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Existential damages in Labor Law: the contribution of Marx & Engels, Weber, and Durkheim

Danos existenciais na Justiça do Trabalho: a contribuição dos clássicos Marx & Engels, Weber e Durkheim

Danos existentes en la Justicia del Trabajo: la contribución de los clásicos Marx & Engels, Weber y Durkheim

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ABSTRACT

This study develops a critical re-reading about the concepts of alienation, disenchantment of the world and anomie in order to broaden the sociological basis of the existential damage research program. Performed this procedure, two innovative results were obtained. In the first place, the real or daily content of the existential damages was delimited, valuing the contribution of different ideological matrices; and secondly, the concept of existential damage and the classical concepts of Labor Sociology proposed by Marx & Engels, Weber and Durkheim can jointly solve the hermeneutical dichotomy between the "Eastern" and "Western" approaches to human rights.

KEYWORDS: Existential damages. Juridical sociology. Research program.

RESUMO

Esse estudo desenvolve uma releitura crítica sobre os conceitos de *alienação, desencantamento do mundo e anomia* com o objetivo de ampliar a base sociológica do programa de pesquisa dos danos existenciais. Realizando esse procedimento, foram obtidos dois resultados inovadores em relação à tradição intelectual desse tema. Em primeiro lugar, delimitou-se o contexto real ou cotidiano onde ocorrem os danos existenciais; e em segundo lugar, demonstrou-se que o conceito de danos existenciais e os conceitos clássicos da Sociologia do Trabalho propostos por Marx & Engels, Weber e Durkheim resolvem conjuntamente a dicotomia hermenêutica entre a abordagem "oriental" e "ocidental" dos Direitos humanos.

PALAVRAS-CHAVE: Danos existenciais. Sociologia jurídica. Programa de pesquisa.

RESUMEN

Este estudio desarrolla una relectura crítica sobre los conceptos de alienación, desencadenamiento del mundo y anomia con el objetivo de ampliar la base sociológica del programa de investigación de los daños existenciales. Al realizar este procedimiento, se obtuvieron dos resultados innovadores en relación a la tradición intelectual de este tema. En primer lugar, se delimitó el contexto real o cotidiano donde ocurren los daños existenciales; y en segundo lugar, se demostró que el concepto de daños existenciales y los conceptos clásicos de la Sociología del Trabajo propuestos por Marx & Engels, Weber y Durkheim resuelven conjuntamente la dicotomía hermenéutica entre el enfoque "oriental" y "occidental" de los derechos humanos.

PALABRAS-CLAVE: daños existenciales; sociología jurídica; programa de investigación.

INTRODUCTION

This study intends to demonstrate that the research program of existential damages has an affinity with the concepts of *alienation*, *disenchantment of the World* and *anomia*, proposed by the classics Marx & Engels, Weber, and Durkheim. The purpose of this study is to make the theories of these three authors contribute to the progress of the existential damage research program, contextualizing the power relationship between employer and employee.

In our model, the scientific research program presents six categories of knowledge: ontology, methodology, axiology, theory, *praxis*, and historical-social context. The ontology defines the work philosophy that is not refuted by the epistemological decision of the researcher. The methodology brings together research methods and techniques. Axiology understands values, beliefs and ideologies accepted by the researcher. The theory brings explanations or interpretations that rationalize and abstract the knowledge obtained throughout the investigation. Praxis, on the other hand, indicates problems and attempts at solutions. Finally, the historical-social context delimits the time and space where the object of study and the researcher's ideas are manifested¹.

1 RESEARCH PROGRAM FOR EXISTENTIAL DAMAGES

The ontology of this research program observes two fundamental parameters: damage to the *life of relationships* (affective, family, etc.) and damage to the *project of life*, especially of a professional and intellectual nature.

The dominant philosophy in this program category is represented by the thesis that the worker needs to "*be in the World*," therefore, he has the human right to share family values and to conquer means that bring material and spiritual progress to his life.

In this ontology, there is a great concern with the freedom, autonomy, and

¹ MONTARROYOS, Heraldo. **Pesquisa jurídica**: como se faz. Rio de Janeiro: PUBLIT, 2017.



dignity of the worker, who must ideally mark his constructive and responsible presence in the World.

Existential damage affects innumerable aspects, including biological, subsistence, cultural, religious, recreational, family activities, etc.² It is a kind of immaterial damage that brings to the victim the impossibility of performing, of pursuing or rebuilding their *life project*, causing difficulties - objectively and subjectively - for the person to restore their *life of relationships*.

The human being usually seeks to extract the maximum of his potential, and makes choices aiming at the realization of his *life project*. However, any unjust fact that hinders the *life project* stops the progress or development of the human personality, therefore, existential damage is constituted.

In Brazil, the recognition of this type of damage is based on two constitutional articles:

Article 1. The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, is a Democratic State of Law and has the following foundation: [...] III – the dignity of the human person; [...]

Article 5. All are equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, as follows: [...] V – the right of reply is guaranteed, proportional to the grievance, in addition to compensation for material, moral or image damage; [...] X – the intimacy, private life, honor and image of people are inviolable, and the right to compensation for material or moral damages resulting from their violation is guaranteed.

The damage to the *life of relations* affronts the Constitution, in article 226, caput of the Federal Constitution, which reads that: "the family entity, base of society, has special protection of the state." Article 227 of the Federal Constitution also provides that it is the duty of the family, society and the State to "ensure the right to life, health,

² SOARES, Flaviana Rampazzo. **Dano existencial**: uma leitura da responsabilidade civil por danos extrapatrimoniais sob a ótica da proteção humana. Porto Alegre (RS): PUC, Pontífice Universidade Católica do Rio Grande do Sul, Faculdade de Direito, Programa de Mestrado, 2007. Available at: <http://tede2.pucrs.br/tede2/bitstream/tede/4004/1/399477.pdf>. Accessed on: May 16th, 2018.



food, education, leisure, professionalization, culture, dignity, respect, freedom and family coexistence to the children, adolescents and the youth with absolute priority.”

In the same direction, the Civil Code protects the indemnification of existential damage, as is verified in the provisions of article 1 with the following warning: "You can demand for the threat, or damage, to cease at the right of the personality, and claim damages and losses, without prejudice to other penalties provided by law." Article 186 of the Civil Code emphasizes, in turn, that "whoever, by voluntary act or omission, negligence or recklessness, violates law and causes harm to others, even if exclusively moral, commits an offense." In the same direction, Article 927 of the Civil Code states that "whoever, by unlawful act, causes harm to another, is obliged to repair it."

Sharing this ontology, the researcher Ferreira³ analyzed a series of sentence fragments and discovered that there are new trends in the Judiciary about the concept of existential damages.

In this sense, part of a judgment was recovered from the 1st class of the Regional Labor Court of the 4th region, which had the report of the Judge José Felipe Ledur, condemning a network of supermarkets in Rio Grande do Sul to compensate for existential damage to the claimant who worked for the company for eight years in extremely excessive working hours.

In his study, Ferreira⁴ rescued part of the judgment of the 1st Group of the TRT of the 3rd Region, which had the report of Judge Paulo Eduardo Queiroz, entitled: EXISTENTIAL DAMAGE. RIGHT TO LEISURE AND REST DENIED. INDEMNIFICATION FOR DUE MORAL DAMAGES.

The researcher also found the trial of the 1st Group of the TRT of the 8th Region, with the report of the Judge Suzy Koury, where the defendant protested the deferment

³ FERREIRA, Vanessa Rocha. O dano existencial nas relações de trabalho e a eficácia horizontal dos direitos fundamentais nas relações privadas. **RBSD – Revista Brasileira de Sociologia do Direito**, v. 3., n. 1, p. 97-116, jan./abr. 2016. Available at: file:///C:/Users/Cliente/Downloads/74-300-3-PB%20(1).pdf. Accessed on: May 18th, 2018.

⁴ FERREIRA, Vanessa Rocha. O dano existencial nas relações de trabalho e a eficácia horizontal dos direitos fundamentais nas relações privadas. **RBSD – Revista Brasileira de Sociologia do Direito**, v. 3., n. 1, p. 97-116, jan./abr. 2016. Available at: file:///C:/Users/Cliente/Downloads/74-300-3-PB%20(1).pdf. Accessed on: May 18th, 2018.



of indemnification for existential damage, in the amount of R\$ 4,000.00. In this case:

The claimant did not prove that, as a result of work, he was unable to enjoy social and family life, nor did he indicate any specific life project, frustrated due to an unlawful act of the respondent. For this reason, the decision was ruled to grant the appeal to exclude from the conviction the deferred compensation⁵.

In another case, we learned that the judgment of the 4th Group of the TRT of the 8th Region maintained the first degree sentence that condemned the employer to indemnify the worker for "moral damages," on the grounds that there was an offense against her objective honor, due to not granting leave during the whole labor agreement that totaled 14 years. However, at the appellate court level, there was a correction of the sentence, recognizing, differently, now, the presence of an existential damage.

Another example, available at the Superior Labor Court, TST, is the judgment of the Appeal Resource in the records of case n. 154-80.2013.5.04.0016 - 4th Group, with the report of the Minister João Oreste Dalazen, which had the following direction: APPEAL RESOURCE. EXISTENTIAL DAMAGE. ASSUMPTIONS SUBMISSION OF THE EMPLOYEE TO STRENUOUS WORKDAY. ALTERNATING WORKDAYS. In this judgment, it was considered that:

Equally, existential damage is not recognized if there is no demonstration that the workday required, in any way, has irreparably compromised the employee's life of relations, a very important aspect to typify and not trivialize in cases of excessive workday, because it can virtually refer to the interests of the employee himself the usual dilation of the workday. It is not always the company that demands extraordinary work. In extreme situations, there are compulsive workers, that is,

⁵ FERREIRA, Vanessa Rocha. O dano existencial nas relações de trabalho e a eficácia horizontal dos direitos fundamentais nas relações privadas. **RBSD – Revista Brasileira de Sociologia do Direito**, v. 3., n. 1, p. 97-116, jan./abr. 2016. Available at: [file:///C:/Users/Cliente/Downloads/74-300-3-PB%20\(1\).pdf](file:///C:/Users/Cliente/Downloads/74-300-3-PB%20(1).pdf). Accessed on: May 18th, 2018.



workaholics, motivated by high competitiveness, vanity, greed, need for survival, or motivated by some personal need to prove something to someone or to oneself. Individuals like this usually cannot detach themselves from work, and often by their own initiative, leave aside children, parents, friends, and family for the work. Hence the employee's requirement to prove that the employer required him to work excessively and in a manner that would affect his life of relations⁶.

The methodology of the existential damage research program therefore recommends three methods to know the reality of the facts and decision-making processes of the judge: objectivist, intuitivist, and integrationist.

The objectivist method is based only on material evidence, including witnesses and documents that would record abuses practiced in the workplace and that would objectively slip into the life of family relationships and the project of improving the professional life of the complaining party, the worker.

The intuitivist method applied by the judge, in turn, believes in the presumption of existential damage, visualizing a parallel and hidden reality that would not necessarily require material proof, except for the verification of the illegal or excessive workday; in this method, it is then understood that the isolation in the work environment obviously hinders the coexistence with the family and prevents the development of projects aimed at the professional improvement of the worker in the future.

As a third method of empirical observation, the judge can choose to integrate these two possibilities, believing that material evidence needs to be balanced with intuition and personal sensitivity. Concretely, in this type of methodology, in addition to the causal link, the judge seeks to clarify the virtual nexus between the facts of the past, the present and even the future, implicitly discovering through this procedure what

⁶ FERREIRA, Vanessa Rocha. O dano existencial nas relações de trabalho e a eficácia horizontal dos direitos fundamentais nas relações privadas. **RBSD – Revista Brasileira de Sociologia do Direito**, v. 3., n. 1, p. 97-116, jan./abr. 2016. Available at: file:///C:/Users/Cliente/Downloads/74-300-3-PB%20(1).pdf. Accessed on: May 18th, 2018.



were, what are, and what will be the *opportunities lost* by the victim.

In this direction, Oliveira & Montarroyos⁷ developed a dense description of six judgments of the Labor Court, 8th Region, Marabá headquarters, demonstrating - empirically - the application of different hermeneutical methodologies in the decision making process of the judge.

The first methodology, subjectivist, was based on the presumption of damages and the intuitive visualization of lost opportunities in the past, present and future; the second, objectivist, was sustained by the material evidence of the losses suffered by the victim; the third, integrationist, carried out the balance or synthesis between the causal and virtual nexus.

Concluding the research, the authors discovered the substantial convergence between the judgments analyzed in the Labor Justice of the 8th region, all of them using the existentialist philosophy of Law.

From the axiological point of view, the existential damage research program contemplates humanistic values that are considered superior to the economic values, generating, therefore, an intense principles debate about the human responsibility of the boss, the health of the employee, the efficiency of the company and of human dignity.

According to Frota & Bião⁸, the existential situation of the person, that is, the set of relationships in which the human being is in the World and with others, requires the existential minimum (right to a dignified existence); for this reason, material needs

⁷ OLIVEIRA, Adriano Guimarães de; MONTARROYOS, Heraldo Elias. O existencialismo jurídico na Justiça do Trabalho da 8ª Região: investigando o modo como os juízes desenvolvem o conceito de danos existenciais. **Revista Jus Navigandi**, ISSN 1518-4862, Teresina, ano 22, n. 5100, 18 jun. 2017. Available at: <<https://jus.com.br/artigos/56790>>. Accessed on: Jun. 26th, 2018.

⁸ FROTA, Hindemberg; BIÃO, Fernanda Leite. A dimensão existencial da pessoa humana, o dano existencial e o dano ao projeto de vida: reflexões à luz do direito comparado. **Cadernos da Escola de Direito e Relações Internacionais**, Curitiba, 13: 129-163 vol.1, 2010. Available at: file:///C:/Users/CLIENTE/AppData/Local/Packages/MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/524-1990-1-PB%20(1).pdf. Accessed on: Sep. 16th, 2018; FROTA, Hindemberg; BIÃO, Fernanda Leite. O fundamento filosófico do dano existencial. **Repertório IOB de Jurisprudência**. São Paulo, v. 25, n. 20, cd. 3, 2ª quinz./out. 2011, p. 711-717. Available at: <<https://tematicasjuridicas.wordpress.com/2011/11/02/dano-existencial-fundamento-filosofico/>>. Accessed on: Oct. 06th, 2018.



must be reconciled with transcendental aspirations, for the human being must transcend himself, projecting himself out of himself to find his own meaning. For the same authors, the human person is faced with two alternatives. In the first alternative, the person can make choices by making authentic decisions that include acts that generate the growth of the self, sources of personal maturation, development of their dormant potentialities, and self-realization of the individual. In this case, the person understands the losses and gains resulting from their attitudes. In the second alternative, the person leads an inauthentic life, to get rid of the onus of deciding, through the bad faith of delegating to others the task of pointing out the choice to be made. Above all, Frota & Bião⁹ affirmed that the project of life and existential is realized through choices made throughout the existence of the individual.

In the epistemological sequence of the research program, we find the basic theory that establishes the distinction between moral and existential damage as a cornerstone. The moral damage is characterized by the outbreak of offense or violation of the moral property of a person that damages their freedom, honor, image, and health (mental or physical). On the other hand, according to Carvalho & Knoerr¹⁰ existential damage is created when the employer imposes an excessive volume of work on the employee, making it impossible for him to develop his life projects in the professional, social, and personal spheres.

⁹ FROTA, Hindemberg; BIÃO, Fernanda Leite. A dimensão existencial da pessoa humana, o dano existencial e o dano ao projeto de vida: reflexões à luz do direito comparado. **Cadernos da Escola de Direito e Relações Internacionais**, Curitiba, 13: 129-163 vol.1, 2010. Available at: file:///C:/Users/CLIENTE/AppData/Local/Packages/MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/524-1990-1-PB%20(1).pdf. Accessed on: Sep. 16th, 2018; FROTA, Hindemberg; BIÃO, Fernanda Leite. O fundamento filosófico do dano existencial. **Repertório IOB de Jurisprudência**. São Paulo, v. 25, n. 20, cd. 3, 2ª quinz./out. 2011, p. 711-717. Available at: <https://tematicasjuridicas.wordpress.com/2011/11/02/dano-existencial-fundamento-filosofico/>. Accessed on: Oct. 06th, 2018.

¹⁰ CARVALHO, Robert Carlon De; KNOERR, Viviane Coêlho de Séllos. Sobre jornada: um olhar a partir do dano moral em razão de doenças psicolaborais. In: **Eficácia de direitos fundamentais nas relações do trabalho, sociais e empresariais** [Recurso eletrônico on-line] organização CONPEDI/UFMG/FUMEC/Dom Helder Câmara; coordenadores: Carlos Luiz Strapazzon, Luiz Fernando Bellinetti, Sérgio Mendes Botrel Coutinho. Florianópolis: CONPEDI, 2015. Available at: <http://www.conpedi.org.br/publicacoes/66fsl345/6eh993o0/072y4qe8og5cfzm7.pdf>. Accessed on: May 28th, 2018.



As highlighted by Frota & Bião¹¹, subjects have their daily lives modified by phenomena that wipe out or annihilate their life of relationships and their life project. Specifically, existential damage constitutes a kind of "non-patrimonial" or "off-balance" damage that imposes on the human person the compulsory and undesired renunciation of daily and lawful activities; and whose forced abstinence impairs the victim's freedom of choice.

Moral damages refer to the subjective question of psychological suffering, while existential damage is located in the objective dimension of the human condition, therefore, it refers to a type of sociological suffering, with the restriction of the individual's freedom to engage in some relevant activity to their personal satisfaction in the World¹².

In the category of the *praxis* of the existential damage research program, the problems and attempts of corresponding solutions are now found, with the criterion of proportionality being empirically highlighted at the time of the definition of the indemnity value. As it is a procedure that does not follow any official monetary table, it is expected through proportionality that the decision of the common sense of the judge does not enrich the complaining party, nor does it lead the claimed to poverty. There must be moderation, observing the limit of the capital of the company and the patrimony of the condemned boss. However, in practice, disproportionality is more frequent, with the judge determining extremely lenient or severe indemnities, which calls into question the correctness of the sentence. In this case, the expectation is that the indemnification will have a pedagogical character, discouraging the repetition of the illegality monetarily.

¹¹ FROTA, Hindemberg; BIÃO, Fernanda Leite. A dimensão existencial da pessoa humana, o dano existencial e o dano ao projeto de vida: reflexões à luz do direito comparado. **Cadernos da Escola de Direito e Relações Internacionais**, Curitiba, 13: 129-163 vol.1, 2010. Available at: file:///C:/Users/CLIENTE/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/524-1990-1-PB%20(1).pdf. Accessed on: Sep. 16th, 2018.

¹² FROTA, Hindemberg; BIÃO, Fernanda Leite. O fundamento filosófico do dano existencial. **Repertório IOB de Jurisprudência**. São Paulo, v. 25, n. 20, cd. 3, 2ª quinz./out. 2011, p. 711-717. Available at: <https://tematicasjuridicas.wordpress.com/2011/11/02/dano-existencial-fundamento-filosofico/>. Accessed on: Oct. 06th, 2018.



Finally, in the spatial-temporal category of the existential damage research program, the environment where the investigator locates the occurrence of the fact and the judge's sentence is delimited. In this program category, it is understood that the subject under ideal conditions learns and internalizes experiences that will give meaning to their existence. In practice, however, various factors (economic, family, political, social, educational, psychological, and cultural) can interfere with one's well-being, affecting one's *life of relationships*.

2 THEORETICAL APPLICATION

The three classic concepts of Work Sociology address the contemporary need to integrate the "Eastern" approach with the "Western" approach to human rights, joining communitarian analysis with individualism, social rights with individual rights.

In "Western" hermeneutics, human rights are the rights of individual freedom to which all human beings are entitled; and since each individual is the bearer of these rights, they are configured as individual rights. Although this approach is extreme, one cannot deny its contribution to the progress of the ideal of the dignity of the human person¹³.

Otherwise, in the exemplary Muslim "oriental" hermeneutics, the preponderantly communitarian aspirations of values and traditions are focused on. In this hermeneutic typology, in the same way, there is an extremist approach, but it contributes to the humanist debate, prioritizing specifically the dignity of human society.

As a third hermeneutic path, experts today share the idea that "philosophical reflection on the normative claim of human rights - its foundations and limits - can contribute to overcoming the false dichotomy that, sometimes, blocks the understanding"¹⁴.

¹³ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 183.

¹⁴ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 248.



According to Bielefeldt¹⁵, human rights have often been considered as the expression of the individualistic human being, opposing the interests of social coexistence, society, or the State. A recent example of this is the evocation of an antagonism between individualism (with a view of the Western world) and the preponderantly communitarian aspirations of Asian values.

As an attempt to escape this dichotomy, Bielefeldt¹⁶ stated that "Civil and political rights have no [...] other normative purpose than economic and social rights which, in their turn, are always liberal rights, since they must guarantee the real conditions for existence within a modern economic society".

Although civil and political and social rights have generated diverse interpretations throughout history and represent a diverse political and legal guarantee, they are still human rights, seeking to guarantee the same order of freedom of solidarity for all.

Going further, the German professor explained that only by considering this communion within social freedom can the term "indissolubility" with respect to human rights be given meaning.

Bielefeldt considers that human rights form an indissoluble whole because, in principle, they refer to one another as fundamental social liberties and complement each other in the realization of a libertarian social constitution, guided by human dignity. Thus, "he who plays liberal human rights against social rights, or interprets its indissolubility by manipulating its balance, perverts the value of human rights"¹⁷.

According to Bielefeldt¹⁸ it is necessary to critically secure consensus-generating ideas and extract from them the foundation and limits for philosophical demands in order to support the complexity achieved. In this case, specifically, the author stressed

¹⁵ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000.

¹⁶ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 205.

¹⁷ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 206.

¹⁸ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 21.



that cultural pluralism is an "essential aspect in the new tangle of the human rights debate." According to the same author¹⁹, "there are voices who want to omit an alternative positioning, seeking in this sense a mediation between universalism and cultural pluralism," and so the author reaffirmed that " in the light of the universality of human rights, intercultural debate is inevitable"²⁰.

For Bielefeldt²¹ human dignity understood as subject of moral responsibilities in autonomy, finds political and legal recognition in the general right by freedom, that also belongs to all, and for that reason is a right of equality.

While he was optimistic, the same author considered that with the growing recognition of autonomy as a central point of law and policy, pluralism no longer presents itself as a threat to the legal consensus but can become a motive for ensuring the mutual recognition of equal freedom²². This consensus of mutual recognition of equal liberty constitutes the normative center of politics and law, from which both legitimacy and the obligatory limitation to the claim for power of the modern State emanate, so that the complementary dangers of civil war and of state repression can be blocked.

According to Bielefeldt²³, the debate on the relationship between universal human rights and cultural pluralism must not lose sight of modern citizenship and economy²⁴. In this sense, the same author pointed out a series of extremisms that take hold of Modernity and that once confronted with modern human rights point to an ambiguity of the Modern era itself.

Rationalism, having the Weberian maxim of the "disenchantment of the World," clarifies the total loss of the ethical-religious belief. As an attempt to escape from this

¹⁹ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 25.

²⁰ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 32.

²¹ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 51.

²² BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 52.

²³ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 58.

²⁴ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 58-59.



extreme, the author proposes "a reflexive self-criticism of reason, which defines possibilities and limits not only of scientific and instrumental rationality, but also of the demand for rational and balanced responsibility"²⁵.

Individualism is also part of the extremism of Modernity, not only influenced by the Enlightenment, "but in the almost indomitable dynamics of modern capitalism that has devastated traditional economic and social units for crises that have often irrevocably destroyed them"²⁶.

It is generally understood that "individualization can lead to a growing fragmentation, or atomization of society." With the disappearance of structures and traditional roles and atrophy of traditional sources of community solidarity. On the other hand, individualism is the fruit of historical achievements that assure each individual their personal integrity regardless of their role in society.

As a solution to the impasse, the author said that "a policy that seeks to achieve socialization without recognition of modern individual freedom would run the risk of never achieving the goal of an organic communitarianism, but instead, collapse into a collectivism whose character of coercion would be the sign of its artificiality and its uselessness"²⁷.

Secularization is also part of the ambivalence of Modernity, which at the same time proposes the ideal of human rights as a civilizational outlet. Secularization "has already been described as the metaphysical extermination of the human being, which is perhaps the core of the malaise in relation to the modern time.

Faced with these extremes, the author affirmed that human rights will not be the solution, but they point to "elementary conditions of a dignified life in this era, from a political and legal point of view. This occurs on the one hand as a reaction to concrete situations of injustice and threat to humanity, especially those arising as a consequence

²⁵ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 43.

²⁶ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 43.

²⁷ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 43.



of the crisis of modern society.

The answer to current problems through human rights is also specifically modern because it assumes ethical responsibility as a genuine chance of freedom, giving it political and legal validity, for the sake of human dignity. In a double sense, therefore, human rights are a challenge of the modern era, considering the current threats to human life, and at the same time formulate a new ethos of freedom that, by the crisis of that era, have become possible and at the same time, indispensable²⁸.

The expert concludes his argument by saying that all human rights are social and since the social order must be resolutely aimed at freedom, all these rights will also be liberal.

Contributing to the hermeneutic progress of human rights, the concept of *existential damages* brings together the two extreme approaches ("Western" and "Eastern"), projecting a critical space to seek balance or convergence between the dignity of the person and human society. At the same time, the three classic concepts of this study reinforce the same methodological concern for hermeneutic reconciliation, since it is admitted that the worker is a direct victim of the abuses committed by the employer, suffering restrictions on his individual right to "be in the World" and to take care of his personal and professional projects aimed at a better future life.

However, it is also understood that the Company loses its dignity when it dominates the economic logic of the Market, discouraging and preventing the practice of humanistic and social values inside and outside the company. The integration of the "Eastern" and "Western" hermeneutics is part of the concept of existential damages, seeking to guarantee the dignity of the worker and the society that directly concerns him, as can be seen, for example, in the following comment:

[...] the guardianship of the family cannot do without the norms

²⁸ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 47.



that impose to the service taker the sacrifice of recognizing to the worker rights whose exercise presupposes that he leaves the work with time and energy to dedicate himself to his family. In other words, the idea of family protection comes through the conciliation between the employer's interest in using the worker in the most productive way and the worker's interest in meeting the demands of his private and family life²⁹.

2.1 DISENCHANTMENT OF THE WORLD

Weber³⁰ demonstrated in his work "Protestant Ethic and the Spirit of Capitalism" that Religion was not the opiate of the American people, contrary to Marx's thesis on Religion in Germany.

The various Protestant denominations of the American colonial era reinforced an ethos or vision of the World that contrasted with the medieval Catholic tradition which held the belief that spiritual elevation would only be possible in the atmosphere of idleness, contemplating Wisdom and Faith within monasteries and churches.

Historical data revealed to Weber that with the Protestant Reformation a culture was created that denied idleness and valued the manual and intellectual work as a path of spiritual transcendence.

In his historical analysis, Weber noted that the Protestant ethic consolidated in everyday life an ideal type of Christian entrepreneur that became the object of desire and consumption among the members of the community.

Weber³¹ evaluated that the various Protestant denominations in America brought an initial historical disenchantment with the World, since in addition to rejecting mysticism, the rationalization of faith and the simplification of communication

²⁹ ALVARENGA, Rubia Zanotelli & BOUCINHAS FILHO, Jorge Cavalcanti. O dano existencial e o Direito do trabalho. *Rev. TST*, Brasília, vol. 79, no 2, abr/jun 2013, p. 247. Available at: https://pesquisa-eaesp.fgv.br/sites/gvpesquisa.fgv.br/files/arquivos/boucinhas_-_o_dano_existencial_e_o_direito_do.pdf. Accessed on: Sep. 16th, 2018.

³⁰ WEBER, M. **A ética protestante e o espírito do capitalismo**. Transl. José Marcos Mariani Macedo. 1.ed. São Paulo: Companhia das Letras, 2004.

³¹ WEBER, M. **A ética protestante e o espírito do capitalismo**. Transl. José Marcos Mariani Macedo. 1.ed. São Paulo: Companhia das Letras, 2004.



between Man and God, without supernatural intermediaries, saints, heroes, and animist entities broke out. The second disenchantment would occur later with the hegemony of the Market and the consequent divorce with the sacred World.

The average Protestant of the day (including Methodists, Calvinists, Puritans, Anabaptists, etc.) cultivated a series of rational values and attitudes. In general, reformers or Protestants began to perform spiritual accounting, focusing debts and credits with God; they re-evaluated labor activity, biblically, as something positive, clean, sacred, and with a power for spiritual elevation; they also emphasized the importance of the professional vocation as a distinctive mark of the Christian worker who should approach God through his human works; and ultimately increased the social responsibility of the entrepreneur, who should not ideally be an irrational spender but a saver and manager of his personal finances, given that money was sacred and should be used rationally for "the honor and glory of the Lord."

Weber considered that Religion did not determine the emergence of Capitalism in America but significantly influenced it by offering moral preconditions for its progress, along with other historical, scientific, philosophical, contractual, and technological factors of the modern era.

Specifically, Calvinism was the first Christian ethic that attributed a religious status to modern work. This evangelical version considered that working was a constructive spiritual mission that pleased the Will of God³².

Weber recalled that the Christian, to live in dignity, should exemplarily develop his moral virtues through his professional vocation; in this case, the vocation would not be outside the World of work and capital, but exactly within that World.

For this reason, Weber concluded that capitalism found no ideological or cultural barriers to develop in America; but over time there was a divorce between Market and Religion, represented by the maxim "Time is Money!" by Benjamin Franklin, at the end of the eighteenth century. Behind this maxim, it has been subtended that idleness is a

³² FERREIRA, Franklin. 2000. **Uma introdução a Max Weber e à obra "Ética protestante e o espírito do capitalismo"**. Available at: http://www.mackenzie.br/fileadmin/Mantenedora/CPAJ/revista/VOLUME_V_2000__2/Franklin.pdf. Accessed on: May 18th, 2018.



serious economic loss; that money must be in the service of progressive accumulation; that working longer hours should be the dominant and obsessive rule in the sense of accumulating more money; and, finally, that earned income from work should not be spent on superfluous, leisure and abusive amusements, but each directed at financial progress³³.

According to the same analyst³⁴, in the "[...] Weberian interpretation [on capitalist and modern society] the cardinal virtues are frugality, industriousness, punctuality in payments and fidelity in agreements; all of which increase credit and enable one to make use of the money of others." Therefore:

The peculiarity of this philosophy of avarice seems to be the ideal of an honest man, of credit recognized and above all, the idea of the duty of the individual in relation to the increase of his capital, which is taken as an end in itself. In Weber's words, in fact, what is preached here is not a simple technique of life, but a peculiar ethic, whose offense is not treated as folly but as a recognition of duty. This is the essence of the problem. What is advocated here is not mere commercial sense, but rather an ethos³⁵.

With money becoming a purely utilitarian instrument with no religious purpose, spiritually disenchanted, Weber recorded that in the nineteenth century there existed a *cage* of capitalist rationality that imprisoned the human being in the atheistic materialism of Modernity; in addition, he found a dominant rationality in the state bureaucracy and in the enlightened knowledge of Science that *disenchanted the World* by imposing technician and machinic values. In this sense, as pointed out by the analyst

³³ FERREIRA, Franklin. 2000. **Uma introdução a Max Weber e à obra “Ética protestante e o espírito do capitalismo”**. Available at: http://www.mackenzie.br/fileadmin/Mantenedora/CPAJ/revista/VOLUME_V_2000__2/Franklin.pdf. Accessed on: May 18th, 2018.

³⁴ FERREIRA, Franklin. 2000. **Uma introdução a Max Weber e à obra “Ética protestante e o espírito do capitalismo”**. Available at: http://www.mackenzie.br/fileadmin/Mantenedora/CPAJ/revista/VOLUME_V_2000__2/Franklin.pdf. Accessed on: May 18th, 2018.

³⁵ FERREIRA, Franklin. 2000. **Uma introdução a Max Weber e à obra “Ética protestante e o espírito do capitalismo”**. Available at: http://www.mackenzie.br/fileadmin/Mantenedora/CPAJ/revista/VOLUME_V_2000__2/Franklin.pdf. Accessed on: May 18th, 2018.



Thiry-Cherques³⁶:

The formal-instrumental rationalization of the State, of the economy, of the private organizations and decisions, will lead to the "coagulated spirit" of monetarized capitalism, the "iron cage" of the legal life in which we are contained, and that quantitativized "dark polar night" that humanity goes through. It means subjecting individuality to legal and bureaucratic rules. A logic centered on means, not ends. It is not a conscious choice, nor a deliberate way of endowing institutions with greater efficiency, but an inherent feature in certain institutions. One of the most important aspects of the process of rationalization is the unthinking substitution of the old custom; the deliberate adaptation of work and life in terms of immediate interests. Other characteristics are the conscious rationalization of ultimate values, customs, affective values, and moral skepticism. The term rationalization in Weber refers to rationally oriented social actions. It is the process of introducing rationalities, or of what, at different times and places, we deem to be rational. It corresponds to practical, formal, theoretical, and substantive rationalities.

2.2 ALIENATION

Marx & Engels³⁷ recognized in the work "German Ideology" that in the historical process of evolution of Capitalism the relationship between Capital, Labor, Politics and Nature underwent radical changes.

In the first moments of History, the domestic economy worker interacted with Nature in a submissive and conditioned way to the natural seasons. The time was still of Nature. However, the invention of new technologies increased production, motivating the emergence of two productive classes with divergent economic interests: that of workers, including manual workers and intellectuals; and the holders of technologies,

³⁶ THIRY-CHERQUES, Hermano Roberto. Max Weber: o processo de racionalização e o desencantamento do trabalho nas organizações contemporâneas. **RAP — Revista de administração pública** – Rio Janeiro, 43(4):897-918, jul./ago. 2009. Available at: <http://www.scielo.br/pdf/rap/v43n4/v43n4a07.pdf>. Accessed on: May 15th, 2018.

³⁷ MARX, M & ENGELS, F. **A ideologia alemã**. Transl. José Carlos Bruni e Marco Aurélio Nogueira. 6.ed. São Paulo: HUCITEC, 1987.



capital and private property, the so-called capitalists. Therefore, two antagonistic classes appeared in the Marxian model. A worsening of this historical situation constituted a mass of unemployed workers, composing the frightening image of a *reserve army of labor*, which would reinforce in the consciousness of the worker the fear of losing his job.

In the Marxian model, there are two practices of labor exploitation: absolute surplus value and relative surplus value. Absolute surplus happens when the boss increases the workload of the worker and his material production goes beyond socially necessary work. With this procedure, the employee who worked overtime receives a salary that tends to become more insignificant when compared to the profit obtained by the capitalist later in his market transactions. Relative surplus value, in turn, occurs when the employer increases the productivity of the company with the help of new technologies, turning the available manpower into an appendage of machines. Therefore, the amount of working hours is reduced to produce the same product as before. A pair of shoes that previously could cost seven days of work to get handcrafted, now in the process of relative surplus takes only a few minutes with the aid of new production technologies. However, to the historical surprise, even though the production process was optimized with the introduction of efficient new technologies, the boss continued to increase the employee's workload, producing more merchandise to meet the large consumer market. Faced with this reality:

[...] Marx would begin to philosophize about the resumption of alienation, about the possibilities for man to return to the conscious fullness of his own life, awakening from his estrangement: freedom, at last. The disalienation of the worker - the dissolution of that estrangement which in modern and industrialized societies had become the root of all estrangement - corresponds to the moment when the worker finally realizes that the whole World is produced by him. This theme will continue in Marx's mature work, forming a bridge between his later analyzes and the early works of the young Marx³⁸.

³⁸ BORGES, José D'Assunção Barros. O conceito de alienação no jovem Marx. **Revista Tempo social**, Revista de Sociologia da USP, vol. 23, n.1, junho 2011. Available at: <http://www.scielo.br/pdf/ts/v23n1/v23n1a11.pdf>. Accessed on: May 17th, 2018.



Marx's best-known and best-quoted study of the problem of alienation is the short text entitled "The Alienated Work" of 1844, where four interrelated dimensions of this phenomenon appear³⁹.

In the *alienation of the worker in relation to the product of his work* (the so-called "alienation of the thing"), it is verified that the work produces a commodity with external existence that is beyond the control of its producer. That is, the worker creates products and objects that become hostile and antagonistic against himself, and no longer has access to the final destination and profit of the merchandise that he himself created.

In the *alienation of the worker regarding the essence of the species*, the capacity to transform the real, to create things, the true end of the human species, that which truly distinguishes Man from all other animals, transforms, in the capitalist society, into mere individual means of satisfying subsistence needs.

In the *alienation of the worker in relation to his work*, it is understood, in turn, that work becomes "forced" serving only as a means of realizing vital needs in exchange for a minimum income, and therefore does not enable a dignified and broader life of pleasure in the world. Hence the recurrent behavior of a worker running from work like the *devil from the cross*⁴⁰.

Finally, in the *alienation of Man from Man*, alienated labor is not "natural" and "eternal", but it is the result of the capitalist production relation centered on the exploitation of the work of some Men by others. Therefore, if the product of labor does not belong to the worker, if it opposes it as a foreign power, this can only happen once the product of labor belongs to another Man other than the worker. That is, if labor activity constitutes a torment for the worker, it will be a source of enjoyment and pleasure for another individual, the capitalist.

In his theory, Marx attributes to private ownership of the means of production an essential role: it is, on the one hand, the product of alienated labor and, on the other

³⁹ SERRA, Joaquim Mateus Paulo. **Alienação**. Universidade da Beira Interior: Covilhã, 2008.

⁴⁰ SERRA, Joaquim Mateus Paulo. **Alienação**. Universidade da Beira Interior: Covilhã, 2008.



hand, it is the medium through which labor is alienated. As a solution, the emancipation of society would imply the abolition of private property that can only be done by organized workers⁴¹.

2.3 ANOMY

In the view of the sociologist Durkheim, the absence of a sense of social belonging generates serious consequences for public order and the worker's own personality, causing physical illnesses and mental disorders, a fact statistically demonstrated by *anomic suicide* in nineteenth-century Europe caused in part because of economic crises and the privatist behavior of capitalists who disregard coexistence with the *social whole*.

Durkheim stated that "it is a well-known fact that economic crises have an aggravating influence on the propensity to commit suicide"⁴². He noted in this regard that the number of suicides among the wealthy of bankrupt enterprises was increasing, while among the poor, despite the scarcity of basic foods and misery in general, suicide rates declined or remained below the numbers involving entrepreneurs. "It is not the growth of misery that causes the growth of suicide, and favorable crises, whose effect is to sharply increase the prosperity of a country, act on suicide in the same way as economic disasters"⁴³.

Durkheim⁴⁴ stressed that poverty protects the person against suicide because it serves as a brake. And he justified this view by arguing that:

[...] the less we have, the less we are led to expand without limit the circle of our needs. Impotence, by obliging us to restraint, accustoms us to it [...] wealth, on the contrary, by the powers it

⁴¹ SERRA, Joaquim Mateus Paulo. **Alienação**. Universidade da Beira Interior: Covilhã, 2008.

⁴² DURKHEIM. É. **O suicídio**: estudo de Sociologia. Transl. Monica Stahel. São Paulo: Martins Fontes, 2000, p. 303.

⁴³ DURKHEIM. É. **O suicídio**: estudo de Sociologia. Transl. Monica Stahel. São Paulo: Martins Fontes, 2000,, p. 306.

⁴⁴ DURKHEIM. É. **O suicídio**: estudo de Sociologia. Transl. Monica Stahel. São Paulo: Martins Fontes, 2000, p. 322.



grants, gives us the illusion that we depend only on ourselves. By decreasing the resistance that things oppose us, it leads us to believe that they can be overcome indefinitely. [Poverty] is the best school to teach Man to restrain himself. Forcing us to exercise constant discipline over ourselves, prepares us to accept collective discipline docilely, while wealth, exalting the individual, always runs the risk of awakening the spirit of rebellion, which is the very source of immorality. Undoubtedly, this is no reason to prevent humanity from improving its material condition. But although the moral danger entailed by every increase in wealth is not irremediable, one must not lose sight of it⁴⁵.

Durkheim differentiated that animals are spontaneously satisfied with the realization of their material needs; however, the human being as a social being depends on Society which imposes prizes and punishments on him, influencing the way in which he intends to attain his material well-being. Society imposes maximum and minimum limits for each individual and class to achieve their happiness. "Thus, it is not true that human activity can be freed from all brakes"⁴⁶.

"What Man has of characteristic is that the brake to which he is submitted is not physical, but moral, that is, social. He receives the law not from a material medium that is brutally imposed upon him, but from a consciousness superior to his own and whose superiority he feels⁴⁷. Consequently, Durkheim concluded that "when Man lives in a state of profligacy, and his passions are less disciplined, anomy is seen as a great social malice which must be overcome by the State and by society"⁴⁸.

In addition to the economic factor, Durkheim found yet another source of suicide that is widowhood, which causes domestic anomy, with the "disorganization of the family, whose influence is suffered by the survivor. [In this situation], man is not

⁴⁵ DURKHEIM. É. **O suicídio**: estudo de Sociologia. Transl. Monica Stahel. São Paulo: Martins Fontes, 2000, p. 322.

⁴⁶ DURKHEIM. É. **O suicídio**: estudo de Sociologia. Transl. Monica Stahel. São Paulo: Martins Fontes, 2000, p. 320.

⁴⁷ DURKHEIM. É. **O suicídio**: estudo de Sociologia. Transl. Monica Stahel. São Paulo: Martins Fontes, 2000, p. 320.

⁴⁸ DURKHEIM. É. **O suicídio**: estudo de Sociologia. Transl. Monica Stahel. São Paulo: Martins Fontes, 2000, p. 322.



adapted to the new situation and therefore, he easily kills himself"⁴⁹.

Expanding his critical approach to liberal capitalism, Durkheim⁵⁰ in his book "From the Division of Social Work" observed that the more society evolves, and the productive specializations multiply in Modernity, the more individuals fail to recognize their own value as a subject and their social function in society.

In liberal capitalism, in general, people are losing the notion that they are part of a society, or of an organic whole, and forgetting about social responsibilities, developing the egoistic side of their personality to the detriment of solidarity, inside and outside the labor environment.

Individualist isolation creates, according to Durkheim, a feeling of estrangement between the partners of the work that develop even the same productive functions.

3 DISCUSSION

In the Weberian line of thought today, the ideal type of Modernity worker is the one who sacrifices his pleasures and socio-affective and religious needs, including the pleasure of leisure, and seeks the material-financial salvation of the company where he works, thus disenchanting his *life of relationships* and *life projects* that could be practiced outside the work environment.

Analyst Bielefeldt⁵¹ explained that "one of the trends of the modern era is the tendency to rationalize all sectors of life - not only in science and technology but also in economics, law and politics."

Bielefeldt pointed out that the sociologist Weber had already noted the deep ambivalence of the historical process of Modernity in describing the *disenchantment of the world* as a consequence of Judeo-Christian monotheism, by believing in the

⁴⁹ DURKHEIM. É. **O suicídio**: estudo de Sociologia. Transl. Monica Stahel. São Paulo: Martins Fontes, 2000, p. 330.

⁵⁰ DURKHEIM. É. **Da divisão do trabalho social**. Translation Eduardo Brandão. 2.ed. São Paulo: Martins Fontes, 1999.

⁵¹ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 42-52.



transcendence of God, liberating the World as a de-demonized place.

As Weber himself put it, "Capitalism and modern bureaucracy devour ethical-spiritual sources, because they are institutionalized forms of the Western process of rationalization"⁵². These sources, according to critic Bielefeldt⁵³, can be dissolved, but in the end only a "hardened and mechanized society in a World run by soulless apparatus" remains.

What Weber described as a possible development of the modern age also appears in Adorno as a "fateful reality," that is, "the self-decomposition of Enlightenment which removes the metaphysical basis of all ethical-normative ideas through the unlimited liberation of instrumental rationality; which ends up [finally] drifting away in positivist mythology"⁵⁴.

According to Bielefeldt⁵⁵, *secularization* is yet another problem of the modern era, with "the growing questioning of the role of religion in the life of the individual and of society."

From the Weberian perspective, Bielefeldt⁵⁶ conceded that "while secularization has overcome the resistance of large religious communities, it can be seen as a consequence of the *disenchantment of the World*, which is the reverse of the transcendental belief of religious radicalism." Faced with this reality, Bielefeldt⁵⁷ concluded that:

The undeniable dangers of an unconstrained rationalization can only be overcome with more enlightenment and reason, and

⁵² BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 43.

⁵³ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 43.

⁵⁴ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000,, p. 43.

⁵⁵ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 45.

⁵⁶ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 45.

⁵⁷ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 43.



never with less, that is, by reflexive self-criticism of reason, which defines possibilities and limits not only of scientific and instrumental rationality but also of the claim by rational and balanced responsibility.

The concept of *anomy* complements, in turn, the debate of existential damages considering that "the rest of the worker assists in his reintegration to the society, because the professional activities distract him from the social life, because the excess work segregates the human being from the leisure, forcing him to a degrading life."⁵⁸. Punctually, the approach of the constitutionalists admits that:

[...] stress can be triggered by any situation or sensation that makes the human being feel frustrated, angry, or anxious, being differentiated between people and can be combined with genetic and biological factors. On the other hand, anxiety is a sensation of apprehension, nervousness, or fear, where the origin of this feeling is unknown, which increases the anguish, able to undermine the self-esteem and the health of the human being. Stress can lead to health problems as well as physical and psychological illnesses, such as depression, where a situation of frustration, irritation or continuous anxiety triggers behaviors that are detrimental to the health of the human being⁵⁹.

In the work "On the division of social work," Durkheim recalled that "the state of anomy is impossible wherever the organs of solidarity are in permanent and sufficiently

⁵⁸ CARVALHO, Robert Carlon De; KNOERR, Viviane Coêlho de Séllos. Sobre jornada: um olhar a partir do dano moral em razão de doenças psicolaborais. In: **Eficácia de direitos fundamentais nas relações do trabalho, sociais e empresariais** [Recurso eletrônico on- line] organização CONPEDI/UFMG/FUMEC/Dom Helder Câmara; coordenadores: Carlos Luiz Strapazzon, Luiz Fernando Bellinetti, Sérgio Mendes Botrel Coutinho. Florianópolis: CONPEDI, 2015, p. 597-598. Available at: <http://www.conpedi.org.br/publicacoes/66fsl345/6eh993o0/072y4qe8oq5cfzm7.pdf>. Accessed on: May 28th, 2018.

⁵⁹ CARVALHO, Robert Carlon De; KNOERR, Viviane Coêlho de Séllos. Sobre jornada: um olhar a partir do dano moral em razão de doenças psicolaborais. In: **Eficácia de direitos fundamentais nas relações do trabalho, sociais e empresariais** [Recurso eletrônico on- line] organização CONPEDI/UFMG/FUMEC/Dom Helder Câmara; coordenadores: Carlos Luiz Strapazzon, Luiz Fernando Bellinetti, Sérgio Mendes Botrel Coutinho. Florianópolis: CONPEDI, 2015, p. 597-598. Available at: <http://www.conpedi.org.br/publicacoes/66fsl345/6eh993o0/072y4qe8oq5cfzm7.pdf>. Accessed on: May 28th, 2018.



prolonged contact”⁶⁰. Therefore, the division of labor classified as *normal* would not be a hindrance to the progress of Society or Capitalism because in this case there would be a living consciousness among the workers about their purpose. "So, however special, however uniform your activity may be, it will be the activity of an intelligent being, for it will have a meaning, and he will know it." The division of *normal* work "assumes that the worker, far from dwelling on his task, does not lose sight of his collaborators, acts upon them and undergoes his action." Therefore, in the context of normality, the worker "is not a machine that repeats movements whose direction he does not perceive, but knows that they tend to somewhere, to a purpose that he conceives more or less distinctly. He feels he is serving some purpose"⁶¹.

The division of *normal* labor produces solidarity; however, what it brings to the fore in everyday life are not individuals, but social functions, social responsibilities, and social interests; therefore, the modern division "asks us only to be tender with our fellow men and to be just, to fulfill our task, to work so that each one is summoned to the function which they can best perform and receive the just price for their efforts"⁶².

Unfortunately, according to Durkheim, Modernity has followed another direction, therefore:

It is necessary to stop this anomy; find the means to make those organs that still clash in discordant movements compete harmoniously; and to introduce into their relationships more justice, increasingly attenuating these external inequalities that are the sources of the malice [...]

In the last lines of his work, Durkheim recalled that our first duty is to create a transforming morality that will arise "little by little, from the internal conditions that make it necessary"⁶³.

⁶⁰ DURKHEIM. É. **Da divisão do trabalho social**. Translation Eduardo Brandão. 2.ed. São Paulo: Martins Fontes, 1999, p. 385.

⁶¹ DURKHEIM. É. **Da divisão do trabalho social**. Translation Eduardo Brandão. 2.ed. São Paulo: Martins Fontes, 1999, p. 330.

⁶² DURKHEIM. É. **Da divisão do trabalho social**. Translation Eduardo Brandão. 2.ed. São Paulo: Martins Fontes, 1999, p. 430.

⁶³ DURKHEIM. É. **Da divisão do trabalho social**. Translation Eduardo Brandão. 2.ed. São Paulo: Martins Fontes, 1999, p. 432.



In the other way, the concept of *alienation* contributes especially when one takes into account that:

Excessive work violates the dignity of the human person and is therefore one of the serious forms of violation of human rights. In this way [...] the worker involved in this situation is deprived of his status as a human being, he ceases to be the recipient of the goods and products produced by him to assume the status of a working tool. He loses his dignity, his image and, not infrequently, his own identity since he is deprived even of family ties and the values of citizenship. His work loses the social and human value stamped in art. 1 of the Constitution of the Federative Republic of Brazil. People are endowed with dignity, insofar as they have an intrinsic value, with the access and enjoyment of their Social Rights (health, leisure, family) being the basis of human dignity, being closely related to the conception of full employment and the dignity of the human person. To submit the employee to an abusive workday appears as the absolute denial of the value of human dignity, autonomy, and freedom⁶⁴.

The concept of *alienation* criticizes the separation between the dignity of the person and human society, caused by the Market, inhuman and socially exclusive. This concept therefore admits the occurrence of existential damages, considering that the worker ceases to be aware of his human and social integrality, moving away from Nature and the Family, especially when there is absolute surplus value in the work environment.

Against individualism, Marx in his text "Jewish Question" of 1843, criticized the Declaration of Human Rights of the French Revolution, saying that in this document the freedom of human beings was isolated as "reclusive monads;" that is, at that moment

⁶⁴ CARVALHO, Robert Carlon De; KNOERR, Viviane Coêlho de Séllos. Sobre jornada: um olhar a partir do dano moral em razão de doenças psicolaborais. In: **Eficácia de direitos fundamentais nas relações do trabalho, sociais e empresariais** [Recurso eletrônico on-line] organização CONPEDI/UFMG/FUMEC/Dom Helder Câmara; coordenadores: Carlos Luiz Strapazzon, Luiz Fernando Bellinetti, Sérgio Mendes Botrel Coutinho. Florianópolis: CONPEDI, 2015, p. 592. Available at: <http://www.conpedi.org.br/publicacoes/66fsl345/6eh993o0/072y4qe8oq5cfzm7.pdf>. Accessed on: May 28th, 2018.



Marx realized that: "the human right to freedom [was based] not on the person-to-person relationship, but on the segregation of people"⁶⁵.

Still according to Marx, in the French Declaration the center of freedom based on human rights is private property in a way that the rights of the human being coincided with the economic-individualistic interests of the bourgeois. For Marx, differently, the practical application of human law involves a radical critique of freedom and the right to private property. In his revolutionary model, Marx finally defended the "cessation of individual rights within a classless humanitarian society"⁶⁶.

CONCLUSION

The concept of *disenchantment of the World* affirms that the excess of rationality and technicism of the Modern life generates existential damages to the person. In this sense, the abusive workday and the capitalist ethic centered on the maxim that "time is money" damages the spiritual, religious, and social nature of the worker, causing him frustration and loss of transcendental meaning of Life.

In the context presented by Weber, therefore, there were two types of damages: existential and spiritual, and in the latter case, in addition to the person's experience, the *project of post-life* is harmed, for example by profaning the sacred days of the week, such as Sunday, Saturday or religious holiday through excessive workload seriously verified in the situation of "slave-like work."

It means, mainly, that there are no mysterious forces untold, but that we can, in principle, dominate all things by calculation. This means that the world has been disenchanting. We no longer have to resort to the magical means to dominate or implore to the spirits, as did the savages, to whom these mysterious

⁶⁵ MARX *apud* BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 46.

⁶⁶ BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000, p. 184.



powers existed. Technical means and calculations perform the service⁶⁷.

The concept of *alienation* described by Marx & Engels⁶⁸ emphasizes, on the other hand, that the routine of the capitalist system is based on the exploitation of *Man over Man*. In this context, the desire to obtain profit induces the boss to overload the employee's workday; and if he can, he pays less than the Law stipulates for the service rendered. Also in this context, the image of the *reserve army of labor* weakens the self-esteem and psychological security of the employee, causing him to peacefully accept the "invitation" of the boss to work overtime beyond what is permitted by the original contract of employment. This submissive attitude of the worker to the imperatives of the boss generates existential damages, since the individual stops living with his relatives and friends, being alienated in relation to the affective and community events that happen outside the work environment, sacrificing, even, his personal projects of improvement of future life, for example, attending a College. This situation can be explained by the concept of *alienation*. According to Marx, there is *political alienation*, that is, the separation of the individual from one's own class interests. Also in the quotidian of Capitalism is the problem of *reification*, that is, the transformation of the individual into a mere object of the system. Moreover, alienation can manifest itself in the *separation of the worker from the product of his work*, where the person no longer perceives himself as a producer and consumer of what they have produced. Also the *alienation of the productive activity* causes the fragmentation of the conscience regarding the dignity of the individual and social work. In the same way, the *alienation of Man in relation to other Men* causes the growing isolation of the worker who disconnects from the extra-labor social and community relations. Going further, the *alienation of Man from his nature* causes another negative consequence, which is the "denaturalization" of the person. Finally, *religious alienation* causes political damage, according to Marx's negativist conception of Religion since it alienates the individual

⁶⁷ WEBER, M. A ciência como vocação: In: **Ensaios de sociologia**. 5 ed. Rio de Janeiro: Zahar, 1982. p. 165.

⁶⁸ MARX, M & ENGELS, F. **A ideologia alemã**. Transl. José Carlos Bruni e Marco Aurélio Nogueira. 6.ed. São Paulo: HUCITEC, 1987.



from the real World.

Finally, the concept of *anomy* proposed by Durkheim describes the social nature of the human being who *must be in the World* developing his *life of relationships* and realizing his *life projects*. This concept considers that the individual needs to obtain recognition among his peers and to freely develop his *life of relationships* outside the working environment. Therefore, Man being a social being, denying him the natural right to *be in the World* generates harmful consequences to health and well-being, causing physical and mental stress to the worker, and even the possibility of suicide, which are projected due to the absence of community values which should be practiced regularly in and outside the workplace.

REFERENCES

ALVARENGA, Rubia Zanotelli & BOUCINHAS FILHO, Jorge Cavalcanti. O dano existencial e o Direito do trabalho. **Rev. TST**, Brasília, vol. 79, no 2, abr/jun 2013. Available at: https://pesquisa-eaesp.fgv.br/sites/gvpesquisa.fgv.br/files/arquivos/boucinhas_-_o_dano_existencial_e_o_direito_do.pdf. Accessed on: Sep. 16th, 2018.

BIELEFELDT, Heiner. **Filosofia dos direitos humanos**. Transl. Dankwart Bersmuller. São Leopoldo: UNISINOS, 2000.

BORGES, José D'Assunção Barros. O conceito de alienação no jovem Marx. **Revista Tempo social**, Revista de Sociologia da USP, vol. 23, n.1, junho 2011. Available at: <http://www.scielo.br/pdf/ts/v23n1/v23n1a11.pdf>. Accessed on: May 17th, 2018.

BRASIL. **Constituição da República Federativa do Brasil**. Brasília: Senado, 1988. Available at: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm. Accessed on: Sep. 17th, 2018.

BRASIL. **Código civil**. Lei nº 10.406, de 10 de janeiro de 2002. Brasília: Senado, 2002. Available at: http://www.planalto.gov.br/ccivil_03/leis/2002/l10406.htm. Accessed on: Sep. 15th 2018.

CARVALHO, Robert Carlon De; KNOERR, Viviane Coêlho de Séllos. Sobre jornada: um olhar a partir do dano moral em razão de doenças psicolaborais. *In: Eficácia de direitos fundamentais nas relações do trabalho, sociais e empresariais* [Recurso eletrônico on-line] organização CONPEDI/UFMG/FUMEC/Dom Helder Câmara; coordenadores: Carlos Luiz Strapazzon, Luiz Fernando Bellinetti, Sérgio Mendes Botrel Coutinho. Florianópolis:



CONPEDI, 2015. Available at:
<http://www.conpedi.org.br/publicacoes/66fsl345/6eh993o0/072y4qe8oq5cfzm7.pdf>.
Accessed on: May 28th, 2018.

DURKHEIM. É. **Da divisão do trabalho social**. Translation Eduardo Brandão. 2.ed. São Paulo: Martins Fontes, 1999.

DURKHEIM. É. **O suicídio**: estudo de Sociologia. Trad. Monica Stahel. São Paulo: Martins Fontes, 2000.

FERREIRA, Franklin. 2000. **Uma introdução a Max Weber e à obra “Ética protestante e o espírito do capitalismo”**. Available at:
http://www.mackenzie.br/fileadmin/Mantenedora/CPAJ/revista/VOLUME_V_2000_2/Franklin.pdf. Accessed on: May 18th, 2018.

FERREIRA, Vanessa Rocha. O dano existencial nas relações de trabalho e a eficácia horizontal dos direitos fundamentais nas relações privadas. **RBSD – Revista Brasileira de Sociologia do Direito**, v. 3., n. 1, p. 97-116, jan./abr. 2016. Available at:
[file:///C:/Users/Cliente/Downloads/74-300-3-PB%20\(1\).pdf](file:///C:/Users/Cliente/Downloads/74-300-3-PB%20(1).pdf). Accessed on: May 18th, 2018.

FROTA, Hindemberg; BIÃO, Fernanda Leite. A dimensão existencial da pessoa humana, o dano existencial e o dano ao projeto de vida: reflexões à luz do direito comparado. **Cadernos da Escola de Direito e Relações Internacionais**, Curitiba, 13: 129-163 vol.1, 2010. Available at:
[file:///C:/Users/CLIENTE/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/524-1990-1-PB%20\(1\).pdf](file:///C:/Users/CLIENTE/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/524-1990-1-PB%20(1).pdf). Accessed on: Sep. 16th, 2018.

FROTA, Hindemberg; BIÃO, Fernanda Leite. O fundamento filosófico do dano existencial. **Repertório IOB de Jurisprudência**. São Paulo, v. 25, n. 20, cd. 3, 2ª quinz./out. 2011, p. 711-717. Available at:
<https://tematicasjuridicas.wordpress.com/2011/11/02/dano-existencial-fundamento-filosofico/>. Accessed on: Oct. 06th, 2018.

MARX, M & ENGELS, F. **A ideologia alemã**. Transl. José Carlos Bruni e Marco Aurélio Nogueira. 6.ed. São Paulo: HUCITEC, 1987.

MONTARROYOS, Heraldo. **Pesquisa jurídica**: como se faz. Rio de Janeiro: PUBLIT, 2017.

OLIVEIRA, Adriano Guimarães de; MONTARROYOS, Heraldo Elias. O existencialismo jurídico na Justiça do Trabalho da 8ª Região: investigando o modo como os juízes desenvolvem o conceito de danos existenciais. **Revista Jus Navigandi**, ISSN 1518-4862, Teresina, ano 22, n. 5100, 18 jun. 2017. Available at:



<https://jus.com.br/artigos/56790>. Accessed on: Jun. 26th, 2018.

SERRA, Joaquim Mateus Paulo. **Alienação**. Universidade da Beira Interior: Covilhã, 2008.

SOARES, Flaviana Rampazzo. **Dano existencial: uma leitura da responsabilidade civil por danos extrapatrimoniais sob a ótica da proteção humana**. Porto Alegre (RS): PUC, Pontífice Universidade Católica do Rio Grande do Sul, Faculdade de Direito, Programa de Mestrado, 2007. Available at:

<http://tede2.pucrs.br/tede2/bitstream/tede/4004/1/399477.pdf>. Accessed on: May 16th, 2018.

THIRY-CHERQUES, Hermano Roberto. Max Weber: o processo de racionalização e o desencantamento do trabalho nas organizações contemporâneas. **RAP — Revista de administração pública** – Rio Janeiro, 43(4):897-918, jul./ago. 2009. Available at: <http://www.scielo.br/pdf/rap/v43n4/v43n4a07.pdf>. Accessed on: May 15th, 2018.

WEBER, M. **A ética protestante e o espírito do capitalismo**. Transl. José Marcos Mariani Macedo. 1.ed. São Paulo: Companhia das Letras, 2004.

WEBER, M. A ciência como vocação. In: **Ensaio de sociologia**. 5 ed. Rio de Janeiro: Zahar, 1982.

