ORIGIN AND CONTENTS OF LEGISLATIVE POLICIES STRIVING TO INTRODUCE FLEXIBILITY INTO LABOR LAW IN SEMI-PERIPHERICAL COUNTRIES: THE BRAZILIAN CASE

REVISTA DIREITO MACKENZIE
ANO 3 – NÚMERO 1 – P. 197-221

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1 Introduction

The term *flexibility* regarding labor market regulation expresses a certain ambiguity. We suspect that this is the reason why flexibility stands for many different and even opposite notions. In order to emphasize the qualitative distance between the variety of legal experiences brought up under the flexibility cliché, we support the convenience of using *flexibilities* rather than flexibility.

Put it aside, it is interesting and possibly useful to stress that *flexibility* conveys a clearly positive appeal. Conversely, the term rigid or even inflexible bears a negative meaning. Following Standing (1999, p.49-51), we suspect that it is due to the greater or smaller range of freedom, associated respectively to both terms. Still according to Standing, it is necessary to point out that flexibility and inflexibility means both different ways of regulating the labor market.

The above-mentioned ambiguity seems enough to recommend a merely operative and analytic definition for *flexibility*. Accordingly, we will call *labor market flexibility* the shortness of the area of statutory regulation, as well as the softness of content of the legal prescription. This is why the importance of labor market flexibility seems to be stressed precisely on the legal system traditionally characterized by emphasizing statutory regulation.

Even adopting a definition such as the one we offered above, the term flexibility still requires further explanations. In other words, the shortness of the area of statutory regulation, as well as the softness of content of the legal prescription can exhibit different approaches according to 1) the subject of regulation and 2) the political trend that justifies *deregulation* policies.

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According to the distinction we suggest, the diversity of flexible policies expresses not only a variety of intensity but also allows us to identify quality distinction of flexibility in what concerns to its ideological and political aims.

Considering the *subject* of flexibility policies, it's conventional to distinguish flexibilization policies of:

1.1 working hours;
1.2 the wage system (profit share, non-wage benefits, bonus etc.);
1.3 the work tasks;
1.4 the legal frame of worker recruitment (for instance, by means of improving the amount of temporary jobs, time-share systems, sub-contractors, home and telework).

Now considering the *political trend* governing the adoption of flexible Labor market regulation policies, we can identify at least the existence of three strongly characterized trends.

The first one is devoted to *introduce flexible policies in order to avoid legal constrains over the supposedly self-regulatory virtues of the market.* Clearly in accordance to the principles of neo-classical economic approach, this one used to be the prevailing sort of flexibility policy during the early eighties, under the influence of the so-called *new right* wing *liberal* governments.

The second one derives from the purpose of *introducing flexible labor regulation in order to face the persistence of structural unemployment* that took place in Europe during the late eighties and the early nineties. To be precise, one can state that the belief on flexibility as an efficient measure of improving job offering inspired the first legal experience in this direction, so called *flexibilité de la legislation du travail.* This experience took place in France during the Âuroux's *réorientation de la politique reformiste du pouvoir socialiste* (1982-1983) (Jeammaud & Lyon Caen, 1986, p.19-49). This specific flexibility policy could be summed up as supporting the abolishment of some rigid statutory prescriptions that had been originally conceived to provide "protection" for employees.

Later on, one can register *the revival of flexibility governing different policies towards labor market,* such as the most recent reform of Spanish labor law (*Lei 11/994, Lei 14/94, Reais Decretos Legislativos 1/95 y 2/95*); the Italian 163/84-Act and the *Pacchetto Treu* (*Legge 196/24.06*), as well as the Portuguese one (*DL 64-A/89* and the *Lei da Polivalência n. 21/96).*[1] Notwithstanding the coincidence on the methods and on the bargaining procedures between both the second and the third trend, one should note that the flexibility policies during the mid-nineties had been hardly stressed by the purpose of adopting internal legal prescriptions to EU standard regulatory system. At any rate, on can state that the collective bargaining has been the most important methodological procedure used in order to provide legitimacy for the legal change in both trends.

[1] For a comparative glance over Spanish, Italian, Portuguese and Brazilian labor Law, focusing on recent legal changes towards flexibility, see, Freitas Jr. (1999).

The strategy of this paper consists of discussing the flexibility policies recently introduced in Brazilian legal system of labor relation taking into account the different trends mentioned above. Since the approval of the 1988 democratic Constitution, witch for the first time prescribed flexible legal institutes in Brazilian legal system, we've been facing an increasing consensus – or at least, a weakness of political opposition – concerning the adoption of *flexibilidade* to the labor market regulation.

In order to make possible the identification of the singular particularities concerning Brazilian labor relation system, the first step of this paper will be devoted to describe its most significant legal institutes. It's important to point out, in order do make it as much comprehensible as possible, that the huge importance of statutory regulation characterizes all the Brazilian legal system, which means that the labor law is consistent with the hole regulatory tradition.

Further on, we will focus on the historical evolution of the Brazilian labor relation system, with particular attention to what could be called its state corporatist origins, according to Schmitter's well-known category. Regarding the union system, it seems to me important to emphasize that it still keeps earning a significant amount of its budget by means of a compulsory and universal system of taxation. In the most developed regions of Brazil, such as São Paulo and Rio the declining comparative importance of compulsory support for the biggest unions is taken for granted. On the contrary, taking into account the situation in the rest of the country, the comparative importance exhibited by compulsory incomes should be just about the opposite. Among other reasons, this phenomenon can be explained by the inefficiency – or even by the complete absence – of spontaneous processes of associative recruitment. Incidentally, we can even see the budgetary characteristics of Brazilian unionism as capable of summing up other singular features of unionism in this country. Namely that official unions, launched and registered according to the extensive legal requirements still enforced, are the only ones: 1º – procedurally legitimized to sue in labor courts over collective claims; 2º – legally considered formal representatives of both labor and employers (as regards industrial relations issues), respectively,[2] by means of their universal and compulsory placement under random shaped social groups named *categories*; 3º – assigned to receive tax incomes. Such a prodigiously non spontaneous system of associative organization, built during the thirties authoritarian rule and settled under the influence of state-corporatism doctrine, still exhibits an impressive persistence in Brazil, in contrast to what happened in Italy, Portugal and Spain after political democracy was restored.

Finally on the third part of the paper our attention will be addressed to summarize the recent Brazilian legal experience concerning the step-by-step introduction of flexible measures in the labor relation system.

[2] The well-known Brazilian central unions, such as CUT (Unified Labor Central), Força Sindical (Union Strength) among others, are not formally considered *unions* under legal patterns. On account of this legal separateness, they do not take advantage of the mentioned legal benefits; except by the spontaneous adherence of the official unions to one of them.

2 Description of the Brazilian system for the regulation of labor relations

2.1 Kinds of legal rules regulating Brazilian labor relations

2.1.1 Legal rules with a state origin

The labor relations in Brazil, both individual and collective, are primarily regulated by legal rules produced by the State, more specifically by the Federal Union[3]. The will of both individuals and unions plays a secondary role. The goal of these state rules is assuring that all workers are entitled with a minimum nucleus of labor rights. The state regulation of these rights, many of them protected by the Brazilian Constitution, makes it impossible to resign them in individual or collective agreements.

2.1.1.1 General view

2.1.1.1.1 Individual labor relations

In the individual labor relations, it is taken for granted that the laborer has no economic power to negotiate his labor contract with his employer. The laborer is in greater need of getting a job than the employer in hiring him, since he needs his job in order to survive. The employer takes advantage of this economic weakness in order to impose his will when negotiating the contents of the labor contract.

The abundance of labor is another factor to weaken the laborer's position when negotiating his labor contract. There are lots of laborers disputing the same position, which allows the employer to select the one who is ready to work under the worst work conditions.

Due to these factors, the state law excluded from the will of both parties a set of labor rights in order to avoid excessive exploitation of labor. It is allowed to improve work conditions both in individual and collective agreements, but it is never allowed to set up less or worse rights than those assured by state laws.

2.1.1.1.2 Collective labor relations

The regulation of unions aims at providing a legal pattern for their constitution as well as rules for their functioning. Every union must defend the interests of the economic or professional group they stand for. The economic group is a part of the economic activity that is randomly detached by the state law. All individuals at work in such activity are obligatory represented by their respective union, regardless of being or not being unionized.

[3] Brazil is a Federation, but the legislative competence of the states in this Federation is small, restricted to certain subjects, and ruled by the Constitution in a very strict way. Most of the competence to create laws is in charge of the Union. The Federal Legislative Power is called National Congress, made up by two Houses, the House of Deputies (elected by direct poll in the states of the Federation; each state has a number of chairs which is proportional to its population, but no state is allowed to have more than 70 or less than 7 federal deputies) and the Federal Senate (senators elected by direct poll, three of them for each state of the Federation). The laws on labor relationships are mainly entitled to the Federation, and not to the states.

The law also allows the organization of professional unions (differentiated professional group) that only represent the members of a given profession (medical doctors, economists, writers, journalists, architects etc.).

The Brazilian law imposes the organization of unions for employers, something that will surely sound weird to a foreign reader. Every group has a union for employers and another union for laborers, both of them forced to negotiate between themselves, being allowed to set up agreements through contract instruments prescribed by law. The law tried to set up a structural symmetry between both kinds of unions in order to make their agreements applicable to all laborers belonging to the same group.

There are some upper level unions (federations and confederations) that operate as coordinators and are also maintained by union taxes. The Brazilian Union Centrals were created outside the legal scheme. They work as political mediators between unions and political parties, as well as coordinators of strikes and political manifestations.

It is strictly forbidden to organize more than one union for each group in the same territory, which cannot be smaller than a *município* (county). Enterprises are not allowed to organize unions. The state law guarantees a rich resource for unions: the union tax, and fixes the tasks to be undertaken with such resource.

2.1.1.2 The Constitution

The Brazilian Constitution presents rules on labor rights granted on individual laborers, as well as rules disciplining union activities. The Brazilian Constitution is very hard, which means it is very difficult to be modified. Any changes in it depend on the National Congress approving a Constitution Amendment.[4] Constitutional rules cannot be disrespected by rules from an inferior hierarchy.

Labor rights are regulated by articles 7 (individual rights), 8 (regulation of union activities), 9 (right to go on strike), 10 (right of both laborers and employers to take part in public organs dealing with their interests) and 11 (right of unions to elect their representatives in enterprises with over 200 employees).

It should be noticed that some constitutional rules have demanded the issue of ordinary and complementary laws in order they could be fully applied. A large part of these rules were never created, which does not allow full action for the Constitution.[5]

2.1.1.3. State laws

Under the Constitution, there stand rules concerning inferior hierarchies, also

[4] Such amendments can be proposed by: a) 1/3 of members of the House of Deputies or Senate, b) the President of the Republic, c) more than half the Legislative Assemblies of all states in the Federation, each one of them through the majority of its members. The proposal must be discussed and voted by the House of Deputies and Senate, in two turns. In order to be approved, it must have, in each turn, at least 3/5 of their members' votes (art 60 of the Brazilian Constitution).

[5] The following rules demand total regulation by a law from an inferior hierarchy: a) article 7, I – protection of employment relationship; b) article 10, first paragraph of the Act of Transitory Constitutional Dispositions – creation of maternity leave; c) article 7 – imposes the need for free assistance to the children of laborers and people depending on them at day nurseries and kindergartens; d) article 7, XXVII – protection of laborers against automation; e) article 7, V – on wage levels; f) article 7, XI – on the participation in gains (ruled by temporary measure 794/94); g) article 7, XX – protection for female labor market; h) article 7, XXI – notice proportional do working period; i) article 7, XXI – on the hard activities. Only one of them has been regulated.

drawn up by the State through the Federal Legislative Power. Rules of this kind best more frequently employed by the state are the complementary laws, the ordinary laws and the temporary measures (article 59 of the Brazilian Constitution).[6]

The first ones regulate matters regarded as the most important ones, according to an direct demand of the Constitution. Therefore, they must be approved by the largest majority of the Senate and Chamber members (article 69 of the Brazilian Constitution). Ordinary laws are approved by a simple majority. They can also regulate the Constitution according to an explicit determination of its text.

Temporary Measures (Medidas Provisórias) are rules supposed to allow the state to legislate in emergencies and exceptional situations. Nonetheless, this kind of measure has become the main legislating instrument for the Brazilian state.

The Brazilian Constitution states that the President of the Republic, in cases of relevance and emergency, can adopt temporary measures that are legally powerful. These measures must be immediately submitted to the National Congress in order to be considered. If the National Congress does not turn them into law or rejects them in 30 days, they lose their validity from the moment the decision concerning them is published.

The President of the Republic has adopted a series of temporary measures that are constantly re-issued. Some of them have been re-issued over a hundred times. Some Brazilian jurists criticizes such practice since, according to them, it is turning the issuing of temporary measures into a rule instead of keeping it as an exceptional legislation for urgent cases. Besides, this practice would be concentrating an excessive power into the hands of the President of the Republic, and weakening the Legislative Power.

The re-issuing of temporary measures has been examined and admitted by the Federal Supreme Court. This Court decided that the temporary measure that has not been examined by the National Congress can be re-issued, since it is re-issued in 30 days. There is no limit for the number of re-issuing.

The largest part of the labor subject is regulated by ordinary laws extracted from the *Consolidação das Leis do Trabalho* (Consolidation of Labor Laws). It should be noticed that the lack of complementary and ordinary laws does not allow the Constitution to produce all its effects. There are some temporary measures – such as MP 794 from December, 1994 – on the participation in profits. We shall later discuss the main rights granted to Brazilian laborers and point out their respective normative sources.

2.1.1.4 Regulating rules

The Executive Power can issue decrees, regulations, normative instructions etc. in order to regulate in a more detailed way complementary and ordinary laws

[6] Ordinary and complementary laws can be proposed by any member or commission of the Chamber or Senate, or the National Congress, by the President of the Republic, by the Superior Federal Court, by the Superior Courts (Brazil has a constitutional court, the Supreme Federal Court and Superior Courts that are competent to judge resources on specific matters.

(art. 84, V of the Brazilian Constitution). The regulating rules cannot bring anything new to laws. They cannot create either procedures or conditions for the exerting of rights granted by laws. They only make their execution easier.

2.1.1.5 Normative sentences

The Brazilian Labor Judiciary Power has the power to create rules regulating labor relationships. Unions that are not in accordance with the contents of the collective convention they intend to celebrate can take this conflict to the Judiciary Power through a lawsuit called collective dissension. The parties trying to celebrate a collective agreement can also propose collective dissensions.

Labor Courts[7] must examine the proposals sent to them and, if they are not able to lead the parties to an agreement, take a decision. Their decisions shall establish the labor conditions, which will be attached to labor contracts of all laborers in a given category or to laborers of an enterprise or enterprises trying to reach a collective agreement. They are called normative sentences since they stand for a true legislation for a given category or for the laborers of the enterprise(s). And they have a temporary validity.

2.1.1.6 International rules

The Brazilian Constitution admits of incorporating international rules into the Brazilian legal system. Such rules enter our system as ordinary laws. They can be reviewed or annulled by posterior state laws belonging to the same hierarchy or to an upper hierarchy.

2.1.2 Autonomy of will

The parties of an individual labor contract can create labor conditions specified by such contract since the state rules or the rules created through collective conventions or agreements are disrespected. A laborer cannot individually resign his rights or accept the worsening of his labor conditions.[8] Furthermore, he cannot avoid the applying of state rules or rules negotiated in his own case.

Brazilian laws prescribe the possibility of celebrating the so-called collective conventions between labor unions and laborer from several categories (article 7, XI of the Brazilian Constitution and article 611 of CLT).

The labor collective convention can be defined as an agreement on labor condition among unions. Such conventions, which have already been called lawful-contract by the doctrine, are real legislative diplomas that are valid for all the member

[7] There exist Regional Labor Courts, one for every state, and a Superior Labor Court. Collective dissensions must be exclusively judged by such Courts.

[8] The Constitution allows unions to negotiate wage cuts for an entire category or the workers of one or more enterprises through collective agreements and conventions (art. 7, VI of Brazilian Constitution). This is an exceptional case in which the state legislation allows workers to resign already acquired labor rights. Laborers are not avoid the applying of state laws or rules created by collective conventions or agreements. More that this, they cannot resign acquired rights: labor conditions can be made better in the same labor contract, but never worse.

of a given category. This means that their rules are incorporated to individual labor contracts of all members of a given category. They are usually renewed every year and preceded by extensive negotiations between unions.

Another instrument for the creation of rules through the autonomy of the will of social subjects is the collective labor agreement. This instrument could be defined as an agreement on labor conditions that is celebrated between labor unions and one or more than one enterprises involved in them.

The stronger and better-organized labor categories usually obtain labor conditions which are much more favorable than those prescribed by law. The usage of collective conventions and agreements is quite common in Brazil. We should recall that it is not possible to set up labor conditions that are worse than the ones granted by ordinary state rules. Collective conventions and agreements are designed to improve labor conditions, but not to generalize more benefic labor conditions to all laborers. This can only be achieved through laws or the Constitution.

2.2 Preliminary conclusion

The main normative rules regulating Brazilian labor relations are the state laws (ordinary and complementary) and the constitutional rules. All of them are hard to be changed, which depends on extensive discussion and voting by the Chamber of Deputies and the Federal Senate.

The will of both parties can create legal rules, since they do not disrespect or decrease the level of labor condition granted by state laws. Furthermore, the will of both parts cannot worsen labor conditions already acquired by laborers. These characteristics make it difficult their usage to soften the Brazilian state legislation.

Therefore, one can easily understand that softening rights in Brazil means dealing with state legal rules that protect them. It is necessary to acquire a broader room for the freedom of organization and performance of unions, as well as for the negotiation of labor conditions through the will of social subjects, individual laborers or unions celebrating collective conventions and agreements.

The legal instruments capable of implementing policies aiming at the softening of legal state rules in Brazil are: a) Constitutional amendments; b) the issuing of new legal state rules, ordinary or complementary laws that can annul rules which are valid at present; c) temporary measures.

3 Historical formation of a stern system for the regulation of labor relations

3.1 Introduction

The apparently excessive rigidity of our system in the regulation of labor relations has some historical roots that might explain and justify it. Brazil did not have a typical

bourgeois revolution, but a passive revolution. Our revolution happened in accordance with tradition, preserving the position of the ruling agrarian upper classes that, in an alliance with bourgeoisie, tried to implement a state with a liberal look, and also centralized and interventionist.

Our industrialization was encouraged by this strong state, which promoted the modernization of the Brazilian production and organized producing factor, thus consolidating capitalism in Brazil. The implantation of corporatism was the main instrument in this process. It expressed the agreement among the Brazilian ruling classes that also had the participation of part of the working classes, which was achieved thanks to state interference.

With the basic compromise it was possible to build up our economic and social development for most of the 20th century. This is one of the reasons why all reformations implemented in Brazil since then were all directed from up to down, trying to preserve positions (Holanda, 1978, p.133), and this is what José de Souza Martins emphasized (1994, p.30):

> in Brazilian society, modernization happens according to tradition, progress happens according to order. Therefore, social and political changes are slow, not based upon sharp and sudden social, cultural, economic and institutional breakings. New elements always come out of old elements [...].

3.2 Formation and characteristics of Brazilian corporatism[9]

The present Brazilian system for the regulation of labor relations was created – as well as its basic lines – during the 1930s, when there happened the 1930 Revolution, a local version (and largely perverted) of a bourgeois revolution. Our *bourgeois revolution* did not achieve a Brazilian agrarian structure. It preserved the rural oligarchies at the center of political power, and was unable of a full industrialization of the country.

It was a revolution that happened with the help of the newly born working class. The Brazil state at the time did not create a complex institutional structure to absorb working classes into the political system. This process aimed at leading laborers to same goal of the Brazilian elite: a Brazilian industrialization.

The concept of corporatism employed in this paper is that proposed by Schmitter: corporatism is a system representing interests trying to integrate functional groups that stand for the different social classes in non-competitive official organizations, supervised by the state (Schmitter, 1974). This concept, although it presents a precise definition of system, is not suitable to express the process leading to its implementation in the semi-periphery of capitalism. Waisman's (1982) and Stephan's (1978) models help us to understand process, although in a partial way.

[9] This part of the text is a summarized and slightly modified version of José Rodrigo Rodriguez's *Liberdade sindical entre Direito e política* (2001).

Waisman shows that the incorporation of working classes is the central moment for the formation and transformation of political systems and for the implantation of capitalism. The crisis of the export-agrarian model leads to the transformation of the system and to the crisis of domination by agrarian classes.

In countries where working classes start the transformation process, there happens a mobilizing process *from below*: the elites have to incorporate the demand for the participations of workers. In other countries, modernization is performed by the elites. In such case, revolution happens *from above*: the elites try to incorporate lower classes in the name of order.

Waisman makes his model more sophisticated by creating four kinds of possible results of the incorporation crisis: accommodation, polarization, exclusion and cooptation. The last one is the best for describing the Brazilian processes: in this case what happens is the heteronymous incorporation of the working class into a highly centralized government that does not allow its autonomous action.

The author explains that it is necessary for the working class to be disposed to join the existing order without questioning it foundations. There must exist an active control of the working classes by those who are *above* them, and a movement for joining and conforming to this control by those who are *below* them. Waisman explains that cooptation has as its main instrument the ideology of corporatism. This ideology aims at producing the consenting of those who are *below.* There is a continuous interactive relationship among the working leaderships and the elites.

Stephan's model aims at explaining the implantation processes of corporatism concerning the relationship among the kinds of state policies implemented in different kinds of civilian societies.

According to this model, Brazilian corporatism could be described as an inclusive corporatism. This kind of corporatism can be characterized by trying to incorporate the working classes through social welfare policies. This corporatism é characteristic of societies where industrialization is beginning, and political organization and mobilization is incipient and non-institutionalized.

Both models agree that corporatism is a conscious answer to a situation of crisis in the elites' domination. These elites are confronted by the possibility of losing control of the political system, a losing provoked by the increase in the demand for participation from the inferior classes. Society is at risk of splitting and breaking with institutions.

Both models also emphasize the need for acquiescence from the inferior classes, a process whose ideological dimension is basic. The elites assume a cooptation or inclusion project that is performed "from above" in order to face its hegemony crisis.

Guillermo O'Donnell enriched this view of the process by adding that Latin-American corporatism is two-faced and fragmentary.[10] It is two-faced because it has a stating aspect: the system aims at subordinating civil society to the state.

[10] The term is by O'Donell (1975, n.2).

It is privatizing because the system opens the state structures to the participation of organized entities from the civilian society. It is fragmentary because it has a different impact on different social classes.

For O'Donnell, as well as for Waisman and Stephan, corporatism arises at moment of domination crisis aiming at producing a new arrangement for the correlation of the political actors' forces. The system employs an inclusive strategy basically turned to the working class. It does not have a great impact on the ruling classes that are not fully considered in the realm of the domination system: the elites are endowed with more freedom to organize themselves outside the state structures in an independent way.

Regardless of this fact, the working classes preserve a small room for a relatively autonomous action inside the state institutions. Brazilian corporatism presents this characteristic.

This room for action is now always perceivable. At times when the state was more weakened, or was democratic, it is possible to notice an increase in union action by the workers. At times of repression and authoritarianism, union activity practically does not exist.

Both the increase in union action and its decrease happen with not significant institutional change. This fact could be pointed out as one of the main causes for the survival of the corporatist system until today.[11]

The pattern for labor relationships, which was created by the 1930 Revolution, is a political compromise between the social classes in conflict. Belying the view shared by many Brazilian scholars, it was not a gift from the revolutionary forces to a shapeless and politically irrelevant working class.[12]

> The interpretation of the pre-revolutionary period is often based on the premise that the Vargas regime kindly offered the working class a totally new labor legislation. Such event would be responsible for decreasing the power of unions and leading the working classes to a confident towards interventions "from above". [...] The political byproduct of this kind of relationship would be found in the subordination of the working classes to the ruling elites, which were regarded as responsible for the integration of laborers into urban societies. (Vianna, 1974, p.137)

Luis Werneck Vianna showed how false this view was. According to Vianna, the working classes conquests, which were decisive for the making of protecting labor laws, appeared before de 30s. They were achieved without the support from other social sectors.

[11] We have to emphasize that these models, although they explain a series of relevant aspects of the Brazilian labor relationships system, do not complete its description, and, more that this, they leave out an essential aspect of Brazilian society: in Brazil the process of separation between a public sphere and a private one is still going on. We not have a clear distinction between civilian society and state. Our modern history can be described as the history of attempts to implement a bourgeois state and its legal principle all over the country. Up till nowadays, a large part of our population simply do not take part in the structures of national legality, developing their activities outside institutions, laws and the official labor market. The history of Brazilian corporatism needs to incorporate the history of those who have remained outside its structures.

[12] On populist ideology and the myth of gift, see Paranhos (1999).

Except for the legislation on minimum wages, which appeared only 12 years later, no new right was created after 1930. The regime simply increased to reach of legislation in order to cover working sectors that were not assisted by this legislation before (Vianna, 1974, p.138).

Before 1930, only the working categories with a better organization were in conditions to fight for their rights. Getúlio Vargas simply amplified to all categories the benefits already conquered by more active sectors of the working classes. Labor legislation only seemed to be a gift from the government to a few laborers.

The action of the revolutionary government aimed at restraining unionism, imposing a false harmony between capital and labor.[13] Already on February 14th, 1931, decree 19.661 prescribes the organization for the National Labor Department.

A month later, decree 19.770 regulates unionizing, putting an end to union pluralism. The principle of union unity is adopted. "Ministério do Trabalho" (Labor Office) is in charge of approving the creation of unions. Unions are forced to submit their installation works, their statutes and names of their members to state approval. It is the end of autonomy: unions are turned into organs attached to the state.

Regardless of being highly authoritarian, we cannot deny that corporatism means a change in relationship pattern between the Brazilian elites and working classes. Before the 1920s and 1930s, working classes were manipulated by force. Laborers were not regarded as subjects capable of participating in the political conflict.

Corporatism provoked the inclusion of the working classes into the system. This inclusion can prove in itself that the working classes were a central element to the correlation of political forces at the beginning of the century.[14]

Wanderley Guilherme dos Santos (1979, nota 8, p.21; 1998, p.73-74) points to the need of a deeper investigation into the impact provoked by Decree 1637. This decree was the first Brazilian legal diploma to admit the right of laborers to create unions in order to defend their common interests.

The author claims that the literature on unionism unjustly neglects the impact of this law. It must have been the first one to accept the "idea that social groups joined together due to common interests could be admitted as interlocutors in the social debate – something which had already been admitted concerning the actors in a privileged position in the accumulation process, that is, the owners of capital, from the first half of the 19th century on.

The inclusion of laborers in the political system would have provoked an *important break* in the legal-constitutional liberal order, since it admitted the righteousness of collective demands. Before that only strictly individual demands were seen as legitimate (Santos, 1998, p.73).

[13] On the building of the ideological speech on harmony between classes, see Paranhos (1999).

[14] Despite this evident advance, Octavio Ianni shows that, up to nowadays, there remain traces of the police attitude defending simple repression against labor movements. "But it takes a long time before attitudes and methods are changed. Besides, retrogressions are frequent. Even after the 1930s a time for populism and military rule, several aspects of the question were again seen as a police matter. By the way, repression against different social manifestations by popular sectors, both in the country and in towns, never ceased. In some situations the repressive apparatus, both inside and outside state agencies, act in order to annul or intimidate movements, unions, political parties, their bases and leaderships" (Ianni, 1993).

The state is responsible for the compulsory organization of classes, being also responsible for granting union the power to represent laborers. The state is also to decide what entity will be legitimate in representing a given category, setting up their functioning rules.

The reason for this "forced organization" has been ideologically justified by Oliveira Vianna (1974, v.1, p.126), one of the main theorists of the model. For him, "the psychology of the Brazilian people" is characterized by a "social lack of solidarity" that did not allow the political, cultural and social organization of Brazilian society. Professional classes or categories were still at the embryonic stage of organization.

> In Brazil, only the individual counts and, what is worse, he counts regardless of society – of *community*. It we look into the history of our social formation, we shall see that everything helps to disperse man, isolate man, develop the *individual* inside man. Socialized man, sympathetic man, man depending on the group or cooperating with the group did not have here climate or temperature to grow up [...].

It was necessary that the state provoked an external stimulus in society in order to make it organize itself. At that time classes did not have the capacity to lead their relationships by themselves. In order to achieve these goals, it was necessary an authoritarian state to discipline them. According to Oliveira Vianna (1974, v.2, p.119):

> The great mistake or great illusion of our reformers is the wish of a change – provoked by a state policy – in people's traditional behavior in public life, within *liberal regimes*. When the change a new law expresses has not yet manifested itself in customs, but expresses *a new attitude to be assumed under the action of legal rules or Constitutional Letters*, the way to obtain people's participation should be the presence of legal punishment; that is, *to make it effective through enforcement*. Since liberal technique has failed due to its ineffectiveness, this new behavior pattern – *not yet confirmed by custom* – should only be achieved through authoritarian means.

Social classes were organizing themselves little by little inside this state frame. As time went by, they could start acting spontaneously: "Concerning, for example, the professional organization of urban classes, it is for sure that they will gradually enjoy cooperation and solidarity. They are leaving their traditional atomism – and are moving towards unionism with an increasing spontaneity" (Vianna, 1974, p.138-139).

In this context, labor rights should be elaborated by the organized collectivities themselves. Labor Justice was created in order to judge labor conflicts. Besides judging conflicts between employees and employers, this justice should know how to manipulate a right originating in the autonomous action of social groups created by the state.

Oliveira Vianna's theoretical view does not coincide with Brazilian reality. Maria Célia Paoli (1994, p.106) claims that it would be impossible to create a justice based upon rules and values concerning groups and social classes in an authoritarian country. Brazilian civilian society was a fiction. It was modeled and built by the state that created the agents acting in it. Corporative unions played their role of applying a

legislation created regardless the values and internal lives of association. Besides, they were in charge of creating "the main focuses in collective life and consciousness that our historical evolution did allow to appear".

The state, which saw itself as the defender of a common interest above classes, developed a policy aiming at answering general will. Its authoritarian character was due to the fact that the state itself was the only entity with power to tell what the general will of society was. There was no other legitimate autonomous voice to do it.

Labor Justice applied right in the name of *social peace*, counting on the participation of employees and employers to avoid the possibility of conflict and direct interlocution among social groups. This branch of the Brazilian Judiciary Power was born with the task of keeping social peace and solving conflicts. The presupposition of its working was the promotion of collaboration among the social classes. Any conflict or social action outside the state structures was unthinkable (Paoli, 1994, p.108):

> Once again, the pattern of a single union per category, obligatory union contribution, the prohibition of striking and the minute detailing of rights previously defined by labor condition crystallized themselves for over 40 years in the ruling competence of labor courts, the perfect instruments to prevent direct interlocution among social classes.

As already stated, this structure did not promote a totally public social action. The gap between private and public in Brazil has never been totally achieved.[15] Corporatism incorporated the tension between these two poles without letting one of them to the dissolved into the other.

Corporatism was not born to deny the action of civilian society for the latter was already defined at this moment of Brazilian history. It served to model its development and lead its steps under the political and ideological control of the elites:

> It is necessary [...] to leave the simplification of analyses understanding corporatism, especially in Brazil, as an exclusive and hidden form of producing controls on the private, darkening some aspects some as the opening of the public space to participation, and the always asymmetric characters of such arrangements, in which the state has a key role. Such recognition can be extremely useful for the comprehension of many evaluations from the period of Estado Novo (New State), particularly among "employees". They realized some advantages in the existence of corporative arrangements, fearing their elimination, understood as a threaten to the keeping of acquired social rights, although they clearly saw the distance between them and the "employers" and the huge state power (Gomes, 1998, p.521-522).

[15] Every tradition of interpreters of Brazil dealt with theme, from Gilberto Freyre, Sérgio Buarque de Holanda and Caio Prado Jr. to Raiumundo Faoro, Wanderley Guilherme and Roberto Schwarz. Due to the limitations of this paper, it is impossible to rebuild this interpretative tradition.

Populism was a two-way road: it was not just a policy for the manipulation of people, but also a way of expressing the industrial proletariat dissatisfactions. It was a way for ruling groups to exert power, and the main form of popular rising in the processes of industrial and urban development.

At many a moment, the corporatist structure was one of the instruments employed to threaten the power of ruling classes although only potentially (Welfort, 1977, p.51; 1968, p.90). Wanderley Guilherme dos Santos claims that, regardless of the pattern for the regulation of labor relationships has remained since 1937, "the vividness of the labor movement varied from 1937 to 1945, from 1945 to 1947, from 1947 to 1950, from 1950 to 1963 and from 1964 to nowadays." The aggressiveness of the labor movement varied a lot in time due to the more or less authoritarian position of each government.[16]

"The law was the same, but politics was different."[17]

3.3 To reform or to transform Brazilian labor relations system?

Brazilian corporatism has exhibited an amazing capacity to adapt itself to different historical moments. This circumstance seems to annul the possibility of a violent break of its structures.

During the authoritarian period (the 1930 Revolution and the 1964 Coup) there was an extensive repression against autonomous union action. In democratic period, union action, which is regulated by the same structures, can develop with greater autonomy. Although the law allowed the state to intervene in union, such thing never occurred. The pattern for democratic legitimation annulled the chance of an arbitrary contention of the conflict and of unjustified restrictions to the autonomy of social groups.

Nonetheless, the restrictive legislation of union autonomy there remained as a Democritus's sword upon the head of laborers. The civilian boiling in the period immediately before 1964 was chocked by the military coup, especially after the issuing of AI-5 (Institutional Act n.5) in 1968. During this period, the laws allowing state intervention in unions began to be used to repress and suppress social conflict with the goal of imposing a single will to society.

Different policies for the same structure: in the late 70s, with the decadence of the military government thanks to the 73´s oil crisis, dissatisfaction grows among civilian society.[18] The process of organizing pressure groups, associations and unions started again.

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[16] See Santos (1979, p.21) and (1978, p.74).

[17] Ibidem, p.74. In the same sense: "It is interesting to notice that, as it happened in 1953, 1957 e in the early 60s, the situation of political opening somehow associated to the 'crises in the above' often leads to the broadening of the *institutional room* in which the labor movement can move. As the legal unions express the institutionalization of the social conflict in the root of the labor movement, the political and institutional crises tend do enlarge their room for action" (Moisés, 1978, p.53).

[18] The oil crisis destroyed the basis for the legitimacy of the Brazilian authoritarian state, which was grounded on the good performance of Brazilian economy.

At this time, there raised the New Unionism, boosted by growing wage losses provoked by inflation. This movement started outside the union structure, and was soon installed inside it, competing in the elections of official unions chairmen.

The decision to occupy the official union structure provoked some conflicts among the laborers themselves. Some sectors of the union movement refused to use the institutions created in 1930. At the end of the process, these groups were defeated, and union action began to embed in the official structure.

The action of New Unionism promoted several changes in institutions. The 1988 Brazilian Constitution made these innovations formal. The state's power of intervening on union was extinguished. The structure of a single union and the public sponsoring of unions were preserved.

The 1988 Federal Constitution is charged of having ambiguously treated the social problem, especially because it kept in its text some institutes with a corporative origin. It would have turned into democratic only half of the unions.

It is true that the Constitution preserved some of the corporative structure, but this fact cannot be called lack of democracy. Union movements never included among their primary demands a total reformation of institutions regulating the Brazilian social conflict. There has never been a consensus among laborers concerning this theme (Almeida, 1996, p.180).

During the drafting of Constitution, those who defended the ending of a single union were a minority. This group was made up by PT deputies,[19] by CUT, some isolated voices from PMDB,[20] the largest part of PFL[21] and PL,[22] besides an expressive part of PDS.[23] CUT proposed a popular amendment establishing union pluralism and full freedom of organization: it was defeated (305 votes for it, 148 votes against it, and 19 abstentions).

Several changes were undertaken: the state can no longer exert a direct intervention upon union entities, deposing chairmen or producing elections. The state was deprived of power to grant unions the representation of laborers.

It should be emphasized that Brazilian labor legislation is not a mixture of corporative and democratic laws. It is an oneness that is coherent with the unionist practice and the history of the relations between capital and labor in Brazil. The text of the Brazilian Constitution reproduces the inconsistencies of actual interests of the actors in our labor world (Cardoso, 1999, p.39). Any reformation in the Brazilian legislation must take this fact into consideration.

[19] Partido dos Trabalhadores (Labor Party), which has as it electoral basis mainly the working classes and the middle class of large urban centers.

[20] Partido do Movimento Democrático Brasileiro (Party of the Brazilian Democratic Movement); it was the only one allowed to operate during the military regime from 1964 to 1984. After the ending of the regime, their members joined several other parties, such as PSDB (Partido da Social-Democracia Brasileira).

[21] Partido da Frente Liberal (Party of the Liberal Front), a party made up by members of Arena, the official party during the military regime.

[22] Partido Liberal (Liberal Party).

[23] Partido Democrático Social (Social-Democratic Party), made up by members of Arena.

4 The process of flexibility in action in Brazil

4.1 Introduction

Several legal innovations have been introduced into the Brazilian legislation in order to make the legal rules regulating labor relationships flexible. It would be impossible to mention all of them in this paper; therefore, we used the following strategy: in the first place we are going to identify the hard core of labor rights, the central target of laws aiming at making our labor regulation system more flexible. Then we shall try to describe the contents of these laws and their impact on this core.

4.2 The hard core of Brazilian labor rights

The goal of Brazilian labor rights is the defense of employees.[24] Being an employee is the necessary condition to enjoy the protection of labor laws.

The Brazilian legislation privileges this way of hiring laborers, and considers it a rule. There are other ways to contract a worker in Brazil, but the legislation clearly privileges the hiring contract in several ways:

a) *Preference for the legal employment regime.* The laborer can only be hired sob work under another legal regime in exceptional cases, regulated in detail by the law.[25] In case of disrespect for the rules, the laborer's legal regime is turned into an indefinite time regime to all intents and purposes.
b) *Preferential hiring through a labor contract with an indefinite validity.* The laborer can only be hired to work under a different legal regime in exceptional cases, regulated in detail by the law.[26] If the employer does not respect these rules, the labor contract will be treated as a contract for an indefinite period.
c) *Impossibility to negotiate the contents of a labor con*tract. If the way the employee works fits the legal concept of employee[27] it is impossible to resign any rights during the labor contract, with the exception of a possibility of wage cut through collective negotiation. The employer cannot change his employee's situation in order to solve any contingent problem.
d) *Continuity of the relationship jog/difficulties to dismiss employees.*

[24] The Brazilian legislation extends the protection of labor rights to some other kinds of worker who do not fit into the legal concept of employee.

[25] For example, Law 6.019, 1974, allows the hiring of temporary *employees* in order to satisfy the temporary substitution of an enterprise staff or in cases of an extraordinary job adding.

[26] Article 443, paragraph 1, 2 and 3 of CLT. It is possible to hire laborers for an indefinite time in case of temporary jobs, if the enterprise has been created to work during a given period, or to evaluate the employee's capacities before hiring for a definite period (experience contract). It can last for at most two years (90 das in case of an evaluating contract).

[27] Article 3 of CLT. The concept will soon be explained.

> The legislation tries to make it difficult to dismiss an employee. The job relationship must be continuous and last as long as possible. The employer who dismisses an employee without a fair reason[28] must indemnify his employee. The amount to be paid must be created by a complementary law.[29]

And what does it mean to be an employee before the Brazilian legislation? In order to characterize the labor contract, it is necessary that four characteristics are present. Firstly, the employee is that laborer who works under the orders of an employer, being subordinated to him. The employee takes orders, has no freedom to develop his activity according to his wishes and conveniences. Secondly, to be an employee means to work in a personal way: the employee must be himself to do the job he has been hired for, not being allowed to be substituted for. Thirdly, an employee is the one who works for a salary. Finally, an employee is the one who continuously work for the same employer.

To be an employee before the Brazilian legislation
• an employee is that laborer *who works under the orders of an employer*, being subordinated to him;
• an employee *works in a personal way* (the employee must he himself to do the job he has been hired for, not being allowed to be substituted for);
• an employee is the one who *works for a salary*;
• an employee is the one who *continuously work for the same employer.*

The employee is subject to a working period of at most 8 hours a day,[30] within the limit of 44 hours a week.[31] He has the right to, at least, a remunerated day-off a week[32] and a 31-day holidays every year.[33] Overtime must be paid on a basis of an extra 50% of ordinary wages, and night work must have a higher remuneration than day work.[34] As a rule, his salary cannot be reduced.[35]

[28] The fair reasons are foreseen by CLT, art. 482.

[29] Article 7, I, of Brazilian Constitution. The complementary law has not been created yet. For the moment, there is a fine of 40% of all the FGTS which has been deposited in the employee's name. The FGTS is a forced saving account that the law has offered all employees with the goal of protecting them from unemployment. The employer must deposit – every month – 8% of the employee's wages in an individualized bank account. This money can only be cashed in cases prescribed by law.

[30] The jornal working period is the one prescribed by his contract. The ordinary working hours cannot be longer than 8 hours a day and 44 hours a week, but can be shorter than this limit.

[31] Art. 7, XIII, of Brazilian Constitution.

[32] Art. 7, XV, of Brazilian Constitution.

[33] Art. 7, XVII, of Brazilian Constitution. The value of salaries corresponding to holidays is the ordinary salary plus 1/3 of its value.

[34] Art. 7, VI, of Brazilian Constitution. CLT prescribes the value of extra 20% for night hours (art. 73).

[35] Art. 7, VI, of Brazilian Constitution. Wage cuts are only allowed through a collective agreement or convention.

The hard core of Brazilian labor rights
a) Preference for the legal employment regime.
b) Preferential hiring through a labor contract with an indefinite validity.
c) Impossibility to negotiate the contents of a labor contract.
d) Continuity of the relationship jog/difficulties to dismiss employees.

4.3 Brazilian measure for flexibility

4.3.1 Flexibility in Brazilian Constitution

a) art. 7, VI – allows the employee's salary to be reduced through collective agreements or conventions. That is, it changes the idea of the impossibility of making working conditions worse.
b) art. 7, XII – allows compensating and reducing working hours through collective agreements or conventions. That is, it changes the idea of the impossibility of negotiating the contents of a contract is modified.

4.3.2 Ordinary laws and temporary measures

4.3.2.1 Contract with a precarious duration in order to fight unemployment

Law 9.608/98 creates a new hypothesis according to which it is allowed to hire employees for a definite period of time.[36] It aims at changing the idea of continuity in the labor relationship.

Law 9.608/98 allows employees to be hired for a definite period of time. The contract foreseen by the law can only be instituted through collective convention, that is, unions must participate in it. Its adoption is optional, depending on evaluation by the unions.

Furthermore, this contract can only be signed if there is an adding of employees in the enterprise. Te employee cannot use this contract to substitute for already hired employees. The law reduces the payment of a series of obligations in order to stimulate employers to adopt this kind of contract.[37]

The law prescribes the following limits for the hiring of employees under this regime: 50% of employees in enterprises with less than 50 employees; 35% of employees in enterprises with 50 to 90 employees; 20% in enterprises with over 200 employees. If these limits are not respected, exceeding employees shall have their contracts regulated by the rules concerning contracts with an indefinite duration.

[36] See note 23.

[37] The value of the monthly payment of FGTS is reduced from 8% to 2%, see note 48. The law reduces the percentage of several enterprise contributions in 50% (Sesi, Sesc, Sest, Senai, Senac, Senat, Sebrae) as well as Incra, education salary and accident aid. The reduction is to last for 18 months from January, 22nd, 1998 on.

This law did not produce the effect legislators expected. One of the main union centrals in Brazil, CUT, adopted a position that goes against the law. The result was that the unions connected with this central decided not to celebrate this kind of labor contract. Besides, the law reduced labor taxes for only 18 months. Such a short reducing discouraged employers to adopt this kind of contract.

4.3.2.2 Hour Bank

The creation of an *Hour Bank* changed the idea of *the impossibility to negotiate the contents of labor contracts.* Law 9.608/98 created it. Its goal is allowing employees to work longer than the ordinary working hours without the payment of overtime wage.[38] It is obligatory to create an *Hour Bank* through collective agreement or convention.

The employer can intensify the use of labor of the same employees during certain periods and reduce it during other periods. The employee who works over his ordinary period receives from the enterprise a credit corresponding to the number of hours he worked. In the same way, if the employee is dismissed from his work by his employer before the end of his ordinary period, the enterprise receives a credit corresponding to the number of hours he did not work. Every year, these credits must be adjusted between employees and employers. These "deposited" hours at the "Hour Bank" are not paid with the adding 50% prescribed by the Brazilian Constitution.[39]

4.3.2.3 Part-time work

Temporary Measure 1.709/98 created a part-time work regime. In this regime, the employee works only 25 hours a week, whose distribution is accorded by both parties. This temporary measure aims at changing the idea of *the impossibility of negotiating the contents of a labor contract.*This regime can be instituted by an agreement between both parties. The employee who works under this regime will have reduced holidays, without the adding of ½ over the value of his holidays. Employees hired under this regime are forbidden to work overtime.

4.3.2.4 Negotiated suspension of a labor contract

Temporary Measure 1.726/98, made it possible to suspend a labor contract through an agreement between employee and employer. This suspension aims at avoiding the dismissal of the employee. It allows a *continuity of labor relation.*

The Brazilian labor legislation prescribes a series of hypothetical suspensions of the labor contract aiming at the protection of the labor relationship. For example, during the obligatory period in which a young man joins the armed forces, the labor contract is suspended: the employee does not work, and the employer does not pay his wages, but the labor contract still exists. After the employee is dismissed from the armed forces, he must be re-hired.

[38] The employee is subject to a working period of at most 8 hours a day, within the limit of 44 hours a week.

[39] Law 9.601/9 prescribed the payment of credits and debts every four months, but Temporary Measure 1.709/98 extended this limit to one year. This measure has been reissued by the government since then.

This new hypothesis of a contract suspension is in accordance with the original spirit of CLT. We do not think it right to consider it a measure aiming at breaking with the logics of our system regulating labor relationships. The employer in financial difficulties can suspend the labor contract of some of his employees, while waiting for his business to go back to normal pace.

Instead of dismissing an employee, the employer can suspend his contract with the optional payment of a *compensating help*, obviously inferior to his wages. During the suspending period, the employee must go through a professional qualification process sponsored by Fundo de Amparo ao Trabalhar (FAT). He shall receive a monthly allowance to attend the course.

The suspension must be prescribed by a collective agreement or convention before it is individually negotiated between employer and employee. The suspending period might vary from two to five months at most. There might be only one negotiated suspension every 16 month between the same parties.

The process of flexibility in action in Brazil	
Flexibility in Brazilian Constitution	a) art. 7, VI – *allows the employee's salary to be reduced* through collective agreements or conventions. b) art. 7, XII – *allows compensating and reducing working hours through* collective agreements or conventions.
Ordinary laws and temporary measures	
Contract with a precarious duration in order to fight unemployment (Law 9.608/98)	• Allow to hire employees for a definite period of time. • Can only be instituted through collective convention. • Hiring should add employees in the enterprise.
Hour Bank (Law 9.608/98)	• Aims at allowing employees to work longer than the ordinary working hours without • Can only be instituted collective convention.
Part-time work *(Temporary Measure 1.709/98)*	• Employees works only 25 hours a week, whose distribution is accorded by both parties. • Can be instituted by an agreement between the employee and the employer. • Reduced holidays, without the adding of ½ over the value of his holidays. • Forbidden to work overtime.

4.3.3. General evaluation

The measures for flexibility adopted by Brazil seem to have as their central target *the enlargement of room for employees and employers to negotiate the contents of their labor contracts making possible to reduce some of the employee's labor rights.*

The Precarious Contract aims at creating a differentiated labor regime, in which several rights concerning the employee do not have to be fulfilled. In the same way, the Hour Bank aims at creating another pattern for the working period, different from the pattern prescribed by the Brazilian Constitution and CLT. Part-time work is also a kind of job with fewer rights, just like the Precarious Contract. The possibilities of Negotiated Suspensions of the labor contract is the only one among these measures aiming at protecting employees according to the original spirit prescribed by CLT: it aims at avoiding the dismissal of employees and preserving their jobs.

Should one be conclusive concerning flexibility?

As we tried to emphasize, there are different types of flexibility according to the subject of the *deregulatory* process, as well as to the political trend that govern the introduction of flexibility policies.

Looking at what has been going on in the recent Brazilian legal reform, concerning the flexibility of labor relation, one can state that it has been characterized by: 1º – the variety of subjects put under legal change; 2º – the adoption of flexibility as a means of fighting job scarcity and diversifying the legal institutes devoted to improve job recruitment.

The political arguments that support the introduction of flexibility measures in Brazil, however, do not take into account the peculiar by-products of legal flexibility in semi-peripherical economies. In other words, the existence of a sort of *de facto* flexibility, which consist of the widespread transgression of the already formally enforceable legal norms, as well as of the absence of an efficient system of legal protection against work over-exploitation,[40] erodes the credibility of flex-law measures as being appropriate to face job scarcity. In this particular economic reality, it is unlikely to predict that the union bargaining system will be strong enough to give efficiency to collective agreement as alternative to statutory legal regulation. It seems far from prediction the social consequences of the flexibility mostly taking into account the internal regional and functional differences between workers Brazilian economic inequalities. Furthermore, one of the unexpected and pervert effects of flexibility could be to increase the rate of informal and precarious job recruitment.

Finally in what concern the Brazilian social experience, no conclusive judgment regarding flexibility should be expressed without a proper comprehension of what has been going on with informal economy.

[40] According to official data (IBGE), approximately 50% of Brazilian workers don't work under any legal protection. Actually, all the Brazilian data about employment, unemployment and precarious jobs must be regarded cautiously. There are several institutes that produce statistics based upon irreconcilable methodologies. Regarding precarious and informal jobs, there is not a consensus among scholars about its characteristics and its impact on the performance of Brazilian labor market.

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