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Labor reform

external antecedents and implications for Brazil

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TABLE OF CONTENTS

EDITORIAL

Labor reform: external antecedents and implications for Brazil

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Since the financial crisis of 2008, which had among its causes the advance of neoliberalism and one of its most devastating facets, the financial deregulation, many countries have been paradoxically enforcing liberal policies with the intention of overcoming the crisis. In this context, flexibilization of labor laws is seen, alongside fiscal austerity measures, as a fundamental part of the conventional prescription for the necessary recovery of economic growth and the fight against unemployment. In this current issue of FEE's **Panorama Internacional**, we present a set of articles that seek to contextualize the global scenario in which the Brazilian labor reform is inscribed, its consequences and uncertainties and also its historical origins.

The necessity of a reform in labor laws has been presented in Western countries as a path without alternatives, but international experience shows that its benefits are at least uncertain. In his article, international relations researcher Ricardo Leães addresses the paradigmatic case of the Spanish reform and reveals that while the precariousness of labor relations is an increasingly present reality, it is not possible to state that the recent creation of jobs in that country has resulted from the reform. On the other hand, Asian countries have adopted a reform under their specificities, as the internationalists Bruno Jubran and Robson Valdez describe. While South Korea combines flexibilization of labor rules with the adoption of explicit policies of job creation, China, going the opposite way, as usual, has embraced the expansion of labor and social security rights in order to stimulate domestic market and keep the manifested transition of its development model.

In Brazil, the labor reform, besides the fulfillment of the public expenditure cap and the approval of the social security reform, has also been conceived as a prerequisite for growth resumption. But the relationship between the reform and job creation is not automatic here either. In recent times, the nation has managed to achieve a sustained cycle of economic growth with a historical nadir of unemployment rates, in conjunction with several transformations in the structure of the labor market, that have begun to disrupt old patterns, such as the rise in formalization and the reduction of wage inequalities between black and non-black people and between men and women. All that progress was achieved without fundamental changes in the labor legislation. It is known that such a scenario was possible owing to a favorable external environment that will hardly be repeated in the coming years. Is the reform, then, the only path for resuming growth?

In their article, researchers in economy Iracema Castelo Branco and Alessandro Donadio Miebach present the main aspects of the Brazilian labor reform. On the one hand, the advocates of the reform

argue that more flexible forms of negotiation, even for establishing the workday, and the reduction of

legal uncertainties contribute to boosting competitiveness by increasing opportunities for all workers, not only the formal ones, besides avoiding quantitative adjustments in employment in times of crisis. On the other hand, critics point out that the reform increases employees' insecurity for it makes it possible to reduce wages and expand the workload (sometimes unilaterally) with predictable negative consequences not only for the workers' well-being, but also for the expansion of the domestic market and the economic growth itself. In addition to the economic debate, the authors point out some adversities, such as the legal uncertainties that remain on the horizon and will only be resolved as the lawsuits proceed, the possibility that part of the workers will earn wages lower than the permitted minimum (due to the legalization of intermittent work) and the consequence of this for the social security collection policy, and the difficulties created for unions and workers to access the justice system.

Labor laws, together with freedom of association, seek to balance the bargaining power between employers and workers, which is naturally unequal in capitalist societies. If well calibrated, this set of rules contributes to preserve a dignified life for workers, not only regarding their access to consumer goods, but also their recognition as subjects and part of society, besides fostering economic expansion and job creation.

Some adjustments in the Brazilian laws might perhaps be fruitful given the changes in the work market. Historian Rodrigo Weimer's article reveals that the Brazilian labor rules began to emerge even before their consolidation in the "worker's bible", a popular designation for the Consolidation of Labor Laws (CLT), having been constantly adjusted ever since. The scope and the depth of the changes which have been passed under Michel Temer's government, however, are unprecedented. The situation of the current ruling forces raises doubts as to whether the purpose of the approved reform is to make the rules more flexible to boost the economy or to unbalance the capital-labor relations. For this issue's interviewee, Valdete Souto Severo, judge of the Regional Labor Court of the 4th Region (TRT4), there is no doubt: "there is no such thing as a "reform" of the CLT. There is no way we can talk about 'reform' when it changes more than 200 provisions, and all of them, without exceptions, aim to protect employers".

Enjoy your reading!

ARTICLE

Is the global flexibilization of labor relations a generalized trend?

A brief analysis of the situation of East Asia

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Over the last few decades, especially after the great global economic crisis in the late 2000s, the deterioration of labor relations has been noticed and discussed, with particular interest in the European Union and the United States. In 2013, the International Labor Review, a publication related to the International Labor Organization (ILO), devoted an entire issue to the situation of labor relations in Europe, with mostly pessimistic conclusions. This scenario shares similarities with those of the United States and some Latin American countries, including Brazil. Indeed, it is possible to infer a correlation between the economic globalization and the decay in labor relations, at least in the most developed regions. However, what is happening in other parts of the world? This text debates the situation in East Asia, where a great deal of attention is being drawn to the best public policy practices, given the recent quick development of markets in that region.

Before proceeding to the question itself, one should note that the national systems of labor regulations appear to be in a more favorable situation for workers in Europe, North America and even in some of the most industrialized countries in Latin America than in other parts of the world. However, it is necessary to ponder not only the static situation of these systems, but also the recent trend in both groups. As most of the recent studies have assessed the problematic in Europe and Latin America and identified a considerable worsening trend in those places, this paper emphasizes the recent evolution in labor relations in Eastern Asia, by selecting three among the most representative emerging economies in the region: China, India and South Korea.

The Chinese case seems to be quite elucidative. Although Chinese regulations still remain far tougher than their analogues in Europe, in terms of wage levels and access to basic rights, such as retirement, the central government has acted to improve labor policy. The basis of current national-level labor laws is relatively recent (in force since 1995), having been complemented by the Collective Contracts Regulation of 2004. As Wu and Sun (2014) stated, a government-led system of mediation and arbitration between workers and employers is in force. This arrangement gives the government the prerogative to impose conditions and limits on wages and working hours and impells the parties to negotiate, among other things. The policy of rights granting might be understood as a response of national leaders to the growing

agitation among Chinese workers in recent times and to the upsurge in the number of cases of labor judicial disputes all over the country, initiated in mid-1990s. In 1992, there were around 18,000 labor disputes, while in 2008 this number increased by 90 times. Chinese labor legislation, in addition to being more restrictive in comparison with the ones of its Western counterparts, remains based on an individualized logic which prohibits the right to strike and the creation of independent trade unions, as the authors point. However, as previously noted in this publication, the relative improvement of workers' welfare, especially in large cities, can also be interpreted as part of a broader plan of the Chinese Communist Party to switch the prevailing export-led model of development to another one based on the domestic market, given the persisting turbulence in the global economy. The expansion of labor rights, therefore, features a significant propositional and even strategic nature.

India, the second most populous country in the world after China and with an increasingly prominent participation in global politics and economy, offers a significantly different picture. On the one hand, around 84% of Indian workers had informal occupations in 2012, according to ILO data, a proportion that is larger than that of other developing countries. On the other hand, this percentage has decreased over the last few decades, albeit in a rather slow pace. Since the early 2010s, the Indian government has been promoting changes to guarantee labor rights which focus on specific groups, such as the Sexual Harassment of Women at Workplace Act, of 2013, and the National Policy for Domestic Workers, of 2011, as reported in a recent publication of ILO's Decent Work Program. It should be noted, however, that the government of Narendra Modi has publicly favored flexibilization in labor standards.

Another interesting regional case is that of South Korea. Despite the rapid economic advance in the last few decades, which has promoted the nation to the group of the Asian Tigers, its economy was hit by the great global crisis of 2008, after having been hit even more severely by the East Asian crisis of 1997. During the crisis of the 1990s, the country suffered a major shortage of foreign currency that had an impact on its macroeconomic indicators. Like what other neighboring countries did, the South Korean government requested a bailout from the International Monetary Fund, which, in response, imposed the granting of assistance to the implementation of fiscal policies, which had great impact on labor relations. After a rapid hike in unemployment rates (from around 2.5% in the last quarter of 1997 to 8.5% one year later), the austerity measures were gradually replaced by a differentiated approach, known at that time as the Social Agreement for Overcoming the Economic Crisis. This policy combined pro-market elements with the expansion of the social security net for workers. On the capital side, it sought to stabilize price and wage levels and to facilitate the practice of shutdowns; on the labor side, it boosted the policy of job creation, enhanced unemployment insurance and empowered labor unions. The maintenance of this compromise solution helped to soften the damages of the global crisis in the second half of 2008, considering that the employment rate was practically unharmed throughout that period. In recent times, there have been diverging political pressures, either by large business groups or by trade unions, to change the existing labor standards. In 2017, the election of the center-left Democratic Party encouraged unions to demand policies that tackled the high proportion of part-time workers and reduce the number of working hours, which is one of the highest averages among the members of the Economic Cooperation and Development (OECD).

From the analysis of the three largest economies in East Asia, one should resume the initial interrogation. This text suggest that, although labor laws in the three Asian nations remain much stricter than those in Europe and North America, they have neither clearly incorporated the tendency

of flexibilization in labor relations nor undergone significant changes in their content. The main innovations can be identified in India, where the legislation has been changed to improve the situation of women in the workplace. However, it is in political disputes that relative gains for workers can be better noticed. In South Korea, workers have been granted important benefits, such as the policy of job protection and the relative strengthening of trade unions. In China, general improvements in the welfare of workers respond to both the fears of a widespread social upheaval and the purpose of altering Chinese pattern of export-led growth.

It should be stressed that workers in these nations are not in a comfortable position. Firstly, as stated, their situation remains highly precarious, notoriously in India. Secondly, it is not possible to conclude that improvements will remain unscathed, once the rise in the bargaining power of workers might lead to the reaction of business sectors in these same countries. This picture can already be seen in India, where calls for flexibilization have gained ground in public discourse. With this brief exposition, it is worth concluding that labor relations in the most significant emerging markets of East Asia have been witnessing a distinct process from those of Europe, North America and even parts of Latin America. However, it is too early to assert that this *sui generis* Eastern experience will be permanent.

ARTICLE

Spanish labor reform: sure losses, uncertain benefits

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In February 2012, in Spain, the proposal of labor reform headed by the government of Mariano Rajoy, of the Popular Party (PP), was converted into law. Truthfully, this undertaking is located in a larger context of labor market flexibilization movements, such as in Mexico, Chile, Argentina and, especially, in Brazil, which means that it cannot be considered a unique case. More than five years after its ratification, an evaluation of its results is required, so that parallels can be drawn with the process in progress in our country.

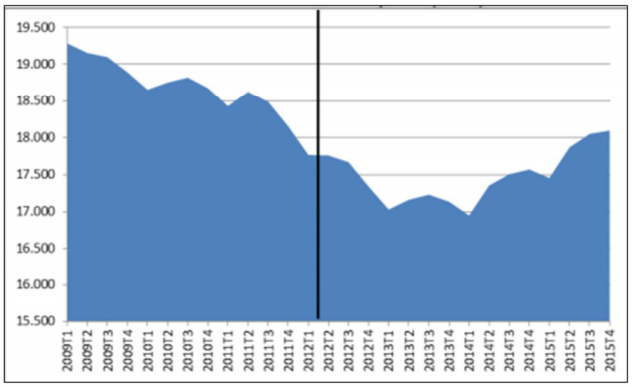
In short, the reform aimed at facilitating dismissals and hiring on a partial or temporary basis. Accordingly, the legal obligations of the companies that cut off their employees were reduced and the processes for the admission of new employees were simplified. The official justification was that, in a context of crisis, these changes would allow the external flexibility of firms (i.e. layoffs) to become internal flexibility (i.e. wage reductions), which would soften their negative effects and enable a faster recovery.

At first glance, the available data seem to indicate an ambiguous picture: concomitant increase in job creation and precariousness in labor relations. In fact, by the end of 2016, compared to the last quarter of 2011, the number of employed persons increased 350,000 and that of salaried employees was augmented by 250,000. Thus, the unemployment rate fell from a level of 24.8% to 18.5%, which was welcomed by enthusiasts of the legislation updates. On the other hand, the hiring of temporary employees and part-time workers has advanced, making the average annual salary, currently 800 euros, lower than the one in 2011.

It is up to the analysts to see if it is possible to attribute a direct causal relationship between the reform and the generation of jobs. That being said, despite the positive data on job creation, it should be noted that the analysis of the period when the reform was taking place shows a dubious scenario: although the unemployment rate has actually fallen since 2011, one should note that its level rose until mid 2014 — a trajectory that was only reversed with the resumption of economic growth in that year, that is, the quarters immediately after the reform point to an opposite picture to that imagined by its supporters. As the correlation between economic growth and job creation is well-proven in the specialized literature, it remains uncertain, albeit plausible, that the decline in the unemployment rate was actually caused by the labor reform.

Figure 1

Number of employed persons in Spain — 1st trim./09-4th trim./15



SOURCE: Encuesta de Población Activa/Instituto Nacional de Estadística (2016).

Thus, a careful analysis of the data available indicates that the direct relationship between the flexibilization of labor laws and the creation of jobs is not conspicuous. In the Spanish case, at least, the link between the two elements only took place after the occurrence of an opposite phenomenon, indicating that the effect of job creation may be due to a third factor, independent of the reform — which casts doubts about whether a similar result would not have occurred even without these changes. This finding is especially relevant for Brazil, as the effects of the labor reform recently approved by Michel Temer will be observed in the coming months.

On the other hand, the negative externalities allowed for by the change in legislation seem to be inextricably linked to the reform itself: precariousness of work, increase in partial and intermittent contracts and immediate wage reduction were the stated aims of those who proposed the law. In fact, part-time jobs grew by 1.8 pp per year between 2011 and 2016, standing at 15.3%, while the rate of involuntary temporary contracts increased by 5.2 pp, reaching 60.5%. Finally, the reform also provided an increase in the number of "false self-employed workers", employees who are forced by their companies to work on their own account. In relation to the total number of self-employed workers, this group represented 62.9% in 2011 and rose to 67.1% in 2016, confirming the trend of worsening the employment protection conditions.

In addition to warning about the need to reduce labor costs in order to turn external flexibility into internal flexibility, reformers also argued that this process would favor Spanish companies in terms of international competitiveness, as lowering these costs would allegedly increase their profits. On this point, it should be noted that these benefits will only occur if the world economy recovers, so that importers will increase their demand for Spanish products.

In these circumstances, it must be said that, for Spanish workers, the benefits of the labor reform seem ambiguous at best, since job creation is not necessarily linked to the change in legislation. In contrast, the losses are crystal clear, once these shifts have spawned precariousness in labor relations and wage contractions.

Labor Reform: a setback to social rights

By Bruno Jubran

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In this issue's interview, labor judge Ms. Valdete Souto Severo criticizes the Brazilian labor reform because she believes that the points brought up by it violate the International Labor Organization (ILO) norms and are a setback to social rights. Severo refers to "reform" in quotation marks to delimit her understanding that the Brazilian Consolidated Labor Law (CLT) has been changed to protect employers, subverting the historical reason for which labor legislation exists.

Severo has a PhD degree in Labor Law (University of São Paulo) and a Master's degree in Fundamental Rights (Pontifical Catholic University of Rio Grande do Sul). She is a Labor Judge at the Fourth Region's Labor Court and a member of the Association of Judges for Democracy. She is a researcher at the Research Group for Labor and Capital (University of São Paulo) and at the National Network for Research and Studies into Labor Law and Social Security. Severo is also a lecturer, coordinator and director at Fundação Escola da Magistratura do Trabalho do Rio Grande do Sul.

Panorama: How have international organizations seen the Brazilian labor reform?

In a negative way. The ILO has already officially declared its concern about the dismantling of the system of protection for those who work brought about by Law No. 13.467/17. Just a few days ago, the ILO issued a recommendation in a report of its Committee of Experts for the Brazilian government to consider revising some points of the labor "reform".

Panorama: In your view, are there any hindrances in Brazil's commitment with the conventions of the ILO?

No doubt there are. The provision for intermittent work, the possibility of individually adjusting the loss of the break time, the reference to the fact that issues related to the working time no longer

concern health at the workplace and the difficulty that the "reform" creates for accessing justice are all changes that challenge the ILO's guidelines for labor protection.

Panorama: The current Brazilian reform has a large inspiration on the Spanish reform, which entered into force in the early 2010s. What is the basis of such flexibilization in the Brazilian and Spanish labor laws?

The Brazilian "reform" is, actually, a cutout of the worst points of neoliberal legal changes in Spain, Portugal, Italy and England. Several provisions, which were to some extent copied from recent European laws, have been worsened. That is the case of the intermittent job contract, which has no provision of the minimum number of working hours a month here in Brazil. The alterations related to the so-called "negotiated above the legislated" are not exactly inspired by laws of any other country, since both the legal provision for the trade union actions and the reality of these actions and the state intervention in collective actions are peculiar to Brazil. And there is no single factor to explain our "reform". Law No. 13.467/17 contains amendments that are clearly pretensions of certain sectors of the economy. These changes constitute copies of foreign legislation and the will of a small group of judges who only after the law was passed was discovered to be composed of "the reform's parents". It is extremely aggressive in both material and procedural terms and reveals a moment of retrenchment of social rights which is also being felt in Europe. The explanations for this retraction are manifold. The capital crisis is cyclical and results from circumstances that arise objectively from the system itself — such as unemployment, income concentration, depletion of natural resources, etc. On the other hand, social rights, especially labor rights, are something "ripped out of the capital," as Marx wrote, which capitalism deals with tensely. Social rights in a capitalist logic of meritocracy and wealth accumulation, in a reality in which opportunities are not or will never be for all, constitute a concession that is only possible if it does not jeopardize this excluding order too much. That is why social rights history, as well as Labor Law history, is a history of advances and setbacks. Social rights have already been considered an aid mechanism to deal with economic crisis, as in the case of the creation of the ILO, in 1919, or the New Deal, but they have also been seen, as currently, as a "scapegoat" or the ones to blame for the objective consequences of our social life choices.

There is also the fact that the history of capital in the last few centuries has oscillated between periods of greater democratic openness, in which the struggle for effective freedom and fairer distribution of goods gains ground, and periods in which fascist discourse, which is a concentrating discourse, enemy of freedoms and, consequently, of the social guarantees, emerges. Unfortunately, the West is undergoing a conservative phase, for many reasons that cannot be listed here. It has reflections not only on the labor "reform", but also on the way of governing and the choice of rulers in countries of different historical traditions and on policies of intolerance towards differences, among many other examples. We have gone through this before, but it is evident that the more we advance in time under the same form of social organization, the more the number of human beings on Earth increases, the less natural resources and areas of exploitation we have at our disposal, the worse it gets.

Still, Brazil is a country of slave and colonialist tradition, which still functions in the logic of the master-slave relationship, in which social rights have never really been respected. An example of that is our difficulty in enforcing rights that have been in the Constitution for decades, such as the guarantee against arbitrary dismissal. In our culture people think that the worker "is given a job" and the employer "gives employment". It is difficult to deal with the common sense (ideology) that is pervasive in social relations. Even workers often reverberate the rhetoric about being grateful to their employer, as if they were not selling their life time for payment and even for the absolute

impossibility of surviving otherwise in a capitalist system of production.

It is also worth mentioning, so that we can understand the symbolic aspect of this “reform”, that it only became possible in our country after the democratic rupture in 2016. For better or for worse, since we promoted (in a conciliatory way, it is true) the democratic opening after the years of lead of the civil-military dictatorship, we have known the rules of the democratic game. There was no concrete possibility of ostensive abolishment of social rights (the issue was absent in any of the political campaigns that disputed the elections either for the Congress or the presidency of the Republic), because we had not even achieved what is commonly called "minimum civilizational level". The few achievements obtained during the past fifteen years in Brazil have addressed a kind of income-based inclusion, without succeeding in changing the bases and the quality of the public services regarding education, healthcare and housing and without being able to enforce the Constitution of 1988, as regards the system of labor protection. Still, there was a kind of consensus about the necessity of progress, which the Constitution portrayed. The parliamentary coup that occurred in 2016 prompted a break in this consensus. From then on, everything has been allowed. The rules of the game were changed and no one even pretended they kept being respected. What is valid to some is not valid to others. The parliament — the most conservative of all time in the country, according to official research — approved the "reform" sneakily, changing an original project that had few articles. They voted behind closed doors in exchange of advantages and privileges, through a hit-and-run procedure, completely disregarding the social will. It was somewhat as if the curtain fell and we came across a reality completely different from what we had seen so far. Obviously, this reality has been around for a long time and has a close relationship with the slavery legacy that I mentioned previously. The point is that the disguise that to some extent materialized into practices of containment of the destructive logic of the capital has disappeared. Now we have a government that finances an untrue campaign in favor of the pension reform, passes an ordinance that practically authorizes slavery-like work conditions, a parliament that proposes to criminalize abortion and which continues to pass, almost every day, laws that destroy social guarantees, and a judiciary that cannot accomplish its only mission: to protect and enforce the constitutional order.

Therefore, within a movement that is international and somehow enables the "reform", there are particular characteristics in the metabolic order of capital in Brazil, and the result is an absurd setback.

Panorama: The debate on the reform of the CLT is quite old and presents interesting nuances, but it has been erroneously portrayed that only neo-liberal sectors have defended changes. Nevertheless, voices in the left of the national political spectrum also direct important criticism to the mentioned code. What are the main aspects highlighted by the Brazilian progressists?

Look, there is no such thing as a "reform" of the CLT. There is no way we can talk about "reform" when it changes more than 200 provisions and all of them, without exceptions, aim to protect employers (as declared by the "parents" of Law 13.467/1207). So, they subvert the historical reason why we have labor norms. It is just like including in the Child and Adolescent Statute a rule allowing sexual abuse in certain circumstances and stating that it is a protection rule or saying that parents have the right to inflict physical and psychological punishment on children and adolescents and insisting that we are "reforming" the statute. Thus, it is not even possible to discuss the necessary criticisms on the labor legislation in the environment that we are facing because there has been a shift in discourse. What we call "reform" (and that is why I am using quotation marks) is a coup whose ultimate goal is to eliminate the notion we have of Labor Law. Then, to not leave the question unanswered, I point out that If we were to

talk about criticism to the CLT, from the perspective of the historical reason why labor laws exist (to protect those who work), we would start with the necessary extinction of the dispositions on summary dismissal, which punishes only the employee and is not compatible with the contractual logic that we insist on using when dealing with labor relations.

At this moment of fascist onslaught on labor rights, it seems to me that it is not time to point out the flaws, but rather to recognize the qualities of the labor legal system to be able to understand the perversity of the destruction that Law 13.467/2017 intends to bring about. The labor procedure, for example, has rules that have been copied in the recent amendments of the Civil Procedure Code (CPC). In fact, it has an effectiveness logic that the CPC has not achieved yet. For instance, since the decrees of 1932 that originated the procedural part of the CLT were passed, we have had a single procedure which ends only when the guarantee of life is actually delivered to the creditor, in cases of origin. Until 2005, the CPC distinguished knowledge and execution. So, in addition to the critical aspects that can be raised against the text of the CLT, it seems to me that today it is strategic to defend that set of rules, especially for its symbolic importance. The resistance must be directed towards the repeal of Law No. 13.467/2017 or, at least, the partial neutralization of its harmful effects.

Panorama: After the enforcement of the new rules, what are the most significant changes identified in the routine of the Labor Court?

There is a decrease in the number of lawsuits that may not have as much to do with the fear that the injurious procedural alterations may apply as with the natural expectation of the social actors (especially of the lawyers) about the interpretation (constitutional or not) that the new rules will be given. At court hearings, I notice an arrogant stance on the part of (a few, truly) big company representatives, who invoke the legislative changes as real weapons against the workers' rights. There is also a growing number of demands in which there is no payment of the resilience funds, which makes the duration of the litigation often fatal, even for the physical survival of those who work.

ARTICLE

From the First Republic to Getúlio Vargas and Michel Temer: the history and memory of labor laws

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The final years of the First Brazilian Republic witnessed the first efforts to regulate labor relations in Brazil. During the administrations of Epitácio Pessoa, Artur Bernardes and Washington Luís, laws on occupational work accidents (1919), retirement and pension funds (1923), vacations (1925) and child labor (1926) entered into force. These historical records will certainly surprise those who regard Getúlio Dornelles Vargas as a pioneer in labor laws.

At the turn of the 21st century, several oral history works carried out with elderly people in rural areas testified how countryside workers still paid immense reverence to Getúlio.[1] In interviews, they credited him with the exclusivity in granting rights. A lady, in one of those reports, attributed some acts to the ruler which did not actually result from his ink, such as rural retirement or even the abolition of slavery (!).

The counterpoint between history and memory allows us to make some reflections. Contrary to what common sense holds, Vargas was not the first ruler to pass laws on workers' rights. Moreover, the Consolidation of Labor Laws (CLT) *[Consolidação das Leis do Trabalho in Portuguese]* and the rights insured therein were not innocuous to the rural population, as it is commonly thought. Otherwise, their memory would not have been kept.

In fact, Getúlio did improve the existing laws, made new ones and systematized them into the CLT, in 1943. Between 1930 and 1945, his administration instituted the employment record card and the minimum wage, established the Labor Court, regulated trade unions, limited the working time to 44 hours a week, established maternity leave and the right to rest periods, among other prerogatives.

However, the perception about the laws enacted in the First Republic, which were sparse and unsystematic, differs greatly in relation to the memory on the legislation approved in the following period. If the former are recognized by historiography as the result of decades of struggle by the labor movement, the CLT is remembered, in the common sense, as a gift bestowed by a charismatic and benevolent president. This memory is so consolidated that it admits few alternative narratives.

Historian Ângela de Castro Gomes (2005) dissected the implicit ideology in the idea of bestowal. Once

[1] DEZEMONE, Marcus Ajuruam de Oliveira. Memória camponesa: Identidades e conflitos em terras de café (1888-1987). Fazenda Santo Inácio, Trajano de Moraes – RJ. 2004. Master's thesis in History. Universidade Federal Fluminense. Niterói, 2004.

RIOS, Ana L. e MATTOS, Hebe Maria. Memórias do cativeiro. Família, trabalho e cidadania no pós-abolição. Rio de Janeiro: Civilização Brasileira, 2005.

the labor legislation was inscribed in a circuit of reciprocity, the workers' support to the dictator was understood as a necessary counterpart. Of a "free, costless, and generous" act, the gift is expected to be paid back. However, memory and history differ. Even if presented as a grant, historians argue that just as in the First Republic, labor laws were passed as a result of the workers' struggle or the negotiation with unions (previously subject to official approval, in 1931, when the Unionization Act passed). According to Gomes, "the state ought to anticipate and elaborate the legislation, even before the associative spirit of workers organized the union". Here is Vargas's achievement: to adopt an anticipatory and preventive attitude on labor rights and receive the laurels for them.

Why do workers attribute the social rights to the generosity and benevolence of that president so staunchly until today? Was the ideological influence of the Vargas Era so absolute and effective? Would the people's naiveness make them fully permeable to the official discourse, broadcast daily on Hora do Brasil?[2] On the contrary: the workers were far from being innocent. Quite astutely, they made that implicit 'pact' with the President (whose memory echoed for a long time) because it helped to secure prerogatives. The legislation was used as an instrument of fight against possible violations of rights, and the Labor Court was the appropriate forum to deal with those issues.

The CLT was dubbed the "worker's bible" because it was a written body based on Vargas's prestige (even after he left power in 1945 and committed suicide in 1954) to which the poor could appeal. It is noteworthy that a significant number of workers were illiterate and had access to labor legislation by the governmental speeches broadcast on the radio. This was also true with rural workers. Although they were not directly encompassed in the CLT, they used it as an argument in their lawsuits or even when they wrote letters to Vargas, as Dezemone (2009) and Ribeiro (2009) demonstrate.

In interviews of oral history conducted in 2008 and 2009, in the Osório region, with elderly workers, black people and poor people, a strong sentiment of experienced injustice could be identified in their retrospective look, for "having no one to count on" and, therefore, being vulnerable to abuse. One of them reported that, on several occasions, when local residents returned from the toil, they found their houses burned down: "they set fire and *you ended up helpless*". In their memories, the sense of vulnerability softened during the administrations of Vargas, when the "worker's bible" represented the very idea of "whom to count on". The CLT thus had a symbolic power that went beyond the guarantees of the law in its practical plan.

While the "ideology of bestowal" could be positively handled by the working class in past decades, today it has become malefic for their purposes. The memory of Vargas's charisma (which was the basis of the "worker's bible") has become rarefied. In this situation, reiterating this memory facilitates abolishing rights (of course, not without discontentment). If the ruler is given the prerogative to grant rights, then he/she can also abolish them through a top-down approach. The reform by Michel Temer of labor laws deducts or flexibilizes a series of rights conquered through the CLT, for instance, the rest period may be shortened, the working day may be prolonged to up to 12 hours, and employees and employers will directly discuss dismissals. The negotiated terms are set to prevail over the legislated ones, thus weakening the Labor Court.

The CLT has undergone several changes since 1943. However, the recent accumulation of changes is only parallel with those carried out in 1967 by the civil-military dictatorship. The latter, however, did not advance on several prerogatives of the original framework, which have been changed only recently. Contemporary social movements often say that not even the dictatorial regime attacked the

[2] Official radio program that broadcast the acts of the government and transmitted the political discourse of the President and his ministers. Since 1962, it has been called Voz do Brasil.

rights guaranteed by the CLT, which is only partially true.

In any case, the recent prevalence of the negotiated conditions over law provisions effectively contradicts the original spirit of Vargas' law. It assumed that there should be a legal body capable of granting protection to workers, who were seen as the weaker party in a power relationship with the employer. Its reconfiguration into a legal framework based on the fictional liberal idea of symmetry, in which the inequality in the bargaining power between the parties is removed, is indeed an unprecedented change.

If one takes into account the changes in the lives of workers and the loss of historically acquired rights, it can be said that the reform has found little resistance among social movements. Along with aspects such as the impact of President Dilma Rousseff's impeachment, police violence and years of "domesticated" and demobilized unions, it is possible that this discouragement is also related to the symbolism of bestowal. If rights are culturally perceived in Brazil as a gift from the government (the abolition of slavery and the Brazilian independence are other examples), for what is given can also be taken back.

Therefore, it would be important to restore a historical truth, in light of the deep-rooted memory. Behind apparent concessions, there were barred past demands and unions' negotiations that, contrary to what common sense holds, were not Getulio's puppets or placid loyalists. The "pact" between President Vargas (and, later, João Goulart) and the workers was full of fissures which were exploited to conquer and preserve individual and collective gains.

The dialogue between history and memory is difficult, but those elements do not constitute an antinomic pair: the relationship between them can be illustrated by the image of Siamese twins, who share organs and blood, feed from each other, but are distinct beings. This complementarity is, then, discussed by Paul Ricœur (2007) and Fernando Catroga (2001). The past always lends itself to political uses, as François Hartog and Jacques Revel (2001) emphasize. History, as much as memory, is a tool for it. By presenting the image of a varguism about to be destroyed, political sectors seek to justify a supposed modernization by neoliberal reforms, which, however, result in archaic labor relations due to the deprivation of social rights. They also deconstruct the legacy of fights for rights longer than a century which goes even beyond Getúlio Vargas. Given this, one shall wonder: whom to count on?

ARTICLE

A first look at the labor reform and its economic impact

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The labor reform passed in 2017 still raises doubts over its impact on Brazilian society. The effects of the changes in the framework of labor relations in Brazil are incipient and there still are some legal uncertainties about the effective enforcement of the new regulation. Time shall pass so that several points are pacified in the national rules. Therefore, the impact of the reform on the labor market is still unclear. This text aims to indicate some of the possible effects of this reform on the economy and the behavior of the Brazilian labor market. To this end, the authors indicate some trends, which are subject to reevaluation as the national labor market internalizes the new normative arrangement.

Law No. 13467 was passed in July 2017 without a wide debate and clarification to the public. The Brazilian labor code has undergone several changes since the Consolidation of Labor Laws (CLT) was enacted on May 1st, 1943, but what is under analysis is the most comprehensive transformation of this institutional framework since then. More than a hundred specific changes in the existing laws can be categorized into the following groups: (a) new forms of hiring that are more flexible (or more precarious, if compared to the pre-reform conditions), such as the intermittent job, which includes discontinuous working hours contracts; (b) flexibilization of the workday, with expansion of working hours banks and extension of working time from 12 to 36 hours for all sectors of the economy; (c) lower wages, with the possibility of performance-related or hour-based pay (which implies that the monthly wage actually earned by the worker may be lower than the minimum wage); (d) changes in health and safety standards at the workplace; (e) changes in union representation and; (f) limitations to the access to Labor Court.

In general terms, groups (a), (b) and (c) aim to meet the business needs of labor force allocation according to short-term oscillations in the demand, that is, they act to reduce labor costs, which results in limitations on workers' rights and compensations. Such reductions may occur either in the form of flexible hiring mechanisms, in which the number of worked hours is reduced (possibly intensifying the work pace), through longer working hours or by means of productivity-based payments.

Group (d) enables reduction of indirect costs and changes in the pace and intensity of work. Groups (e) and (f) act to reduce any resistance to the labor reform by weakening trade union organization and

restricting the scope of action of the Labor Court. The impairment of union representation has the potential to reduce the workers' bargaining power in collective bargaining actions.

The main arguments to defend the Brazilian labor reform lie on the assumption that the legislation

used to present rigidities incompatible with the dynamics of the economy and the labor market itself at the beginning of the 21st century. In other words, the labor code is seen as an obstacle to employment growth and to economic growth itself, at the same time that it induces inequalities in the structure of the labor force, especially those associated with the distinction between formal and informal work. On the other hand, the arguments against the changes in the CLT are based on the perception that flexibilization, under the terms proposed by the new laws, imposes a reduction on workers' rights, which reflects in worsened working conditions, a greater degree of subordination to employers and higher pressure towards reduction of wages. In this perspective, the inequality between the formal and the informal labor markets results from the non-compliance with the law by the employers.

From the economic point of view, the existence of different theoretical understandings about the role of wages in the economy shall be stressed. On the one hand, the advocacy of greater flexibility in the labor legislation emphasizes the role of wages as a cost for the productive activity. In this fashion, their reduction, which is implicit in the reform, would be beneficial to the economic process, as it would allow a greater level of economic activity. The reduction of costs through wages would facilitate, under this perspective, better conditions of competitiveness, enhancing the companies' market share. A simple reduction of the cost of labor would stimulate hiring more workers, regardless of the other economic conditions, and it would mean a higher level of economic activity and employment. In this light, it is assumed that there are no restrictions on the demand that could have an impact on the level of economic activity.

On the other hand, the arguments against the reform, beyond the workers' welfare and the social costs, recognize the asymmetry of capital and labor relations and emphasize the role of wages on the demand for goods and services. In this sense, reducing wages would lead to lower consumption by workers, eventually reducing the aggregate demand, which would have negative implications on investment and, by extension, on economic growth and on the level of employment.

In fact, this is a facet of the debate that has split economic science since its origin, with periods of progress and setbacks within the theoretical consensus that has been created over time. The foundation of the International Labor Organization (ILO) in 1919, with its tripartite representation, has sought to pacify conflicts between capital and labor, through international agreements and incentives to regulate the labor market. Recent evidence from deregulated labor markets, such as the cases of Spain, Ireland and Mexico, does not indicate that greater labor flexibility implies sustaining high levels of employment.[3] On the other hand, studies carried out by the ILO using data of more than 100 countries have shown that there is no statistical significance in the relationship between the rigidity of labor legislation and the level of employment. [4] Thus, economic processes are complex, and economic growth derives from the interactions between many variables, such as the type of global integration of each country, the conditions of international markets, the technological transformations, the nature and the functioning of institutions, the different roles of wages, among others. Therefore, economic growth is much more like an inducer of employment (assuming a given system of labor relations) than the result of the institutional conditions that regulate labor

[3] Some studies have found positive relationships between labor flexibility and unemployment, such as Guzman, E.; Guerra, E.; Salas, E. La Ley de Okun y la flexibilidad laboral en México: una análisis de cointegración. **Contaduria y Administración 60**, 2015 p.631-650.

[4] The studies have been published in the ILO report of 2015, **World Employment and Social Outlook 2015:** The Changing Nature of Jobs. Retrieved from http://www.ilo.org/global/research/global-reports/weso/2015-changing-nature-of-jobs/WCMS_368626/lang--en/index.htm.

relations. This is exemplified by the quasi-full employment status of the Brazilian economy between 2010 and 2014 in conjunction with significant rates of economic growth, under the same laws that, two years later, were said to be responsible for the high level of unemployment.

With this theoretical formulation in mind, in economic terms, the labor reform will make the behavior of employment and wages more procyclical. Both employment and wages will become more susceptible to economic fluctuations and will be subject to their impacts more quickly. Employers can more easily adjust the amount spent on employees as demand fluctuates. In this sense, it seems unlikely that the institutional changes made in the labor market will result in a rise in employment, in the same way as the flexibilization of the labor legislation implemented in the 1990s failed to result in lower unemployment rates in that period.