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Republic and Strike Action in the Beginning of the 20th Century: A Debate between the 1906 Strike and Legal History

1 Introduction

From the railroad workers strike in 1906, the present article aims to prove that the right to strike was an enshrined right in the doctrine, in the working class and in the Brazilian jurisprudence in the beginning of the 20th century, in spite of the violent response by the Executive Branch. To go on strike was a right that was met with the strength of the police and the army.

Thus, this article intends to demonstrate how the Legal History is not a history towards the progress, a walk of the reason or an evolutionary history: “law must be understood in its time, and not simply as a walk towards progress, it is not possible to say that the past was better or worse, it simply changed, it was simply different and the task of the historian is to constantly make history complex.”¹ The task of the legal historian is to notice the contradictions, ambiguities and tensions that coexist within the legal norm. Therefore he may understand the past with its characteristics and singularities, and not as a preview of the present: the past ceases “to be a precursor to the present, a rehearsal for solutions that have a complete development of the present. And, with this, it ceases to have to be read in the perspective of what came next. The past is liberated from the present. Its logic and categories gain depth and autonomy.”²

That is, the past ceases to be seen under the logic of the present and is understood in its peculiarities, in its contexts, bringing the perception that “legal history is one amongst the thousands that can be possible, legal history is the law and what was made of it.”³

1 SILVEIRA SIQUEIRA (2011) 21.

2 HESPANHA (2005) 43.

3 SILVEIRA SIQUEIRA (2011) 24.

This way, it is intended to deny thoughts that “the right of law never existed” or that going on “strike has always been a crime”. The intention is to show how this right existed with the violence and prejudice that were inflicted upon it, using legal history, not as a present “that never came”, but as learning from experience for the future. Here history is used for the future, so that, with past experiences, it may be possible to discuss possible (not believing that history repeats itself or is the same) future experiences.

2 The strike of 1906

The strike of 1906 involved two of the main railroad companies in the state of São Paulo: Paulista and Mogyana. Considered to be the largest strike in Brazil until then, the movement initiated in May and ended in June impeded the transportation of coffee – main export product in Brazil –, of people, of correspondence and banking services.

Literally, a large part of the economic activity was paralyzed with this strike. Initiated against the abuse of the chief engineers, the essence of the strike was the repudiation to the “violation of workers’ dignity”. In the Strike Manifest of May 15th, 1906, the *Liga Operária* (Workers’ Guild) summoned the workers to fight against the “harassment”, “pay cuts” and “dismissals” that “offend our dignity as honest workers, which do not consider ourselves slaves and neither want to submit ourselves to the arbitrariness of tyrant superiors, which cannot and should not continue,” fighting “with the steadiness and enthusiasm that our cause render us.”⁴ Having the workers that “violated the workers’ dignity” dismissed, the strike ends without the grant of the claims.

Thus, the strike of 1906 was chosen, because it is an excellent moment to understand the legal tensions that existed around the right of strike. The strike of 1906 involved the Workers’ Guilds, lawyers, the state of São Paulo, the Police, the Army ... It is a rich movement that can illustrate a little of the legal experiences at that time.

4 Published in the Newspaper *Comércio de São Paulo* on 15th May, 1906, in the Newspaper *Cidade de Campinas* on 16th May, 1906 and in the Newspaper *A Terra Livre* on 16th May, 1906.

3 The legal treatment of the strike in the beginning of the 20th century

Sixty days after the publication of the Penal Code of 1890 that criminalized the strike in articles 205 and 206, the interim government altered the text through the decree number 1162:

The Chief of the Interim Government of the Republic of the United States of Brazil, considering that the text of articles 205 and 206 in the Criminal Code may in its exercise give rise to doubts and wrongful interpretations to establish the indispensable comprehensibility, mainly in the penal laws, decrees:

Article 1 – The articles 205 and 206 and their paragraphs are thus written:

Article 205 – Divert workers from the places of work, by means of threats or embarrassment:

Penalty – imprisonment from one to three months and fine of 200\$ to 500\$000.

Article 206 – Lead or provoke ceasing or suspension of work by means of threats or violence, in order to enforce on workers or bosses the raise or cut in labor or salary:

Penalty – imprisonment from one to three months.⁵

According to the new text, the peaceful strike ceased to be a crime, remaining as a crime only the violent strike. Under penal code, call workers to strike, without threats and embarrassment, was licit. Evaristo de Moraes, in 1905, commented on the penal code, “under penal law in exercise in Brazil, the right to strike is plainly recognized.” (...) “just like a worker may individually stop working, many workers have the right to refuse the effort of their arms to the call to meet the bosses’ needs. Nor would it be compatible with a republican government the denial to this right, which originates in the economic settings of our time.”⁶

5 Original: O Chefe do Governo Provisório da Republica dos Estados Unidos do Brazil, considerando que a redacção dos arts. 205 e 206 do Codigo Criminal pode na execução dar lugar a duvidas e interpretações erroneas e para estabelecer a clareza indispensavel, sobretudo nas leis penas, decreta:

Art. 1.º Os arts. 205 e 206 do Codigo Penal e seus paragraphos ficam assim redigidos:

Art. 205. Desviar operarios e trabalhadores dos estabelecimentos em que forem empregados, por meio de ameaças e constrangimento:

Penas – de prisão celllular por um a tres mezes e de multa de 200\$ a 500\$000.

Art. 206. Causar ou provocar cessação ou suspensão de trabalho por meio de ameaças ou violencias, para impôr aos operarios ou patrões augmento ou diminuição de serviço ou salario:

Penas – prizão celllular por um a trez mezes.

6 MORAES (1905) 57–58.

If the 1891 Constitution assured the right to gather (Art. 72 § 8th), the freedom of speech (Art. 72 § 12th), and of profession (Art. 72 § 24th), to go on strike, with the absence of a penalty, was a right. If the worker can work, so he can also choose not to work and gather to express their thoughts. Thus, to understand that the strike was a right, seemingly, is compatible to a State influenced by the liberalism of the beginning of the 20th century.

On the 1891 Penal Code, Nelson Hungria commented:

The object of legal protection is, here, the freedom of work against the imposition of strike or lock-out. The crime is the embarrassment to the ceasing (complete paralyzing or for a long time) or the suspension (transitory paralyzing) of work. Strike and lock-out are not crimes in themselves: they represent, on the contrary, a right, and the opposition to exercise them should be considered illegal (art. 180 Consol.). What the law punishes is the forcing or coercing of workers to strike, or the bosses to lock-out, to coalition.⁷

In the same sense, the Federal Supreme Court stood, in 1920, in judging the Habeas Corpus of a foreign striker expelled from the country by the São Paulo government for taking part in the 1906 movement.

Considering that the peaceful strike is a right that can be freely exercised by the worker, and that the exercise of a right in any free and law-enforced country is not a crime, nor does it place the individual in a situation of being considered a pernicious element to society or a disturber of the public order.

By the analysis of the documents submitted it is proved, in evidence, that the individual, intervening in the Mogyana strike with the intention of calming down the exalted strikers, did not commit an act, against people or goods, defined by penal Law, and nor any other manifestation with words or fact, became a “pernicious element to society”, in which he has lived for twenty-four years, and in which he supports 7 Brazilian children.

Considering that the individual is Brazilian, therefore, has Brazilian children and an estate in Campinas, *ut* document page 27, and is a tax-payer for municipal property.

Considering that, in this situation, the Constitution of the Republic, in the article 96, paragraph 5, considers the foreigner a naturalized Brazilian under any legal effects, and the expelling order does not apply to Brazilians.

7 HUNGRIA (1936) 385. Original: “O objecto da protação penal é, aqui, a liberdade de trabalho contra a imposição da greve ou do lock-out. O crime é o constrangimento á cessação (paralyzação definitiva ou por longo tempo) ou á suspensão (paralyzação transitoria) do trabalho. A greve e o lock-out não são crimes em si mesmos: representam, ao contrario, um direito, devendo mesmo considerar-se constrangimento illegal (art. 180 Consol.) a opposição ao seu exercicio. O que a lei pune é o forçar ou coagir os operários á greve, ou os patrões ao lock-out, á coalizão.”

The Federal Supreme Court

GRANTS the appeal, so that all and any embarrassment to the individual be ceased, from the expelling decree. Expenses “ex-causa”.

Federal Supreme Court, June 14th, 1920. – Pedro Mibielli, Reporting Judge: even if the individual were a foreigner, proven that he is a resident, I would grant the “habeas-corpus” under the terms of the article 72 of the Constitution of the Republic. – Pedro Lessa. – Leoni Ramos. – Pedro dos Santos. – Viveiros de Castro – Godofredo Cunha. – Sebastião de Lacerda. – Muniz Barreto. – Germenegildo de Barros – João Mendes.⁸

The law, the Constitution, the doctrine and jurisprudence agreed that the peaceful strike was a right of the worker. It was interesting to notice that such understanding was also shared by the workers and the bosses. But it is also necessary to understand that it is not possible to claim that all doctrine or all jurisprudence was for the right to strike. Decisions such as the one of the Justice Court of São Paulo (and indoctrinators like Baptista Pereira), in several occasions, criticized the right to strike or illegally deterred its exercise.⁹

8 Published in the *Revista do Supremo Tribunal Federal* in October, 1920, Fasc. 1, volume XXV, Rio de Janeiro, 149–150 (HC number 5.910). Original: Considerando que a grève pacífica é um direito que pôde ser livremente exercido pelo operario, e que o exercicio de um direito em qualquer paiz livre e policiado não constitue delicto, nem colloca o seu titular em situação de ser considerando um elemento pernicioso á sociedade e comprometedor da tranquillidade publica;

Considerando que dos documentos offerecidos se prova, á evidencia, que o paciente, intervindo na grève da Mogyana com intuito de acalmar os animos exaltados dos grévistas, nem um acto praticou, isoladamente contra pessoas e cousas, definido pela Lei penal, e nem qualquer outra manifestação por palavras, ou factos teve como indicativo de ser elle um “elemento pernicioso á sociedade”, na qual vive há vinte e quatro annos, e em cujo meio presta assistencia a 7 filhos brasileiros,

Considerando que o paciente é brasileiro, porquanto, tem filhos brasileiros, e possui um immovel urbano em Campinas, ut documento de fls. 27, pelo que é contribuinte dos cofres municipaes por impostos devidos pela propriedade predial.

Considerando que, nessa situação, a Constituição da Republica, no art. 96 parágrafo 5, considera o estrangeiro naturalizado brasileiro para todos os efeitos legais, e que a lei de expulsão invocada não se applica a brasileiros.

O Supremo Tribunal Federal

DÁ PROVIMENTO ao recurso interposto, para que césse todo e qualquer constrangimento contra o paciente, oriundo da portaria de expulsão. Custas “ex-causa.”

Supremo Tribunal Federal, 14 de Junho de 1920. – Pedro Mibielli, Relator: ainda que estrangeiro fôsse o paciente, provado que é residente, eu concederia o “habeas-corpus”, no termos do art. 72 da Constituição da Republica.

9 Some of these rulings are reproduced in LEME (1984).

Yes, it was possible to notice Judiciary rulings, not expressly opposed to the understandings of the Federal Supreme Court, but that did not recognized the right to strike as a right that could be exercised.

From pamphlets and manifests used in the strike of 1906 it is possible to notice the contradictions and tensions of the time. It is also possible to notice the reactions of the strikers, the company-owners and the government of the State of São Paulo at the time.

The manifest of the Workers' Guild of Jundiaí, published on May 19th, 1906, on the first page of the *Jornal Comércio de São Paulo*, stated: "our cause is a just one and a saint one, and for this reason we ought to work together and in mutual agreement to win the right that assists us and safeguards our dignity as men." The workers believed they were exercising a right.

On May 19th, 1906, Joaquim da Silveira, Joaquim Barros and Crizanto Pinto published a Positivist Manifest in the city of São Paulo.¹⁰ For the positivists: "strikes do not constitute a crime, they are not punishable acts; on the contrary: they constitute a normal resource that the working class may use against the abuse of the industrial bosses and they are originated in the principle of professional freedom, established in the Constitution." Not being a crime, the "role of the police is to maintain the order at all times and ensure the complete freedom for the ones who wish to go back to work as well as the ones who decide to maintain the strike." The intention of the positivists was to reach a consensus, and through their manifests it is clear the recognition of the right to strike.

On May 25th, 1906, the Newspaper *O Estado de São Paulo* publishes a letter from the lawyer from Cia. Paulista, Pedrom Villaboim, who defended the actions against the strike:

The action of mere defense, agreed upon between Company and the government to safeguard the property already damaged by some of the so-called strikers, to ensure the safety of public transportation that relies on roads and to ensure the freedom to work to those who do not join the abstention, is being pointed out as a violence against the right to strike and some requests to courts to protect the workers against a fantasized oppression are being made. (...) Well, until now, no-one from the Company or from the government has refused the right to strike to the workers

10 Attached to the thesis by LEME (1984) 280–281.

of Cia. Paulista; no-one has denied them the right to, via an agreement or a collective resolution, refuse their services to the company.¹¹

The lawyer claimed that no-one in the Company had refused the right to strike and that the company itself was acting to fight, with the support of the government, the violent strike. He continued, however, to claim that the Company had respected the rights of the workers and that the workers had not respected the rights of the Company, by disabling machines, pulling out rails, etc ... Therefore the strikers did not “limit themselves to the exercise of a right; they criminally attacked the Company, acts punishable by the Penal code.” That’s why the police acted “within the limits of extreme moderation”, “without an act of violence to anyone.” Concluded the lawyer: “what is in question, therefore, is not the right to strike. Against this licit and powerful weapon of vindication, no-one rebels, on the contrary, it is considered by all with great sympathy.”

It was not prudent to deny the right to strike. That is why, in all attacks against strikes, there was an attempt of “legitimization”, with claims that the strike was not peaceful. The right to strike was “recognizes”, but fought under the allegation that the strike was a violent one.

By saying that they respected the right to strike and fought the violent strike, the Companies, alongside the state and federal governments, used the force against all strike movement. The strike, violent or not, was considered a disturbance to public order that should be fought.

4 A violent response to the exercise of a right

All generalization impoverishes any debate, and thus the strike of 1906 will be mentioned only to cite possibilities of action during a strike. It will be used to illustrate and to generalize all strikes at the time, which should be analyzed with their own peculiarities.

- 11 Original: A ação de mera defesa, combinada entre a Cia. e o governo para resguardar as propriedades já danificadas por alguns dos chamados grevistas, para garantir a segurança do transporte ao público que se utiliza das estradas e para assegurar a liberdade de trabalho aos que não acompanham a abstenção, está sendo apontada como uma violência ao direito de greve e já se anunciam pedidos de garantia aos tribunais contra a fantasiada opressão dos operários. (...) Ora, até aqui, ninguém da Cia. ou do governo recusou esse direito de greve aos trabalhadores da Cia. Paulista; ninguém lhes negou o direito de, por um acordo ou por uma resolução coletiva, recusarem seus serviços à empresa.

The “first reaction of the Companhia Paulista (when made aware of the strike) was to intimidate the strikers, threatening to fire them, besides asking for the police support from the state government.”¹² One day after the beginning of the strike, the president of Cia. Paulista headed out to Campinas taking with him “50 police soldiers to guard rails and bridges, threatened by the exalted strikers.”¹³ “One of the most commonly used ways by the bosses to contain these strike manifestations was repression. At the slightest sight of a strike, they would alert the police, intent on maintaining order, and ensure the safety of the company goods and facilities.”¹⁴

Violence would be used against the strikers, no matter if the strike was a peaceful one. On May 17th, 1906, the newspaper *Cidade de Campinas*, reports that the situation in Jundiaí and Rio Claro is of “perfect tranquility”. In the city of Campinas, the newspaper informs, the only moment tempers flared was when soldiers that were arriving from São Paulo “exceeded themselves and hit – with the butts of their pistols – some people” who were shouting against the police officers who had arrived from the capital: “Mr Bandeira de Melo (deputy from Campinas) reported the fact to the commander so that he could solve the problem.” In the beginning of the evening the strikes held a meeting, with around 2,000 people, in which they decided to maintain the strike. The police deputy was also present at the meeting: “Mr Bandeira de Mello also made a quick statement, advising the strikers to keep calm. The meeting was adjourned on the best fashion, at 7pm.”

The debate about the strike was also happening at the courts. On May 23rd, 1906, the lawyer representing the Workers Guild from Jundiaí, Affonso Celso Garcia, presented the preventive habeas-corpus¹⁵ in favor of the members of the Guild, threatened with imprisonment. The lawyer stated that “one of the forces that moves the working class to claim their rights, undeniably, is the strike” and that “no government will prohibit a strike without damaging the freedom of labor, the freedom of association, the freedom of gathering, three rights that the supreme law of educated peoples enshrines as

12 NOMELINI (2010) 164. On the same day, the Second Assistant Chief of Police of the state of São Paulo, Augusto Pereira Leite, assures that those who want to work will have the protection of the police, “as well as maintaining the order, in case of disturbance.”

13 ZAMBELLO (2005) 84.

14 LEME (1984) 100.

15 The Workers Guild requested the publication of the habeas-corpus in the Newspaper *Comércio de São Paulo*, on May 24th, 1906, on pages 1 and 2.

a precious conquest.” Thus, “the strikes, which were punishable in the past, are today, when peaceful, an incontestable right in the civilized world.” As the strikes were not prohibited in Brazil, the preventive habeas-corpus was filed so that the members of the Guild could not be arrested illegally by the police for the exercise of a right.¹⁶

The claim of the lawyer made a statement for the strike as an exercise of claims from the workers and defended the right to strike, enshrined in the “civilized world”. Other habeas-corpus were filed under the allegation that there was also “a rupture in the constitutional assurances to freedom of action, thought and movement, maintained by any republican regime.”¹⁷

“Strikes, at that time, were treated like rebellions, and as they were fought vigorously, the government and the capital showed their strength over labor.”¹⁸ The right to gather, assured by the Constitution of the Republic, was also questioned: “with the intention of maintaining the order, people started to lose the possibility of freely associate to complain and demand measures from public institutions, when feeling wronged.”¹⁹

On May 23rd, 1906, in the newspaper *Il Secolo*, the Union of Graphic Workers protested against the dissolution of a meeting by the police. For them, “the police attacks the constitution of the country, since we are not in state of siege, and since this police violence is another provocation against the workers, the Union protests (...) Free laws are created in this country, a peaceful regime, without a shadow of tyranny and oppression, and however, these laws are not enforced and armed forces, in a repulsive partiality, tries to suffocate the voices of workers in order to better serve the rich.”

The right to strike, the laws or the constitution were of little concern. The strike was considered a disturbance of the peace and would be described as war,²⁰ as a total violation to the normality. It did not matter if the service was public or private, fighting the strikes was also a task of the State:

16 SILVEIRA SIQUEIRA (2011) 105.

17 LEME (1984) 119.

18 LEME (1984) 192.

19 LEME (1984) 192.

20 The newspaper *Minas Geraes*, on May 21st, 1906, describes the atmosphere of war in the state of São Paulo, reporting the movement in the barracks and the soldiers called to fight the movement. On May 23rd, 1906, the same newspaper reports the censorship that the telegraphs from São Paulo were under, as well as the request of help made by the Governor of São Paulo, Jorge Tibiriçá, to the president of the Republic, Rodrigues Alves. The newspaper also reports the visit of the Chief of Police to the house of the President of

Given the circumstances, the president of the state telegraphed the president of the Republic, Rodrigues Alves, notifying the joining of Mogiana and probable joining of Docas de Santos and people from the Central. As a reply, the president of the Republic sent warships to the harbor of Santos, and the police were ordered to take even more drastic measures.²¹

On May 21st, 1906, the battle cruiser “Barroso”, a very modern warship at the time, arrived at the harbor of Santos.²² The cruiser “Tiradentes” was sent to Santos on May 26th, 1906.²³ Warships and soldiers were sent to stop the strike from spreading.

5 Conclusions

It is possible to notice that the positivation of a right does not ensure its exercise, that is, the positivation of a right is merely a part of the long process of struggle of the constitution of a right. This means that a right is the result of struggles for its recognition. Only through recognition may a right be exercised to and for all.

In this specific case, the right to strike, although enshrined on legal spheres, was constantly violated by a State that worried far more with the economic damages than the rights at that time. To meet its demands, the State violated citizens’ rights.

In the same way, it is important to realize that the right to strike was on the consciousness of the workers and in part of the Brazilian society. Despite not being positivized, it was recognized as an existing right, which did not prevent it being fought by the illegality of the State.

By being in the consciousness of part of the population, it is possible to recognize the State as the main agent of the illegal actions and it brings to life a sense of legality towards the right to strike. The criminalization of

Companhia Paulista and elected-mayor of São Paulo, Antonio Prado. Prado claimed to be satisfied with the readiness of the police in ending the strike.

21 Original: Diante dos fatos, o presidente do Estado telegrafou ao presidente da República, Rodrigues Alves, notificando a adesão da Mogiana e a provável adesão das Docas de Santos e do pessoal da zona da Central. Em resposta, o presidente da República enviou ‘vasos de guerra’ para o porto de Santos e a polícia teve ordens para adotar medidas cada vez mais enérgicas. LEME (1984) 100–101.

22 Reported by Jornal Commério do Rio de Janeiro on May 22nd, 1906.

23 Reported by Jornal Commério do Rio de Janeiro on May 27th, 1906.

strikes in the 30s does not extinguish the legal sense and consciousness towards this strike. That is, the criminalization shows how the process of creation of a right is also vulnerable to setbacks, non-linear processes, mishaps and contradictions.²⁴ Such as it is, legal history is not linear, nor is it a path to progress, and even less cunning of reason.

Legal history is made of flaws, contingencies, violence, and, essentially, the fight for rights. A right is constituted in a long struggle process and not by simply positivation. Thus it is possible to state that the right to strike existed in the First Republic and that its criminalization in the New State did not put an end to its exercise and the constant struggle for it.

These realizations have led us to, more and more, multiply the sources to create legal history. If laws, jurisprudence and doctrine were merely showing a “romantic” view of the time, that is, by these sources was law assured, it is imperative to verify which experiences dealt with each right. That is why it is interesting to see how, for instance, social movements can enrich legal history, bringing new elements into the debate, and, essentially, allowing new interpretations to the infinite possible legal experiences.

Understanding legal experiences as “all possible relationships with the feeling of legality (including its violations and contradictory interpretations), beyond laws and beyond possibly positivized feelings by them”²⁵ it may be possible to increasingly include color, design, lives and paintings in these lines, so often painted in black and white, of legal history.

24 CATONI DE OLIVEIRA (2009) 367–399.

25 SILVEIRA SIQUEIRA (2011) 73.

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