simply as a form of cheap labor – that, in reality, constituted a formal employment tie – have begun using this nefarious practice with apprentices. With the allegation that they are fulfilling their legal quotas and utilizing the benefits of the reduction in the aliquot of the FGTS (the Guarantee Fund for Length of Service) from 8% to 2% and a proportional minimum wage, many companies are undermining the greater objectives of apprenticeship. This employer practice is at odds with the purpose of apprenticeship. Apprentices are given repetitive tasks not requiring any skills. Sometimes, not even the theoretical part of the project is taught or its content is weak and unsatisfactory. Faced with such a situation, the only path to follow is to recognize it in reality as a formal contractual work relationship, undermining the greater aim of professional qualification. It needs to be stressed that this migration has been accompanied by some intermediaries (Art.5, Law 11.788/09 – the internship law) who have formally begun to function as non-profit organizations (Art.430, Line 2, CLT – Apprenticeship).

Yet these are the exceptions. As a rule, technical professional schools have delivered high-quality courses and have even been preoccupied with the pedagogical and psychological formation of young people, and sometimes, even their families. We have heard genuine reports of the rescue of young workers and, as a result, of their families.

APPRENTICESHIP AS AN INSTRUMENT OF QUALIFICATION

With the aim of inserting apprentices into workplaces, the law established a minimum quota of 5% and a maximum of 15% of the total number of employees whose function demands professional formation. To fix such quotas, the legislation (Decree 5.598/05, Article 10, Par.1) excludes from the numbers, employees whose posts require purely technical, post-secondary, supervisory or management skills.

Thus, apprenticeship is not simply the mere insertion of young people into the labor market. It is the insertion of skilled young workers into the labor market, whose functions require a professional formation that go beyond simple manual or mechanical work. Purely technical or post-secondary jobs require a specific diploma with all the peculiar requirements of the Ministry of Education. Supervisory and management posts are also excluded. These exclusions, for the purpose of fixing the quota levels, are salutary. It is not that young workers may not aim to one day gain supervisory or management jobs or continue their studies at the post-secondary level, but such posts require work experience and fiduciary practice.

Apprenticeship aims to open doors in the formal market for young, skilled workers. It does not intend to simple insert them at any cost into the labor market, transforming them into cheap labor and extending the chains of social exclusion. It should explore the development of the potential of the young person, not just putting them into merely repetitive jobs that dispense with skills.

However, it is necessary that a thorough exam be made for each task done since sometimes, functions which appear to be repetitive, actually require a high degree of skills as in the case of complicated machines.

As the State Prosecutor in the state of São Paulo, Marcelo Pedroso Goulart (2005, pp.94-119), argues:

> in contemporary society, marked by technological revolution, the world of work is demanding in terms of qualifications. Therefore, a professional

> formation adequate to this new reality is a presupposition for the exercise of citizenship. An inadequate and insufficient professional and educational formation, today, implies exclusion from the market, therefore, social exclusion. Employers are demanding a minimum of high-school education for the simplest activities. Merely manual jobs are disappearing in the face of the substitution of people by mechanical (mechanization) or electrical (automation) instruments. Respect for the development of children and adolescents implies the effectuation of the right to professionalization. Of a professionalization that attends to the necessities of the labor market in a computer age, in an era of knowledge. Premature entrance into the labor market – for common work – implies the loss of the possibility of adequate formation, whether it is basic education – primary and secondary – or professional since the activities available in the market for the adolescent segment i) lack complexity; ii) are facing extinction due to technological advances; and because of this, iii) do not contribute to professional capacitation.

It is urgent, as a result, for Brazil to abandon once and for all the international Fordist model that it has followed in the last sixty years. It is an elitist model that only trains a small group of professionals, the majority of which in the very workplace. Such a system no longer responds to the developments of the technological revolution and, certainly, aggravates the situation of social exclusion.

On the insertion of young people into non-skilled trades, Oris de Oliveira (2009, p.302) explains:

> It is not a question of making depreciative judgments about determined trades whose exercise does not require professional qualification, but without the latter the young person will have difficulties to enter into the labor market and, when they succeed, will have to content themselves with low-paying jobs with a high dose of informality.

It is thus necessary to closely analyze the apprenticeship legislation in such a way for the effective preparation of the young person for the labor market not for a mere premature insertion in the productive chain.

The insertion of skilled young workers in the labor market gains importance mainly when we consider the high levels of unemployment among young people (16-24 years of age) that reached 3.5 million young workers or 45% of the national labor force among young people, according to data from the ILO. Moreover, the ILO also points out that 93% of the jobs until then available for young people were in the informal economy with low salaries and few perspectives to advance. As sectors that are interrelated, unemployed young people today are like the child workers of the past. And, as a result, this vicious cycle continues:

child labor, school evasion, young unemployed, cheap labor, informal work, father of child worker…

Aiming to break this vicious cycle and create real conditions of equality of opportunities, the quota system in the apprenticeship legislation is an affirmative action, taking into account the concrete context of discrimination and marginalization. It is the state interfering to secure substantial equality of opportunities.

In this respect, Gláucia Gomes Vergara Lopes explains concerning the quota system for persons with special needs, which has similar guidelines to the quota system for apprentices:

> This fact arises from the necessity of the materialization of the concept of equality, demanding that situations be analyzed in a concrete manner to identify which treatment should be applied, avoiding the deepening and perpetuation of inequalities generated by society itself. It is a consecrated notion in the social state of law, the break with the dogma of formal equality and the demand for the analysis of concrete hypotheses as a form of guaranteeing the protection and defense of those who are victims of discrimination and social injustice. With the evolution of these concepts and demands from society, the necessity has arisen for a real equality that aims to abolish inequalities through the adoption of positive social policies, and not just repressive ones, known as affirmative actions (the terminology of American law) or positive discrimination (European law). In these policies, the state abandons its position of non-interference defended by liberalism and becomes a positive actor in the materialization of the equality contained in constitutional texts (2005, pp.83-92).

One of the key points of the apprenticeship legislation revolves around the necessity to prove the school attendance of the apprentice, if they have not yet completed high school (Article 428, Par.1, CLT). Indeed, non-attendance at school is one of the reasons that may lead to the rescission of the apprenticeship contract. In this way, school and work advance together with apprenticeship dependent on school attendance.

The legislation, however, has advanced in a retrograde form in allowing the duration of the work of the apprentice (as a rule, six hours a day), extending it to eight hours (theory and practice) in cases where the young person has already completed high school. This exception is not justified since high school is considered basic education (Art.21, Law 9.394/96). Thus, the limitation of the workday to six hours should also be given to the apprentice who has already graduated, taking into account the constitutional infrastructure that regulates apprenticeship as well as the application of Arts. 63 and 67, Line IV, of the Statute of Children and Adolescents (ECA). The workday, involving both theory and

practice, has its limits imposed by the guarantee of the access and frequency of the young person in regular school and its continuance.

In relation to the activities developed by apprentices, legislation prohibits the following types of work: night work, dangerous, insalubrious and heavy work in locales prejudicial to their formation and physical, psychic, moral and social development as well as work done in hours and places that do not permit access to schooling, as provided in Article 67 of the Statute of Children and Adolescents. The peculiar situation of the apprentice as a person in development as well as the restrictions imposed by Decree 6.481/08 (a list of the worst forms of child labor) should also be observed.

Employers and co-workers are responsible to ensure that the apprentice is treated as a person in development. Such a fact should guide the choice of functions to be performed and the respectful treatment necessary in the formative process, avoiding the utilization, for example, of demeaning language. This is provided for in Art.425 of the CLT.

For example, some young people are timid, which could bar them from attending the public. A simple change in the function to internal administrative tasks is sometimes sufficient to demonstrate the potential of the young worker who may gradually lose their timidity in dealing with strangers. As such, it is necessary to attend to the peculiar condition of age and experience as well as physical, intellectual and social development.

Law 11.180/2005 extended the maximum age of apprentices from 18 to 24 years of age with no age limitations for apprentices with special needs. Above 18 years of age, we are no longer speaking of adolescents at least in terms of the provisions of the ECA (Art.2, Law 8.069/1990). Thus, in the 18-23 years of age category, the apprentice may engage in activities prohibited for minors. Such an alteration is of unquestionable importance since it permits apprentices to engage in insalubrious, night, heavy and dangerous work.

APPRENTICESHIP AND ITS IMPLEMENTATION

The implementation of apprenticeship programs have been regulated by legislative conceptions applied and overseen by the Ministry of Labor and Employment (consciousness-raising, inspection and procedures) in partnership with the Public Ministry of Labor (conduct and public and civil actions). This is a wide infrastructural scaffolding that develops through multiple interactions at many levels.

A good number of companies, on being inspected, fulfill their legal duties. Some, however, act as if they are doing a favor by meeting their legal requirements. A fiscal auditor ends up assuming the role of convincing the employer of their duties, extending deadlines and frequently visiting the company to oversee progress. In the case of non-compliance in relation to apprentices, an inconsequent fine is applied and a report is sent to the Public Ministry of Labor.[3] That is, inspectors need to plea for employers to comply with their legal obligations in the effectuation of a fundamental human right.

The logic appears to be inverted. What is right appears to be doubtful. It appears that the country prioritizes capital in detriment to labor and human rights. Protective legislation is useless if the values of the fines imposed for non-compliance are tiny in comparison to the power of the company and if a large part of the workers' demands end with agreements "imposed" by the miserable situation of the worker who needs to survive. In asking the Labor Courts (really Courts of the Unemployed) if an ex-employee agrees to a determined settlement by the employer, it is clear that in a great part of cases that frustration, desperation and hunger corrodes the will of the worker to contest agreements that benefit the bosses. In this type of reasoning, it is necessary to question why fines imposed by the Internal Revenue Service in Brazil are much higher than those of the Ministry of Labor. Cheating on taxes is worse than infringing human rights?

Nothing is more appropriate than citing the professor and labor judge Jorge Luiz Souto Maior:

> Human rights, as a manifestation of the importance of being human and enjoying its most intimate values, confronts serious problems for its consecration, since human relations are developed in social contexts: some human values succumb to economic, political and even lesser human values, rhetorically constructed as natural. Above all in economically unjust social relations, some humans appear to be more human than others in the sense that certain interests that attend to the necessities of a determined class have more aptitude to become effective than others. Human rights are transformed into the rights of a determined class of humans (2005, pp.210-221.

The number of fiscal auditors of labor in Brazil is small considering the continental dimensions of the country in which past, present and future are intertwined through slave labor, Fordist divisions, high technology and globalization. Brazil does not honor what has

[3] I personally observed this during the period in which I worked with the NAPE (Nucleus of Support to Special Programs) in the Regional Superintendence of Labor of the Ministry of Labor and Employment in the state of Goiás.

been established by the ILO, Art. 10, Convention 81 that calls for the number of inspectors of work to be sufficient to effectively exercise their functions.

The obstacles are great notwithstanding the fact that the legislation was solicited by the very employers who were faced by a lack of skilled workers. Resistance encompasses criticisms of the right of the state to intervene in the workplace to the simple resistance to teach workers. And, as paradoxical as it seems, this resistance sometimes comes from the very target populations for apprenticeship programs. An example of this was in the Regional Superintendence of Labor in the state of Goiás who confronted difficulties in implementing apprenticeship programs in civil construction.[4] Despite having a high number of industrial accidents, which demands a trained workforce, it was difficult to find young workers interested in apprenticeship.

Some resistance comes from the very family of young workers who prefer to see their children follow their parents' footsteps rather than enter into an apprenticeship program. In financial terms, the wages of a good professional in construction are much greater than an administrative assistant. Yet resistance to manual work, associated with non-intellectual tasks, remains high.

Even co-workers have prejudicial attitudes towards apprentices, for example, those who arrive at the workplace conscious of the need to use protective equipment and new ways of production in order to avoid waste and accident. Many times, the prejudice comes from within the same class.

Yet once the initial barriers are overcome, the benefits of apprenticeship are unquestionable. The company forms its own future workforce in the way it needs. Soon after completing the apprenticeship, the apprentice, in the majority of cases, is able to find work with the employer for an undetermined duration. The benefits affect the company, the employee and society.

CONCLUSION

The quota system for apprentices is an affirmative action, aiming to break the alienation and social exclusion generated in a country with great regional and social disparities. Through apprenticeship, human dignity is concretized because it offers young people the opportunity to develop more than just what is necessary for survival. It is an

[4] Personal observation. See Note. 3.

instrument for humans in formation to develop their potential and establish life projects. The benefits indubitably extend from the young person to all of society.

Apprenticeship legislation, however, should not be banalized. A close reading is necessary to ensure the effective preparation of young people for the labor market and not a mere insertion in the productive chain.

My intention in this article was to increase interest in apprenticeship, demonstrating its importance for the concretization of the professional as a fundamental human right as well as the rights associated to this such as dignity of the person, substantive equality and social justice.

The theme is extensive and this article does not exhaust the possibilities of research into this question. Its fascination come from the fact that it is inserted simultaneously in the areas of labor, constitutional and human rights law. The contemporaneity of the theme is highlighted in the context of globalization and the clamor for social justice.

Since the initial struggle to deepen the right to professionalization has been won, in both national and international juridical contexts, there remains the fight to effectively implement this important right. To accomplish this, it is necessary to see the institution of apprenticeship as an important component of the concretization of fundamental human rights.

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