THE INFLUENCE OF AMERICAN INDUSTRIAL DEVELOPMENT ON BRAZILIAN LABOR LAW*

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The impact of North American industrial development on less developed neighboring countries is a natural and inevitable historical phenomenon. Throughout history the states that are at a high level of material, cultural, or military progress have influenced the countries that are on a lesser level, favorably or unfavorably, according to the peculiar conditions of each epoch. Understandably, this influence is felt most strongly through geographical proximity or cultural factors. This phenomenon needs no comment. It is but the interaction of history and geography. Nothing is clearer than the need for a developed country to expand its economy and all its attributes and to create zones of influence. The underdeveloped countries suffer acutely from the effects of this expansion. By necessity or through convenience, it is clear that they cannot escape, for better or for worse, the direct or indirect influence of the progress of another country. In this sense, the simple presence of a developed country on the continental map can constitute a ground for concern by the remaining countries.

These other countries, vis-á-vis the state that progressed, and which in the American instance grew enormously in relation to the rest of the continent, could adopt two attitudes: (a) the underdeveloped state could simply coexist with the developed state, in terms of interchange and aid and, above all, could adopt measures of reception, including attraction, of private foreign capital; (b) on the contrary, they could take measures to repel or repress the developed nation's investments when they are deemed essentially harmful to the national security, to the sovereignty of the country, or to the autochthonous process of liberation and economic development. These two positions are not necessarily opposites or alternatives. They are frequently adopted at the same time, at first glance giving the illusory impression of vagueness and indecision of policy. This conduct stems basically from the need for capital resources from international or foreign sources and the awareness that these funds must be invested in the national territory with caution.

Some underdeveloped countries react by disciplining with some severity the investment of foreign private capital in the national territory. It is permissible and certainly legitimate that they should so weigh the importance

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or the strict necessity of accepting the investment. In no case should these investments be permitted to disturb the national security. History, unfortunately, confirms that they sometimes conceal or at least facilitate political intervention in the intimate life of underdeveloped nations. The just policy, called nationalistic, consists of regulating the foreign investment – without stripping it of indispensable guarantees[1] – in given areas of the indigenous economy and, primarily, of distributing the capital invested in the economy of each state. This plan integrates the capital into the national wealth through an intelligent process of progressive absorption.

The forms and the juridical models of adjustment of foreign private capital investment in the local economy are varied in space and time. We are not concerned with examining them at this time. We are concerned, however, with determining whether, in this quite complex process, the positive law of underdeveloped countries quickly evolves to adapt itself and the national institution to the new situation favored or eventually created by the impact of foreign economic development and the inevitable expansion of its economic force. This adaptation of positive local law to the new dimensions of the economy of the country, enriched or in any other manner affected by a foreign developed country, is most vividly felt in the various branches of positive law, such as commercial law, tax law, and administrative law. Nevertheless, it is remarkable how, through a chain of repercussions, this phenomenon can affect in succession all other spheres of local legislation. These ideas are very general and thus somewhat large; but they are verifiable in history. Within them we shall attempt to see the extent to which Brazilian labor legislation has suffered – and in recent years is suffering – because of the influence of North American industrial development and the presence in our national territory of foreign private capital; specifically, private capital originating in the United States.

THE DEVELOPMENT OF COLLECTIVE BARGAINING AS AN INSTITUTION

The first significant American influence on Brazilian labor legislation came from observation, using the normal techniques of comparative law, of the American industrial experience. The most interesting point about that industrial experience, for Latin American labor law in general and Brazilian labor law in particular, was the practice of collective bargaining.

In Europe the contracts between unions of workers and employers evolved as a process on the periphery of law. For example, the growth of custom in the formation of collective contracts may be seen in Great Britain from the time of the industrial revolution. Later, the European legislators came to understand the extraordinary importance of these new "contracts," which in

1. The foreign investor needs: (a) the security, as far as possible, of a stable social, political and economic climate; (b) a guarantee that his investment will not be disturbed by state intervention without appropriate compensation; (c) in the case of concession contracts, a clause permitting the contract to run for a reasonable period in view of the risk of the investment.

their normative role revolutionized the then prevailing concepts of contract. They were vital instruments for coordinating the interests of workers and employers and for solving actual group conflicts and potential threats to social peace. With that development, collective labor contracts were recognized by the state as a legitimate formula of the new juridical industrial life and incorporated in the legislation of continental nations.

In Europe, therefore, the collective bargaining contract was born of the practice of actual relations between workers and employers. Through custom it came to be crystallized into legislation. In other words, the collective bargaining contract of Europe went from the bottom to the top, that is, *from the people to the Code.*

In underdeveloped countries, and especially in Latin America, the historical process was reversed. Through comparative law and by adaptation of the experiences of others to local realities the jurists and legislators understood the relevance of collective bargaining contracts in contemporary society. There was no spontaneous industrial practice capable of creating a customary norm. To provide the needed stimulus it was therefore absolutely necessary that the national economy be acutely concerned with the development of manufacturing activities and the efficient performance of the labor unions. But, heeding the opinion of jurists the state adopted the collective bargaining contract in its legal precepts. Noting its utility, the state placed it, on its own initiative and without awaiting social demand, at the free disposition of employers and employees. Therefore, the collective bargaining contract in Latin America followed a different course from the paths trod by European nations: it went from the top to the bottom, that is, *from the Code to the people.*

It is for this reason that jurists and political leaders in the majority of Latin American countries are concerned with stimulating the practice of collective bargaining contracts, contracts that originated more or less artificially. The most significant explanation for this attitude seems to us to be the common desire and the urgent necessity that the worker be given juridical rights equal to that of the employer. With such rights he can participate in collective bargaining contracts, in "the law created by the parties themselves," instead of continuing to petition for protective paternalistic directives from the state.

On this continent the North American experience is singular. Collective bargaining in the United States was the direct and almost exclusive fruit of industrial practice. That is to say, it derived from custom. On the one hand it stemmed from the irreversible historical influence of Great Britain as the mother country; on the other hand, from the rapid progress of manufacturing activities and of North American labor unions. As far as collective bargaining is concerned, this combination of historical circumstances permitted the juridical system of the United States to develop as intensively – or perhaps more intensively – than the European countries. In this respect the North American experience appears to us to be a logical consequence of the correlation existing between the system of collective bargaining contracts and the economic development of the country. It is, thus, lamentable that the Latin American statutes have exhibited greater interest in the lessons and examples

from European doctrine and legislation and that the North American experience has not until very recently been studied with care.

In Brazil there is a strong and longstanding movement aimed at putting into effective practice the abundant legislation on collective labor contracts. In recent years other Latin American countries (Argentina, Mexico, Venezuela) have advanced in these fields with measurable rapidity. Today, however, Brazil finds itself practically in the same position as twenty years ago.

Two circumstances explain this surprising fact: (a) the Brazilian labor movement lacks strength and authority; (b) the group conflict in labor, whether a mere divergency at birth or a conflict breaking out later, inspires the practice of collective bargaining contracts. In Brazil, group conflict in labor is regulated, in the final analysis, by the Labor Courts.[2] The Labor Courts' decisions create a binding effect even when the dispute is of an economic character. This effect reaches all the workers of employers affected by the conflict and not only those associated with the unions in litigation. This gives the court's decision the impact of a group judgment.

The weakness of the Brazilian union movement is such that its leaders do not feel secure or at least strong enough to negotiate collective bargaining clauses with the employers. On the other hand, it is understandable that the union worker, having the possibility of obtaining a judicial pronouncement and not being able to count on a powerful, cohesive, and vigorous union movement, prefers once more the protection of the state. More particularly, he prefers the protection of the state through the judicial power, in which the economic and political influence of the employers is completely irrelevant. The labor union member has the certainty of this impartiality. This certainty means that the worker has greater respect for the good results obtained in the Labor Courts than for the bargaining tables, thereby stifling the type of group conflict that would increase their power and effectiveness.

In Brazil many norms concerning collective bargaining contracts are systematized in the Consolidation of Labor Laws.[3] The historical origin of most of these norms is in Italian law. It is understandable, therefore, that Brazilian labor lawyers are accustomed to fall back on the rich European bibliography, especially Italian, for their studies and their interpretation of current laws. Presently, however, the remarkable labor experience in the United States, particularly in connection with collective bargaining contracts is exercising a palpable influence on the lawmakers and the jurists of Brazil.

In spite of the profound differences between the Latin American and North American judicial system, which makes it difficult to utilize reciprocally each others experiences, we cannot ignore the mass of indigenous social factors implicit in the existence of collective bargaining in union and employer life in North America. The strong influence of these realities and their excellent practical results can be seen in the reformulation of the collective

2. FEDERAL CONSTITUTION, art. 134 (Brazil, 1967).

3. The CONSOLIDATION OF LABOR LAWS (1943) was promulgated on the list of May 1943 and entered into force on November 10, 1943.

bargaining contracts part of the Consolidation of Labor Laws of 1943. In this new legislation the legislature, for the first time, showed itself disposed to face up to the encumbrance placed in the path of the practice of collective bargaining by the exercise of the normative jurisdiction of the Brazilian courts, which, as stressed formerly, extends to all labor disputes whether of a juridical or economic nature.[4]

Following this new course, the legislature adopted two measures that appear to be relevant.[5]

The first step of the legislature was to establish as a directive norm the principle *that no action whatsoever of a collective nature could be considered before the labor courts unless the plaintiff had previously tried to obtain an amicable solution of the dispute by means of collective bargaining.*

Completing the norm, the law punished *administratively* the employer who in bad faith refused collective bargaining. This is the logical way to ensure that obstinacy and unfounded refusal by the employer will not frustrate the development of solutions through collective bargaining.

The objective of these reforms is twofold: (a) Above all, they seek to stimulate the practice of labor negotiations, breaking the major obstacle that until now prevented that result: the normative jurisdiction of the Labor Court. This jurisdiction guaranteed by the federal constitution, now constitutes a phase subsequent to collective bargaining so that it takes effect only when there is no satisfactory solution through the collective bargaining contract. After initial hesitation, the current jurisprudence of the labor courts, surprisingly, permits actions of a collective nature to be judged without previous attempt at solution of the conflict through direct negotiation between the workers and the employers. It may be described as jurisprudence *contra legem,* which impedes the attainment of the aims sought by the legislature. Nevertheless, the Supreme Labor Court itself, as already described, has decided the issue in this manner. It can also be admitted that most commentators and labor court judges feel that this jurisdiction is the court's culminating moment as an act of creation of law. (b) More remotely, through this effort the law tries to invigorate and develop the Brazilian labor union movement by liberating it from a paternalistic legislation in order to force it into self-strengthening. The biological mechanical materialists of the 19th century were not quite accurate in stating that "the function *creates* the organ"; but it is undeniable that the disciplined exercise of function develops the organ. In the case at hand the labor union (organ), by being led to the rhythmic exercise of its most appropriate contemporary function (collective bargaining), becomes more vigorous and acquires authentic expression. However unbelievable it may seem, the law frequently obeys the rules of biology.

The present system of collective bargaining contracts adopted by Brazilian law, however, clearly displays, even to the most superficial observer, distinct marks of the experience gained from American industrial life where, *mutatis mutandis,* one finds analogous norms.

4. Decree Law No. 229 (Feb. 28, 1967), profoundly modified the CONSOLIDATION OF LABOR LAWS (1943), above all in respect to collective bargaining contracts.

5. *Id.*

WAGE FIXING AND ADJUSTMENT

The policy of periodic fixing and readjustment of workers' salaries is another relevant aspect of Brazilian labor law that clearly bears the imprint of North American experience.

The traditional position in Brazilian law, in synthesis, has always been as follows:

(a) The fixing, by executive decree, of a regional minimum wage, or, by law, of a professional wage determined for specialized occupation (airmen, doctors, engineers, et cetera).

(b) Above the *minimum* established by law the parties always were, and continue to be, free to stipulate a wage by means of individual labor contracts.

(c) By the above mentioned decrees or laws the minimum and professional wages could be periodically altered according to prevailing socio-economic factors in the country.

(d) However, through normative decisions of the Labor Courts or a collective bargaining contract, given the inevitable changes in these socio-economic factors, the salaries contracted above the *minimum* also could be modified.

In these last mentioned cases the legislature did not specify the factors to be used in calculating salary readjustment. This meant that the power of decision by the judge (group judgment) or by the parties themselves (collective bargaining contract) was for all practical purposes unlimited in reflecting the inflationary process of the national economy. Now, however, since the government has taken serious, effective, and drastic measures against inflation, the legislature has reformulated its wage policy, and established a "ceiling" or maximum limit for the periodic adjustment of the contractual wage for workers.

The government measure consists essentially of the adoption of a mathematical formula that considers in succession the nominal wage, the increase in the cost of living index, the actual average wage of the worker during the period of revision, the increase in national productivity, and the inflationary forecast for the subsequent period. Juggling all these various and complex elements, there is reached, after many difficult steps, the percentage increase to be conceded.[6] The wage policy of the formula adopted in Brazil after the revolution of March 31, 1964, is an adaptation to Brazil of an experience peculiar to the industrial life of the United States.

When the North American collective bargaining contract was extended to five years in order to achieve maximum economic benefits, convenience, and tranquility it became essential to find a formula for periodic and automatic readjustment of salaries during the time the contract was in force. This formula is a typical creation of North American industrial life, which

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6. Law No. 4.725 (July 13, 1965); Decree Law No. 15 (July 29, 1966) and subsequent legislation. *See*, with reference to the "formula," decisions 33 and 34 of the Supreme Labor Court of Brazil, called "prejulgados."

stemmed, in our opinion, from the contract made between General Motors and its workers in 1948 and which is now being used by Brazilian positive law.

There are, however, profound differences in the juridical systems of the United States and Brazil, as much as in the steps taken in reaching the wage policy of the formula as in the practical results obtained in its application:

> (a) The periodic and automatic readjustment formulas were born in the United States *spontaneously* in the collective bargaining clauses, through agitation by the workers or rather as an inevitable result of the adoption of long-term contracts. In Brazil, on the contrary, the formula was imposed by law.
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> (b) This first distinction would not have great importance, being derived from the nature of local legal systems, if from it there did not result a second observation: in the United States the formula represented a guaranteed *advantage*, by means of the collective bargaining contract, to the workers; in Brazil the governmental measure represented the taking of an anti-inflationary stand and an ostensible limitation on the possibility of the worker obtaining better remuneration.
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> (c) While, in the North American contract the formula represented a *minimum* wage guarantee, in Brazil the formula indicated the *maximum* by way of stipulation of new remunerative levels. Neither the courts in their decisions nor the parties in their agreements could exceed the stipulated limit, and the penalty for so doing was cancellation of the collective bargaining contract.
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> (d) The success of any wage policy formula, in the last analysis, depends upon the authenticity of statistical factors: in Brazil we do not count on accurate statistical information, even though the agency giving it in the specific case of collective bargaining contracts or normative decisions is the state itself.
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> (e) The formula for wage readjustment, as set out above, has been fully accepted by North American labor unions and severely criticized by Brazilian unions, which see in it a new and appreciable reduction in the jurisdiction of the labor courts. The Brazilian workers warmly defend in its full scope the normative jurisdiction of the labor courts. They rely on historical antecedents illustrating the service that the labor courts gave and are giving in aid to community peace as well as, when necessary, the jurisdictional guarantee of workers' rights.

There is in course a progressive *emasculation* of the labor courts, which involves new Brazilian norms about collective bargaining contracts and wage policy. The importance of this fact perhaps cannot very well be appraised in the United States, which does not have in its judicial institutions anything that compares to the Brazilian labor courts, but no one in Brazil denies the importance of this subject. In our opinion this process of a growing limitation on the jurisdiction of the labor courts is clear. To a certain degree it becomes automatic by the cold cybernetic application of a formula in which statistical factors furnished officially by the executive power are balanced. However, it does not stem from an intentional attitude, but from the anti-inflationary policy, which is one of the major preoccupations of the national leaders. This policy is unfolding new economic and social possibilities for the nation, and it cannot be considered absurd that these new possibilities,

in the present and especially the future, may alter the prediction that everyone has made concerning the role reserved to the Brazilian labor courts in the solution of collective labor disputes.

We are not concerned, however, with the really profound distinctions between the systems of wage adjustment formula in the United States and in Brazil. We do wish, basically, to emphasize the fact that as never before one can sense the significant utilization of North American industrial experience by Brazilian labor law.

The Need for Foreign Capital and the Impact on Brazilian Labor Law

As we have stressed above, in Brazil, which through the influence of Roman law belongs to the sphere of codified legislation and in which the union movement lacks force and authority, the system of collective bargaining contracts is neither effective nor efficient. Normally, in Brazilian labor law we do not have the labor union presenting claims to employers. On the contrary, actions of a group nature and the collective bargaining contract are exceptional.

In nations with an advanced system of collective bargaining the modern labor union plays above all else the role of negotiator. In Brazil, however, it acts predominately as a political pressure group demanding legislative measures from the state or compelling their adoption by means of political pressure tactics. The labor responsibilities of the employer and of the state welfare system, therefore, do not result from periodic negotiations with unions. Employer responsibilities that exist are the fruits of the condescension of the government to examine and consider paternalistically the claim of the workers.

The legislation in question, composed of norms that blend with and contradict each other, grows daily. It descends to minute details of regulation of work; it creates a thicket that is difficult to penetrate. At the moment there is no other solution: the workers live in unfortunate conditions and legitimately strive toward obtaining a better standard of living. The government feels compelled to intervene by means of protective legislation in the area of labor relations.

When studying the possibilities and advantages of investment in a particular country the foreign investor carefully calculates the sum total of his future "social duties," namely, the sum of the responsibilities imposed upon him by local labor legislation.

These "social duties" form an important aspect of the investors' commitments. They must be studied with the same caution that generally is given to examination of the degree of political and social stability in the country in which the investment will take place. They are different aspects of the minimum conditions of security and of the success of the enterprise.

In this sense a very complex and advanced labor law legislation and the legislation concerning social welfare can, in certain cases, constitute an obstacle to an investment of foreign capital. At least when it is not an obstacle

it explains why foreign capital is applied in the national territory under such conditions of advantage as will compensate for all the burdens (including labor responsibilities) that will fall on the investor. In view of the necessity of attracting foreign private capital investment, therefore, the underdeveloped nations possessing advanced labor legislation can feel compelled to pause, to adapt, and even to take backward steps in the promulgation of further legislation. It is in this sense that we wish to explore how far the expansion of North American capitalism has had an influence on the historical development of Brazilian labor law.

The Brazilian policy of recent years rejected the possibility of widespread and imminent social reforms aimed at altering the economic structure of the country and affecting the ownership of the private means of production (land and industries). In the same manner foreign capital investment policy took an approach permitting greater investments. This policy became more effective as current Brazilian political institutions revealed themselves as strengthened and as gradual success was gained – painfully and with sacrifices by all – in the fight against inflation.

It was not difficult for us to identify (using current techniques of comparative law) the aspects of North American industrial experience utilized by the Brazilian legislature: collective bargaining and wage fixing. It is much more difficult for jurists to try to see in what respect the expansion of foreign capital, invested or to be invested, in the national territory can also influence the development of the country's positive law. This attempt forces the jurist out of his normal habitat. In addition, the attraction of foreign capital through legislative means is a process that grows slowly – owing to state security interests – and with discreet publicity in view of the risk of displays of nationalism – good or bad – which set the people against the government. The jurist thus must move in an area that is not only strange to him but is also obscured by a fog of imprecise information. Nevertheless, we find a close link between the investments of foreign capital in general and North American private capital in particular and the recent modification of an essential part of the Brazilian law relating to the stability of the worker in his employment.

The positive national law took a pioneer position in the normative regulation of the absolute stability of the worker in his employment. The so-called "Eloy Chaves Law" of 1923,[7] established the principle, which became traditional and general, that the worker with more than ten years of effective service in his employment could not be dismissed unless by (a) grave fault, (b) act of God, (c) economic cessation of the activities of the firm, or (d) utter personal incompatibility (declared by the judiciary) between the worker and the employer. Beyond these exceptional situations the worker in good standing has the right to be reinstated in employment with the advantages stemming therefrom.

Today, this principle is adopted in countries having advanced labor legislation and, it is to be noted, in very diverse politico-administrative struc-

7. Law No. 4682, Art. 42 (Jan. 24, 1923).

tures.[8] As a result, the worker can no longer be considered an incidental part of the industrial machinery, removable at the discretion of the employer. The job stability of the worker lies in the recognition that his position is an essential and necessary part of production, thereby making him the holder of an undeniable and inalienable right of *permanency of employment.* Assuming there are no socially relevant reasons that justify the worker's discharge, his right runs against the unilateral wish of the employer. This right is the wellspring of his life.

In this sense, job stability is a heavy "social duty" to be duly undertaken by an investor. This duty creates difficulties for the employer insofar as the mobility of his roster of workers is concerned. Regardless of the cause of discharge (assuming there is no grave fault) the indemnity due to the worker is proportionate to his time of service and is double the value of the indemnity paid in the same case to the worker who has not attained job stability.

Although adopted by diverse modern legislation, *job stability* in itself is an idea still being developed and is but a recent triumph for the worker. However, the employer is not disposed to submit to the loss of a prerogative that he always had exercised exclusively in the pure capitalist enterprise: to select, to admit, to direct, and to discharge at his discretion all the employees. There is, thus, a question of employer reaction to laws concerning job stability. Implicit in this question are the obstacles that this principle, as in the case of Brazil, can eventually cause to foreign investment.

When, as a result of change in Brazilian policy, foreign capital investment began to increase in intensity, the then-existing government took with evident *chronological coincidence* frontal legislative measures against job stability. The first governmental idea was to suppress the regime of job stability and to substitute for it a system, until then unknown in the national positive law, called "Guarantee Fund of the Workers Time of Service."[9] This system consists of the creation of a fund aimed at covering the needs of the worker who ceases to work. This fund is proportional to the worker's time of service and constitutes a contribution, calculated on his monthly wage, payable by the employer into a bonded bank account, earning interest, and subject to monetary correction necessitated by inflation.

The labor union and popular reaction against this measure was intense, and the government compromised in order to maintain certain of the traditional norms concerning job stability. A hybrid resulted allowing the worker to elect the system of his choice. Even though the government attributes substantial and immediate pecuniary advantages to a selection by the worker of the "Guarantee Fund" system, in practice this optional regime does not work well. The following facts have been reflected in statistical studies:

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8. Disregarding the socialist states, by the distinctive nature of their economic and political organization, we can include in this context West Germany, Spain, Italy, and Mexico.

9. Law No. 5107 (Sept. 13, 1966); Decree Law No. 20 (Sept. 14, 1966); Decree No. 59.820 (Dec. 20, 1966) (approves the establishment of the Guarantee Fund).

(a) the established workers, having job stability or on the verge of acquiring it, refuse to choose the new regime;

(b) upon being hired, the more recent workers unanimously choose the new system.

We deduce three conclusions from this: (a) The refusal of the workers to accept the regime of the "Guarantee Fund" reveals their belief that under the new system they revert to that which they had been formerly: incidental and secondary parts of the enterprise, removable and dispensable by a mere gesture of the employer. (b) The acceptance of the "Guarantee Fund" system chosen for all practical purposes only by the worker who was seeking employment or had but recently signed up, resulted from coercion exercised by the employer (a fact subsequently recognized by the Ministry of Labor). (c) The employer's interest in compelling the worker to adopt the new system confirms the worker's reason for repelling it.

The "Guarantee Fund" legislation is more than a pause. It is a lamentable retrogression in the struggle to integrate the worker into the body politic of economic enterprise.[10] It can be admitted that the governmental measure (at the time the executive power was legislating parallel to the legislative power and simultaneously with it) was inspired solely by the Brazilian employers.

In spite of the opposition, sometimes made with excessive vehemence to these measures, we find in it the influence of foreign investor interests. Basically we recognize the fact that the "Guarantee Fund" regime reduces the welfare responsibilities of the investor and facilitates the creation of new industries in Brazil, as well as the foreign capitalist's acquisition (which will not always be convenient) of Brazilian industries that are nationwide in scope. We do not attribute these measures directly to the pressure of investor groups. We consider them to be the natural and spontaneous result of an economic policy adopted by the government of the country and employed to attract the capital necessary for its own development.

The jurist's task is to find the logical interaction of governing factors in the creation of the juridical norm that he must interpret and put into effect. This logical interaction in the case at hand can be found, registered, and freshly delineated as follows:

(a) The absolute job security of the worker, as a new idea, surprises the foreign employer. It is understandable, therefore, that the national legislation on job security intrinsically provokes an unfavorable reaction.

(b) This principle – crystalized in the earlier legislative transition of Brazil and currently much in evidence – was the principal triumph of the worker and was and is valiantly defended by the weak national labor unions.

(c) The evolution of a Brazilian policy aimed at increasing the flow of foreign private capital was led by a government that had actual power. At the same time, there was an attempt to weaken the job stability implicit in local labor legislation. The labor unions made strong protest. Later

10. *See generally* Law No. 5107 (Sept. 13, 1966) and subsequent legislation.

on, as a concession, coexistence was permitted between the former system and the new system. The parallelism of the two regimes, however, did not lessen the government's wish to cut down the practical importance of job stability.

What must necessarily be deduced from these facts? Our conclusion is that the creation of the "Guarantee Fund" and the correlative restriction on job stability stemmed from the governmental plan to stimulate the investment of foreign private capital in the country's economy. Given the importance of North American investment in Brazil and the American employer's conception of a business enterprise and of the role he plays in it, we may proceed further: It is not rash to admit that Brazil, in modifying the legislation on job stability, has tried to take away some of the barriers that would frustrate the transfer of North American and other foreign capital necessary to the national development.

CONCLUSION

The industrial experience of the United States creates new and appropriate forms or formulas of collective bargaining that the Latin American law is using and that it must use. By its expansion into the international sphere (an irreversible movement) the North American industrial experience is in the same fashion stimulating our national legislators to adopt new attitudes in the treatment of old problems.