

**HUMAN DIGNITY AS THE "ESSENCE" OF LABOR LAW: FROM
HUGO SINZHEIMER'S FORMULATION TO THE PRESENT
DAY**

TOWARDS THE SOCIAL CONSTRUCTION OF NEW LABOUR MARKETS.

Interdisciplinary Reflections on the Changing World of Work. Bergamo 24-24 November

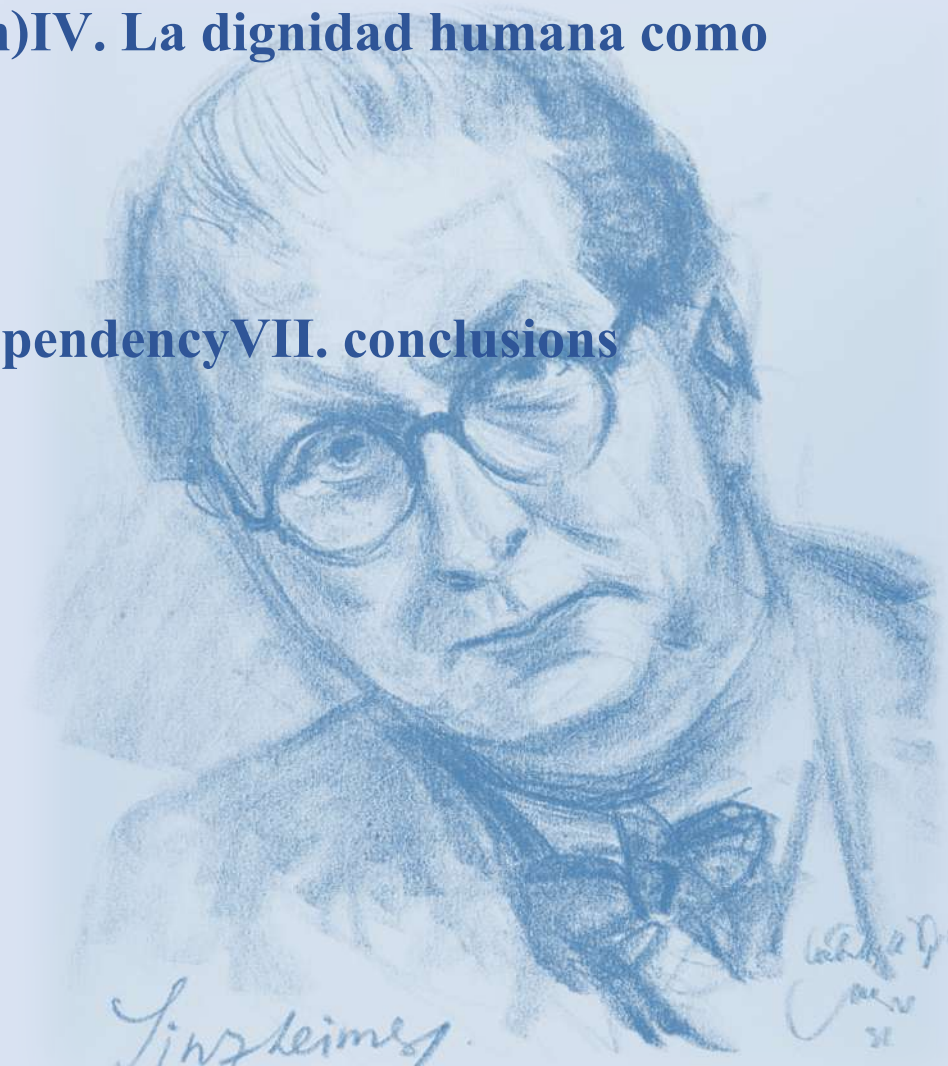
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SUMMARY

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I. JUSTIFICATION OF THE CHOSEN THEME

Topic 3 Industrial relations between theory and practice: the legacy of the past and the updating efforts to govern the new problems of work:

“Con este tema se quiere dar espacio a los intentos de reconceptualización y consecuente relanzamiento práctico de las relaciones industriales que, partiendo del diálogo con los textos clásicos del siglo XX, propongan revisiones y actualizaciones a la luz de los cambios que se han producido en las últimas décadas [...] Las discutidas dificultades de los actores e instituciones tradicionales de las relaciones industriales (p. ej., sindicatos, negociación colectiva, derecho laboral) y la aparición simultánea de nuevos sujetos e instrumentos (p. ej., organizaciones no gubernamentales, instituciones multilaterales internacionales, responsabilidad social empresarial); la ampliación del escenario de confrontación entre las partes, más allá de los intereses materiales en el trabajo” Call of paper

”The always renewed search for an ethical foundation of the legal” in order to “achieve a justification for the Law that, based on what is considered socially necessary at all times, transcends it, so that the jurist inquires not only what is the Law... but also what it should be, for which it has to rise above the mere factual data and the Law itself, to the meta-legal”. Manuel Alonso Olea.



II. SOME BIOGRAPHICAL NOTES

-Hugo Sinzheimer (April 12, 1875 in Worms; died September 16, 1945 in Bloemendaal-Overveen, The Netherlands).-

-He was a German jurist and author of the Weimar Constitution. He was one of the main defenders of the concept of social law and one of the founders of European labor law.

-1914. Co-editor of the Arbeitsrecht magazine, the first Labor Law magazine.

-1919. Participation in the drafting of the Weimar Constitution (especially in art. 165)

-1920. Professor of labor law and legal sociology at the University of Frankfurt.

-1933. Exile Pajos Pajos, professor of legal sociology in July 1933 (inaugural speech on November 6, 1933), first in Amsterdam and then in Leiden.



BIBLIOGRAFIA PRINCIPAL:

- *Lohn und Aufrechnung. Ein Beitrag zur Lehre vom gewerblichen Arbeitsvertrag auf reichsrechtlicher Grundlage.* Diss. Univ. Heidelberg, Berlin 1902. (Salarios y compensaciones. Una contribución a la teoría de los contratos comerciales de trabajo basada en la ley imperial)
- *Der korporative Arbeitsnormenvertrag.* Leipzig 1907 (El acuerdo de normas laborales corporativas).
- *Brauchen wir ein Arbeitstarifgesetz? Rechtsfragen des Tarifvertrags.* Jena 1913 (¿Necesitamos una ley laboral? Cuestiones jurídicas del convenio colectivo).
- *Ein Arbeitstarifgesetz. Die Idee der sozialen Selbstbestimmung im Recht.* 1916 (Una ley laboral. La idea de autodeterminación social en el derecho).
- *Grundzüge des Arbeitsrechts.* Jena 1921 (Fundamentos del derecho laboral).
- *Das Problem des Menschen im Recht.* Groningen 1933 (El problema humano en el derecho).
- *Jüdische Klassiker der deutschen Rechtswissenschaft.* Amsterdam 1938 (con prólogo de Franz Böhm reimpresso por Vittorio Klostermann, Frankfurt am Main 1953) (Clásicos judíos de la jurisprudencia alemana. Amsterdam).
- *Theorie der Gesetzgebung. Die Idee der Evolution im Recht.* Haarlem 1949 (postum) (Teoría de Legislación)
- *Arbeitsrecht und Rechtssoziologie. Gesammelte Aufsätze und Reden.* Editado por Otto Kahn-Freund y Thilo Ramm, dos volúmenes, Europäische Verlagsanstalt, Frankfurt am Main 1976 (Derecho del Trabajo y Sociología del Derecho. Ensayos y discursos recopilados).

III. SINZHEIMER'S PREMISE: HUMAN DIGNITY (KANTIAN FOUNDATION)

«El término dignidad (del griego axión) significa algo que es valioso, lo que es estimado o considerado por sí mismo, y no en función de otra cosa [...] La dignidad humana radica en el valor interno e insustituible que le corresponde al hombre en razón de su ser, no por ciertos rendimientos que prestara ni por otros fines distintos de sí mismo». U. FERRER SANTOS, *La dignidad y el sentido de la vida, en Cuadernos de bioética*, 1996, n. 26.

In the system of nature, man [...] is a being of little importance [...]. Now, man, considered as a person, that is, as the subject of a practical-moral reason, is situated above all price; because as such [...] it can be valued [...] as an end in itself, that is, it has a dignity (an absolute internal value), thanks to which it instills respect towards it in all other rational beings in the world [Kant, 2012 (1797), p. 298-299.



IV. HUMAN DIGNITY AS AN AXIOMATIC ASSUMPTION OF LAW

UDHR 1948

«Freedom, justice and peace in the world are based on the recognition of intrinsic dignity»

(Preamble)

"All human beings are born free and equal in dignity and rights" (art. 1)

"Every person who works has the right to fair and satisfactory remuneration, which ensures him, as well as his family, an existence in accordance with human dignity" (art. 23.3).

CIDECSO 1966

"Recognizing that these rights derive from the inherent dignity of the human person" (Preamble)

FL de Bonn

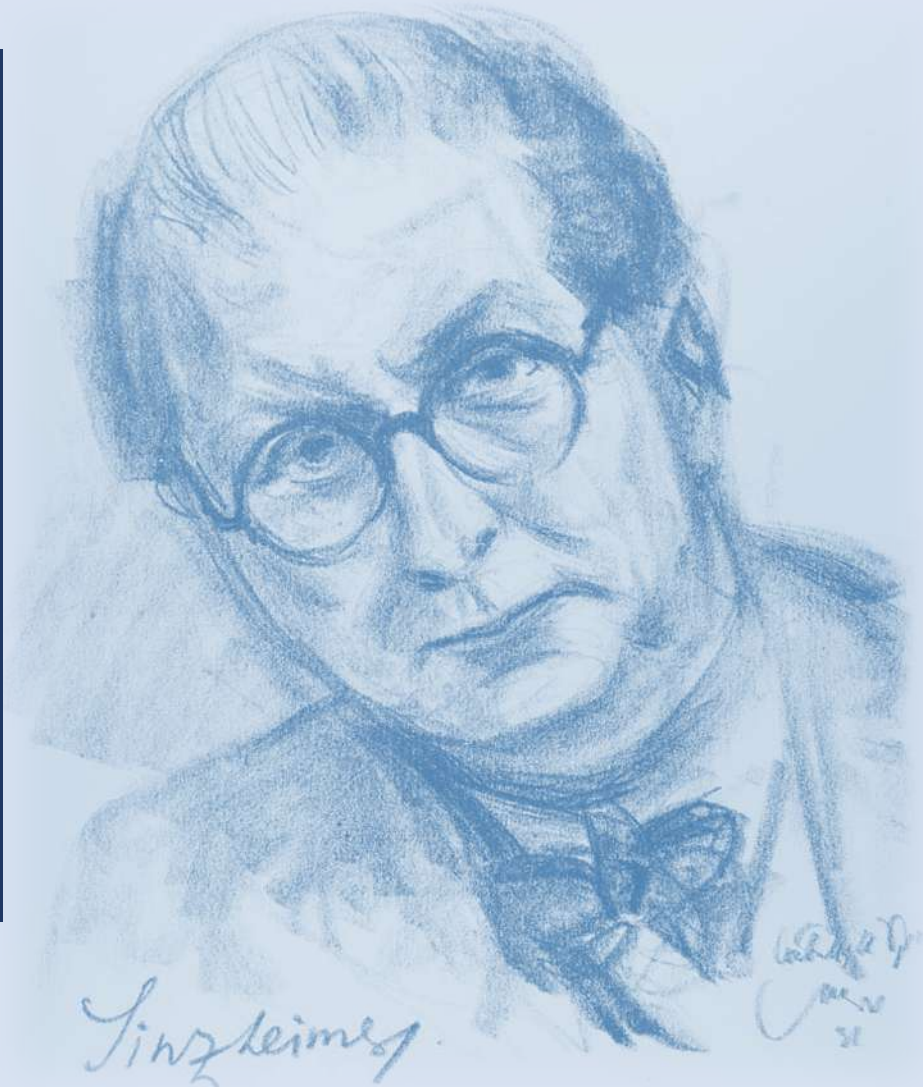
**"The dignity of man is intangible and it is the duty of all State authorities to respect and protect it"
(art. 1)**

V. THE CENTRALITY OF MAN IN LABOR LAW

-The Law has no dignity, it is not an end in itself, but always an instrument subordinated to an end: this end is the person, whom the Law must place at its center.

-Whoever provides the work does not give any patrimonial object, but gives himself. Work is man himself in a position to act. Work is a source of patrimony, but not a patrimonial source [...]. Heritage is the real basis of human life, it belongs to the world of things that has no end in itself and whose destiny is to be a means for man. The labor force is the personal basis of human life, it belongs to the world of spiritual beings, who have their own end, whose destiny, since it cannot be abstracted, is only an end for other people's means". Hugo Sinzheimer, The essence of labor law, 1927.

-"Man has dignity. Achieving such dignity is the special mission of labor law. His function is to prevent man from being treated the same as things. Whoever wants to understand the spirit of Labor Law must see this fundamental idea dominate in the multiple provisions it contains". or Sinzheimer, The essence of labor law, 1927.



V. THE CENTRALITY OF MAN IN LABOR LAW

- a) **REAL Dependence:** It is not the man who has the work tools he needs to work and survive.
- b) **PERSONAL Dependency:** The work cannot be separated from the personality of the worker and, therefore, the creditor of the work not only has the right to labor benefits, but also to dispose of the person forced to work.
- c) **COLLECTIVE Dependency:** In the measure, price and circumstances of the work, not only the will of the worker influences, but the factual and possible conditions of all the other workers who provide services with him or are willing to provide them instead are also decisive. of the. Man in labor law, 1930.

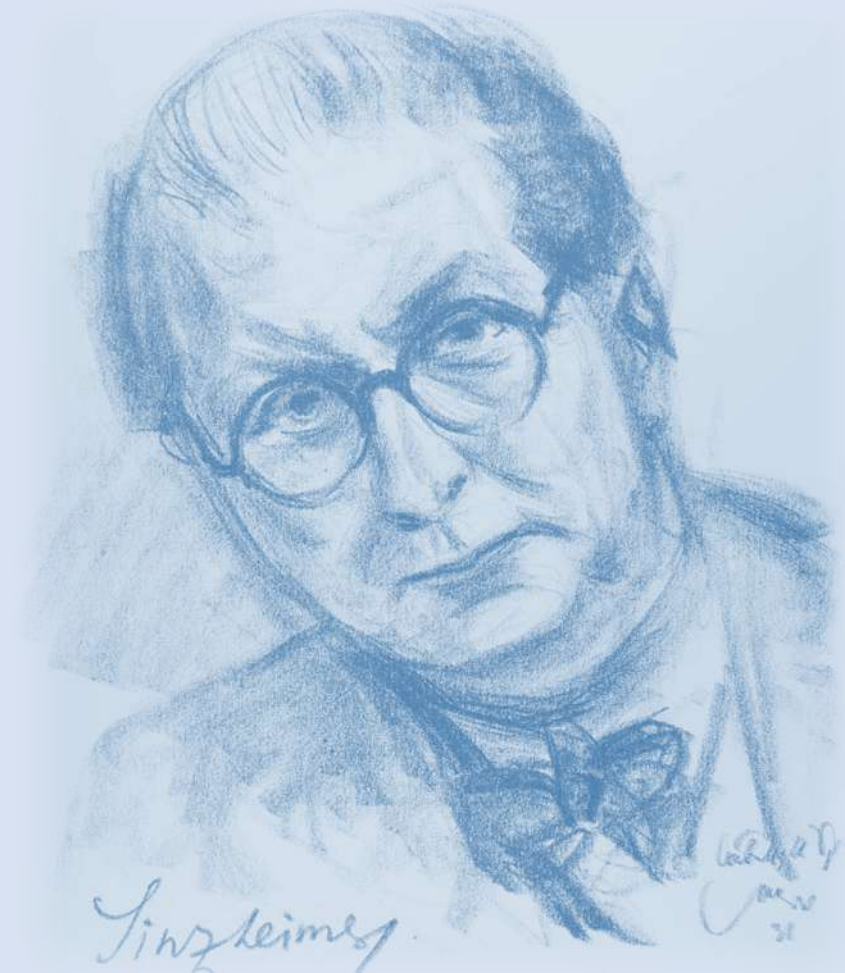
All these dependencies justify labor subordination, which instrumentalizes the person (attempts against their dignity) through the following logical sequence:

- The employer has the ability to dispose of the work.
- The work is inseparable from the person who executes it.
- Ergo, the employer has the worker.



SAW. HISTORICAL RESPONSES OF THE LAW TO THE PHENOMENON OF DEPENDENCY

-Whoever is confronted with the history of labor law will clearly see before him this drive towards human dignity. How did all this come about? At first, the man was just a goose. The slave was neither more nor less than a valuable cattle of the owner. The “free labor contract” made him a “person”. The person is an abstract being, so abstract that all men are the same, because he ignores his special social situation. The transition from the thing to the person was an extraordinary advance in the legal history of humanity. All men were made equal. All men were going to be legally capable of everything. All men could have all rights. The world was legally open to all men. But unfortunately, the social order persisted! Here appears the great void left by man's elevation from the world of things, to the world of people, where not spirits rule, but men of flesh and blood! The social order is something very different from the legal order. The social order



VI. RESPUESTAS HISTÓRICAS DEL DERECHO AL FENÓMENO DE LA DEPENDENCIA

- a) **BOURGEOIS CONCEPTION OF LAW:** Dispenses with dependency. He only knows people, or what amounts to the same thing, abstract individuals, detached from all social ties and who, as such, are equal, free and independent of each other”. Natural law conception of Law (what is the same for all). **CIVIL LAW.CONCEPCIÓN SOCIAL DEL DERECHO.**
- b) It does not dispense with the dependence of the working man, but rather reveals it, removing it from the free play of forces, subjecting the social situation on which such dependence is based to the norm. **LABOR LAW:** Its objective is to protect the working man from the social effects of dependency, which threaten his human existence.
- Actual dependency-----Social security
 - Personal dependency-----Labor rights
 - Collective dependency----- Collective law
- c) **CONCEPCIÓN SOCIALISTA DEL DERECHO DEL TRABAJO (DERECHO ECONÓMICO):** Aspira a hacer desaparecer la dependencia. Desea que el hombre socialmente dependiente le suceda lo que sobrevino al hombre independiente político: “que no sirva a ningún otro que al ser común en el propio sentido de la palabra” (Kant). Así diluye la oposición entre trabajadores y empresarios en una nueva unidad que permite prestar el trabajo a un sujeto social.

VII. THE PARTICIPATION OF THE WORKER IN THE ORIENTATION OF THE PRODUCTIVE PROCESS THAT HIS HUMAN DIGNITY DEMANDS

- Parallels between the process of political emancipation and the emancipation of work.

Social liberation	Labor liberation
<ol style="list-style-type: none">1) Public liberty has not freed man from duties and burdens. What he was released from was private duties and burdens. The public man is subjected, but not to private persons, but to a political community.2) They guarantee individual spheres of freedom formed by fundamental rights.3) Public liberty is liberty in the State. The free citizen is not a subject. It is a part of the community will.	<ol style="list-style-type: none">1) The release of work does not remove the individual from submission to rules.2) Guarantees fundamental rights in the employment relationship.3) The pending task is to achieve the community of the economy in which private persons no longer manage the economy as a business, but a common economic will, resting on diverse and community owners, who direct and manage the economy as a whole.



A DRAFT ECONOMIC CONSTITUTION (ART. 165 WEIMAR CONSTITUTION)

Art. 165 Weimar. The workers and employees will be called to collaborate, alongside the employers and with equal rights, in the regulation of the conditions of remuneration and work, as well as in all the economic development of the productive forces. Groups of both classes and their federations are recognized. To defend their social and economic interests, workers and employees will have legal representation in company workers' councils (Betriebsarbeiterräten) as well as in district workers' councils grouped by economic region, and in the Empire workers' council (Reichsarbeiterrat). The District Workers' Councils and the Workers' Council of the Empire, together with the representations of the employers and other interested classes of the population, will form District Economic Councils and an Economic Council of the Empire (Reichswirtschaftsrat), called upon to understand all questions of economic order and to cooperate in the execution of the socializing laws. The district and imperial economic councils will be constituted in such a way that all the important professional groups are represented in them in proportion to their economic and social importance.

The economic and social policy bills of fundamental interest must be submitted by the Government of the Empire to a report from the Economic Council of the same, before their presentation. The Economic Council of the Empire may also have the initiative of such bills, which, even if the Government does not endorse them, will have to present them to the Reichstag indicating its opinion. The Economic Council may defend its projects before the Reichstag using of one of its members. The workers' councils and the economic councils may be entrusted with powers of control and administration in their own matters. It is the exclusive competence of the Empire to regulate the organization and attributions of the workers' Councils and the economic Councils, as well as their relations with other autonomous social corporations.



CONCLUSIONS

- The recognition of human dignity requires a legal statute according to it.
- In labor relations, the treatment of human dignity requires special attention due to the triple dependency in which the working man finds himself (real, personal and collective dependency).
- Labor law attends to this reality, and establishes a legal statute that mitigates the effects of dependency, avoiding the reification of man.
- The fulfillment of this objective, to protect the dignity of the worker, involves making him participate in the orientation of the economic project in which he participates with his work.
- This participation is not achieved through the current collective bargaining systems, aimed at defending corporate interests.



THANK YOU SO MUCH FOR YOUR ATTENTION

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