Resilience and Renewal: The Enforcement of Labor Laws in Brazil

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ABSTRACT

What happens to a country's system of labor laws when its government embraces market-oriented reforms? In a twist on the prediction that labor regulations will be repealed, researchers find that laws remain in place but are not faithfully enforced, a phenomenon known as de facto flexibility. This article examines the case of Brazil to understand its near-opposite; namely, resilience and renewal in the enforcement of labor regulations. It finds that labor unions have combined the corporatist authority they gained under state control with the autonomy they acquired under democratization to devise new modes of action and to safeguard existing regulations. Meanwhile, labor inspectors and prosecutors rely on existing laws to combat precarious work conditions and promote formal employment relations, which strengthen the unions. This mutually supportive arrangement is neither perfect nor free of tension, but it shows how workers can be protected even when employers are subjected to global competition.

During the 1990s, Latin American governments decreased public controls over business activities, privatized state-owned enterprises, removed barriers to trade, and sought to attract foreign direct investment. At first, numerous observers reasoned that domestic firms would thrive in this increasingly competitive environment only if their managers had authority to deploy and redeploy workers at will. On the basis of this premise, observers further predicted that countries would repeal many of the labor laws and regulations they had adopted in previous decades (Collingsworth et al. 1994; Kapstein 1996; Myerson 1997; Newland 1999; Tonelson 2000).

Subsequent research found that this outcome did not come to pass, at least not as expected. Some countries decreased individual employment rights, but most of them retained or even strengthened their collective labor regulations (Cook 1998;

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Madrid 2003; Murillo and Schrank 2005). And yet, researchers also found that underneath this veneer of protection, workers remained exposed to the vagaries of the marketplace. In some instances, the laws protecting collective labor rights did not keep up with the novel economic realities of outsourced, decentralized, and dispersed production (Anner 2008, 2011a). In other instances, governments failed to enforce the individual and collective labor laws they had retained on the books (Cardoso and Lage 2005; Bensusán 2006; Cook 2007; Murillo and Levitsky 2013; Kanbur and Ronconi 2016). This phenomenon of covert deregulation came to be known as de facto flexibility.

The notion of de facto flexibility provides a widely accepted narrative to explain observed conditions in many developing countries, where stringent labor laws coexist with high levels of informality and contingent employment relations in the marketplace. Among such countries, Brazil is often showcased as a prime example. It implemented many of the economic reforms of the 1990s, but its labor laws did not change much. To this day, Brazilian workers continue to enjoy roughly the same protections they had for most of the twentieth century, when the government owned numerous enterprises and sheltered domestic firms from international competition. As predicted by the narrative on de facto flexibility, approximately 40 percent of the Brazilian labor force operates under informal employment arrangements.

Reflecting this tension, the Brazil-specific literature falls into two main camps. On one side, left-leaning scholars decry the lack of labor-friendly wholesale reform under President Lula and lament the country's continuing reliance on a corporatist structure that hamstrings vibrant unionism. On the other side, right-leaning analysts emphasize de facto flexibility or give excessive credit to the limited de facto reforms enacted under President Cardoso. In contrast to both these views, this article argues that the de facto flexibility narrative, especially when applied to Brazil, misses the agency of important actors that have shown a remarkable capacity of resilience and renewal. In particular, this study argues that labor unions, labor inspectors, and labor prosecutors have reinvented themselves during the reform period and have reinforced each other so they can protect workers even when employers operate under tight market constraints.

The following pages examine the recent trajectory of legal reforms, union representation, and enforcement practices in Brazil. Research proceeded in three steps. To provide a backbone to the analysis, we used secondary sources to draw a detailed chronology of labor reforms, including both those that were enacted and those that were extensively debated but not approved. To understand how unions responded to market-oriented reforms, we used census data, official data on government revenues pertaining to the union tax, a database of labor unions maintained by the Ministry of Labor, and other sources. To examine the role played by labor inspectors and prosecutors, we drew from detailed records on labor inspections maintained by the Ministry of Labor, statistics on labor prosecutors maintained by the Secretary of Justice, interviews, and participant observations conducted between 2005 and 2010.

Through this process, we found that market reforms triggered a rearrangement of the national system of labor relations. On one side, labor unions combined the

legal right to exclusive and mandatory representation they had gained under state control with the autonomy and contestation they had acquired during redemocratization to devise new modes of collective action and to prevent a rollback of domestic labor legislation.[1] On the other side, labor inspectors and prosecutors relied on this legislation to emerge as new protagonists who combat precarious work conditions and compel employers to register their employees, which strengthens the unions. Even if these actors never discussed a master plan of joint action, they still support and strengthen each other as they search for ways to improve labor conditions in Brazil.

Conceptually, this kind of action, in which agents take advantage of ambiguities in laws to enforce existing codes in new ways, fits nicely with the model of gradual and endogenous institutional change proposed by Mahoney and Thelen (2010). By analyzing it, this study contributes to ongoing debates about how employment relations are being shaped in contemporary Latin America. Instead of joining debates about reforming labor codes or changing state-party-union relations, which are often inconclusive or stalemated, this article calls attention to agents' routine efforts to enforce good laws, extend weak ones, and undermine detrimental ones in ways that significantly improve labor practices on the ground.

Critically, these efforts have produced noticeable outcomes. As noted by Berg (2010, 7), "Brazil's labor market performed well in the 2000s, with strong rates of job creation and formal job growth outpacing informal job growth by a three-to-one ratio." Thanks to this performance, in 2012, and for the first time in decades, the proportion of workers in occupational categories classified as precarious (46.8 percent) was superseded by workers in unprecarious jobs (49.3 percent; Cardoso and Hamasaki 2014). Naturally, many variables interacted to produce these outcomes, but existing research suggests that stronger unions and more vigorous enforcement played a critical role (Pires 2008; Piore and Schrank 2008; Ronconi 2012; Coslovsky 2011).

De Facto Flexibility

Over the past 20 years, scholars of labor relations have examined what happens to labor protections after developing countries embrace Washington Consensus–type reforms. Early on, commentators predicted that these reforms would be accompanied by the widespread dismantling of labor regulations, a downward spiral derisively known as race to the bottom. Subsequent studies have qualified this prediction and identified four levers that counteract its effects.

Three of these levers originate outside developing countries; namely, social clauses imposed by the United States or the European Union as a condition to sign bilateral or multilateral trade agreements (Murillo and Schrank 2005; Hafner-Burton 2009); the inflow of foreign direct investment and associated spillover effects (Mosley and Uno 2007; Ronconi 2012); and demand for goods and services by countries that protect their own workers (Greenhill et al. 2009). A fourth lever originates within developing countries and pertains to the government's ideology. In

particular, researchers have found that left-leaning governments tend to promote stronger labor regulations and better conditions for workers (Murillo and Schrank 2005; Ronconi 2012; Berliner et al. 2015; Amengual 2016).

And yet, many of these same researchers also find that labor laws are not always enforced with the necessary rigor. For instance, Greenhill et al. (2009) find that developing countries tend to strengthen their labor laws to match those of their trading partners, but enforcement often lags behind. Davies and Vadlamannati (2013) use different statistical techniques to examine an overlapping dataset and find that non-OECD countries strive to preserve their collective labor laws from decline but let enforcement slide to conform to a falling global standard. Stallings examines a separate dataset and finds that "all kinds of labor rights are greater on paper than in reality because of lack of enforcement" (2010, 136). Kanbur and Ronconi (2016, 3) go even further and find that countries with stronger labor laws tend to have weaker enforcement, a negative correlation that might be causal at heart.[2]

In brief, the narrative of de facto flexibility has become quite prevalent in today's debates pertaining to labor regulations. For the most part, this narrative has also been taken for granted in Brazil-specific debates and shared by scholars across the political spectrum. There is no doubt that this synthetic label captures important elements in the ongoing tension between national labor protections and globally integrated product and capital markets. However, a closer look into the Brazilian case calls this interpretation into question. The following sections review the historical trajectory of labor market reforms in Brazil and examine how two sets of actors—labor unions, and inspectors and prosecutors—challenge this narrative.

Market Reforms, Labor Laws, and Enforcement: Brazil in Historical Perspective

Brazil has had an eventful history that has shaped its current economic profile and system of labor relations. At the turn of the twentieth century, it was a low-income exporter of raw materials. In the early 1940s, the country embarked on an ambitious plan to industrialize. Over the next several decades, the national government set high tariff walls, created state-owned enterprises, and enacted numerous policies that gave it inordinate control over the economy. As part of this effort, in 1943 President Getúlio Vargas extended existing labor laws, enacted new labor regulations, and unified them all into a single document known as the Consolidação das Leis do Trabalho (CLT). The CLT organized the Brazilian system of labor relations around the idea of a formal job, or a legally valid employment relationship that endows employers and employees with rights and duties, including the duty to pay taxes and fees that fund workforce training, social insurance, low-income housing, and other government initiatives.

With the idea of a formal job at its core, the CLT built the Brazilian system of labor relations atop three additional pillars. As the first pillar, the CLT provided formal sector urban workers with an extensive and inalienable set of individual

rights. It established a national minimum wage, set annually by the federal government, and a limit on working hours and overtime. The CLT also guaranteed workers one month of paid vacations per year; an end-of-year bonus equivalent to one month's salary (*décimo terceiro salário*); minimum remuneration for overtime; additional payments for night, hazardous, and unhealthy work; and special protections for women. In addition, the CLT defined procedures for workers' dismissal, which can occur for "cause" or "without cause." In the latter case, employers must give workers 30 days' notice and pay a mandatory severance fee.[3]

As the second pillar, the CLT created a regimented and highly structured framework for collective representation, with mirroring sets of labor and employer unions characterized by the principles of mandatory and exclusive representation. This means that a single union would represent all formal workers in a given occupation and territory, as defined by the government. As a counterpart for being represented, all these workers had to pay an annual "union tax" (*imposto sindical*) proportional to their wages to support their designated union.[4] In addition, the CLT determined that representation would be strictly vertical; that is, unions could join other unions that represented the same occupation in a neighboring territory to form a federation (state level) and a confederation (national level), but not join unions that represented other categories. The CLT also determined that unions would represent all designated workers in a given territory no smaller than a municipality, but could not have a presence on the shop floor.

To act as counterparts to labor unions in collective negotiations, the CLT created a roughly parallel set of employers' unions (*sindicatos patronais*) that followed the same basic principles of exclusive, mandatory, vertical, and minimum territorial representation. Analogous to workers, employers had to pay an annual "union fee" (*contribuição sindical*) proportional to the firm's capital stock. Employers also had to pay a tax on payroll to fund a network of worker training and social service organizations (*Sistema S*).

As its third pillar, the CLT provided the federal government with numerous levers to control the national system of labor relations. The most visible of these levers was the government's ability to determine the federal minimum wage, which affected the whole economy. Another, subtler lever of control was provided by the government's authority to decide which occupations constituted a category for union representation; which businesses pertained to a given economic sector, also for union representation; and which territory each union covered. Thanks to these legal provisions, the government could split or unify occupational categories or sectors and also gerrymander territorial units to reward compliant unions and punish rebellious ones. In addition, the government managed the flow of money that funded the entire system, and it could withdraw funds from unions that infringed on government directives. Increasing its power further, the government retained the authority to cancel union elections, veto specific union decisions, unseat defiant union leaders, and call for new union elections. At its most overt, the law specified what unions could and could not do. It determined detailed procedures surrounding collective bargaining and allowed unions to provide members with social services

but proscribed anything deemed "political." Even the right to strike was heavily regulated; workers could strike only if they obtained a permit first.

Thanks to all these levers, the government retained control over labor activities and made sure that only docile and pliable unions survived. Occasionally, labor leaders tried to confront the government, but they were termed subversives and swiftly (sometimes violently) punished. In theory, unions had authority to negotiate both wages and hours and health and safety. In practice, they did not have the detailed knowledge of working conditions at each workplace to negotiate health and safety, and tended to abide by the wage adjustments determined by the government. In the end, and for most of the twentieth century, labor unions were more an appendage of the state to appease workers than an instrument of the workers to represent themselves.

Along with a range of government policies devoted to import substitution, this system of labor relations helped buttress a thorough transformation of Brazil's economic profile during the twentieth century from a rural exporter of raw materials to an urban producer of industrial goods. And yet, the effort eventually ran out of steam. By the 1980s, Brazil's GDP growth stagnated and even turned negative while inflation spiraled out of control. Numerous attempts to reform the national economy failed, and the 1980s ended up known as "the lost decade."

The Economic Reforms of the 1990s

The 1990s saw a succession of democratically elected presidents implement Washington Consensus–style reforms that changed the underlying nature of the Brazilian economy. For instance, import tariffs declined from an average of 32 percent in 1989 to 8 percent in 2011 (weighted mean for all products; World Bank 2013), while inflows of foreign direct investment increased from 0.2 percent of GDP in 1990 to a peak of 5 percent in 2000. Foreign trade grew from 14 percent of GDP in 1989 to 30 percent in 2004. Complementing this effort, from 1990 to 2000, the Brazilian government conducted more than 173 privatization transactions, which generated over US$80billion dollars in revenue (World Bank n.d.). During that decade, in absolute numbers, it was the largest privatization program in the world.[5]

Even though the Brazilian government continued to intervene in the economy through its own brand of state capitalism (Hochstetler and Montero 2013; Taylor 2015), these market-oriented reforms exposed domestic firms to renewed competition. And as expected, increased competition reignited the longstanding tension between workers' demands for social protection and employers' demands for managerial flexibility. How would this tension be relieved? Over the years, the narrative that emphasized de facto flexibility has gained enormous traction. In contrast to this view, this study argues that key domestic actors—labor unions, labor inspectors, and labor prosecutors—have demonstrated remarkable resilience and a capacity for renewal that illustrates how workers can be protected even when private firms are encouraged to compete.

Limited Labor Reforms: The Unions Hold the Line

Brazilian labor unions, formerly subjugated to the government, (re)emerged as political protagonists in the late 1970s and 1980s, thanks to the rise of "new unionism," a movement of industrial workers who rejected state control over unions, encouraged shop floor activism, and favored increased union accountability to workers (Keck 1992; Seidman 1994; Noronha 2009). Most notably, in the late 1970s and early 1980s, leaders of metalworkers' unions in São Paulo organized a series of protracted and unauthorized labor strikes that brought the local industry to a halt. Many of these union leaders were imprisoned, but they still helped create the Workers' Party (*Partido dos Trabalhadores*, PT). They also strengthened a broader popular movement that eventually toppled the Brazilian dictatorship and reinstated democracy. The hallmark of this transition, which was pushed along by multiple social groups, was the adoption in 1988 of a new constitution that remains in force to this day.

The writing of the constitution drew heavily on the participation of organized civil society. Labor unions and social movements had ample opportunity to shape the document. In doing so, they changed their relationship to the state, from submission (before redemocratization) to contestation (during the transition to democracy), and eventually to partnership and participation, as unions and social movements successfully lobbied for the inclusion of participatory principles and mechanisms in the new constitution (Doimo 1995). Since then, policymaking in areas as diverse as healthcare, education, social assistance, employment, and workers' health and safety has followed mandatory consultations through councils staffed by representatives of government, businesses, social movements, and labor unions. These reforms created the legal foundations for new modes of tripartite governance and social concertation in policymaking in Brazil.

The new constitution modified the national labor legislation in four critical ways. First, the document elevated many of the individual employment rights originally granted to workers by the CLT to the level of constitutional provisions and thus protected them from capricious change. Second, the constitution extended existing rights to benefit formerly unprotected workers, such as rural workers, unregistered workers, and independent contractors. Third, it allowed public sector workers to unionize and strike (Cardoso and Gindin 2009, 20). And fourth, the constitution severed some of the ties that subordinated unions to state control (Cook 2002). In particular, it authorized workers to decide on their own strike activities and to create their own unions independent of government oversight.

And yet, the constitution also determined that unions would retain exclusive and mandatory representation over an occupational category and territory, which set the stage for two seemingly inevitable tradeoffs (Cardoso and Gindin 2009, 17). First, while these provisions assured that unions would remain strong, they also discouraged them from recruiting new members, tightening their relationship with existing members, and devising innovative ways to protect workers not directly under their purview. Second, the provisions mandating exclusive and mandatory

representation clashed with the provision assuring freedom of association. Since all formal sector workers are, by definition, already covered by a union, they can only form new unions by splitting existing territories or devising ever narrower occupational definitions. Given this setup, many analysts predicted that unions would undergo a process of alienation, fragmentation, and gradual decline.

Two (Failed) Waves of Labor Reform

During the 1990s and early 2000s, the pressure to deregulate the labor market continued to mount. This effort consumed inordinate amounts of political energy but produced limited results. In the end, unions and their allies resisted the push, so the Brazilian system of labor relations was tweaked slightly but never entirely revamped. More important, the dire predictions of union decline did not come to pass.

The first wave of reform attempts took place during the presidency of Fernando Henrique Cardoso (1995–2002), of the Social-Democratic Party, who strove to remake the national system of labor relations along more liberal lines. For instance, his government proposed to eliminate both the union tax and exclusive representation, so unions would have to recruit their own members and raise their own funds. It also proposed that "the negotiated supersede the legislated," so workers could relinquish certain employment rights if they wished to do so (Cook 2007, 89). To advance these goals, President Cardoso's government adopted heavy-handed legislative tactics and enacted numerous "provisional measures" (*medidas provisórias*) that had the force of law. Still, unions mobilized against this effort and prevented Cardoso's administration from producing meaningful results (Cook 2007, 84–85).

The few successful reforms included the creation of part-time and fixed-term labor contracts with limited labor rights, which could be adopted under special circumstances, and the suspension of employment contracts for up to six months, in a type of temporary layoff or furlough. Arguably the best-known reform was the creation of the "bank of hours," a legal device that allows firms to compensate workers for overtime not with a cash payment on payday, but with time off at a later occasion. These reforms increased managerial flexibility at the margins but left the larger system intact (Cook 2007, 87; Cardoso and Gindin 2009, 5).

The second wave of reforms corresponded to the presidency of Luis Inácio Lula da Silva (2003–10), of the Workers' Party, a former union leader and prominent supporter of new unionism. Under President Lula's leadership, the federal government proposed a number of reforms to expand employment rights for formerly unprotected workers and to strengthen collective bargaining (Cook 2007, 99–101).

Instead of heavy-handed tactics, President Lula favored consensus. His government implemented and disseminated the participatory councils previewed in the Constitution of 1988.[6] It also created many other spaces for tripartite dialogue and negotiations, such as the National Labor Forum (*Fórum Nacional do Trabalho*), Negotiating Tables (*Mesas de Negociação*), and the National Public Policy Conferences (*Conferência Nacional de Políticas Públicas*; Pires and Vaz 2014).

One of these spaces was the Minimum Wage Roundtable. Constituted in 2005 under the coordination of the Ministry of Labor, it brought together representatives from union movements, business associations, and various government bureaucracies. Together, these actors agreed on a policy for annual increases of the minimum wage systematically above inflation. This policy contrasted sharply with that of the previous administration, which did not establish a procedure for public consultation on this topic and raised the minimum wage only to keep up with inflation.

Extending this experience, the federal government established roundtable negotiations in many other sectors. For instance, federal authorities convened a roundtable devoted to improving working conditions on sugarcane farms that resulted in a national tripartite pact for the sector (Lambertucci 2010). The government also convened a roundtable devoted to the public sector so that leaders of public sector unions and organizations could identify problems, preempt disagreements, and find ways to improve both the conditions of work and the services being delivered. Also important, the government recognized central unions that bring together different federations and granted them access to a share of the union tax. Together, these reforms increased opportunities for participation and strengthened unions slightly, but they did not fundamentally reshape the existing system of labor relations.

Unions Reinvent Themselves

Over the past 20 years, and as predicted by several observers, union density rates have declined in most of the world. For example, in OECD countries, the average density dropped from 21 percent in 1999 to 16.7 percent in 2014 (OECDStat 2016). In Latin America, however, the situation is more ambiguous. In some countries, like Mexico, union density rates declined from 15.8 percent to 13.5 percent in the same period. In other countries, like Chile, they increased from 12.7 percent to 15.5 percent. In this context, Brazil's decline from 20.6 percent in 2003 to 16.6 percent in 2013 (ILOStat 2016) seems stark, but this aggregate measure hides more than it reveals.

Through our analyses, we find that Brazilian unions not only have survived their predicted decay but have done it by reinventing themselves as agents and organizations. By and large, these efforts have been taking place at the frontlines of unionism, and therefore they are not always easy to detect. For instance, over the past several years, Brazilian labor unions have sought to modify the laws on profit sharing (*Programa de Lucros e Resultados*), which were instituted under Cardoso, so the agreements would not be unilaterally imposed by managers but actually negotiated with the unions (Martins 2000). And once unions had secured a seat at this table, they started insisting that the program should not be a subterfuge for employers to minimize payroll taxes and workers' benefits, but should be an instrument allowing all relevant parties to align incentives and increase both productivity and pay. Similarly, labor unions have maneuvered to limit the effective scope of the "bank of hours"; for instance, by demanding that one hour of overtime lead to a

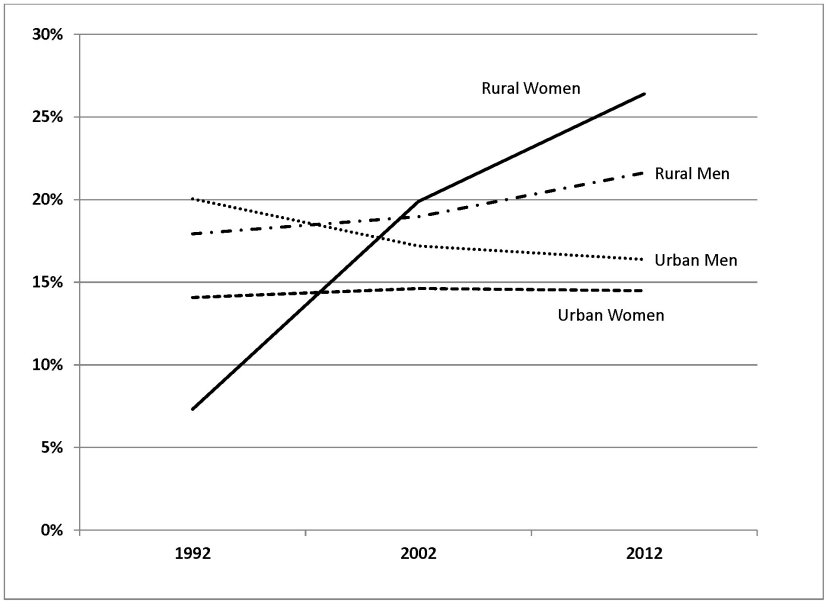
"deposit" of 1.5 or even 2 hours in the "bank." Also important, and as mentioned above, labor unions have been endorsing the creation of national tripartite and quadripartite committees that merge labor concerns with broader economic development issues. Among other achievements, these committees have buttressed a set of policies that led to an increase in the minimum wage and improved labor relations in the public sector.

Complementing these domestic efforts, and as analyzed by Evans (2010, 2014) and Anner (2011b), Brazilian unions have also engaged in (and benefited from) innovative modes of transnational activism that further underscore their resilience and capacity for renewal. Many of these efforts can be traced back to the 1970s and 1980s, and since then their transnational activism has evolved in different ways. In some cases, Brazilian unions have joined forces with European counterparts to negotiate global framework agreements (GFAs) with European-based multinationals, such as Danone, Telefónica, Daimler, and Rhodia, that increase unions' leverage to represent their workers (ILO 2007). While GFAs are often seen as the epitome of transnational activism, Brazilian unions have also joined other types of efforts, such as Global Works Councils (an extension of European Works Councils), regional (i.e., South American) framework agreements (e.g., BASF), and also company-centered networks (e.g., Volkswagen). Thanks to these efforts, Brazilian unions have established a presence in important settings, such as Daimler's Supervisory Board (Daimler AG 2015). They have also been able to receive funding and foreign assistance from European organizations to engage with multinationals on labor rights and economic issues (Rombaldi 2012).

In an interesting twist, transnational activism has empowered Brazilian unions to support their allies abroad. For instance, Brazil's National Confederation of Metalworkers has been helping the U.S.-based United Auto Workers in its effort to unionize a Nissan plant in Mississippi. Similarly, metalworkers in Brazil have used their leverage over Gerdau, a Brazilian-based multinational, to help their counterparts at Ameristeel, a Gerdau-owned mini-mill in the United States (Gray 2009). Taken together, these innovative forms of transnational organization suggest that Brazilian unions have not been the passive subjects of economic forces beyond their control. Instead, they have been adapting to the circumstances and finding novel ways to retain or even increase their power in the contemporary world.

To further substantiate this claim, we draw from several additional sources of data. First, we combine data from the IBGE's annual household survey (*Pesquisa Nacional por Amostra de Domicílios*) for the period 1991 to 2012 with data from its surveys on labor unions (*Pesquisa Sindical*) conducted in 1991 and 2001 and the current registry of labor unions maintained by the Brazilian Ministry of Labor and Employment (MTE) to understand the profile of workers represented by unions. Through this analysis, we find that the total number of labor unions in Brazil increased from 8,000 in 1992 to 11,400 in 2001, but stabilized from then on. At present, Brazil has approximately 10,500 labor unions. When we control for the size of the labor force (*pessoal ocupado*), we find some fragmentation in the first period, as the ratio of workers per union decreased from 8,200 in 1992 to 6,600 in 2001.

Figure 1. Union Demographics
(Percent of each cohort that self-identifies as union members)

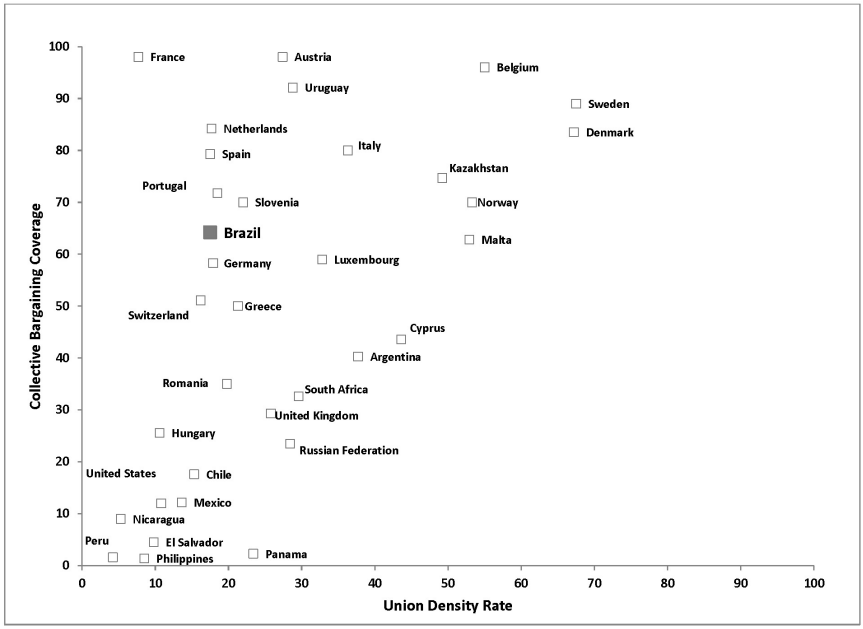


And yet, we see significant recovery in the subsequent period. At present, the ratio of workers per union stands at 8,900, not far from the 1992 figure.

Still, this mild swing in aggregate figures obscures some meaningful changes in the underlying demographics of formal and unionized workers. Even though all formal workers are, by law, represented by a union and pay the union tax, some workers might not be fully aware of what this means. When conducting its annual household survey, IBGE asks interviewees whether they are associated with a union, and a positive response indicates their awareness and proximity to these institutions. By dividing the number of people who answer this question positively by the total workforce, we obtain an indicator of "union awareness" for different demographic groups. In 1992, 20 percent of urban men indicated that they belonged to a union. In contrast, only 7 percent of rural women offered a similar answer. Over the course of the next two decades, these figures changed quite dramatically. In 2012, the proportion of urban men in the labor force who affirmed that they belonged to a union declined as predicted, from 20 percent in 1992 to 16 percent in 2012. In contrast, the proportion of rural women who answered in the affirmative increased dramatically, from 7 percent in 1992 to 26 percent in 2012 (see figure 1).

The exact driver of this transformation is not clear, but it is probably related to the provision of rural credit, which increased during the period and is channeled through rural unions (Cardoso 2014). At the very least, these figures suggest that unions did not simply resist decline and the predicted tendency to fragment, but did it by reinventing themselves.

Figure 2. Union Density vs. Collective Bargaining Coverage



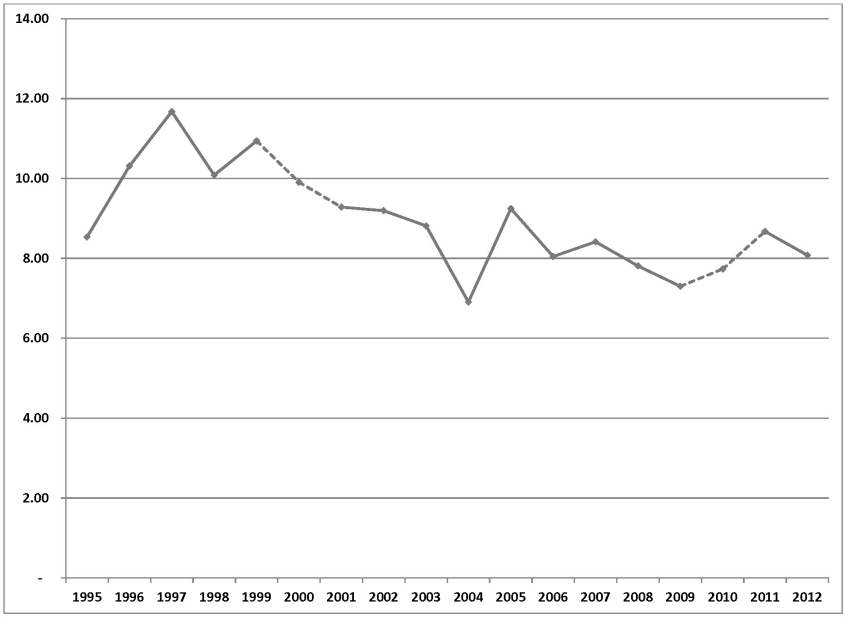
Source: Data from ILOStat 2012

Our second source of data was conventional indicators of union density and collective bargaining coverage obtained from ILOStat for the period 2008–12, which also suggest more resilience than anticipated. In particular, while the density rate for Brazilian unions has decreased in recent decades, their collective bargaining coverage has gone up, a movement that sets Brazil apart from other Latin American countries and brings it closer to several Western European nations (see figure 2).

Third, we identified, in the Brazilian national budget, the line item that corresponds to the union tax. This tax, as described earlier, is paid by every formal sector worker; it is equivalent to one day's worth of wages. The evolution of this item in the government's budget provides another gauge of union strength. Figure 3 shows the total union tax (total nominal revenue) divided by the product of the minimum wage (nominal value per employee) and the total labor force (*pessoal ocupado*), independent of union affiliation. It reveals a slight decline of union revenues from 1996 to 2003, and then a mostly stable trajectory. This pattern corresponds to a minor decline in union power during the Cardoso government and some recovery during the Lula government.

To sum up, Brazil emerged from more than 20 years of market-oriented reforms with a slightly modified set of labor regulations and union representation. First, employment regulations became marginally more flexible (less protective)

Figure 3. Index of Union Revenues
(adjusted for minimum wage and size of labor force)



than before, but they also covered a wider array of workers who had not been fully covered by previous legislation. Second, central unions acquired legal recognition and gained access to a share of the union tax to fund their domestic and transnational activities. Third, labor unions gained some independence from state control. Thanks to these changes and their own initiatives, unions have continued to bargain, strike, and reach out to domestic and international allies to protect all employees under their purview. And yet, a significant share of workers has continued to rely on atypical employment relations that limit their capacity to attain the protections offered by Brazilian law. This increased exposure at the fringes of the labor market has created institutional demand and space for the ascension of a new set of protagonists in the Brazilian system of labor relations; namely, labor inspectors and prosecutors, who use their discretion to propose remedies for observed violations.

New Coprotagonists: Labor Inspectors and Prosecutors

The origins of the Brazilian Labor Inspectorate (*Secretaria de Inspeção do Trabalho*) and the Labor Prosecutors' office (*Ministério Publico do Trabalho*) can be traced at least to the 1930s, so these organizations evolved alongside the CLT. And similar to that of labor unions, their trajectory suffered a critical inflection point in 1988, when the constitution endowed them with considerable authority and autonomy. Instead of proposing the kind of decentralized structure that was in vogue at the time, the Constitution of 1988 determined that both the Labor Inspectorate and the Labor Prosecutors' office remain centralized, national-level organizations. Moreover, the constitution encouraged their increasing professionalization, including recruitment through meritocratic and nationwide competitive exams and promotions from within.

The Brazilian Labor Inspectorate is a division of the Ministry of Labor and Employment, an executive agency subordinated to the presidency. According to recent estimates, it has 2,700 labor inspectors, who work from offices spread throughout the country. All labor inspectors have college degrees (typically in law, management, accounting, medicine, economics, or engineering) and, in a survey conducted in 1998, 34.5 percent also had master's or doctoral degrees (Dal Rosso 1999). Brazilian labor inspectors work side by side with, but independently of, approximately 700 labor prosecutors, who operate out of field offices countrywide. In Brazil, all labor prosecutors have law degrees; 60 percent have additional (nondegree) graduate training, and 23.5 percent have master's or doctoral degrees (Ministério da Justiça 2006).

As in other Latin American countries, Brazilian labor inspectors and prosecutors are responsible for enforcing all labor laws in the country. Typically, they receive complaints from unions or individual workers and conduct unannounced workplace visits to examine whether employers comply with existing legislation. Inspectors do not need a warrant to enter a workplace. Once they detect a violation, inspectors may demand that employers change their practices, pay a fine, and, depending on the circumstances, stop production until the problem is solved. Inspectors can also issue administrative orders determining changes to workplace practices that must be implemented immediately under penalty of contempt.

In recent years, labor inspectors have been emphasizing two types of action, fiscal and social (Pires 2013). When engaged in fiscal action, they compel employers to formally register workers who had been kept off the books or paid less than the minimum wage. As noted earlier, the concept of a formal job constitutes the cornerstone of the Brazilian system of labor relations: each new formal job creates a new union member and triggers a number of recurring fees and taxes that help finance both the unions and numerous government initiatives. Formalization imposes direct costs on employers (and perhaps on employees), but these costs can be seen as necessary investments for the collective good.

When engaged in social action, inspectors combat degrading and dangerous work conditions, including sweatshops, child labor, forced labor, modern-day slav-

ery, workplace discrimination (including discrimination against people with disabilities), and precarious working conditions. In addition to social and fiscal action, inspectors devote significant effort to enforcing health and safety regulations. As part of this responsibility, they preside over meetings of tripartite commissions organized by industry or theme, which help the relevant parties update norms and administrative rules pertaining to their various workplaces.

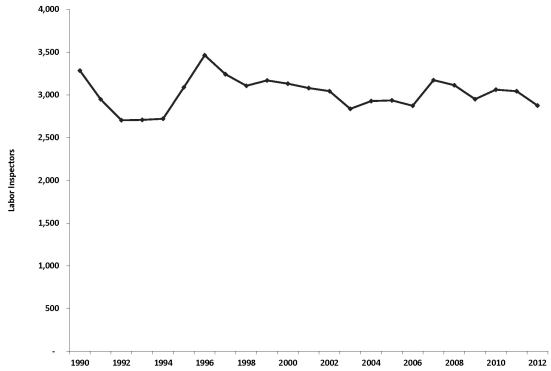
Prosecutors possess different legal tools from inspectors and perform a different, often complementary role. As part of their duties, prosecutors can subpoena documents, conduct public hearings (*audiências públicas*), and initiate judicial proceedings to seek reparations or intervene in a workplace. Prosecutors are particularly influential when they bring the Brazilian equivalent of a class action (*ação civil pública*) on behalf of large and sometimes loosely defined groups of workers. In 2007, prosecutors in the Southeast region of the country initiated more than 3,300 investigations (*procedimentos investigatórios*) and 720 class actions and negotiated more than 860 deferred prosecution agreements (*termo de ajuste de conduta*, TAC; Ministério Público do Trabalho 2007).

In addition to sharing a common mission, inspectors and prosecutors' routines can also overlap, which helps explain why they often collaborate in a variety of ways. Labor unions often file the same complaints with both organizations, hoping to increase their chances of getting attention from enforcement authorities. While both inspectors and prosecutors have legal powers to investigate and inspect firms, prosecutors lack field staff to visit workplaces and collect evidence. In turn, while inspectors have the means to conduct *in situ* verifications of compliance with labor laws, they often lack sufficient coercive capacity, given the relatively small monetary value of the administrative fines and the individualized nature of penalties they can impose. Therefore, when dealing with relatively complex cases, inspectors and prosecutors often work together to find the root causes of seemingly intractable violations, and also to bring employers into compliance through class actions or deferred prosecution agreements. This type of collaboration helps explain their positive image and reputation among international observers, as well as domestic civil society and governmental actors (Audi 2006, 2008; Rosati 2011).

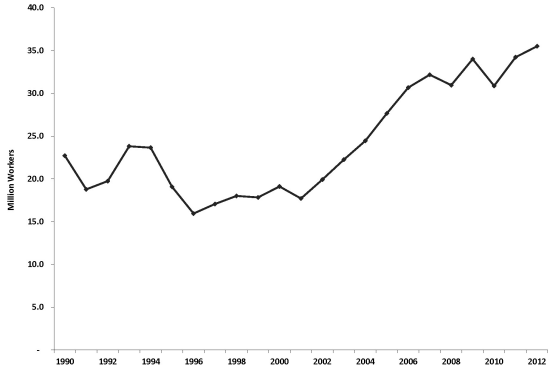
Despite their potential, these collaborations are not regular or uniformly distributed over the territory. There is no formal, overarching, or systemic link between the inspectorate, the prosecutors' office, and labor unions that stimulates and disciplines joint efforts. In addition, these enforcement organizations are characterized by internal fragmentation, ongoing disputes, and high levels of discretion at the front line. Nevertheless, in recent years the Brazilian federal government has adopted several policies to increase the effectiveness and reach of labor inspections. First, the government established specific performance metrics, adopted pay for performance, created new information technology systems, and disseminated the use of planning tools that allowed inspectors to target sectors and firms most likely to be out of compliance (Pires 2011). For example, in one state office, labor inspectors developed a system that can predict peaks of demand for temporary (and informal) labor on new agricultural frontiers. Based on this information, the office plans oper-

Figure 4. Labor Inspection Performance (1990–2012)

a. Labor Inspectors



b. Workers inspected (wage and hours)



c. Workers freed from conditions analogous to slavery

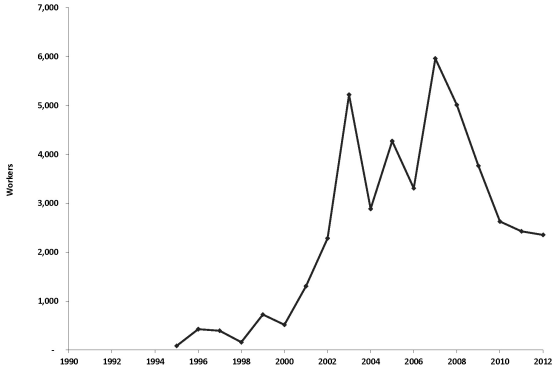
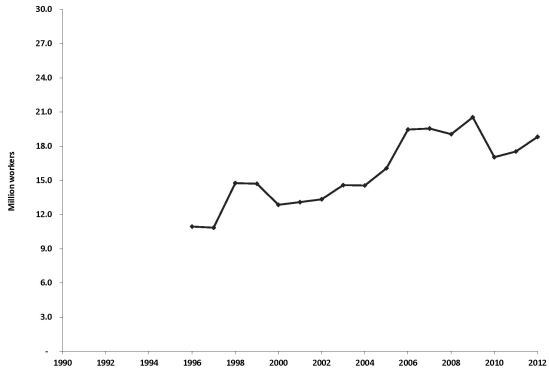


Figure 4. Labor Inspection Performance (1990–2012) (*continued*)

d. Workers inspected (health and safety)



Source: MTE 2008, 2012, 2013a, b, c

ations carefully (to the level of estimating the amount of fuel needed to drive inspectors to the site) so that inspectors can reach the greatest number of undeclared workers at the lowest possible cost.

The effect of these policies, clear metrics, and associated incentives is visible in the increase in inspector productivity (Cardoso and Lage 2005). Even though the number of inspectors has remained relatively stable over time (around an average of 3,000 inspectors; MTE 2008, 2013a), the total number of workers reached during wage and hour inspections has more than doubled, from 15.9 million in 1995 to 34.2 million workers in 2011 (see figure 4). The number of workers reached during health and safety inspections also doubled, from 10.9 million in 1996 to 20.5 million workers in 2009 (MTE 2013b).[7]

The second policy improvement is that inspectors have strengthened their ability to seek out and interact with governmental and nongovernmental partners in order to prevent the worst forms of labor abuse. This effort can be illustrated by the struggle against forced labor and human trafficking, which is carried out by labor inspectors alongside prosecutors and sometimes rural labor unions. This effort started in earnest in 1995, when the Brazilian government yielded to pressure from numerous social groups (including inspectors) and officially admitted the existence of conditions analogous to slavery in the country. Since that date, the labor inspectorate has been assembling and overseeing multiagency task forces called mobile squads (*grupos móveis*), which search for workers subjected to slavelike conditions all over Brazil, in any field or industry.

The exact composition of each mobile squad varies depending on the circumstances, but they are headed by labor inspectors who volunteer for the job and often include prosecutors, as well as union leaders. This partnership is noteworthy because

it combines the administrative powers wielded by inspectors with the judicial safeguards implemented by prosecutors and the local knowledge of union leaders and organizers. Most of these inspections occur in remote parts of the country, take several days each, and require complicated logistical support, including the use of boats, 4 × 4 vehicles, and even helicopters.

In a typical operation, inspectors who detect the existence of slavelike conditions move workers out of the facility, put them under protection, and demand that employers pay back wages, benefits, and the mandatory severance fee. Inspectors also arrange for rescued workers to receive unemployment benefits and direct them back to their hometowns so they can be properly reinserted into the formal job market. Thanks to increased public investment in this activity, the number of inspections targeting slave labor and the quantity of workers reached has increased markedly over time. Between 1995 and 2002, inspectors reached an average of 736 workers per year. Between 2003 and 2010, this figure increased fivefold, to 4,133 workers per year (MTE 2012).

In the third policy upgrade, inspectors and their allies strive to reorganize labor relationships and the productive processes of targeted enterprises to make it easier for businesses to comply with the law.[8] The efforts of inspectors responsible for enforcing health and safety regulations in the auto parts industry in Minas Gerais illustrate this phenomenon. As reported by Coslovsky et al. (2011), Brazilian auto parts manufacturers responded to market liberalization by increasing production targets and "sweating" their labor. Many of these firms use punch presses, the equipment that stamps auto parts out of sheet metal. These machines are intrinsically dangerous, and occupational accidents in this industry soared to the point that they represented 48 percent of all industrial machine accidents in the country (Piancastelli 2004). To a large extent, the problem rested in the absence or obsolescence of safety devices. A contemporary study found that none of the punch presses traded in São Paulo State had adequate protection to minimize workplace accidents (Mendes 2001). And yet, manufacturers resisted upgrading their machines, as mandated by labor regulations, not only because of the large capital investment required, but also because they feared that safety devices would reduce productivity.

For some time, labor inspectors tried to crack down on these violations and to compel firms to replace unsafe punch presses with new ones. This effort mostly floundered, so a team of labor inspectors reached out to labor prosecutors and researchers from FUNDACENTRO, a health and safety institute associated with the Ministry of Labor, to explore alternative solutions to improve safety conditions. These officials soon realized that they did not know much about the design and function of punch presses, which safety devices actually existed, and whether worker safety could be improved without compromising productivity. According to a labor inspector, "we studied the functioning of these machines, the catalogues of protective equipment producers, all in order to know the best alternatives to manage productivity loss" (Pires 2008. 221).

Instead of pursuing the utopian goal of replacing all machines with newer and safer models, the regulators searched for more efficient protective devices, con-

ducted ergonometric studies, and tried to persuade public banks and financial authorities to provide subsidized credit for retrofitting existing machines. Eventually, they developed a set of protection kits that improved worker safety without compromising productivity. In 2003, the number of accidents recorded in the auto parts industry fell by 66 percent when compared to 2001. By 2005, 70 percent of the 350 firms inspected in the Belo Horizonte area had adopted adequate protection for their punch presses (Pires 2008).

The case described is far from an exception. Other examples include the reduction of accidents in fireworks production in Minas Gerais; improved salaries and working conditions in the sugarcane, sugar, and ethanol sector in São Paulo; in the charcoal sector in the Amazon; among temporary workers hired during Carnival festivities in Bahia; and on small farms throughout the country (Pires 2008, 2011, 2013; Coslovsky et al. 2011; Coslovsky 2011, 2013; Coslovsky and Locke 2013). In brief, labor inspectors and prosecutors have been playing a critical role mediating between private sector managers seeking to become more productive and competitive, and a country that chose to guarantee social protections and workers' rights.

Conclusions

How did the Brazilian system of labor relations weather the economic reforms of the 1990s? On the one side, domestic firms were exposed to a level of competition many of them had never experienced before. On the other side, and despite the efforts of numerous interest groups that pushed for widespread deregulation of the labor market, the laws did not change much (Hall 2008). Given this apparent mismatch between market demands and legal obligations, it was not surprising that many private sector managers sought to offload some of their costs and risks onto workers. For instance, some managers resorted to triangular employment relationships, while others misclassified their workers as independent contractors, created fraudulent workers' cooperatives, and established long, convoluted, and purposefully "fissured" supply chains (Weil 2010, 2011).

The prevalence of these strategies has led many scholars to interpret the Brazilian labor market through the lens of de facto flexibility. This article has argued that this view is, at best, limited. By calling attention to the countervailing actions performed by labor unions, labor inspectors, and labor prosecutors, we argue that the organizations responsible for protecting workers in Brazil have shown noticeable resilience and ability to reinvent themselves when operating under fairly tight constraints.

Even if we did not design this study to identify how de facto (re)regulation took hold in Brazil, we take advantage of this conclusion to draw some insights into the origins of the phenomenon, the forces that propel it forward, and its prospects for the future.

Typically, analysts of contemporary Brazilian politics and society put a lot of emphasis on the transformative effect of the 1988 Constitution. Indeed, the adoption of this charter constituted an inflection point in the recent history of the coun-

try. But on closer examination, it becomes clear that the constitution represented not a launching pad of novel initiatives but the crowning moment for processes of transformation that were already under way. For instance, labor unions had started asserting their independence in a more visible manner in the 1970s, through new unionism. Similarly, prosecutors had started looking for creative ways to protect collective interests—particularly in the environmental area—many years before they acquired formal legal powers over these types of claims.

The exact forces propelling these agents forward are not always clear, but we posit that they have two roots. First, we call attention to often-neglected processes of professionalization. Typically, midlevel government officials are portrayed as bureaucrats who broadly conform to the Weberian outline. This tendency is particularly prevalent when analyzing low- and middle-income countries. In analogous fashion, union leaders are often portrayed as representing some ulterior interests (ideally workers, but sometimes employers). This study suggests that these individuals are not only agents but also principals (or professionals) capable of deliberate, creative, and autonomous action. While this claim is somewhat more intuitive when applied to government officials, it might also apply to a new generation of progressive union leaders who have not gone into government and are trying to devise innovative strategies to help unions confront the challenges that they face.

Second, government and union officials' ability to engage in independent action received a noticeable boost once the organizations under which they operated acquired more autonomy from state control, as determined by the Constitution of 1988. We contend that the confluence of these two variables provided these agents with the elements they needed to pursue an agenda of their own, informed by their technical training and mediated by the groups with whom they interacted.

These processes were complemented by a third variable: organizational interdependence. Neither unions nor enforcement agencies have ever possessed the resources they need to represent and protect workers effectively. For one thing, inspectors and prosecutors depend on unions not only to help them stem the deregulatory tide but also to identify workers' grievances and for additional information on violations and business practices. This factor is particularly important today, as the number of labor inspectors in Brazil, as in most countries, is far from adequate, and the shortage of public officials has a negative impact on their ability to monitor the labor market. Furthermore, inspectors have the personnel and equipment to conduct field visits, but they lack the legal and coercive powers provided by prosecutors. When these organizations face resource scarcity, they are even more likely to resort to explicit or tacit collaboration. Therefore, more than a process that has been planned or masterminded by any specific political actor, the resilience and renewal of regulation that we describe is a fairly robust process that emerges gradually, based on the professionalization of the agents, their autonomy, and their interdependence.

Nevertheless, despite their perceived effectiveness, these emerging collaborations between labor unions, inspectors, and prosecutors cannot be described as a systematic, overarching feature in labor law enforcement in Brazil. For the most part, they thrived during a decade of relative economic abundance and under the aegis of

a government oriented toward the left. Changes in any of these circumstances could show that the arrangement is more fragile than it seems, at least until it resurfaces, perhaps under a slightly different guise. Moreover, each of these organizations is characterized by internal fragmentation, disputes, and high levels of discretion at the front lines. If, on the one hand, this has allowed for greater plasticity, creativity, and innovation in joint enforcement efforts, on the other hand, it still poses challenges in terms of promoting a more evenly distributed or encompassing pattern of enforcement in the Brazilian labor market.

Finally, we cannot neglect the tension between unions, inspectors, and prosecutors on one side, and the employers who object to labor regulations on the other. Indeed, the combination of increased market competition and more forceful enforcement of protective labor rights makes for an explosive mixture, with plenty of resentment and heated debate. Enforcement agents are not universally acclaimed, and they are not a panacea. In fact, their organizational capacity is dwarfed by the size of the challenge they face. Their impact, potential, and limitations are not well understood. And on a larger canvas, it is unclear whether the Brazilian arrangement is a stable one or a temporary stopgap, destined to be dismantled by budget cuts or replaced by a different arrangement in the near future. In any case, the ascension of these agents constitutes a noteworthy phenomenon that adds a new dimension to studies of labor relations in developing nations, expanding not only our explanatory power beyond a de facto flexibility view, but also enhancing the spectrum of opportunities for sustainable, sustained, and equitable growth.

Notes

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1. The pressure to deregulate the Brazilian labor market was not as intense as that felt in some other Latin American countries, such as Argentina or Mexico. Still, this achievement—that is, the maintenance of existing labor laws—should not be taken for granted.

2. As a general phenomenon, this recurrent distance between written law and lived experience was analyzed by Holland (2016), who proposes a framework to distinguish among six different types of enforcement gaps. By moving beyond a binary approach in which enforcement is either present or absent, Holland makes a significant contribution to the relevant debate. And yet, her classification scheme assumes that legal directives are always crystal-clear and that legitimate decisions can only emanate from the top. In so doing, her study obscures the discretion—sometimes beneficial—that resides on the frontlines. It also neglects an important realm of politics (see Coslovsky et al. 2011; Coslovsky 2015).

3. This system of severance fees was established in 1966, and it is based on the principle that each formal worker has an individual employment assurance account (*Fundo de Garantia*

por Tempo de Serviço, FGTS) with the state-owned bank Caixa Econômica Federal. Every month, employers must deposit the equivalent of 8 percent of each employee's salary in his or her individual account. An employer who dismisses a worker without cause not only grants the worker access to the account but must also pay a fine to the worker proportional to its own deposits over time. In 2012, all deposits constituted a fund of US$150 billion (FGTS 2013), which the government used to finance its investment in housing, sanitation, and other infrastructure.

4. The employer deducts this tax from employees' paychecks and remits it to the Ministry of Labor. In turn, the Ministry of Labor forwards 80 percent to the appropriate union, federation, and confederation, and keeps 20 percent to fund some of its own activities. Workers can decide to join their union and thus be able to run for internal office and influence internal union decisions, but voluntary membership does not alter the nature of mandatory representation.

5. The World Bank database contains data for 129 countries and covers the period 1988 to 2008. During this period, the largest privatization programs in the world (in absolute numbers) were conducted in Mexico, Argentina, Turkey, Russia, China, and Brazil. The exact ranking, however, depends on the period. Mexico's program peaked first, then Brazil's, and then China's.

6. Between 2003 and 2010, 16 new policy councils were created (in areas such as urban development, food security, youth, women, elderly rights, racial inequalities, LGBT, solidary economy, and social and economic development, among others) and a few others have been reformed, out of a total of 31 policy councils currently in operation in the federal government. Union representatives have seats on 85 percent of these councils (IPEA 2010).

7. Some of these figures might be double-counted. In addition, some of the increase in productivity can be credited to inspectors' devoting themselves to performance targets, even if it means pursuing low-impact cases that are relatively easy to resolve, instead of complex and time-consuming cases that might deliver the highest possible public benefit.

8. Amengual (2013) describes a similar dynamic in Argentina.

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