

Original Paper

A “Legal Realism” at the Ministry of Labor (1932-1940): Inventive Translations and Multiple Agencies

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ABSTRACT

This article examines the translations and adaptations of elements of sociological jurisprudence and U.S. legal realism by Oliveira Vianna, a Brazilian jurist actively involved in labor regulation during the 1930s. Vianna’s work reflects a pragmatic approach aimed at bridging legal theory and bureaucratic practice within the Ministry of Labor, Industry, and Commerce. His self-styled “legal realism” served an instrumental form of authoritarianism. Through an analysis of legal opinions, legislative proposals, and theoretical writings, the article highlights the convergence between legal thought and governance strategies in Brazilian labor regulation. The translation of U.S. legal theories found expression in Vianna’s multiple theoretical and practical agencies – not as mere imitation, but as a form of “inventive translation” tailored to his normative agenda.

Keywords: Legal Realism; Legal Method; Oliveira Vianna; Inventive Translations; Brazilian Labor Law

Um “realismo jurídico” no Ministério do Trabalho (1932-1940): traduções inventivas e múltiplas agências

RESUMO

O artigo explora as traduções e adaptações de dispositivos da jurisprudência sociológica e do realismo jurídico estadunidenses por Oliveira Vianna, jurista brasileiro envolvido na regulamentação trabalhista durante os anos 1930. A obra de Vianna reflete uma abordagem pragmática voltada a aproximar teoria e prática burocrática no âmbito do Ministério do Trabalho, Indústria e Comércio. Seu autodenominado “realismo jurídico” serviu a um autoritarismo de caráter instrumental. Ao analisar pareceres jurídicos, projetos legislativos

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e escritos teóricos de Vianna, o artigo evidencia a convergência entre pensamento jurídico e estratégias de governança na regulamentação trabalhista brasileira. A tradução de teorias jurídicas estadunidenses expressou-se em múltiplas agências teóricas e práticas de Vianna, não como imitação, mas como “tradução inventiva” capaz de responder à sua agenda normativa.

Palavras-chave: realismo jurídico; método jurídico; Oliveira Vianna; traduções inventivas; direito do trabalho brasileiro

Un “realismo jurídico” en el Ministerio del Trabajo (1932-1940): traducciones inventivas y agencias múltiples

RESUMEN

El artículo explora las traducciones y adaptaciones de dispositivos de la jurisprudencia sociológica y del realismo jurídico estadounidense por Oliveira Vianna, jurista brasileño involucrado en la reglamentación laboral durante los años de 1930. La obra de Vianna refleja un abordaje pragmático enfocado en aproximar la teoría y práctica burocrática en el ámbito del Ministerio del Trabajo, Industria y Comercio. Su autodenominado “realismo jurídico” sirvió a un autoritarismo de carácter instrumental. Al analizar dictámenes jurídicos, proyectos y escritos teóricos de Vianna, el artículo evidencia la convergencia entre el pensamiento jurídico y las estrategias de gobernabilidad en la reglamentación laboral brasileña. La traducción de teorías jurídicas estadounidenses se expresó en múltiples agencias teóricas y prácticas de Vianna, no como imitación, sino como “traducción inventiva” capaz de responder a su agenda normativa.

Palabras clave: Realismo jurídico; método jurídico; Oliveira Vianna; traducciones inventivas; derecho laboral brasileño

In *Biographing Realist Jurisprudence*, Roy Kreitner (2010) proposes approaching realism from another angle: that of biographies. My proposal differs from his, but it departs from his conclusion that legal realism must be examined beyond its theoretical propositions.

In the Brazilian case, there are few works that have put into perspective the agenda, whether theoretical or practical, of the self-styled legal realism advanced by Francisco José de Oliveira Vianna¹, one of the main jurists who collaborated with the first Vargas government. What are the characteristics of his propositions regarding legal method? Were they confined to his theoretical works? Or, further, is it possible to draw parallels between

¹ From a general perspective, one can cite: Vieira (2010, p. 70), Gomes (1993), Bresciani (2005, p. 439-453), Boson (2021), Rosenfield (2022) and Guerra (2022).

the realism proposed “in the books” and the realism “in action”, borrowing from Roscoe Pound’s iconoclasm, in Vianna’s performance?

My focus, unlike Kreitner’s, will not be on Vianna’s biographical trajectory, although such an approach is promising for understanding how elements of his life contributed to his realist agenda. While this is not a biographical essay, I acknowledge that in analyzing the theory and practice of an agent, biographical elements inevitably emerge.

It is on the interrogation of the relationship between academic writing and bureaucratic practice – in terms of instrumental choices, methods, and artifacts – that I will concentrate. In other words, this is a study of the parallels between the theoretical proposal on legal method and the symbolic artifacts resulting from bureaucratic practice².

Vianna, born on June 20, 1883, in Saquarema, Rio de Janeiro, was one of the principal intellectual architects of labor legislation during the first Vargas government (1930-1945). After serving in the government of Rio de Janeiro, he was legal advisor to the Ministry of Labor, Industry, and Commerce (MTIC) from March 1932 to December 1940. His work took place during a period of great profusion of regulatory, supervisory, and institutional creation activities related to unionization and the labor market. Part of his work coincided with the period of the Estado Novo dictatorship, which, although officially launched in 1937, began its repression of the working class in late 1935 in reaction to the National Liberation Alliance (Werneck Vianna, 1978, p. 199).

His books *Problemas de Direito Corporativo* and *Problemas de Direito Sindical*, produced during his ministerial service, reflect the effort to align bureaucratic practice with what he considered the most advanced social legislation in the world (Bresciani, 2005, p. 437). These texts conveyed agendas that culminated in the 1939 decree-laws on the Labor Court and unionization. Although revisited by various studies³, *Problemas* has not received sufficient analytical attention regarding the legal realism advocated by the author.

In consideration of his bureaucratic activity, recent studies have focused on the actions of the *statemaker*⁴ in the 1939 projects. Reduced to these terms, his governmental role has been viewed in a restricted manner. Few studies have explored ministerial archives, legal opinions, legislative drafts, and reports by Consultant Vianna⁵. Regarding legal realism, I find no works correlating the theory of legal method and the jurist’s bureaucratic practice – a field still open for investigation.

² Concerning the scope of the “legal method”, I refer to the elements that Wells (1994) analyzed in Holmes.

³ The works of Luiz Werneck Vianna, Evaldo Vieira, Ângela de Castro Gomes, Vanda Ribeiro Costa, and Maria Stella Bresciani stand out. More recently, those by Fábio Gentile, Antônio Brasil Jr., Luciano Aronne de Abreu, and Melissa Teixeira.

⁴ Interesting works explore this facet of the jurist (Gomes, 2009; Brasil Jr., 2010).

⁵ An exception is the dissertation by Fontana (2022) and the articles by Moraes (1997) and Lima Filho and Cabral (2023), in which, however, the analysis does not focus on the theory of the legal method.

His participation in commissions tasked with drafting legislative bills, such as those on the regulation of work hours in commerce (1932), the Labor Code (1933), the reform of Retirement and Pension Funds (1934), the duration of rural labor (1934), and the Immigration Code (1934), still deserves proper consideration. His legal opinions covered a wide range of procedures, including labor disputes, immigration policies, public policy formulation, sectoral studies, and investigative inquiries.

The thread of analysis is the inquiry into the relationship between Vianna's legal realism and the devices of his "instrumental authoritarianism"⁶ in the 1930s. Regarding the features of the authoritarian agenda, I adopt Gentile's (2019) triad – anti-Marxist, nationalist, and corporatist-syndicalist. This characterization will be useful to advance one of the central points of my proposal: understanding how this triad is associated with an institutional space forged by a pattern of "regulated citizenship"⁷ and depends on the creation of legal arrangements anchored in a renewed theory and practice of legal method. Within these arrangements, I will emphasize realism as a project.

As for the intended endpoint of his instrumental authoritarianism – the liberal society – Vianna (1947) praised Anglo-Saxon democracies in several passages, emphasizing the civic qualities, political mentality, and consistent public opinion among the British and Americans⁸. At the same time, he criticized the unreflective importation of institutions typical of this universe, which he called the "Anglo-Saxon craze"⁹ (Vianna, 1947, p. 38). There was not, however, a refusal on his part to engage with institutional aspects of these legal cultures. Hence, a complex game of selection and exclusion emerges: if Vianna rejected the compatibility of American federalism with Brazilian politics, the same cannot be said for several other benchmarks – e.g., assumptions of sociological jurisprudence and legal realism, which will be explored in this article. My choice, therefore, to focus on interactions with American legal culture, is not arbitrary. As Gomes (1993, p. 45) emphasized, "the ideas of the new American sociological school are an essential part of the model through which Oliveira Vianna understood the making and interpretation of laws"¹⁰. It is also preliminarily important to contextualize that the comparison between Brazil and the United States is not unique to Vianna, but rather a recurrent topos in Brazilian social and political thought,

⁶ Santos (1998, p. 46-48), in an analysis I consider appropriate, classifies Vianna's project as "instrumental authoritarian", as he identifies in the work a defense of an authoritarian concentration of power in the State to build a liberal society, after which the authoritarian State could be overcome.

⁷ By "regulated citizenship", I refer to the concept developed by Santos (1998, p. 103-109), according to which an occupational stratification system was institutionalized between 1930 and 1934, structured around three pillars: professional regulation, the work card, and the public union.

⁸ Regarding the author's imaginary concerning Anglo-Saxon political culture, especially "individualism" and "groupism", see Teixeira (2018). For solidarism as a project, see Bresciani (2005).

⁹ Free transl. of the author: "coqueluche anglo-saxã".

¹⁰ Free transl. of the author: "as ideias da nova escola sociológica norte-americana são parte essencial do modelo pelo qual Oliveira Vianna entendia a fatura e a interpretação das leis".

appearing in authors from Tavares Bastos and Rui Barbosa to Sérgio Buarque de Holanda and Gilberto Freyre.

This article has three objectives: (a) to assess the appropriation processes of the assumptions of American legal realism and sociological jurisprudence in Vianna's theorization of legal method, challenging interpretations that regard it either as merely a copy of foreign influences or as an entirely isolated and idiosyncratic creation (*a jabuticaba*)¹¹; (b) to characterize legal realism in his theoretical production, relating it to the foundations of an instrumental authoritarianism; and (c) to analyze how the realist traits defended theoretically participated in the jurist's ministerial practice in the 1930s.

The text is divided into three parts. The first synthesizes the theoretical assumptions of sociological jurisprudence and American legal realism, situating them within the broader trend of the critique of legal formalism and conceptualism. The second identifies the elements of legal realism in Vianna's work, including elements of translational "reception" and intellectual creation. The third examines a set of legal opinions by the legal advisor, associating them with the theoretical work on legal method and its application within an instrumental authoritarian grammar.

Before proceeding, some caveats are necessary. I reject the interpretation that Vianna shaped his theoretical assumptions solely in adherence to the Vargas government. Elements of his realist conception of law were already under development in the 1910s and 1920s. His texts from that period already outline legal realism as a driving idea for law, expanded in the following decades.

In addition to books and articles in the press, this article examines intellectual artifacts somewhat sidelined by analyses: advisory opinions, legislative drafts, letters, interviews, lectures, and public appearances. The time frame will be delimited to the period from 1932-1940, considering the jurist's ministerial tenure, without excluding sources that intersect with the period.

This study is grounded in theoretical assumptions inspired by the history of political and intellectual thought, combining methods of discourse analysis, the study of institutional practices, and comparative approaches with foreign law. The selected sources – ministerial opinions, published texts, and legislative drafts – are privileged for allowing the observation of the interaction between normative elaboration, state intervention, and sociopolitical conceptions, offering concrete evidence of the jurist's practice and of his strategies for articulating technical knowledge, empiricism, and political programs.

The intense pace of activities during the chosen period was described by Vianna himself in a letter to Oswaldo Aranha, dated to the mid-1940s. In it, there is a self-reflection on his insertion into the bureaucracy:

¹¹ Here I adopt the figure of speech used by Corrêa (2016, p. 502), that of the "*jabuticaba*" as a representation of "our main national characteristics".

for almost twenty years, since 1926, I have been – first in the administration of my State; then in the federal administration – dispersing myself in public or administrative office activities, some of them extremely absorbing (for example, that of the MTIC Legal Advisory), with the almost complete abandonment of the guidelines I had set for myself in 1920, in the preface of *Populações* and away from my own temperament¹².

In the Other Hemisphere: Sociological Jurisprudence and Legal Realism

Although my analysis focuses on the reception of core ideas from the legal culture of the United States in the early decades of the twentieth century, the impact of anti-formalist critiques from the European context at the turn of the nineteenth to the twentieth century on Vianna is unquestionable. Thinkers such as Ehrlich and Kantorowicz (Germany), Santi Romano (Italy), and Gurvitch (France) emphasized legal pluralism, the internal incoherence of law, and the normative operations of social reality as critiques of formalism and of a purely state-centered, legislative conception of law. Slightly less critical, authors such as Duguit, Gény, Lambert, and Josserand¹³ also influenced him in advocating for a closer relationship between legal knowledge and the social sciences, as well as a social and collective perspective against liberal individualism (García Villegas, 2009).

Across the Atlantic, but still in the Northern Hemisphere, the critique of legal formalism was raised by theorists who impacted legal culture in the United States and various parts of the globe. The turn of the twentieth century was marked by social and economic challenges, such as intensified urbanization, the growth of corporations, and workers' demands for legal protection. Critiques of law spread across different social sectors, accusing courts of ignoring urgent social issues, favoring the powerful, and neglecting the public interest (Tamanaha, 2019, p. 2). Even before theorists systematically addressed these accusations, the practical contributions of Oliver W. Holmes, LeBaron Colt, Horace Lurton, and Melville Bigelow already imposed a genuinely critical understanding of dominant legal formalism.

In the early decades of the twentieth century, one of the most influential theorists in the academic critique of the legal field in the United States was Roscoe Pound of Harvard Law School. His 1906 lecture, *The Causes of Popular Dissatisfaction with the Administration of Justice*, harshly criticized legislators and legal professionals for disregarding the public sense of justice. Pound presented an implicit defense of a sociological approach to law, denouncing the gap between law and society:

¹² LIBRARY OF OLIVEIRA VIANNA, Niterói. *Carta a Oswaldo Aranha*, registro 1023.27/1957, [n.d.].

¹³ The naming of these authors is intentional, given the influence they exerted, as recorded in *Problemas de Direito Corporativo*.

The law does not respond quickly to new conditions. It does not change until ill effects are felt; often not until they are felt acutely. The moral or intellectual or economic change must come first. While it is coming, and until it is so complete as to affect the law and formulate itself therein, friction must ensue (Pound, 1964, p. 359).

His later writings expanded on this initial approach.

In 1907, Pound (1964) preliminarily defended a “sociological jurisprudence”, focusing on legal education. He criticized the dominant model, which ignored the effectiveness of laws and relied on outdated methods disconnected from popular thought. Legal education, he argued, should focus on concrete issues and actual decisions, analyzing the social conditions in which law operates in practice, rather than merely legal norms or court rulings. He stated:

Legal monks who pass their lives in an atmosphere of pure law, from which every worldly and human element is excluded, cannot shape practical principles to be applied to a restless world of flesh, and blood (Pound, 1964, p. 392).

According to him, law professors should be agents in creating a true “sociological jurisprudence” (Pound, 1964).

Later, he would systematize a set of propositions within his self-proclaimed “Sociological Jurisprudence”, contrasting it with a “Mechanical Jurisprudence” influenced by three schools he deemed sterile: analytical jurisprudence, natural law theory, and historical jurisprudence (Pound, 1908). In *Mechanical Jurisprudence*, he proposed ruptures from the dominant legal scene, influenced by William James’s instrumentalism and John Dewey’s pragmatism:

The sociological movement in jurisprudence is a movement for pragmatism as a philosophy of law; for the adjustment of principles and doctrines to the human conditions they are to govern rather than to assumed first principles; for putting the human factor in the central place and relegating logic to its true position as an instrument (Pound, 1908, p. 609-610).

Law should be judged by its outcomes, not by internal rigidity. Pound criticized technicality as an end in itself, derived from deductions and abstractions, proposing a “pragmatic and sociological legal science” aimed at addressing social emergencies.

Years later, between 1911 and 1912, he published the three-part *The Scope and Purpose of Sociological Jurisprudence*, presenting five distinguishing features of sociological jurists compared to others: (1) they focus more on the functioning of law than on its internal content; (2) they see law as a social institution subject to improvement; (3) instead of concentrating on sanctions, they prioritize the social purposes of law; (4) legal precepts are seen more as guides to achieving appropriate social outcomes and less as rigid molds; (5) there is a diversity of philosophical views among its adherents (Pound, 1912, p. 516).

After the first two decades of the twentieth century, key aspects of his work were carried forward by his interlocutors and followers, whether they were merely critics of legal formalism or also adherents of his pragmatic progressivism¹⁴. A generation of scholars, inspired by Holmes's functional and skeptical premises, broadened, from the 1920s onward, Pound's critiques of formalism in the American context, moving beyond the questions raised by sociological jurisprudence.

In a history marked by ruptures and internal divergences, the banners of Pound's *Sociological Jurisprudence* were, to some extent, appropriated by Karl Llewellyn, a professor at Columbia from 1925 to 1951. Although initially failing to give credit to Pound – something he himself would later revise¹⁵ – the Columbia professor, a leading figure of what he himself labeled in 1930 as “legal realism”, would accuse Pound of being timid in his critique. Alongside other scholars, Llewellyn gave shape to a sharper critical movement.

Rooted primarily at Yale, Columbia, and Harvard, and gathering authors from Llewellyn's generation, such as William O. Douglas, Thurman Arnold, Jerome Frank, and Felix S. Cohen, the movement known as realism created a kind of “academic torrent” with strong influence from the late 1920s to the early 1940s (Herget; Wallace, 1987, p. 434). Many of its representatives leaned politically left and served in Roosevelt's administration¹⁶.

In a widely influential text, Llewellyn (1931) laid out the foundations of the legal realism he proposed. His opening words are a manifesto against the prevailing attachment to conceptualism, formalism, and deductivism:

Before rules, were facts; in the beginning was not a Word, but a Doing. Behind decisions stand judges; judges are men; as men they have human backgrounds. Beyond rules, again, lie effects: beyond decisions stand people whom rules and decisions directly or indirectly touch (Llewellyn, 1931, p. 1222).

He was emphatic in stating that there was no school of realists or even a group with an official doctrine, but rather a profusion of viewpoints, interests, and fields of study: “They differ among themselves well-nigh as much as any of them differs from, say, Langdell” (Llewellyn, 1931, p. 1234). Recognizing the independent initiatives of authors considered realists, Llewellyn sought to highlight shared starting points: 1. The conception of law as fluid, in motion, and of judicial law-making; 2. The conception of law as a means for social ends, not as an end in itself; 3. The conception of society as in flux, even more rapidly than the law, such that there is a recognized lag between law and reality; 4. The relative

¹⁴ The case of Cardozo's acceptance of sociological jurisprudence is paradigmatic. For this history, see Tamanaha (2019).

¹⁵ Regarding the tumultuous relationship between Pound and Llewellyn, including the affectation of the distinction between sociological jurisprudence and legal realism, see Hull (1989).

¹⁶ Regarding the agenda of various realists, in political terms, see Kamp (1995).

separation between *Is* and *Ought* for purposes of study; 5. Distrust of traditional legal rules and concepts insofar as they purport to describe what courts or people are actually doing; 6. Distrust of the theory that traditional prescriptive rule-formulations are the heavily operative factor in producing court decisions; 7. The usefulness of grouping cases and legal situations into narrower categories; 8. Emphasis on evaluating law in terms of its effects and on the importance of identifying them; 9. Insistence on sustained and programmatic attacks on legal problems along any of these lines. Llewellyn acknowledges that the first, second, third, and fifth items are not unique to the so-called realists. He even admits that these figures were “Men more or less interstimulated – but no more than all of them have been stimulated by the orthodox tradition, or by that ferment at the opening of the century in which Dean Pound took a leading part” (Llewellyn, 1931, p. 1234). It is in the other items (fourth, sixth, seventh, eighth, and ninth) that he identifies the distinctive marks of legal realism. Anyone fitting these specifications can be considered a realist (Llewellyn, 1931, p. 1238).

Although Llewellyn denied similarities between legal realism and sociological jurisprudence, contemporary scholarship acknowledges important connections. Without disregarding the complexity of the comparison, Tamanaha (2019, p. 17-18) examines some of these similarities, highlighting: (1) Both were driven by reformist efforts – sociological jurisprudence by the progressives of the early twentieth century and legal realism by support for New Deal policies; (2) Both approached law in social terms, with a strong emphasis on empirical study; (3) Both shared the view of law as a means to social ends, prioritizing effects over legal form; (4) Both emphasized the role of courts and the creative function of jurisprudence; (5) Both regarded the social sciences as tools for promoting legal reform.

Tamanaha (2019, p. 18) also points out fundamental differences. First, while proponents of sociological jurisprudence, such as Pound, believed that law should identify and promote values, the realists rejected this idea. Second, the realists displayed deeper skepticism toward legal rules and judicial decisions. On the empirical front, the distinction lies in the approach: the realists frequently conducted scientific social studies of law, while the jurists of sociological jurisprudence remained largely theoretical.

Although the outline of differences could be expanded, this is a debate that exceeds the scope of this work. The emphasis here is on the tendencies and traits generally recognized as shared banners of both movements¹⁷, which are of interest for advancing the proposal of this study¹⁸.

Several points shared by the two movements would be creatively appropriated by Vianna, especially in the 1930s, in his writings on corporate and labor law, with direct

¹⁷ Rumble (1965, p. 566) even understands legal realism as “an unfolding of sociological jurisprudence”.

¹⁸ The critical reception of Vianna overlooked an adequate framing of the claims made by these movements. Vieira (2010, p. 70), for example, summarized the “American sociological school of law” as a “disregard for the norm, reducing law to a set of facts”. Simplifications such as this hindered a more in-depth investigation of the influences.

references to authors from these movements. As Gomes (1993, p. 49) noted, the choice of the American context “exemplifies the reaction against the extreme formalism that had until then characterized public and constitutional law”. The next section will examine the “inventive translations” carried out by Vianna, highlighting the main traits he self-identified as being part of his legal realism.

In the Brazilian Legal Field, A Self-Proclaimed Realist

In an exercise of self-classification, Vianna describes his theoretical output in the legal field as “realist”. Characterizing his realism is the goal of this section. Some preliminary remarks are important. Although my emphasis is on the influence of American sociological jurisprudence and legal realism, I do not overlook that theoretical frameworks from other parts of the world also exerted an impact on the author. Vianna was an avid reader of works from diverse contexts, from the United States to southern Europe, including New Zealand and Romanian literature. An example of this is found in his conception of Labor Justice, which, in addition to Italian influences, incorporated elements – topically and selectively – from other legal orders, such as Weimar Germany, post-1848 France, and early twentieth-century Australia and New Zealand (Silva, 2010). His corporatist project, adapted to Brazilian conditions, also reflects an “eclecticism of sources”, whose “basic point of reference” revolves around three authors – Manoilescu, Perroux, and Panzini – drawing on various European corporatist influences, the American sociological school of law, and social Catholicism. In many respects, the American production with which he engages is situated within a transnational context of legal renewal.

It should also be noted that Vianna does not fully adhere to the tenets of American legal realism. He uses the term “realism”, on the one hand, primarily to reject conceptualism and formalism, and on the other, to mobilize aspects common to sociological jurisprudence and American legal realism. Indeed, a close analysis of his work positions him closer to sociological jurisprudence than to legal realism.

Finally, his relationship with such movements is not one of simple transplantation¹⁹. There is an “inventive translation”²⁰ of foreign influences. One observes a fusion of influences in his work: alongside American, French, and German trends critical of formalism, he adds contributions from Italian corporatists, such as Mazzoni’s realism (1934) and Maggiore’s

¹⁹ Although he uses the term “transplant”, the author acknowledges that the adaptation of foreign legal institutions involves a complex process of selection, integration, and local idiosyncratic factors, such as cultural ones (Vianna, 1943b, p. XVII). On the impossibility of legal transplants, see Legrand (1997).

²⁰ For the concept of “cultural translation”, which I adopt, see Duve (2014). The reasons for the inventive character I attribute to it will be further developed below, in dialogue with the “innovative attributes” identified by Vieira (2010, p. 30).

(1926) critique of the legal method, grounded in an “*indirizzo sociologico*” connected to corporatist institutions.

From the standpoint of the institutional context, Vianna adjusted foreign theories and models to a localized universe²¹, with a ministerial organization, union regulation, and Labor Justice, for instance, that, although shaped by foreign influences, bore its own distinctive features (Silva, 2010). Moreover, his work was crafted in a context outside common law – a system he himself criticized regarding the dynamics of *stare decisis* (Vianna, 1991, p. 161) – and within a world of labor regulation and structure markedly different from that of the United States (Lothian, 1986). Theoretical elements from sociological jurisprudence and American legal realism were reworked by Vianna to respond to local problems and serve his instrumental authoritarianism, linked to a matrix of “regulated citizenship”²², which encompassed minimal bases of social welfare²³.

Vianna’s claim to realism does not escape, but rather is fundamentally rooted in, the national references that shaped his thought – such as Sílvio Romero’s sociological culturalism, Euclides da Cunha’s portrayal of Brazil in *Os sertões*, the national modelers like Capistrano de Abreu, and Alberto Torres’s political realism (Boson, 2021). In this sense, even though this article focuses on the correlations with the American legal field, it is important to emphasize that such a dimension must be understood as complementary to the comprehension of his legal work, and not as the foundation of his social and political thought. Therefore, starting from the assumption of a critique of legal transplants in a comparative perspective (Legrand, 1997), the key of imitation is already set aside.

It is time to present Vianna’s claims regarding a realist agenda for law and to interrogate them within the complex interplay of rereading, adaptation, and creative translation of foreign trends, especially regarding the posited relationship between law and reality and the resources mobilized through various agencies.

Knowledge of the Surrounding Reality

One of the main hallmarks of the influence of sociological jurisprudence and legal realism on the work of the Brazilian jurist lies in the defense of bringing empirical knowledge of

²¹ Such is the case of the territorial organization of labor unions: in 1941, Vianna (1943) proposed the reception of elements from the Italian union model, with adjustments to Brazil’s territorial extent.

²² This interpretive key was presented by Santos (1998).

²³ The promotion of social rights, especially labor rights, predates his role at the MTIC. In 1916, he praised the book *Justiça e assistência* by Ataulpho Alves, which focused on social assistance. In *Problemas de política objetiva*, he advocates for social legislation as a means to integrate the masses into the social and political structure. Influenced by social Catholicism and corporatism, as well as by Alberto Torres, Vianna also draws inspiration from Pound, Cardozo, and Brandeis to argue for state regulation of the economy and the instrumentalization of law for social welfare.

social reality closer to the creation and application of law. Vianna (1938b, p. 29) criticized the Brazilian jurists of his time, whom he described as detached from social facts and the social purpose of norms. He selected as their antipodes the praxis-oriented and conceptualist jurists, such as Joaquim Ignácio Ramalho and Francisco de Paula Baptista.

The theme of empirical knowledge of national particularities assumed a certain prominence within the intellectual context of the crisis of liberalism in the 1920s. Contemporary authors, such as Gilberto Amado, shared concerns similar to Vianna's regarding the need to adapt law and politics to the specificities of the country. Recent research – such as the collection organized by Viscardi and Gasparetto Júnior (2023), as well as the works of Werneck Vianna (1997) and Santos (1970) – highlights this intellectual milieu and the national influences that also shaped Vianna's thought.

The claim to a realist stance, in turn, runs through the long duration of national history, finding in authors close to Vianna, such as Silvio Romero and Alberto Torres, formulations that directly inspired him. His criticism of jurists for their lack of empirical knowledge of reality is, above all, grounded in his reading of these works, more than in any other influence.

In the 1910s, he criticized the “archaic type of old judge” bound to outdated doctrines and to the literal application of the law, advocating instead for an ideal type of “sociologist” judge²⁴. In the 1920s, in a critique primarily directed at Rui Barbosa, he attacked the “utopian idealism” of foreign normative projects unadjusted to Brazilian reality, a stance articulated in *O idealismo da Constituição* (published in 1927). In the 1930s, he broadened his reflection, arguing that jurists must construct law for concrete cases, considering social realities and the public interest (Vianna, 1938b, p. 12).

For the task of constructing law, Vianna (1938b, p. 16-17) cites Justice Louis Brandeis, in *Adams v. Tanner* (1917), as a prototype. Brandeis had defended the constitutionality of a law prohibiting private employment agencies from charging fees, basing his argument on empirical studies showing that such agencies constituted a real means of exploiting the unemployed working class. By contrast, Justice James Clark McReynolds had declared the law unconstitutional, relying solely on doctrine and jurisprudence advocating for freedom of commerce and profession guaranteed by the Constitution. For Vianna, McReynolds made the mistake of separating the Constitution and society. Law, he argued, must be interpreted vitally, as proposed by Holmes and Brandeis, who viewed the Constitution as a “living law”, in opposition to the logical-grammatical method of Fuller and Sutherland (Vianna, 1938b, p. 19). Laws, therefore, should be interpreted flexibly, considering the social context and the public interest. In a later article, Vianna²⁵ expands the roster of archetypal jurists: Stone, Cardozo, Frank, Llewellyn, Pound, Cohen, Frankfurter, and Freund.

²⁴ VIANNA, Oliveira. Justiça e assistência. *O Paiz*, Rio de Janeiro, ano XXXIII, n. 11.724, 12 nov. 1916, p. 1.

²⁵ VIANNA, Oliveira. Brandeis e o seu americanismo. *Correio da Manhã*, Rio de Janeiro, ano XXXVIII, n. 13.610, 21 mar. 1939, p. 4.

Vianna considers jurists from diverse schools, such as Pound and Llewellyn, emphasizing their convergences rather than their particularities, treating them as representatives of the American “sociological school”, which he characterized by the affirmation of social reality as the foundation of legal interpretation. Although his praise of both authors is undifferentiated, Vianna aligns more closely with Pound regarding the weight attributed to statutes²⁶. The Brazilian jurist does not deny the autonomy of law, as does Pound, advocating for its reinterpretation in light of social reality. Drawing inspiration from Mazzoni (1934), he states that law must act as a translator of social reality (Vianna, 1938b, p. 26). In practice, however, Vianna’s concretizing bias was limited: his authoritarianism operates with ideal types that, though posited as realistic (for him, here, “adequate to the milieu”), ignore preexisting social facts. This is the case with a unionism organized by decree, which does not recognize social organizations not aligned with the terms defined by the State (single, by professional category, pyramidal, etc.). Here, law appears not as a translator but, to some extent, as an articulating instance of fictions that contrast with, collide with, or fail to recognize social facts.

Furthermore, Vianna (1951, p. 173) believed that law must represent “the moral conscience” of the people and that judges should seek to reflect “what the community is concerned with or what public opinion considers just or reasonable”²⁷ (Vianna, 1938b, p. 221). These assertions once again bring him closer to Pound and set him apart from Llewellyn regarding the relationship between law and morality or between law and values.

In Vianna’s work, the call to knowledge of reality appears in various forms, and although it may be subject to critique for its limited practical implementation, it nonetheless produced concrete outcomes. In ruling on an appeal by the Companhia Nacional de Seguros de Vida Sul América, which debated the classification of brokers, he expressed discomfort with the lack of empirical data²⁸. Consequently, he himself conducted an inquiry to investigate the working conditions of brokers, identifying three types of employment relationships based on the presence or absence of subordination, signaled by the predominance of fixed compensation in the contract-reality²⁹. In another opinion, regarding a claim for job security by an employee, he argued that Labor Justice could not apply the same criteria as civil law; it was incumbent upon the labor judge to understand reality, supplement evidence, and adjudicate based on indications³⁰.

²⁶ In *Problemas de Direito Corporativo*, it is stated that the labor judge “must always act *intra legem*, within the limits of laws and regulations” (Vianna, 1938b, p. 116). Free transl. of the author: “deve sempre se mover *intra legem*, dentro dos limites das leis e regulamentos”.

²⁷ Free transl. of the author: “o que a comunidade interessa ou a opinião pública julga como justo ou razoável”.

²⁸ The opinion is dated 13 oct. 1938. The appeal sought to overturn a decision that had classified all insurance agents as employees.

²⁹ LIBRARY OF OLIVEIRA VIANNA, Niterói. *Parecer D.G.E. 3.029-1938 - Cia. Nacional de Seguros de Vida Sul América recorre de ato do IAPC*, 1938.

³⁰ LIBRARY OF OLIVEIRA VIANNA, Niterói. *Parecer D.G.E. 18.433-1937 - Otaviano Macedo contra*

Legislative drafting also received sociological undertones: (1) politicians and jurists should craft norms in accordance with “organic idealism” – antagonistic to liberal, socialist, communist, and anarchist solutions (Vianna, 1939); (2) the drafting of laws should consider public and social interests to ensure their effectiveness; (3) laws must respect the distinctions among legal areas, because between them there are notable differences in subjects and matters³¹; (4) the legislator-jurist must assess constitutionality in advance based on the specificities and social consequences of reforms, in light of a “living Constitution” (Vianna, 1938b, p. 19); (5) the need for legislative delegation to public agencies.

In his terms, delegations of regulatory powers were justified due to the slowness of parliament and its disconnection from the practical problems of public administration (Vianna, 1938b). Examples of delegations came from American administrative agencies with discretionary normative and adjudicatory powers. Responding to criticisms from Waldemar Ferreira, based on the non-delegability rooted in the strict separation of powers, he cited the precedents *Chicago, Milwaukee and St. Paul Railway Company v. Minnesota* (1890) and *Buttfield v. Stranahan* (1904) from the U.S. Supreme Court, as well as Edward S. Corwin’s *The Twilight of the Supreme Court* (1934) and Freund’s *Administrative Powers over Persons and Property* (1928), which validated delegation under the argument of greater efficiency.

Vianna’s proposal, in Silva’s (1998, p. 129) synthesis, is that “technical competence gradually replaces parliamentary competence”³², with social scientists being the most capable of objectively deciphering reality and proposing solutions suited to the milieu (Silva, 1998, p. 87). Technocracy should prevail in the creation and application of laws, through technical councils and ministerial commissions. There is a belief that the state’s efficiency in relation to reality depended on alignment with the laws of social science.

The intention to narrow the relationship between law and other social sciences was reflected in his legislative projects, such as the Regulation of the National Department of Labor³³, which provided for social research in the department’s three thematic sections: social and labor conditions; social assistance and welfare; and hygiene, safety, and labor statistics. The results would support legislative cooperation. Still within the Department’s scope, the creation of a Social Museum was envisioned, with a specialized library, social archive, and journal on Brazilian social issues. Inspired by Argentine and Uruguayan models, the Museum would be a “center of investigative initiatives” on economic life, including labor and the popular classes³⁴. Although the Museum was

Companhia Lloyd, 1938.

³¹ Based on this differentiation, the author proposed a Labor Court with new categories, institutions, and concepts. Cf. Vianna (1938b, p. 75).

³² Free transl. of the author: “a competência técnica vai substituindo a competência parlamentar”.

³³ LIBRARY OF OLIVEIRA VIANNA, Niterói. *Projeto de regulamento do Departamento Nacional do Trabalho*, 1932.

³⁴ VIANNA, Oliveira. O Ministério do Trabalho e a criação no Brasil do Museu Social. *O Jornal*, Rio de

partially implemented in 1939, the publication of the journal – the *Boletim do MTIC* – had already begun in 1934.

Social Groups Produce Law

Vianna proposed replacing the exclusively legal, impersonal, and formalist juridical structure of the First Republic with another that explicitly recognized the power of social groups in the creation of legal norms. His legal realism supported syndical-corporatism and rejected methodological formalism and individualism, engaging with European authors (Gentile, 2019; Vieira, 2010; Bresciani, 2005; Gomes, 1993) and drawing parallels with the New Deal (Teixeira, 2018).

In his writings, there is an argument regarding the anachronism of Brazilian law, tied to the individualist principles of Roman law, and a defense of its overcoming through a reorientation of the sources of positive law. He was inspired by the works of Del Vecchio, Geny, and Ehrlich, who, despite their differences, converged on the idea of a plurality of legal sources beyond state law. Specific social groups should have the power to create legally recognized norms, reflecting law as a social practice, not merely a product of abstract reason (Bresciani, 2005, p. 445).

But which groups was Vianna referring to? There is precision in the identification: “social groups and (...) organized collectivities, living within the State itself”³⁵ (Vianna, 1938b, p. 22). In this chapter of his work, there is a reference to the need for the legal recognition of labor unions as legitimate creators of legal norms, a fundamental step in his syndical-corporatism. He justified this defense based on the choices made by Decree No. 21,761 of 1932, which institutionalized collective agreements in Brazil. The Labor Court project, led by him, went further, granting the Court the authority to extend collective agreements. To support this measure, Vianna (1938b, p. 58-85) argued for the homology between collective agreements and normative rulings as sources of law, rejecting their status as mere contractual clauses. What was at stake was the controlled systematization of collective sources.

Also at stake was the defense that, within the State (Institutes such as the Sugar and Alcohol Institute; parliamentary representation; mixed commissions; and the Labor Court), social groups should be represented, as long as they were framed within legally authorized provisions. The discourse refers to corporate organizations capable of integrating professional and economic representations into the State, which should recognize them: “because all these organizations were already constituted, already functioning, already living before the

Janeiro, ano XII, n. 3.709, 14 dec. 1930, p. 1.

³⁵ Free transl. of the author: “grupos sociais e (...) coletividades organizadas, vivendo dentro do próprio Estado”.

State recognized them and called them to its side as collaborators in its functions”³⁶ (Vianna, 1938b, p. 62). In practice, however, the State of the 1930s not only failed to recognize but also suppressed preexisting collective associations, as post-1931 legislation imposed strict criteria for the recognition of unions. Still within the realm of practice, studies have pointed to the contrast between the discourse of corporatism and its concrete experimentation (Cardoso, 2011), marked by an asymmetry between employers and workers in accessing decision-making centers, prioritizing the former. In various passages, a “bipartite sectoral corporatism was consolidated, creating arenas of negotiation between economic and state elites around specific policies”³⁷ (Diniz, 1998, p. 16).

In the spaces where they were included, the groups were admitted within the limits authorized by heteronomous legislation. A restrained, though not negligible, recognition of representative groups of capital-labor involved categories (collective agreements), economic sectors (institutes), or diverse segments (chambers and administrative commissions). All of this must be nuanced by the authoritarian state control over unions, conveyed in Vianna’s writings and in the political practice of the 1930s, marked by the model of union unicity under the tutelage of the MTIC. For this reason, Vianna’s syndical-corporatism should be considered “state-centered” (Rodrigues, 2009).

His aims were resistant to conflict, dissent, and pluralism. They were associated with ideals of unity and homogenization, through collaboration, national interest, and anti-Marxism, under the “power of control, discipline, and guidance of the State”³⁸ (1943, p. 139). In an opinion, Vianna summarized: “As the Ministry of Labor, it is also logically the ministry of professional activities, of the worker as a class: therefore, it is responsible for directing professional organizations”³⁹.

The formula he proposed combined political centralization and functional decentralization. The autonomous organizations, under syndical-corporatist representation, would receive fractions of legislative, executive, and judicial powers. The labor courts, with class-based representation, besides resolving collective disputes *erga omnes*, would create general norms through normative power and exercise broad inquisitorial and *ex officio* powers, functioning as corporations integrated into the State.

To defend the normative power of the Labor Courts, Vianna (1938b, p. 90) compared them to New Deal institutions – “the most beautiful model of democratic organization in

³⁶ Free transl. of the author: “porque todas estas organizações já estavam constituídas, já funcionavam, já viviam antes que o Estado as reconhecesse e as chamasse para o seu lado, como colaboradoras das suas funções”.

³⁷ Free transl. of the author: “um corporativismo setorial bipartite, criando-se arenas de negociação entre elites econômicas e estatais em torno de políticas específicas”.

³⁸ Free transl. of the author: “poder de controle, disciplina e orientação do Estado”.

³⁹ LIBRARY OF OLIVEIRA VIANNA, *Parecer - competência do Ministério da Agricultura em matéria sindical rural*, [n.d.]. Free transl. of the author: “como Ministério do Trabalho, ele é também logicamente o ministério das atividades profissionais, do trabalhador como classe: portanto, a ele a direção das organizações profissionais”.

the world”⁴⁰ – avoiding accusations of fascism leveled by Waldemar Ferreira⁴¹. He cited the National Labor Board and other agencies focused on labor relations, which held regulatory powers within their areas of competence. To reconcile normative power with democratic experiences, he also referenced the legislative delegation to administrative agencies in countries like Australia, New Zealand, Denmark, and Norway, but his greatest emphasis was on the New Deal (Teixeira, 2018).

Pragmatism

Pragmatism is a transversal idea in his work – in legal interpretation, in the choice of social theories, and in sociological observation. In the 1920s, he stated:

in the face of any and every system of doctrines, social, legal or political, my attitude is always pragmatist. These systems, these doctrines are only valuable to me by their results: if good, the doctrine is good; if bad, the doctrine is bad (Vianna, 1942, p. 113)⁴².

Vianna (1938b, p. 26) considered Brazilian classical dogmatics to have failed, incapable of serving social interests and resolving the political and legal problems of modern society in Brazil. Legal responses, both in the creation and application of laws, should be grounded in practical consequences, considering social purposes and the interests of administration. Legal dogmatics is understood as an instrument, not an absolute value.

His opinions reflected this consequentialism. The legislative choices he proposed were accompanied by conjectures about what would happen if a different solution were adopted, as in debates with Catholics on union pluralism, with FIESP on federations, and with Waldemar Ferreira on the normative power of the Labor Court⁴³. In one opinion, he favored the dismissal of a negligent employee, justifying it by the need to maintain the operations of a company dependent on service regularity, even without explicit legal provision for such punishment⁴⁴. This example reveals a normative logic of duties of collaboration with the company, objective good faith, loyalty, and workers’ disciplinary subordination. Instrumentally, law is mobilized to accelerate the process of “disciplining labor” underway in the 1930s (Paranhos, 2007, p. 16).

⁴⁰ Free transl. of the author: “o mais belo modelo de organização democrática do mundo”.

⁴¹ Waldemar Ferreira, a liberal congressman from São Paulo, harshly criticized Vianna’s Labor Court project.

⁴² Free transl. of the author: “diante de todo e qualquer sistema de doutrinas, social, jurídico ou político, a minha atitude é sempre pragmatista. Estes sistemas, estas doutrinas só me valem, pelos resultados: se bons, a doutrina é boa; se maus, a doutrina é má”.

⁴³ All these disputes are described in *Problemas de Direito Sindical*.

⁴⁴ LIBRARY OF OLIVEIRA VIANNA, *Parecer D.G.E. 16-646-935 – Pedido de avocação do processo de Romão Rosa*, 1936.

Pragmatism permeated his institutional conception: corporate autarchies with regulatory power were also defended under the argument of greater efficiency. In contrast to slow-moving parliaments legislating on abstract problems, autarchies would offer greater speed and effectiveness in addressing concrete interests, meeting the “principle of service efficiency”⁴⁵ (Vianna, 1938b, p. 68).

It is crucial to understand that the circumstantial goals to which Vianna refers were not entirely undefined. The central issue inaugurated in *Populações* was insolidarity. For the jurist, it was necessary to put law at the service of overcoming social disintegration; affirming nationality; combating socialism, anarchism, and communism; and intervening in the racial question. Law itself is an instrument of his “instrumental authoritarianism”.

“Legal Standards” for Lawmaking

The topic of “legal standards” had been raised by Roscoe Pound in *Juristic Science and Law* (1918) and at a conference of the American Bar Association (1919)⁴⁶. The Harvard dean reactivated standards as legal precepts to be mobilized. He argued that the obsolescence of law was linked to jurists’ attachment to a mechanistic view, restricted to fixed and inflexible rules (Pound, 1918, p. 1060). For him, law is more complex and involves three types of precepts: rules, which foresee detailed consequences for specific situations; principles, which serve as a basis for legal deductions and the resolution of antinomies and gaps; and standards, which are “legally defined measures of conduct” (Pound, 1924, p. 47-48), such as “due care”, “fair conduct” or “reasonable service” in public utility law. Standards allow for variable application and contain a strong moral element: “The legally defined measure of conduct, applied by or under the direction of a tribunal is as much a part of the machinery by which organized society secures interests as the precise rules which it uses for the same purpose in other situation” (Pound, 1918, p. 1061).

Pound’s discontent with the rigidity of the law echoed in Vianna’s writings, a critic of the Brazilian legislator’s tendency toward excessive detail, inflexibility, and restriction of judges’ decision-making power. Commercial, civil, and administrative laws, even after the Estado Novo, were criticized: “everything in them is foreseen, regulated, counted, fixed, with minuteness, precision, exactness – no room is granted to the autonomy and free movement of the law’s enforcer”⁴⁷ (Vianna, 1943, p. XXI). Although initiatives such as Article 114 of the 1939 Code of Civil Procedure and Article 5 of the 1942 Law of Introduction to the Rules of Brazilian Law expanded judges’ decision-making power, he considered them timid.

⁴⁵ Free transl. of the author: “princípio da eficiência do serviço”.

⁴⁶ This refers to *The Administrative Application of Legal Standards*.

⁴⁷ Free transl. of the author: “tudo nelas está previsto, regulado, contado, fixado, com minúcia, justeza, exação – margem nenhuma franqueiam à autonomia e aos livres movimentos do aplicador da lei”.

His critique became an agenda: legislators must create rules that do not prevent judges and administrators from exercising a certain degree of freedom for regulation and individualization through “accommodation, adjustment, and equity”⁴⁸. Inspired by Pound and Llewellyn, he advocated for the adoption of “legal standards” that would establish only general criteria and guidelines, allowing decisions guided by “prudence” and “common sense”, enabling equitable adaptations and adjustments⁴⁹.

Referring to Articles 511 to 578 of the CLT and the standards they established, he claimed that judges could bring into the decision-making realm

the palpitations of social life, expressed in its fundamental realities: mesological and ecological realities; anthropogeographical realities; economic realities; cultural realities; in short, the material and spiritual realities of the people to whom they are applied⁵⁰.

In *Problemas de Direito Corporativo*, his ambition was already clear: to endow labor courts with the authority to define in practice the scope of standards such as “reasonableness”, “proper conduct”, “necessary precaution”, “commercial loyalty”, and “unfair competition” (Vianna, 1938b, p. 55). His program, close to Pound’s (Ouedraogo, 2013, p. 159), was to produce legislation with legal instruments that were flexible and adaptable to social transformations, balancing norm and judicial discretion, without transgressing the principles of legality and supra-legality (Vianna, 1938b, p. 116).

This discretion was not constrained solely by law. Vianna and Ministry technicians worked to define the interpretive horizons of judges not only by drafting standards but also by orienting interpretive permissions according to authoritative ideals. Nationalism, anti-Marxism, and corporatism guided the recommended content. These ideas appeared in his books, in the 1937 Commission for Propaganda against Communism, and in public speeches against “exotic theories”, such as anarchism, socialism, and communism (Vianna, 1951, p. 2-59).

The 1939 unionization law exemplifies the instrumentalization of the technique of standards to expand the state’s control over unions. A series of provisions typical of an open normative model – standards and indeterminate concepts – were used, allowing the Minister of Labor to interpret what would be the “peculiarities of certain professions” (Art. 7), the “most representative association” (Art. 9), the “misconduct” of leaders (Art. 19), and the “lack of suitability” to veto unionization (Art. 30).

⁴⁸ VIANNA, Oliveira. Os “standards legais” e a nova técnica legislativa. *A Manhã*, Rio de Janeiro, ano III, n. 648, 17 sep. 1943, p. 4.

⁴⁹ Ibidem, p. 4-6.

⁵⁰ Ibidem, p. 6. Free transl. of the author: “as palpitações da vida social, expressas nas suas realidades fundamentais: realidades mesológicas e ecológicas; realidades antropogeográficas; realidades econômicas; realidades culturais; em suma, realidades materiais e espirituais do povo, a que se aplicam”.

Another functional provision within the authoritarian cycle stands out. The 1939 law organized union representation by identical, similar, and related professions, without defining “similarity” and “relatedness”, delegating regulation to the MTIC. In 1940, Vianna submitted to the Minister the draft of Decree-Law 2,381 to regulate these standards. The Decree established a framework of activities and professions, subject to revision every four years (Art. 7). This periodic review granted broad power to the administrative authority, incorporated into the CLT and criticized during the post-1988 redemocratization.

The Sociological Work of the 1920s and Legal Realism

It is not possible to consider Vianna’s self-styled legal realism without associating it with the formulations of the sociologist of the 1920s. Central issues of *Populações*, published in 1920, appear in the *statemaker*’s agenda of the 1930s. This makes Vianna’s legal realism even more creative. There is an authorial metalinguistic aspect: the jurist evokes the sociologist’s formulations.

In works from the 1920s, native contributions to national transformation were at issue (Vianna, 1939). A clannish and kinship-based society required an “organic” policy with a “realist” foundation⁵¹. Sociological work should precede the work of the jurist⁵². State constructivism should adjust to society, recognizing social practices and mentalities as an “adjusting” force of interventions (Gomes, 1993, p. 46). Sociological conclusions, especially regarding insolidarism, supported the defense of political centralization and a strong State, capable of inducing the aggregation of the people (Vianna, 1939). To this defense, a corporatist-unionist repertoire was forged throughout the 1920s and 1930s.

The relationship between the sociologist of the 1920s and the jurist of the 1930s has already been explored (Boson, 2021; 2022), so I will be brief on this point. I wish to make only three remarks. First, the sociological investigation produced two conclusions mobilized in the 1930s: Brazilian people’s insolidarism and aversion to class struggle⁵³. Second, conclusions on race and eugenics influenced ministerial interventions in the 1930s: Vianna (2005, p. 175) had argued for the inferiority of Indigenous and Afro-descendant peoples, defending white superiority and a “regressive selection of ethnic atavisms”⁵⁴. In *Evolução do povo brasileiro*, there is a progressive view of whitening through miscegenation

⁵¹ Regarding the limitations on the implementation of a “realist” practice by the sociologist, cf. Carvalho (1991) and Lamounier (2014).

⁵² VIANNA, Oliveira. A Legião Revolucionária de S. Paulo. *Correio da Manhã*, Rio de Janeiro, ano XXX, n. 11.112, 11 mar. 1931, p. 2.

⁵³ From this, one extracts a prescription opposed to liberalism, anarchism, and socialism, mobilizing the natural background of the people in defense of corporatist elements in the 1920s.

⁵⁴ Free transl. of the author: “seleção regressiva dos atavismos étnicos”.

and Aryan immigration (Vianna, 1938a, p. 207-216). Part of his ministerial activity focused on immigration control, seeking to avoid “poorly selected immigration”⁵⁵ (Bresciani, 2005, p. 289), highlighting a concern with racial fusibility and its correlation with national integration. Third, since *Populações*, the vastness of the national territory and its integrative challenges are announced. At the Ministry, Vianna ([1941] 1943) sought to establish union legislation suited to the vastness of the territory.

The appropriation of sociological work by the jurist drafting union laws is summarized as follows: “to take these institutions into our hands, to face them with determination and courage, and to alter them, deform them, Brazilianize them, in short, in a way that adjusts them to our body, to our conformation”⁵⁶ (Vianna, 1943, p. XII). In 1938, he had spoken to the press about the need “to give labor justice a structure more compatible with our realities, with the degree of organization of our economic life, and with the peculiarities of our collective psychology”⁵⁷. Vargas, through social reforms, was seen as the leader capable of representing a realist project for Brazil (Vianna, 1951, p. 52).

Four Cases and Ministerial Work

In October 1933, a matter of industrial policy came under review by the Legal Advisor. The case involved a request by Cia. Extrativista de Taninos S.A. to annul the authorization granted to Hinckeldeyn and Martinez, who intended to import machinery for a quebracho extract factory in Mato Grosso. Decree No. 19.739 of 1931 prohibited, for three years, the importation of machinery for manufacturing industries whose production, in the government’s judgment, was considered excessive. Formally, the MTIC had already established an overproduction of tannins in the country.

Without questioning the fact of tannin overproduction, Vianna’s opinion⁵⁸ retrieved the economic context that led to the control of industrial growth and the issuance of Decree No. 19.739. His concern was to refute indiscriminate applications of the Decree that could create monopolies and harm non-industrialized regions such as Mato Grosso⁵⁹. What is the social purpose of the Decree prohibiting the importation of machinery? – he asks. In response, he suggests that the Decree aimed to prevent disorderly industrial

⁵⁵ Free transl. of the author: “imigração mal selecionada”.

⁵⁶ Free transl. of the author: “tomar estas instituições em nossas mãos, encará-las com decisão e coragem, e alterá-las, deformá-las, abrigará-las em suma de maneira a ajustá-las ao nosso corpo, à nossa conformação”.

⁵⁷ VIANNA, Oliveira. Como nos falou o sr. Oliveira Vianna sobre a justiça do trabalho. *Correio da Manhã*, Rio de Janeiro, ano XXXVII, n. 13.245, 14 jan. 1938, p. 3. Free transl. of the author: “dar à justiça do trabalho uma estruturação mais compatível com as nossas realidades, com o grau de organização da nossa vida econômica e com as peculiaridades da nossa psicologia coletiva”.

⁵⁸ LIBRARY OF OLIVEIRA VIANNA, Niterói. *Parecer - Recurso de Cia. Extrativista de Taninos S.A.*, 1933.

⁵⁹ Ibidem.

growth, which could worsen business bankruptcies, unemployment, and warehouse congestion. In a hypothetical scenario, Vianna warned that in a country like Brazil – with vast territory and lacking popular cohesion – indiscriminate prohibition of imports would condemn border regions to backwardness, poverty, and depopulation⁶⁰. For these reasons, he issued an opinion against the company's request, reaffirming the authorization granted to Hinckeldeyn and Martinez.

Another consultation involved the immigration of three thousand Chinese individuals, resulting in a landmark opinion. Vianna sought to integrate biological, socio-economic, and ethnographic-political aspects to address the issue. In his opinion, he admitted that, legally, there was no basis for preventing the immigration: “our immigrant selection regime only recognizes individual selection – not selection of ethnic types: we have means to repel the undesirable individual, but not the undesirable nationality”⁶¹. The most curious aspect, however, is how he frames the immigration permit, reconciling legality with the national and public interests he defended. A set of interventions was presented as a condition for shaping the immigrant profile.

Revisiting the racializing perspective of the 1920s, Vianna viewed the Chinese as culturally averse to integration with other nationals – “insoluble” like “sulfur”⁶². He argued that the immigration of the three thousand should be accompanied by instruments of assimilation and nationalization⁶³. For that, his opinion distinguished between urban Chinese – deemed morally and physically deficient – and rural Chinese – praised for their agricultural competence. Considered useful for national growth, the immigrants should be exclusively farmers, and once settled, each Chinese household should be interspersed with a Brazilian one. Furthermore, the proportion of Chinese could not exceed fifty percent of the total inhabitants in each agricultural colony.

I would like to highlight a third record, this time in the genre of legislative drafts, to illustrate the invocation of popular values as part of the self-proclaimed realism. In 1934, Vianna submitted a draft regulation on the working hours of rural laborers, expressly invoking the “nature of the people”. His defense was of a regulation “moderated by the general aspirations of the working masses, implemented without radicalism, without extremism, without this spirit of animosity and antagonism that we find in some other similar legislations”⁶⁴. Legislation, he argued, should be based on the “feelings of equity, justice, and

⁶⁰ Ibidem.

⁶¹ LIBRARY OF OLIVEIRA VIANNA, Niterói. *Parecer - Imigração de três mil chineses*, [n. d.]. Free transl. of the author: “o nosso regime de seleção imigrante só conhece a seleção individual – e não de seleção de tipos étnicos: temos meios para repelir o indivíduo indesejável, mas não a nacionalidade indesejável”.

⁶² Ibidem.

⁶³ Ibidem.

⁶⁴ LIBRARY OF OLIVEIRA VIANNA, Niterói. *Apresentação do Anteprojeto sobre duração do trabalho rural*, 1934. Free transl. of the author: “moderada pelas aspirações gerais das massas trabalhadoras, realizadas, sem radicalismos, sem extremismos, sem este espírito de animosidade e antagonismo que encontramos em algu-

humanity, so dominant in the conscience of our people”⁶⁵. The conciliatory character of Brazilians was used to justify distinctions between the rights of rural and urban workers. Applying the eight-hour daily standard to both would be “radical and extremist”. Hence, he proposed a solution “safeguarding the worker’s right to fair rest and fair remuneration, without, however, sacrificing the interests of employers”⁶⁶.

The justification of the draft is also a return to *Populações*, characterizing rural workers as lacking education and aptitude for professional solidarity. The sociological problem emerged as a legislative challenge. In the explanatory memorandum, he concludes with a suggestion that, prior to any definition, the draft should be distributed in pamphlet form to interested parties before the final wording⁶⁷.

Finally, I would like to address the issue of the legal standard of the “just wage”. In a case on which Vianna was called to give an opinion, the discussion was over wage quantification for construction workers, specifically in sawmills. The debate revolved around the concrete definition of the “just wage”. Initially, the MTIC had accepted the workers’ proposal and determined the application of a wage table based on the highest values. Criticizing the lack of data, studies, and inquiries, Vianna weighed the consequences the ministerial decision could cause: a high wage standard could aggravate the crisis in the sector, increase unemployment, and cause industry closures. Therefore, he suggested the Minister of Labor reconsider the decision, conduct an inquiry into the economic and working conditions in the companies, and then establish wages in a differentiated manner, taking into account the specifics of each company and the category’s minimum⁶⁸.

Ministerial practice was constructing a form of wage-policy intervention, not only to resolve past issues but also to establish future directives, as the Labor Court project would later stipulate. The normative power over wages followed a logic of mutability: with limited duration, normative rulings could be adjusted (*rebus sic stantibus*). In projecting normative power, Vianna theorized about what was already being imposed in ministerial practice: a power guided by criteria of equity and social justice. Decisions would not be based on analogies or judicial precedents but on prices, market conditions, costs, living conditions, and national interest, to then “balance all this, extract a measure, and decide or resolve”⁶⁹ (Vianna, 1938b, p. 115). Discussions on the “just wage” would become part of the labor courts’ grammar throughout the twentieth century, extending to the present day, given the

mas outras legislações congêneres”.

⁶⁵ Ibidem. Free transl. of the author: “sentimentos de equidade, justiça e humanidade, tão dominantes na consciência do nosso povo”.

⁶⁶ Ibidem. Free transl. of the author: “ressalvando-se os direitos do operário a um justo repouso e a uma justa remuneração, sem sacrifício, entretanto, dos interesses dos patrões”.

⁶⁷ Ibidem.

⁶⁸ LIBRARY OF OLIVEIRA VIANNA, *Niterói. Parecer D.G.E. 17.703-934 – Centro dos Industriais de Serriarias recorre do ato do Diretor Geral do Departamento do Trabalho*, 1935.

⁶⁹ Free transl. of the author: “balancear tudo isso, tirar uma medida e decidir ou dirimir”.

persistence of normative power – a proposal with an authoritarian bias already discussed elsewhere (Boson, 2021).

Final Notes

After his departure from the MTIC in March 1940, the frenzy of the bureaucratic whirlwind of the 1930s was replaced by the monotony of his work as a minister of the Federal Court of Accounts, a position to which he was appointed that same year.

In *Instituições políticas brasileiras* (1949), the epigraph of the chapter *Culture and Law* reproduces a passage attributed to Pound (apud Vianna, 1999, p. 55): “Law in all its senses is studied as a much specialized phase of what in a larger view is a science of society”. In the book, Vianna revisits the American jurists who had influenced his earlier work. Classifying them as “the renovators of the American sociological school”, he identifies in Holmes, Pound, Cardozo, Brandeis, Freund, and Frankfurter the expression of a “new attitude in legal thought”, marked by “objectivity” in the methods of interpretation and legal construction. Subsequently, Vianna (1999, p. 387) associates propositions of his own with the work of these jurists – delegation of legislative power, avoidance of judicial formalism, and creation of new collegial organizations (councils, boards, commissions) with administrative, legislative, and judicial powers.

His departure from the MTIC can be understood as the result of a political defeat – with a victory for FIESP⁷⁰ – or as the conclusion of a phase that had instituted the main mechanisms of a singular labor regulation project, albeit not without its failures. I prefer the latter interpretation. The framework envisioned by Vianna, especially regarding union matters and labor justice, had already been irreversibly implemented by the early 1940s.

Many of the provisions theorized in his books and put into practice in ministerial work – although not always in convergence⁷¹ – would have long-lasting effects in Brazilian law, reaching even the 1988 Constitution, such as normative power and the fundamental guidelines for union structuring. Neither an exotic outlier nor a mere transplant, his contributions move between the local and the global. The comparison of his intellectual and practical agencies in the 1930s reveals symbolic artifacts of a symptomatic framework oriented toward asserting an “instrumental authoritarianism”. Understanding his normative initiatives – establishing a dialectical lens for the exchanges between national and comparative perspectives, bureaucratic action and intellectual production, authorship and translation, and the legal field and broader social formation – is a challenge to

⁷⁰ This is Costa’s (1991) interpretation.

⁷¹ Cardoso (2011) highlights the divides between Vianna’s theories and the practical applications by the ministerial bureaucracy of the 1930s.

contemporary interpretations of the historical constitution of mechanisms of power over labor relations in Brazil.

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