

MODERN SLAVERY: TODAY, THE SAME AS YESTERDAY

TRABALHO ESCRAVO CONTEMPORÂNEO: HOJE, O MESMO DE ONTEM

Article received on: 08/03/2021

Article accepted on: 04/10/2023

Tiago Muniz Cavalcanti*

*Ministério Público do Trabalho (MPT), Recife/PE, Brazil

Lattes: <http://lattes.cnpq.br/7934187683721532>

Orcid: <https://orcid.org/0009-0007-6920-3235>

tiago.cavalcanti@mpt.mp.br

Rafael Garcia Rodrigues**

**Ministério Público do Trabalho (MPT), Curitiba/PR, Brazil

Lattes: <http://lattes.cnpq.br/5227260239473642>

Orcid: <https://orcid.org/0009-0005-0307-4317>

rafaelgarcia7@gmail.com

The authors declare there is no conflict of interest.

Abstract

This article seeks to review the thematic of current slave labor, verifying how it is perpetuated in the Brazilian history in such a way as to indicate its non-anachronistic character in the Brazilian social relations. Critical-descriptive literature review was adopted, combined with the survey of relevant laws, case laws, and judicial decisions on the theme. Starting from the historicity of the slave labor experience in the Colonial Brazil, we review how this experience and reasoning of the existence of a human being as an object rather than as a subject of rights still remain today, including in judicial decisions that justify its occurrence based on a local pseudo-culture. We verified to what extent this approach, along with a restrictive reading

Resumo

Este artigo busca analisar a temática do trabalho escravo na contemporaneidade, verificando como ele se perpetua na história brasileira de modo a indicar seu caráter não anacrônico às relações sociais brasileiras. A metodologia adotada para estes fins foi a análise crítico-descritiva da literatura, conjugada com o levantamento das legislações pertinentes e de jurisprudência e decisões judiciais que abordaram o tema. Partindo da historicidade de sua experiência no Brasil Colônia, analisou-se como essa vivência e mentalidade da existência de alguém como objeto e não sujeito de direitos mantêm resquícios na atualidade, inclusive em decisões judiciais que justificam sua ocorrência baseada em uma pseudocultura local. Verificou-se em que medida tal abordagem, somada a uma leitura



of the concept of modern slavery, unveils a historical moment of setback in the fight against this form of exploitation. And, at the end, we pointed out how modern slavery is expressed in several forms of exploiting human labor today, suggesting paths for the hermeneutics of such a concept so that its confrontation is as broad as possible, as the only way to fulfill citizenship.

Keywords: characterization; contemporaneity; human rights; historicity; modern slavery.

restritiva do conceito de trabalho escravo contemporâneo, desnudam um momento histórico de retrocesso no enfrentamento de tal forma de exploração. E, ao final, indicou-se como o trabalho escravo contemporâneo se manifesta em diversas formas exploratórias do trabalho humano na atualidade, indicando caminhos para a hermenêutica de tal conceito a fim de que seu enfrentamento seja o mais amplo possível como único meio de concretizar a cidadania.

Palavras-chave: caracterização; contemporaneidade; direitos humanos.; historicidade; trabalho escravo contemporâneo.

Introduction

During the civil-military dictatorship in Brazil (1964-1985), not a few national and foreign conglomerates, supported by the federal government—including financial support—, promoted forest felling, formation of plantations, and all sorts of environmental and social damage to the Brazilian Amazon, with the indiscriminate exploitation of slave laborers. At the time, a supposed contradiction emerged: companies that invested in and developed advanced technology in their production, such as Volkswagen, used slave labor to rudimentarily fell the forest and prepare pastures, in an imbricated relationship between capitalism and slavery, the ‘modern’ and the ‘archaic’.

Despite the boldness of those who file the first charges during the military dictatorship, it was only after the re-democratization and some years after the enactment of the 1988 Federal Constitution that, in 1995, the then President Fernando Henrique Cardoso, in a radio address to the nation, formally recognized the existence of contemporary slave labor in Brazilian territory, starting the first initiatives to combat this illicit practice in an organized manner.

Besides the pioneering recognition of slavery in the Brazilian territory, the radio address also announced the first important measure to combat slave labor: the creation of the Interministerial Group for the Eradication of Forced Labor (*Grupo Interministerial para Erradicação do Trabalho Forçado* – GERTRAF), providing for regular fiscal actions involving State agents to investigate charges of slave labor.

The emblematic José Pereira case is among the reasons that fostered this

change in Brazilian Federal Government posture. In 1989, José Pereira together with another worker, surnamed Paraná, tried to escape from a farm located in the municipality of Sapucaia, in southern Pará, where they were enslaved with other 60 workers. They were intercepted by armed thugs who shot at them. Paraná was killed, José Pereira was shot in the neck from behind, hitting the area near his eye, he pretended to be dead and then went to a nearby farm for help. The petitioners alleged that the State violated its obligations under the American Convention on Human Rights and the American Declaration on the Duties and Rights of Man, with respect to persons under its jurisdiction who suffer conditions analogous to slavery imposed by others, and by allowing this practice to occur through omission or complicity. On October 24, 2003, the Amicable Settlement was signed, and the State took on several obligations aimed at repressing and preventing slave labor.

Informed via the Pastoral Land Commission (*Comissão Pastoral da Terra*) in 1994, and formally presented to the Inter-American Human Rights Commission by the civil society organizations Américas Watch and the Center for Justice and International Law (CEJIL), the José Pereira case—an icon in the fight against slave labor—culminated in 2003 with Brazil’s commitment, before the IACHR, to implement a series of legislative and administrative measures to fight slave labor in the Brazilian territory.

In 2003, the struggle of social movements, unions and activists in defense of human rights and the fight against slave labor forced the State to comply with the Amicable Settlement signed with the IACHR. It also led Brazil to initiate a public policy to eradicate slave labor with the expansion and modernization of the concept of slave labor inserted in art. 149 of the Penal Code¹, the elaboration of the first national plan for the eradication of slave labor, the creation of the Brazilian

1 The concept of slave labor originally provided for in art. 149 of the Penal Code stated: “Reduce someone to a condition analogous to that of a slave: Penalty – confinement from 2 (two) to 8 (eight) years”. It was amended by Law 10.803/03 which established:

“Art. 149. Reduce someone to a condition analogous to that of a slave, either by subjecting them to forced labor or exhausting workday, or by subjecting them to degrading working conditions, or by any means restricting their locomotion due to a debt owed to their employer or agent. Penalty – confinement from two to eight years and fine, in addition to the sanction corresponding to the violence.
§ 1. The same penalties are incurred by those who:

I – Restrict the use of any means of transportation by the worker, in order to detain them at the workplace;

II – Keep ostensive surveillance at the workplace or taking possession of documents or personal objects of the worker in order to detain them at the workplace.

§ 2. The penalty is increased by half if the crime is committed:

I – Against a child or adolescent;

II – Due to prejudice of race, color, ethnicity, religion or origin”.

National Commission for the Eradication of Slave Labor (CONATRAE), and the establishment of the Special Mobile Inspection Group (GEFM) made up by the Labor Prosecutor's Office, Labor Auditors, and the Federal and Federal Highway Police.

In the first years of the 21st century, several cases of enslaved workers that are rescued by the State through the GEFM, some cases involving hundreds of workers and always in rural remote locations and lodged in precarious conditions in the heart of the forest, are highlighted in the national press. Modern slavery is being constructed in the imagination of the Brazilian society as a remnant of an archaic, backward, and rural Brazil. In short, an exceptional situation typical of the armpits of "Deep Brazil".

The fact is that, contrary to common sense, slave labor reveals to be an archaic manifestation, and related to the armpits of the Brazilian rural space. Slave labor, as the most insidious form of worker's overexploitation, is not an anachronistic phenomenon taking place on the fringes of the capitalist modernity. On the contrary, it remains fully integrated and adjusted to the productive system, remaining conveniently unscathed in the current stage of the Brazilian capitalism.

This article aims to review modern slave labor, especially how slavery is perpetuated in the Brazilian history, stressing its non-anachronistic character in the Brazilian social relations. To that, we performed a critical-descriptive bibliographical review, pointing out regulations that rule the issue of modern slavery, as well as case laws and judicial decisions handed down by the Brazilian courts discussing the configuration of a condition analogous to slavery.

The discussion proposed herein starts from the roots of the exploitative relations that began with the slave system, and have continued in the Brazilian society until nowadays. Therefore, the mindset of "objectification" of people and their overexploitation, and not as subjects of rights, remains even in judicial decisions.

It is verified to what extent this mindset, along with a restrictive reading of the concept of modern slavery, unveils consistent setback threats in the fight against this form of exploitation.

Finally, it is indicated how modern slavery is expressed in several current forms of exploiting human labor, suggesting paths for the hermeneutics of such a concept so that its confrontation is broadened to the fulfill citizenship.

1 The perpetuated continuism: “o passado nunca foi, o passado continua”²

The discussion about slave labor in the 21st century allows us to reflect on the very Brazilian history, the construction of its institutions and the structure on which society was built. If, as Gilberto Freyre stated, “the past continues being”, modern slave labor clearly demonstrates the rooting of violent relations of power and exploitation, and allows for a better understanding of the phenomenon and the mechanisms and strategies necessary to cope with it.

In the view of Florestan Fernandes, the slave system consolidated in the Brazilian society an abyssal social inequality, absolutely entrenched, deeply rooted and difficult to overcome (FERNANDES, 2008). In the same sense, the analysis by Lilia Moritz Schwarcz (2019, p. 27-28):

[...] slavery was much more than an economic system: it shaped behaviors, defined social inequalities, made race and color markers of fundamental differences, ordered labels of command and obedience, and created a society conditioned by paternalism and a very strict hierarchy.

Enslaved people were subjected to extreme conditions of work, housing, and food; slaves had their bodies, lives, and destinies subjected to the wills of their masters. As a more sophisticated means of control, they were denied access to formal education, either by express prohibition or by the simple nonexistence of schools for them, a situation that extended to freedmen and that remained unchanged even after abolition.

As Jessé Souza states, in Brazil, since year zero, slavery was the institution that encompassed all others (SOUZA, 2017). The Brazilian form of family, economy, politics and justice was all based on slavery.

Slavery conditioned the Brazilian society since its beginnings, and thinking about how the slave exploitation model was organized is essential. A self-perception of a peaceful country, without deep conflicts and, above all, tolerant, was built. Would this be possible with the legacy assumed as a result of centuries of slavery? The most accurate reading of the Brazilian social indicators leads us to a shocking reality of deep social inequality, a glaring income imbalance, and frightening violence.

The rural environment of the Brazilian Colony, Empire, and Republic, were deeply marked and structured by patrimonialism, bossiness, and patriarchalism, so well represented by the symbol of the Casa Grande (where the masters' family

² Famous phrase by Gilberto Freyre in the full court of the 1946 Constituent Assembly (The past never was, the past continues being, free translation).

lived), where the role played by the master (of slaves) in their territory materialized law and order, and the State itself within their domains.

The authoritarianism generated in the past gave birth to the current hierarchical, misogynist, racist, patriarchal, and deeply unequal society (FERNANDES, 1965).

In slavery, characterized by the human and sub-human dichotomy, the enslaved is functionalized for the fulfillment of the interests and economic desires of their master, a relationship based on such conditions prevents from building empathy and otherness. The cruelty, punishment, absolute subjection of the enslaved are trivialized and not seen with remorse, guilt or shame, since they are practiced against a “non-person”, an invisible being (SOUZA, 2017).

In a system founded on such premises it is impossible that these *non-subjects* are (even if in the future) granted citizenship. This phenomenon is closely intertwined with the current genocide of the Black population, marked by invisibility and non-punishment of the criminal, as in the recent case of the Jacarezinho massacre and many others throughout the Brazilian history. They are, as advocated in this article, situations that are not occasional, sparse, or dystopian, but result from the social constitution and structuring based on slavery and the distinction between masters and slaves, subjects and objects, beings and non-beings. As substantial elements of the Brazilian historical construction, they will significantly influence the understanding of slave labor in contemporary times and, consequently, the necessary confrontation.

2 The naturalization of slavery and the constant threats of setback in coping with it

The Brazilian “civilizing process”, based on extremely violent labor relations, typical of slavery, for four centuries, may explain the naturalization of subhuman working conditions, as well as the inequality and other social dramas experienced in Brazil.

The subjection of workers to modern slavery is part of the broader picture of the construction and flawed and incomplete exercise of citizenship, as well as the difficulty in effectively implementing a project of an inclusive, fair, and plural country.

The context of the transformations in the world of work in the early 21st century indicates greater precariousness, reduction of rights, approach of historical achievements as privileges, and many other discourses that demonstrate

the strength of capital and its underlying ideology. In times when rights are suppressed and the working class is subjected to increased exploitation, legislative initiatives and judicial interpretations try to delimit slave labor no longer within the framework of protecting the dignity of the working human being, but rather of the freedom to come and go (*stricto sensu*)³.

If the colonial heritage continues to dictate social relations, court decisions that naturalize the elements that characterize slave labor are not uncommon: undignified housing, absence or insufficiency of food, drinking water and toilets, among other serious labor violations, both in urban and rural areas, are constantly relativized by the judiciary branch. The decisions may invoke an alleged “local culture” or the precarious housing conditions of the families (usually in slums, shacks, or urban or rural occupations of the enslaved) to justify the non-existence of illicit acts in the concrete cases tried. The subject’s dramatic condition of extreme social vulnerability and economic misery is no longer the reason for their submission to modern slavery, but justifies it.

In this way, inequality is minimized, exclusion is trivialized, and slavery is naturalized. The insensitivity of class origins takes over Justice and its operators, complacent with oppression and with the brutal exploitation of the working class and its “de-civilization”. It is a violence inflicted against specific populations, that is found in the arguments that support judicial decisions that absolve slave labor. There are many cases⁴.

³ The following examples can be mentioned: Bill 2464/2015; Bill 3842/2012; Senatorial Bill 342/2018 (regulation of the ‘Slavery’ Constitutional Amendment Bill); and the Senatorial Bill 236/2012 (Penal-law Reform)

⁴ Just as an example, two judgments are quoted:

“In the case at hand, it was proven, by the abundant oral evidence collected in the procedural instruction, only the existence of degrading working conditions. In the housing destined for more than 40 (forty) workers, there were only hammocks for sleeping, without bathrooms, nor garbage cans or even lockers to store belongings. In addition, the water consumed by workers, stored in tanks and without the use of filters, came from a nearby reservoir for drinking and bathing. That not to mention that the workers made their physiological needs and showered in open places, more specifically in the “bush”, and were not provided with toilet paper or any hygiene material, nor with protective equipment. However, mere irregularities or illicitnesses to labor laws, such as those presented in this case, do not necessarily constitute the perpetration of the crime of reducing to a condition analogous to that of a slave, as described in article 149 of the Brazilian Penal Code” (BRASIL, 2017, free translation).

“Regarding the housing conditions, said to be demeaning, without bathrooms and adequate water and sewage treatment, we must make some reflections. Let’s see. It is clear that most of the world’s population, especially in peripheral countries such as Brazil, lives a social reality of deprivation, whether as residents of the peripheries of large cities, or as inhabitants of rural areas. We often learn that, in the 21st century, large Brazilian cities do not have ideal conditions of basic sanitation, such as water and sewage treatment, a reality that is not very different from what one expects to find in places that are embedded in the middle of the forest, more than 20 miles away from the nearest village. [...] Every job developed, whether as a construction worker, a garbage collector, a street sweeper, or a rural

The naturalization of slavery is the structuring pillar of judicial decisions. The slaver is acquitted because their victims are used to precarious living and working conditions. As previously emphasized in another study (CAVALCANTI, 2016), this is a condoning of the extreme extortion directed to the inferior social group: a historical naturalization of segregation, exploitation, and aggression against human labor.

In a research conducted on criminal acquittal decisions handed down in Tocantins, Brazil, Shirley Silveira Andrade and José Ivan Alves Barros observe that the Magistrate's class interest and their condoning of situations that exploit the victim's state of misery are elements that guide the acquittal sentences. They refer to a case of slave labor that occurred in the Fazenda Floresta, located in that Tocantins:

On June 17, 2003, a team from the Regional Labor Office visited the Fazenda Floresta managed by Joaquim. A total of 43 rural workers were found grazing pastures in degrading work. They were settled shacks over dirt, covered with black tarpaulin and straw, without hygienic conditions, eating rice, drinking dirty water from a stream, and doing their needs outdoors. Some individuals had not been paid for four months. They were coerced to buy goods in the Fazenda's canteens. Informality of labor contracts. Lack of registration in the workbook, lack of protective equipment, absence of medical exams. (ANDRADE, 2013, p. 153-154, free translation).

Despite the subhuman situation of the victims, easily classified as slave labor, the Judge acquitted the defendants under the allegation that such a reality is customary in the area:

Regrettably, the factual picture evidenced in the records represents the harsh reality of the interior of the northern of the state of Tocantins and southern of the state of Pará: misery, illiteracy, rural workers on the fringes of labor laws. One should only take a look at the photos of their homes to conclude that there was no reduction of rights, in fact, the State gave them none. The working conditions on the farm are only one face of the context of extreme poverty in which the residents of Bico do Papagaio – Tocantins live (ANDRADE, 2013, p. 153-154, free translation).

In other words, the Judge understands that only those who are socially above the poverty line and have their rights respected can be victims of the crime of reducing to a condition analogous to that of a slave. To the authors cited, all this is very easy to understand. Referring to the lessons of Roberto Aguiar, they say that

worker, dealing with the cultivation of the land, in agriculture or even in livestock, each worker plays a relevant role in the economic development of society, being subjected to the conditions inherent to the exercise of the function performed, according to the reality and context in which they are developed. One cannot want to apply to the reality of a rural worker in northeastern Brazil a working environment different from the one presented in the situation under analysis" (BRASIL, 2012, free translation).

the Judge tends to apply the law as the legislator created it: based on the interests of their social group. In the case of slave labor, it is undeniable that the Judge is part of the same group as those who are in the passive pole of the demand (ANDRADE, 2013).

In any case, it is important to emphasize that slave labor is so highly unlawful that its practice constitutes a true assault on the democratic order itself. For this reason, interpretations that seek to naturalize this illicit act and seek justifications and support in alleged cultural or historical elements must be critically reviewed and repelled with the firmness of legal hermeneutics, since they totally affront the constitutional order.

3 Modern slavery: the same as yesterday, today

When analyzing the reshaped perpetuation of the historical Colonialism, Boaventura de Sousa Santos states that everything “that remains from previous periods is always metamorphosed into something that simultaneously denounces and conceals it and, therefore, always remains as something different from what it was without ceasing to be the same” (SOUSA SANTOS, 2018, free translation). Nowadays, in the society of human rights, slavery is both condemned and reproduced: the same exploitation as yesterday, today, but under veils that hide reality.

If the analysis of the creation of the Brazilian society offers clues to the concepts of structure and culture that enable the existence of endemic flagrant cases of slave labor in the country, it makes clear that we are not dealing with the same slave labor that existed in Brazil until its abolition in 1888. Rather, we are dealing with something reshaped and adjusted to the current economic system and its new conformations, which is why we add the adjective “analogous” or “modern”.

In the Brazilian cultural context, in a first analysis, the understanding of slavery always refers to the absence of freedom to come and go, to the shackles, the slaves’ accommodations (*senzala*) and chains. Perhaps the influence of the arts, from Jean Baptiste Debret’s neoclassical painting in the 19th century to the television that, especially in the 70s and 80s, produced successful *telenovelas* and series about the theme that, always with all fictional freedom, overused stereotypes and locations that built this popular imaginary.

This is not about denying the truth embedded in each of these elements. However, transporting such imaginary, as well as demanding restriction on the freedom to come and go to characterize the condition of slave labor, implies at least two deep improprieties: the first consists in demanding that characteristics

of the past are necessary to configure slave labor in the present; and the second, in reducing and limiting the historical condition of slave to the facet of the freedom to come and go that, strictly speaking, was not always present.

3.1 The restriction of freedom of locomotion as an element that is not necessary to characterize slave labor

The legal nature of the enslaved in the Colonial America, although controversial, is based on the possibility of exercising over such persons at least one of the attributes inherent to the right to property: the possibility of buying and selling. In other words, the condition of a slave resembles that of a merchandise. In fact, the first paragraph of the 1926 UN Convention, when the UN was still named League of Nations, defined slavery as “the state or condition of an individual in relation to which the attributes of property rights or some of them are exercised”.

The objectification of the human being is something that goes far beyond the restriction of their freedom to come and go: it is the emptying of their existential content, of their dignity, of their condition as a human being.

There are several historical records of enslaved people who did not suffer absolute restriction of their freedom of locomotion and who, nevertheless, were recognized as slaves. That is, based on the historiographical point of view, slavery does not necessarily refer to imprisonment, but to the appropriation of individuals by individuals: it has always presented and continues to present the essence of treating fellow human beings inhumanely, reducing them to the condition of a thing, of merchandise or something fungible. In fact, this characteristic is the point of convergence that allows us to identify it regardless of space, time and other variable elements concerning social, cultural, economic, political, legal, etc. aspects. The freedom opposed to the sense of slavery is not reducible to its dimension of coming and going. It is much broader and more complex, concerning directly the dignity of the worker and their condition as a human being.

Rebeca J. Scott, when reconstructing the Tinchant family’s odyssey over generations in search of emancipation during the centuries of slavery in the Americas, highlights that the struggle of former slaves did not end with manumission or liberation, since: “If the status of slave implied a situation of absolute denial of citizenship, status as a free person of color implied only a small set of rights [...]” (SCOTT, 2014, p. 220, free translation).

The fight against slavery was not confined to the freedom to come and go; rather, it was first and foremost the fight for the reunion around the freed human

being of the attributes that gave them dignity and citizenship as a possibility of belonging to a community or society (COOPER, 2005).

The dawn of the liberal ideology brought with it the discussion about the legal status of former slaves, since citizenship was an inseparable element of freedom and, thus, the transition from slave to citizen tested the political principles of the 19th century liberal democratic thought (COOPER, 2005).

In Brazil this debate is highly remarkable, since a society where capitalism is only introduced late and had a precarious transition from slavery to free labor regimen, the citizenship project has never been concluded, despite being formally foreseen since the Independence. The Constitution of the Empire, enacted by Dom Pedro in 1824, recognizes the civil rights of all Brazilian citizens, with the exception of those enslaved for as long as they remained in slavery. Therefore, it recognizes that the antonym of slavery is citizenship.

Similarly, the Federal Supreme Court has recognized that the current concept of slave labor aims to comprehensively protect human beings, their dignity and all the attributes related to them, having the Organization of Labor as a tutored legal good.

Thus, the Supreme Court has repeatedly decided that the competence for judging the crime provided for in article 149 of the Penal Code belongs to the Federal Court, because it is a crime against the Organization of Labor, and not a crime that exclusively attacks personal liberty (after all, if this were the case, the competence would belong to the State Court) (BRASIL, 2006).

Besides the discussion on the competent court, the Federal Supreme Court has also taken a strong position, recognizing that the restriction of freedom to come and go is not a necessary element to characterize modern slavery.

PENAL SENTENCE. REDUCTION TO A CONDITION ANALOGOUS TO THAT OF A SLAVE. MODERN SLAVERY. NO NEED FOR DIRECT COERCION AGAINST THE FREEDOM TO COME AND GO. COMPLAINT RECEIVED. In order to establish the crime of article 149 of the Brazilian Penal Code it is not necessary to prove physical coercion of the freedom to come and go or even curtailment of freedom of locomotion. The submission of the victim to “forced labor or exhausting workday” or “degrading working conditions”, alternative conducts provided for in the type of criminal offense, is enough. “Modern slavery” is more subtle than that of the 19th century, and the curtailment of freedom may result from several economic and not necessarily physical constraints. Someone is deprived of their freedom and dignity by treating them as a thing and not as a human being, which can be done not only through coercion, but also through the intense and persistent violation of their basic rights, including the right to decent work. The violation of the right to decent work affects the victim’s ability to make choices of

their own free will. It also means “Reduce someone to a condition analogous to that of a slave”. It is not just any violation of labor rights that constitutes slave labor. If the violation of labor rights is intense and persistent, if it reaches blatant levels and if the workers are subjected to forced labor, exhausting working days or to degrading working conditions, it is theoretically possible to frame the crime of article 149 of the Penal Code, because the workers are receiving treatment analogous to that of slaves, being deprived of their freedom and dignity. Complaint received for the presence of the legal requirements. (BRASIL, 2012).

The fight against contemporary slave labor is not limited to protecting the freedom of the individual, in its individual sense and restricted to the physical aspect; it is a crime that denies the condition of human being and, therefore, it is of interest to society as a whole and to the collectivity of workers, dispensing for its configuration the restriction of the freedom to come and go.

3.2 Citizenship as an antonym to slavery

Slave labor remains as a signifier, but with a different meaning. It is a concept with a changing content, as are all legal definitions in general. It is not a neutral, immutable and timeless concept, but something that has defined contours according to the historical moment in which it is located.

In the lessons of Antonio Manuel Hespanha, the same category allows for several readings situated in different time, space and intentionality.

The meaning of the same word, in its different historical occurrences, is closely linked to the different social or textual contexts of each occurrence. That is, meaning is eminently relational, or local. Concepts interact in differently structured semantic fields, receive influences and connotations from other levels of language (everyday language, religious language, etc.), are differently appropriated in social contexts or ideological debates, behind the apparent continuity on the surface of words is hidden a radical discontinuity in the depth of meaning. And this semantic discontinuity completely frustrates this claim of a timeless validity of the concepts embedded in the words, even if they remain (HESPANHA, 2012, p. 26-27, free translation).

There is no neutrality possible. The category – slave labor – runs through the history of Law and of the Brazilian Law itself. But it does not do so without suffering the influences of society and the time in which it is inserted.

The Law, giving a new wording to article 149 of the Penal Code, established four modalities that represent the submission of workers to conditions analogous to those of slaves, defining the phenomenon whenever the worker is submitted to forced labor and/or to exhausting workday and/or to degrading working conditions and/or, still, to debt servitude.

Forced labor is associated with the disregard of the volitional element. It is compulsory labor, performed against the worker's freely expressed will, characterized by vitiated consent. This vitiated will derives from the employer's coercion and has incidence both in the pre-contractual moment, in the choice or acceptance of the work, and also during the rendering of the services, preventing the termination of the labor link. The exhausting workday is the one that is worked under adverse conditions, at a fast pace and with an exhausting frequency, and this intense labor prevents the worker, at the end of the day, from recomposing their working energies until the beginning of the next workday, fatiguing them, providing them with a poor quality of life and, certainly, affecting their dignity. The restriction of locomotion due to debt consists of the creation, by the employer, of indebtedness mechanisms that make it impossible or extremely difficult to terminate the labor bond and leave the workplace. Degrading conditions denote debasement, indignity, and demeaning; they are, therefore, precarious, demeaning, subhuman conditions; conditions that deprive the worker from dignity and disregard them as subject of rights (CAVALCANTI, 2016).

As can be seen, subjecting someone to slavery does not require the restriction of freedom of movement, but the *status libertatis*, i.e., freedom in its aspect that is confused with dignity itself, with the very condition of humanity. This becomes clear in the explanatory statement of the special part of the Brazilian Penal Code (item 51) that, since 1940, already elucidated in article 149 that "the fact of reducing someone, by any means, to a condition analogous to that of a slave" means "to actually suppress their *status libertatis*, subjecting the agent to their complete and discretionary power.

The freedom deprived by slavery is related to the concept of autonomy, of self-determination, of free will. Freedom thus gains the same concept of individual autonomy as an attribute that differentiates man from other living beings, enabling them to build their own individuality, choose their way of being, elect their own life projects, act according to their mind (CAVALCANTI, 2016, free translation).

It is a more modern and appropriate concept to face reality, and that shifts the axis of protection to the dignity of the worker as a human being and subject of rights, promoting their broad protection. In this sense, it is observed that the degradation of environmental working conditions and the imposition of exhaustive workday, for example, are some of the hypotheses that, in the context of the concrete case, can lead to the characterization of exploitation as analogous to slavery without the worker having their right to come and go curtailed.

Conclusion

Inheritance of a colonial past, slave labor remains vividly alive in Brazil in the 21st century. Contrary to what common sense and liberal theories believe, this form of exploitation of human labor is not something anachronistic and dystopian, which occurs on the fringes of the system, but one of the innumerable ways in which capitalism manifests itself in peripheral countries.

This type of capitalist exploitation (because it is part of the historical context of capitalism) differs from other forms of exploitation of human labor by the degree of degradation, by the violence it involves, and it can occur in many ways: preventing the right of the worker to leave work through the use of armed surveillance by gunmen or militias; making it impossible to terminate the labor bond through pecuniary coercion arising from the assumption of debts by the worker, a practice known as the “*sistema barracão*”; requiring the worker to work exhausting workdays that go far beyond what the human body can bear, exhausting it, fatiguing it; imposing work in degrading conditions, which exposes the victim to undesirable health and safety risks, directly affecting them in their dignity.

From archaic to modern, from rural to urban, from Colonial Brazil to Republican Brazil, from human to subhuman, from citizenship to slavery: these apparent antagonisms, veiled by the veil of modernity, have deep similarities: the same as yesterday, today, but metamorphosed. Slave labor was re-signified, but not ceased. Its essence remains intact even after its formal abolition and the advent of the most recent stages of capitalism: the overexploitation of the worker, robbing them from the very condition as a human being.

In times of systematic degradation of the socioeconomic condition of the Brazilian working class, it is necessary to rescue the constitutional promise, not yet completely fulfilled, but fervently dreamed of, in the sense of guaranteeing dignity to all. Only then will it be possible to overcome overexploitation and abandon colonial rancor in order to effectively achieve the republican promises.

References

ANDRADE, S. S.; BARROS, J. I. A. Trabalho escravo contemporâneo. Por que tantas absolvições? In: FIGUEIRA, R. R.; PRADO, A. A.; GALVÃO, E. M. (org.). *Privação de liberdade ou atentado à dignidade: escravidão contemporânea*. Rio de Janeiro: Mauad X, 2013. p. 143-165.

BRASIL. Supremo Tribunal Federal (Plenário). *Inquérito n. 3412/AL*. Penal. Redução a condição análoga a de escravo. Escravidão moderna. Desnecessidade de coação direta contra a liberdade de ir e vir. Denúncia recebida. Para configuração do crime do art 149 do Código Penal, não é necessário que

se prove a coação física da liberdade de ir e vir ou mesmo o cerceamento da liberdade de locomoção, bastando a submissão da vítima “a trabalhos forçados ou a jornada exaustiva” ou “a condições degradantes de trabalho”, condutas alternativas previstas no tipo penal. A “escravidão moderna” é mais sutil do que a do século XIX e o cerceamento da liberdade pode decorrer de diversos constrangimentos econômicos e não necessariamente físicos. Priva-se alguém de sua liberdade e de sua dignidade tratando-o como coisa e não como pessoa humana, o que pode ser feito não só mediante coação, mas também pela violação intensa e persistente de seus direitos básicos, inclusive do direito ao trabalho digno. A violação do direito ao trabalho digno impacta a capacidade da vítima de realizar escolhas segundo a sua livre determinação. Isso também significa “reduzir alguém a condição análoga à de escravo”. Não é qualquer violação dos direitos trabalhistas que configura trabalho escravo. Se a violação aos direitos do trabalho é intensa e persistente, se atinge níveis gritantes e se os trabalhadores são submetidos a trabalhos forçados, jornadas exaustivas ou a condições degradantes de trabalho, é possível, em tese, o enquadramento no crime do art. 149 do Código Penal, pois os trabalhadores estão recebendo o tratamento análogo ao de escravos, sendo privados de sua liberdade e de sua dignidade. Denúncia recebida pela presença dos requisitos legais. Autor: Ministério Público Federal. Investigados: João José Pereira de Lyra e Antônio José Pereira de Lyra. Relator Ministro Marco Aurélio. Redatora do Acórdão Ministra Rosa Weber. Brasília, DF, 30 mar. 2012. Available from <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=3076256>. Access on: Jul. 13, 2021.

BRASIL. Supremo Tribunal Federal (Plenário). *Recurso Extraordinário n. 398041/PA*. Direito Penal e Processual Penal. Art. 149 do Código Penal. Redução à condição análoga à de escravo. Trabalho escravo. Dignidade da pessoa humana. Direitos fundamentais. Crime contra a coletividade dos trabalhadores. Art. 109, IV da Constituição Federal. Competência. Justiça Federal. Recurso Extraordinário provido. A Constituição de 1988 traz um robusto conjunto normativo que visa à proteção e efetivação dos direitos fundamentais do ser humano. A existência de trabalhadores a laborar sob escolta, alguns acorrentados, em situação de total violação da liberdade e da autodeterminação de cada um, configura crime contra a organização do trabalho. Quaisquer condutas que possam ser tidas como violadoras não somente do sistema de órgãos e instituições com atribuições para proteger os direitos e deveres dos trabalhadores, mas também dos próprios trabalhadores, atingindo-os em esferas que lhes são mais caras, em que a Constituição lhes confere proteção máxima, são enquadráveis na categoria dos crimes contra a organização do trabalho, se praticadas no contexto das relações de trabalho. Nesses casos, a prática do crime prevista o art. 149 do Código Penal (Redução à condição análoga a de escravo) se caracteriza como crime contra a organização do trabalho, de modo a atrair a competência da Justiça federal (art. 109, VI da Constituição) para processá-lo e julgá-lo. Recurso extraordinário conhecido e provido. Recorrente: Ministério Público Federal. Recorrido: Sílvio Caetano de Almeida. Relator Ministro Joaquim Barbosa. Brasília, DF, 30 nov. 2006. Available from: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=570361>. Access on: Jul. 13, 2021.

BRASIL. Tribunal Regional Federal da 5ª Região. *Apelação criminal 14784/CE*. Penal e processual penal. Crime de redução à condição análoga à de escravo (art. 149 do cpb). Trabalhadores submetidos a condições degradantes de trabalho. Inexistência de restrição à liberdade locomotiva. Não caracterização da conduta criminosa. Mera ilicitude à legislação trabalhista. Atipicidade. Absolvição dos réus. Provenimento das apelações. [...] O crime de redução à condição análoga à de escravo caracteriza-se pela prática de uma das quatro modalidades descritas no tipo penal desenhado no art. 149 do Código Penal brasileiro, com a dicção dada pela Lei 10.803/2003: a) submissão a trabalhos forçados; b) submissão à jornada exaustiva; c) sujeição a condições degradantes de trabalho; e d) restrição da liberdade de locomoção, em razão de dívida contraída com o empregador. O tipo é misto alternativo ou de ação múltipla, configurando-se o crime mediante qualquer dessas modalidades, não se exigindo, necessariamente, a violência física (STF, Inq. 3564, 2ª Turma, Rel. Min. Ricardo Lewandowski, j. 19/08/2014) ou a privação de liberdade (STF, Inq. 3412, Pleno, Rel. Min. Rosa Weber, j. 29/03/2012; STJ, HC 239.850, 5ª Turma, Rel. Min. Gilson Dipp, n. 14/08/2012). O parágrafo 1º do art. 149 do CPB ainda traz à colação as formas derivadas consistentes no cerceamento do acesso ao transporte, vigilância ostensiva e retenção de documentos. O consentimento da vítima é, a rigor, irrelevante, seja porque está em jogo a dignidade da pessoa

humana, que é indisponível, seja porque tal beneplácito será, o mais das vezes, obtido de forma viciada, mediante fraude, coação ou erro. [...] A sentença proferida pelo juízo a quo reconheceu a prática criminosa dos réus por entender ter havido sujeição dos trabalhadores a condições degradantes de trabalho, afastando, por conseguinte, a perpetração dos tipos de submissão a trabalho forçado, à jornada exaustiva, e à restrição à liberdade de locomoção. Em princípio, será degradante a condição laboral a falta de instalações sanitárias adequadas e de água potável e alimentação suficiente e adequada. Não se considera, porém, condição degradante de trabalho a mera precariedade das acomodações dos trabalhadores. Na hipótese dos autos, ficou provado, pela farta prova oral colhida na instrução processual, apenas a existência de condições degradantes de trabalho. No alojamento destinado a mais de 40 (quarenta) trabalhadores, existiam apenas redes para dormir, sem banheiros, nem lixeiras ou mesmo armários, para guardar pertences. Além disso, a água consumida pelos trabalhadores, armazenada em tanques e sem utilização de filtros, provinha de açude próximo, servindo para beber e tomar banho. Sem falar que os trabalhadores faziam as suas necessidades fisiológicas e tomavam banho em locais abertos, mais especificamente no “mato”, não sendo, ainda, fornecido papel higiênico ou qualquer material de higiene, nem equipamentos de proteção. Meras irregularidades ou ilicitudes à legislação trabalhista, tais como essas apresentadas neste caso, não configuram, necessariamente, perpetração de crime de redução à condição análoga à de escravo descrita no art. 149 do Código Penal brasileiro. É entendimento pacífico do Tribunal Regional Federal da 5ª Região que a simples submissão a condições degradantes de trabalho não se afigura suficiente para caracterizar o delito de redução à condição análoga à de escravo, sendo necessária a comprovação da restrição à liberdade locomotiva do trabalhador por seu empregador. (ACR 12874, 4ª Turma, Rel. Des. Élio Siqueira, j. 15/03/2016, DJE 31/03/2016; ACR 9449, 2ª Turma, Rel. Des. (conv.) Ivan Lira de Carvalho, j. 16/06/2015, DJE 26/06/2015; ACR 11503, 2ª Turma, Rel. Des. Vladimir Carvalho, j. 21/10/2014, DJE 24/10/2014). Uma das situações em que isso pode ocorrer é com a servidão por dívida. A servidão por dívida consiste na restrição da liberdade do trabalhador em razão de dívida contraída com o empregador. Neste caso em particular, normalmente, o trabalhador depende do empregador para obter comida, roupas, remédios e até mesmo ferramentas necessárias ao desempenho da atividade laborativa. Na espécie em cotejo, como se evidenciaram nos elementos de prova produzidos em juízo, não houve qualquer cerceamento ou embaraço à liberdade de locomoção dos 52 (cinquenta e dois) trabalhadores que laboravam na propriedade rural fiscalizada. Daí inexistir a necessária tipicidade da conduta praticada pelos réus, impondo-se, por via de consequência, as suas respectivas absolvições. Nesta linha de pensar, impende reconhecer a absolvição dos réus FRANCISCO LEORNE CALIXTO JÚNIOR e EXPEDITO CARLOS FONSECA DOS SANTOS, por não constituir as condutas imputadas de mera submissão a condições degradantes de trabalho, sem que tenha havido qualquer restrição à liberdade locomotiva, crime de redução à condição análoga à de escravo (art. 149 do CPB), de acordo com o disposto no art. 386, inciso III, do Código de Processo Penal. Provimento das apelações dos réus. Apelantes: Francisco Lorne Calixto Junior e Expedito Carlos Fonseca dos Santos. Apelo: Ministério Público Federal. Relator Desembargador Federal Leonardo Carvalho. Recife, 14 nov. 2017. Available from: <https://www4.trf5.jus.br/processo/00000401520124058106>. Access on: Jul. 13, 2021.

BRASIL. Tribunal Regional do Trabalho da 16ª Região. *Recurso Ordinário no processo n. 0143200-45.2009.5.16.0013*. TRABALHO ANÁLOGO À CONDIÇÃO DE ESCRAVO. NÃO CONFIGURAÇÃO. DANO MORAL. EXCLUSÃO. A caracterização do trabalho escravo pressupõe a existência de meios de coação, sejam físicos, psicológicos, morais ou mesmo por dívidas, que impeçam ou dificultem o exercício da liberdade de ir e vir do trabalhador, situação não verificada, haja vista que o reclamante usufruiu irrestritamente do referido direito. Recurso ordinário conhecido e provido. Recorrente: Marcelo Testa Baldochi. Recorrido: Raimundo Alves da Silva. Relator Desembargador Luiz Cosmo da Silva Júnior. São Luiz, 06 set. 2012. Available from: <https://www.trt16.jus.br/site/conteudo/jurisprudencia/inteiroTeor.php>. Access on: Jul. 13, 2021.

BUCLET, B. Entre tecnologia e escravidão: a aventura da Volkswagen na Amazônia. *O Social em*

Questão, Rio de Janeiro, ano 9, n. 13, p. 33-50, 2005. Available from: http://www.gptec.cfch.ufrj.br/pdfs/tecnologia_escravidao.pdf. Access on: Jul. 13, 2021.

CAVALCANTI, T. M. *Neoabolicionismo e direitos fundamentais*. São Paulo: LTr, 2016.

CAZETTA, U. A escravidão ainda resiste. In: ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. *Possibilidades jurídicas de combate à escravidão contemporânea*. Brasília, DF: OIT, 2007. p. 100-132. Available from: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms_227539.pdf. Access on: Jul. 13, 2021.

COOPER, F. *Além da escravidão: investigações sobre raça, trabalho e cidadania em sociedades pós-emancipação*. Rio de Janeiro: Civilização Brasileira, 2005.

FERNANDES, F. *A integração do negro na sociedade de classes*. Rio de Janeiro: Globo, 2008.

FIGUEIRA, R. R. *Pisando fora da própria sombra*. Rio de Janeiro: Civilização Brasileira, 2004.

FIGUEIRA, R. R.; *Rio Maria – Canto da Terra*. Petrópolis: Vozes, 1992.

FIGUEIRA, R. R.; PRADO, A. A.; GALVÃO, E. M. (org.). *Privação da liberdade ou atentado à dignidade: escravidão contemporânea*. 1a Ed. Rio de Janeiro: Mauad X, 2013.

HESPANHA, A. M. *A cultura jurídica europeia: síntese de um milênio*. Coimbra: Almedina, 2012.

LE BRETON, B. *Vidas roubadas: a escravidão moderna na Amazônia Brasileira*. Translation into Portuguese Maysa Monte Assis. São Paulo: Loyola, 2002.

SAKAMOTO, L. M. *Os acionistas da casa-grande: a reinvenção capitalista do trabalho escravo no Brasil contemporâneo*. Thesis (Doctorate in Political Science) – Graduate Program in Political Science, School of Philosophy, Languages and Humanities, Department of Political Science, University of São Paulo, São Paulo, 2007.

SAKAMOTO, L. (org.). *Escravidão contemporânea*. São Paulo: Contexto, 2020.

SCHWARZ, L. M. *Sobre o autoritarismo brasileiro*. São Paulo: Companhia das Letras, 2019.

SCHWARZ, L. M. *O espetáculo das raças: cientistas, instituições e questão racial no Brasil*. São Paulo: Companhia das Letras, 1993.

SCHWARZ, R. G. *Trabalho escravo – a abolição necessária: uma análise da efetividade e da eficácia das políticas de combate à escravidão contemporânea no Brasil*. São Paulo: LTr, 2008.

SCOTT, R. J. *Provas de liberdade: uma odisseia na era da emancipação*. Campinas: Ed. Unicamp, 2014.

SOUTO MAIOR, J. L. *O Direito do Trabalho como instrumento de justiça social*. São Paulo: LTr, 2000.

SOUSA SANTOS, Boaventura. O colonialismo insidioso. *Espaço Público*, 30 mar. 2018. Available from: http://www.boaventuradesousasantos.pt/media/O%20colonialismo%20insidioso_30Mar%20C3%A7o2018.pdf. Access on: Jul. 13, 2021.

SOUZA, J. *A elite do atraso: da escravidão à Lava Jato*. São Paulo: Leya, 2017.

VIANA, M. T. Trabalho escravo e “Lista Suja”: um modo original de se remover uma mancha. In:

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. Possibilidades jurídicas de combate à escravidão contemporânea. Brasília, DF: OIT, 2007. p. 28-59. Available from: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms_227539.pdf. Access on: Jul. 13, 2021.

ABOUT THE AUTHORS

Tiago Muniz Cavalcanti

PhD in Law from the Universidade Federal de Pernambuco (UFPE), Recife/PE, Brazil, with a research period at the Centro de Estudos Sociais da Universidade de Coimbra (UC), Portugal. Master in Law from the Pontifícia Universidade Católica de São Paulo, (PUC-SP), São Paulo/SP, Brazil. Expert in Labor Law and Procedural Law from Faculdade de Boa Viagem, Recife/PE, Brazil. Member of the Labor Law Academy of Pernambuco (Academia Pernambucana de Direito do Trabalho, APDT), Recife/PE, Brazil. Attorney for the Labor Public Ministry (Ministério Público do Trabalho, MPT), Recife/PE, Brazil.

Rafael Garcia Rodrigues

PhD candidate in Social Relations Law in the Graduate Program in Law of the Universidade Federal do Paraná (PPGD/UFPR), Curitiba/PR, Brazil. Master in Civil Law from the Universidade do Estado do Rio de Janeiro (UERJ), Rio de Janeiro/RJ, Brazil. Attorney for the Labor Public Ministry (Ministério Público do Trabalho, MPT), Curitiba/PR, Brazil.

Authors' participation

Both authors participated in the discussion of the results, drafted, revised, and approved the final manuscript.

How to cite this article (ABNT):

CAVALCANTI, T. M.; RODRIGUES, R. G. Trabalho escravo contemporâneo: hoje, o mesmo de ontem. *Veredas do Direito*, Belo Horizonte, v. 20, e202203, 2023. Available from: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/2203>. Access on: Month. day, year.