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The Limits of Labor Legislation Reforms: Rigidity, Growth, and Employment in Brazil (1995–2010)

Jean François Mayer

Abstract: The literature addressing market dynamics typically assumes that reforming labor legislation has a direct impact on economic performance, the configuration of labor markets, and the strength of labor organizations. Within this literature one prevalent school of thought advocates flexibilizing labor laws as the key to creating economic prosperity, enhancing labor productivity, increasing formal sector employment, and successfully fighting poverty and socioeconomic inequality. I test these assumptions by analyzing the case of Brazil between 1995 and 2010. My findings suggest that reforms seeking to flexibilize the Brazilian labor code do not significantly change the country’s labor market or economy. I propose that transformations in international economic contexts as well as differing policy orientations of successive Brazilian federal governments may hold more explanatory power in accounting for labor market changes during this time period.

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Keywords: Latin America, Brazil, labor policy, flexibility, growth, employment, market reforms

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1 Introduction

The literature addressing market dynamics typically assumes that reforming labor legislation has a direct impact on economic performance, the configuration of labor markets, and the strength of labor organizations. One prevalent school of thought within this literature advocates flexibilizing labor laws in order to create economic prosperity, enhance labor productivity, increase formal sector employment, and successfully fight poverty and socioeconomic inequality.¹

In this paper² I test the explanatory power of this approach by analyzing the case of Brazil between 1995 and 2010. In particular, I seek to find out whether changes in the configuration of labor legislation can be linked to the above-mentioned transformations in market and socioeconomic indicators. I propose to verify these claims through a single-case historical analysis, utilizing both quantitative (socioeconomic measures) and qualitative (survey-based) data. Brazil appears to be a well-suited case study for this purpose given that it (i) has one of Latin America’s levels of highest union density, (ii) exhibits one of the highest rates of socioeconomic inequality in the world, (iii) and is characterized by an informal economic sector that has constituted over 40 percent of its gross domestic product during the past 20 years and has traditionally absorbed a very significant percentage of its workforce (CEPAL 2013, 2014).

Perhaps most importantly for this paper’s purpose, Brazil has also been subject to a variation of labor market policy approaches taken by successive federal governments. Indeed, the government of Fernando Henrique Cardoso (1995–2002) adopted a policy orientation that appeared largely based upon the approach outlined above: it considered “rigid” labor legislation to be the principal cause of Brazil’s poor labor market conditions and problematic economic performance. As such, the country’s Consolidação das Leis do Trabalho (Consolidation of Labor Laws,

¹ Labor flexibilization mainly seeks to reduce the cost of labor. Particularly noteworthy among the variety of policies and regulations utilized to achieve this goal are broadly defined job descriptions allowing the assignment of employees to various, often unrelated tasks; greater freedom in the scheduling of work days and working hours; reduction in the costs of training and firing; promotion and salary increases based upon demonstrated technical abilities and production performance (as opposed to seniority); and reduction of the influence of unions on the management of the labor force (Bensusán 1995: 73; Mayer 2006: 17–18).

² I am grateful to Jorge Gordin for his support and dedication. I am also grateful for the thorough, insightful, and supportive comments made by one of the JPLA anonymous reviewers. Any remaining mistakes are mine alone.
CLT) was particularly blamed for low economic growth; a lack of job creation in the formal economy, which resulted in significant informality in the labor market; persistent poverty; and the *custo Brasil* (i.e. the cost of doing business in Brazil, which is an estimated 35 percent higher than in countries with flexible labor legislation). Cardoso’s administration therefore deemed reforming Brazil’s labor code a key element in solving this predicament.

By contrast, the government of ex-unionist Luiz Inácio Lula da Silva (2003–2010) adopted a policy position that was overall friendlier to organized labor’s interests. His administration’s efforts to modify Brazil’s labor code by and large attempted to strengthen the labor movement’s interest representation structure and its collective bargaining position. Lula’s government especially sought to remove corporatist constraints on labor organization and collective action. Lula’s administration also adopted other pro-labor measures, such as markedly increasing the country’s minimum wage. This effectively contradicted the labor policy orientation of the previous administration.

The Cardoso government altered the country’s labor code by flexibilizing the labor market and altering the structure of labor interest representation. Nevertheless, this paper finds that these reforms appear to have had limited success in stimulating economic growth, generating formal sector jobs, and reducing poverty and inequality. By contrast, the available data indicate that Brazil’s economy grew more rapidly between 2003 and 2010 than it did in the preceding 20 years. During that same eight-year period, the country also moved away from informality and reduced unemployment, poverty, and inequality. These positive outcomes occurred even though the Lula government did not seek to flexibilize labor rights and was largely unsuccessful in its efforts to abolish corporatist restrictions.

As such, this paper suggests that transformations in Brazil’s labor market and socioeconomic performance since the mid-1990s do not correlate well with shifts in the country’s labor legislation. These findings tend to contradict the claims of those who advocate labor legislation reform. It appears instead that transformations in international economic contexts, changes in successive federal governments’ policy orientations, and, to a lesser extent, the strategic behavior of the country’s main socioeconomic actors hold greater explanatory value in the Brazilian case. These results are generally congruent with claims found in a body of scholarship often associated with neostructuralism. I conclude that the key to understanding the evolution of the labor market and labor organization in Brazil entails going beyond a narrow focus on labor code re-
forms. My article advocates a consequent reorientation of the literature’s analytical focus on this matter.

2 Labor Legislation Reform in the Literature

The structural adjustment programs (SAPs) adopted in Latin America starting in the mid-1980s aimed at stabilizing and revitalizing the region’s ailing economies. In particular, they sought to further economic deregulation, reduce state spending, liberalize trade and financial transactions, and privatize state-owned enterprises. The overarching goal of these market-oriented reforms – later known as the Washington Consensus – was to revive growth and favor formal sector employment by moving away from state intervention in economic dynamics.

Legislation favoring greater flexibility of the labor market represented an intrinsic part of these stabilizing and restructuring reforms. In fact, labor law reform often constituted one of the conditions attached to the loans granted by international financial institutions – such as the International Monetary Fund (IMF), the World Bank, and the Inter-American Development Bank – to Latin American countries in economic difficulties. But although conditionalities aimed at privatization, austerity, and market opening were widely implemented in Latin America during the 1980s and 1990s, labor law reform was not (Sabatini and Farnsworth 2006: 51–53). This can be attributed to several factors, not least of which is the political resistance of civil society. Workers organizations, in particular, were opposed to these reforms and intently pressured governments seeking to implement them. In the context of the more open, newly democratized Latin American political regimes of the 1980s and 1990s, union opposition to labor reform proved consequential.

An important body of literature thus emerged in the 1990s and the first decade of the twenty-first century, insisting on the importance of, inter alia, reforming labor legislation in order to “complete” the economic restructuring process undertaken in the region and enable it to reap the above-mentioned intended benefits (Dömeland and Gill 2002: 1–3). In line with the tenets of the Washington Consensus, this literature depicts Latin American labor laws as being too rigid, thus preventing demand-driven shifts in wages, employment, and the nature of contracted work. In turn, these characteristics are alleged to generate market distortions and economic inefficiencies (Lora and Pagés 1996: 14, 30, 33).

Indeed, this body of literature, first and foremost, considers that the labor legislation of most Latin American countries discourages the creation of jobs in the formal sector because of its emphasis on job security
and protection. This is believed to significantly increase labor costs and make them more uncertain, thus reducing employment opportunities (Edwards and Lustig 1997: 20–21; IADB 1997: 47; Heckman and Pagés 2000: 5, 14; Gil and Montenegro 2002: 221; Heckman and Pagés 2004: 6). Second, it argues that countries with flexible labor legislation grow more rapidly and more significantly, exhibit higher levels of productivity and competitiveness, and receive more investment than countries with rigid labor laws (IADB 1997: 55, 60; Cox Edwards 1997: 129, 148; Heckman and Pagés 2004: 75; Sabatini and Farnsworth 2006: 62).

Third, this literature contends that rigid labor legislation ultimately serves to protect the interests, income, and jobs of older, male, relatively wealthy formal sector workers. By contrast, most other categories of workers (i.e. the young, women, the unskilled, the marginal, the temporary, and the self-employed – particularly in rural areas) see their income depressed and their possibilities of employment in the formal sector reduced by labor rigidity (IADB 1998: 139–140; Heckman and Pagés 2000: 5, 2004: 6). In particular, this body of work claims that binding minimum wage policies have a distortionary impact on income distribution, favoring wealthier workers in the formal sector of the economy to the detriment of poorer workers in the informal sector (Maloney and Nunez 2004: 17–18; Cox Edwards 2007: 8, 29). This literature hence sees rigid labor codes as a source of social injustice, growing socioeconomic inequality, and persistent poverty.

For this body of work, the solution to these ills stems from labor law reform, given its conviction that “regulations matter and the choice of labor market institutions matters” (Heckman and Pagés 2004: 75). In particular, this literature advocates the establishment of labor legislation reforms “that change the mechanisms of labor protection and regulation so that these may maximize the protection granted to workers at a minimum cost in terms of efficiency” (Lora and Pagés 1996: 33, my translation). As a summary of this literature’s emphasis on the need to implement flexibility, Sabatini and Farnsworth (2006: 62) insist that “the keystone of [economic] reform has to be the updating of outmoded labor codes, especially insofar as these make the cost of dismissing workers unreasonably and destructively high.”

In order to enhance formal sector employment, growth, and competitiveness; further prosperity and greater social justice; and reduce socioeconomic inequalities, this literature argues that job security and payroll taxes must be reduced and that wages and working conditions must be decided through negotiations between employers and workers without being hampered by state intervention or a restrictive labor code.
(Cox Edwards 2007: 28; Kugler and Kugler 2009: 235). According to Marques and Pagès (1998: 1), “The state will need to change its role, and center its action in the active promotion and protection of freedom of organization and bargaining” and thus refrain from intervening directly in labor negotiations.

My findings (presented below) tend to contradict these postulates and instead align with neostructuralist arguments. Briefly put, neostructuralism posits that shifts in international economic dynamics play a key role in explaining changes in domestic market conditions, particularly in the context of globalization (Stallings 1992: 43, 82–83; Leiva 2006: 341). This perspective argues that the neoliberal restructuring and trade liberalization of Latin American economies in the 1990s have made them more dependent on world market fluctuations and more vulnerable to international economic shocks. Furthermore, neostructuralists blame SAPs for increases in income inequality, poverty, and social conflicts (Saad-Filho and Mollo 2002: 109). Neostructuralist literature also insists that changes in governmental policy priorities help to explain transformations in labor markets, as well as in economic and social indicators. The pro-business labor policies that accompanied SAPs in many Latin American countries are therefore believed to have contributed to sluggish growth and increases in precarious employment, informality, and low-paying jobs (Kay and Gwynne 2000: 147–149, 153).

Neostructuralists thus advocate selective integration into the world economy and carefully crafted economic policy, emphasizing – among other things – state (re)investment in social programs and enhanced regulations of market conditions, such as real improvements to minimum wages (Ramirez 1993: 17). My findings suggest that the neostructuralist perspective is better suited to accounting for shifts in the Brazilian labor market between 1995 and 2010 than is the pro-flexibilizing approach.

3 The Corporatist Foundations of State-Labor Relations in Brazil

Brazil’s labor code, the CLT, was established in 1943 under the Getúlio Vargas government. It sought to aggregate and streamline the disparate labor laws that existed at that time principally by providing legal tools that could be utilized by the state in order to regulate labor relations (French 2004: 14; Boito 1991). As such, the CLT created a state corpo-
ratist structure of interest intermediation, which remained largely intact until the constitutional reform of 1988 (Levine 1999: 144). This allowed the state to play a central role in determining Brazilian labor relations. The literature identifies at least three pillars in Brazil’s corporatist system: representation hierarchy and *unicidade sindical* (exclusive unionizing), *imposto sindical* (union tax), and labor courts and the Ministry of Labor.

The first pillar, the *unicidade sindical*, was implemented in order to divide labor organizations, thus limiting labor’s strength in collective agreement negotiations and preventing the emergence of a strongly organized and autonomous labor movement that could challenge the state. As such, unions were generally organized along *município* (county) lines and prohibited from having direct ties with other unions in the same *município* or from representing a similar trade in other *municípios* within the same state (Alexander 2003: 70; Skidmore 2010: 118). Furthermore, each union could only represent one line of occupation in each *município* – though each was compensated with a monopoly over representation within that particular *município*. Even though state federations and national confederations contained many unions from the same economic categories, the CLT did not allow the labor movement to create peak associations to represent the general interests of workers from different occupational backgrounds (Erickson 1977: 32–33; Power and Doctor 2004: 222–223; Riethof 2002: 47). With this hierarchical system of interest intermediation in place, labor organizations rarely went beyond promoting and defending the narrow concerns of their respective trades.

The second pillar, the *imposto sindical*, is a mandatory union tax that is equivalent to a day’s salary for a worker. The Ministry of Labor is responsible for collecting the *imposto sindical* and also injects additional state funds in the *imposto*. The ministry then redistributes these funds to labor organizations (Alexander 2003: 69–70). This provision of the CLT granted the Ministry of Labor a significant amount of discretionary power. In particular, it allowed the ministry to financially reward labor organizations that were considered more loyal to the state’s policy orientation and interests and punish those that were not. In fact, Buchanan (1995: 171) explains that the *imposto sindical* was, “In practice, […] used as an

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3 The concept of state corporatism is understood here as “a system of interest representation in which the constituent units are organized into a limited number of singular, compulsory, non-competitive, hierarchically organized, and functionally differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports” (Schmitter 1974: 93–94).
instrument of patronage.” Since the state-controlled imposto sindical represented the principal source of income for unions, significant pressure was exercised on union leaders to comply with state directives in exchange for this financial support. In return for their quiescence, union leaders were also given control over the manner in which the imposto sindical was spent (Mericle 1977: 325; French 1992: 5; Power and Doctor 2004: 223).

The third pillar, the Ministry of Labor and the labor courts, played a crucial role in labor relations given their mandate to interpret and implement the various aspects of the CLT. In addition to collecting and redistributing the imposto sindical, the Ministry of Labor approved or denied the creation of new unions and the election of the executive committees of established unions. This allowed ministry officials to reject leadership candidates they deemed inappropriate in favor of more compliant ones (Drake 1996: 77; Skidmore 2010: 118). Effectively, this meant that the Ministry of Labor held the power to threaten and, when needed, punish the more unruly elements of organized labor.

For their part, the state-controlled tripartite labor courts arbitrated labor conflicts between workers and employers, regulated contract negotiations, and validated the legality of strikes (Cardoso 1999: 31).\(^4\) Essentially nonexistent under Vargas’s Estado Novo government (1937–1945), the right to strike was selectively and scarcely granted to workers by labor courts from 1946 until 1985 (Weffort 1989: 335). This system hence made it difficult for labor organizations to mobilize their memberships or to hold legal strikes. In addition, legal provisions existed that granted the state the power to intervene in other aspects of labor relations. Such was the case of the Wage Adjustment Law, created in 1965 for the purpose of “determining the minimum rate of increase for all wages in the economy,” which was utilized by successive governments as an “instrument of wage control [that] inhibited collective bargaining” and eroded real wages (Arbache 2001: 5–6).

Notwithstanding its restrictive corporatist elements, the CLT also guaranteed a significant number of privileges and degree of protection for workers in the formal sector: (i) no termination without “just cause,” (ii) unemployment insurance, (iii) a reduced working week, (iv) a mini-

\(^4\) Labor courts are populated by representatives of workers, employers, and the state – with the latter directing the courts’ work. There are three levels of labor courts: local, regional/state, and national. Each has its own jurisdiction: Local labor courts address grievances. Regional/state labor courts settle contractual matters. And national labor courts examine appeals from regional courts (Reis de Sousa and das Mercês Cerneiro 2010: 20).
mum wage, (v) a guaranteed right to create unions and conduct contract negotiations, (vi) a right to salubrious working conditions, and (vii) a ban on child labor. In this respect, the CLT represented a remarkably progressive and all-encompassing labor code, perhaps only rivaled by the Mexican Federal Labor Law of 1929. Nevertheless, between 1943 and 1985 Brazilian labor relations were mostly characterized by a lack of implementation and selective interpretation of these pro-worker provisions by state authorities (French 2004: 41–42). During this period, the state more often than not infringed rather than supported the workers' rights set out in the CLT.

The 1988 Constitution introduced a marked liberalization of labor relations in Brazil, which was generally perceived as favorable to organized labor (Cook 2007: 70). Among other things, the Constitution formally endorsed freedom of organization (thus the Ministry of Labor could no longer deny registration to unions, except in special cases), guaranteed the right to strike for all workers (including public sector employees), and obligated unions and employers to bargain collectively and directly without interference from the labor courts.

Hence, the 1988 Constitution effectively abolished some of the elements comprising the three pillars of the Vargas-era corporatist framework. Nonetheless, several fundamental corporatist provisions (mirrored in the CLT) remained intact – for instance, uniidade sindical, imposto sindical, and the clauses preventing the official recognition and legalization of peak national labor organizations (which would be able to aggregate unions horizontally and directly represent them in collective bargaining). Furthermore, the labor courts were to still serve as arbiters of labor conflicts and had the power to decide on matters related to collective agreements (Boito 1994: 16; CLT 2014: Title IV). In addition, none of the aforementioned transformations removed the state's capacity to selectively implement CLT provisions, thus leaving it in a position to favor restrictive elements over progressive ones, as was often the case under successive regimes from 1943 onward. It is this legal framework that the Cardoso and Lula administrations sought to reform.

4 Labor Market Flexibilization Under the Cardoso Government (1995–2002)

4.1 Labor Reforms and Their Impact

At the time of his election Fernando Henrique Cardoso was perhaps best known in Brazil for being the originator of the Plano Real (the Real Plan),
which successfully tackled Brazil’s hyperinflation, dramatically reducing it from 2,075.9 percent in 1994 to 66 percent in 1995 and to 15.8 percent in 1996 (see Statistical Annex). Cardoso’s center-right government was intent on continuing the market-based economic policies that underpinned the Plano Real in order to restructure Brazil’s economy (Cheibub Figueiredo 2007). This orientation had a significant impact on the labor market and labor relations during Cardoso’s two consecutive mandates (Cardoso 2004: 12–13). To be sure, Cardoso made it clear from the very beginning of his presidency that he considered flexibilizing labor conditions and reforming the structure of labor organization away from corporatism as priorities for his government (Cook 2007: 83–84). He believed that such transformations were consistent with the Plano Real and would help to complement economic stabilization by giving preference to growth and employment. This conviction was reflected in Cardoso’s minimum wage policy orientation, which emphasized restraint in order to lower labor costs and promote greater international competitiveness. As a result, Cardoso’s government was characterized by a very modest increase of real minimum wages (see Statistical Annex).

With regard to flexibilization, this perspective corresponded closely to that of international financial institutions and Brazil’s main business associations, which had been very supportive of Cardoso’s candidacy – particularly given that his main opponent was Lula da Silva, whom they considered an untrustworthy radical socialist (Lisbôa Romão 2006: 146). These organizations posited that:

flexibilization measures such as flexibilization of contracts and reduction of social costs would be essential prerequisites to diminishing the cost of labor, incentivizing hiring, formalizing the labor market, and fighting unemployment in order to consolidate the inflationary controls and reactivate the economy. (Galvão 2003: 226, my translation)

The Cardoso government therefore pushed Congress to pass several modifications to the Brazilian labor regulatory framework that were designed to flexibilize the labor market. First, the Wage Adjustment Law was eliminated in 1995. This removed an important element of salary regulation and allowed wages to vary more closely according to labor market conditions (Estevão and de Carvalho Filho 2012: 5). Cardoso also spearheaded a reform package (comprised of three different bills and which came into effect in 1998) that aimed to flexibilize work contracts by allowing greater latitude in hiring of part-time staff, easing procedures for temporarily suspending or terminating work, and modifying work contract durations and the vacation time bank system. According
to the Cardoso government, the goal of these measures was to spur employment in the formal sector in a context of lagging domestic economic growth (Cook 2007: 90–91; Galvão 2003: 235).

The 1998 reform package was followed by another implemented in early 2000. Although originally broader in scope and reach, it ended up mostly restructuring the operations of the labor justice system (Dal Morin 2011: 156–166). The principal objective of the reforms was to enhance the efficiency of the labor courts’ administration of justice, which was then characterized by their onerous nature and a staggering backlog of pending cases. This legal restructuring redistributed responsibilities for settling minor work-related disputes to bilateral worker-employer commissions and removed the potential for state interference into these matters. The Cardoso government hence sought to introduce a market-based bargaining process to Brazilian labor relations and thus reduce the role of the state as arbiter. Although this approach intended to destroy parts of the aforementioned third pillar of corporatism (i.e. the dominant role played by labor courts in labor relations), it should be noted that the state retained the ability to ultimately regulate labor conflicts. The reform of 2000 also arguably sought to reduce the influence of labor organizations on these legal procedures by making individual workers – as opposed to their unions – shoulder the burden of these processes.

The literature does not agree on the extent to which these reforms flexibilized the labor market in Brazil. For instance, Mazali and Divino (2010: 294, 303) argue that there is evidence of aggregate real wage rigidity since the implementation of the Plano Real in 1994. By law, the Plano Real’s anti-inflationary component effectively limited salary fluctuations and, in particular, prevented nominal wage lowering. These authors echo Arbache and de Negri’s (2004) finding that “the Brazilian wage structure is rigid and insensitive to the economic cycle” during the period under consideration. Nevertheless, Estevão and de Carvalho Filho (2012: 17) partially contradict these conclusions, arguing that wages have become more flexible since 1999 due to the abolition of the Wage Adjustment Law, greater sensitivity to fluctuations in unemployment, and the gradual opening of the Brazilian market to international trade.

In fact, Estevão and de Carvalho (2012: 5, 17) find that labor market flexibility noticeably increased after 1999, following the passing of legislation that made hiring and firing practices easier, simplified requirements for temporary work creation, and varied work assignments. The authors indicate that this greater flexibilization may be attributable to the Cardoso government’s reform of labor legislation, greater open-
ness of the Brazilian economy to the international market since the early 1990s, and the introduction of a more credible monetary framework, which would have contributed to lowering the expectations of organized labor concerning prospective increases in nominal wages.

Given that Estevão and de Carvalho’s work focuses on more than one dimension of flexibility by utilizing more comprehensive and disaggregated data that covers a longer period of time, their analysis of the Brazilian labor market’s fundamental characteristics seems more accurate and reliable. Therefore, the principal components of the Brazilian labor market appear to have been flexibilized as a result of, among other things, the legislative reforms carried out under the Cardoso government. Salaries were perhaps less affected by these measures owing, in particular, to the legacy of the Plano Real’s anti-inflationary elements. Nevertheless, wages were somewhat flexibilized by the cumulative effect of SAPs (including labor reform) that have been implemented since the early 1990s, as the country has become more open to international trade and foreign capital investment.

According to the aforementioned theoretical perspective advocating labor code flexibilizing, one should expect to see positive changes in indicators of economic growth, labor productivity, formal sector employment, and poverty and socioeconomic inequality levels during Cardoso’s presidency. However, the changes to Brazil’s labor legislation did not seem to have a noticeable positive impact on the country’s economy, labor market, or poverty and socioeconomic inequality measures (see Statistical Annex for all relevant data). In fact, GDP growth averaged a humble 2.5 percent for Cardoso’s first mandate – a rate that fell to 2.1 percent during the years 1999–2002, following the introduction of the main elements of Cardoso’s labor reform packages. Inflation averaged 14.9 percent for the entirety of the Cardoso government – a remarkable achievement given the astronomical levels of the preceding 10 years.

Overall, the labor market also did not react to these reforms in the anticipated manner either. In fact, open unemployment climbed, averaging 7.4 percent yearly between 1995 and 1998, and 9.3 percent for the period between the 1999 and 2002. Similarly, the proportion of the labor force employed in the informal sector rose steadily, averaging 47.6 percent annually between 1995 and 1998, and 50.3 percent between 1999 and 2002. Nonetheless, labor costs, one of the principal measures of the overall level of Brazil’s economic competitiveness, exhibited a declining curve. As such, labor costs averaged 105 index points for 1995–1998, and roughly 98 index points for the 1999–2002 period (Banco Central do Brasil 2015). This suggests that the international economic competitive-
ness of labor-intensive firms based in Brazil increased during the Cardoso years.

Finally, poverty and inequality rates showed no real improvement under the Cardoso administrations. Poverty averaged 34.8 percent between 1995 and 1998, slightly increasing to 35 percent between 1999 and 2002. Inequality rates, calculated with the Gini coefficient, averaged a staggering 60 during Cardoso’s first mandate, falling slightly to 59.3 during his second mandate.

Supporters of flexibilization policies often argue that time is needed before we can evaluate the impact of legislation reforms on the labor market and the principal socioeconomic indicators (Cox Edwards 1997: 132). The principal labor law reforms under Cardoso were adopted in 1995, 1998, and early 2000 – the heart of these measures being the 1995 and 1998 reforms. Thus, these reforms had ample time to yield results before the end of Cardoso’s second term (in 2002). However, the evidence suggests that lengthening the analysis’s time horizon by a year or even two will not produce results that differ significantly from those presented above. Furthermore, including the year 2004 would represent an analytical stretch given that the Lula government’s social and wage policy orientation, which diverged significantly from those of Cardoso’s, were already having a noticeable impact by that point. Moreover, the international economic context changed in 2004 as demand for Brazil’s main exports increased – the only significant difference in indicators from previous years, which helps to explain the strong GDP growth rate that year.

4.2 Interpreting the Results

These findings suggest that flexibilizing measures did not have the positive socioeconomic impact anticipated by the Cardoso government, international financial institutions, or pro-flexibilization proponents. In fact, these measures seem to have had the opposite effect, as their implementation correlates with a worsening of employment figures and declining formal sector employment. Other factors appear to have influenced the labor market under Cardoso – namely, the larger international economic context in which Brazil found itself during that period, the government’s policy orientation, and the strategies employed by Brazilian business and labor. I briefly explore these factors below.

Brazil had to navigate a difficult international economic environment in the late 1990s. The successive Asian (1997) and Russian (1998) crises precipitated a speculative run on the real, which resulted in a rapid depletion of the country’s foreign reserves and severe capital flight. In
order to constrain the recession that subsequently affected Brazil, Cardoso’s team increased interest rates and let the real float freely – hence creating a significant devaluation. In addition, the Cardoso administration accepted an emergency loan from the IMF, World Bank, and US government, which required the federal government to increase taxes and cut expenditures in order to generate a budget surplus (Baer 2014: 146–148). Although these measures stabilized inflation in Brazil, they also contributed to increasing unemployment and low rates of economic growth during Cardoso’s second mandate. This situation was compounded by the 2001 crisis in Argentina, one of Brazil’s main trading partners, which affected negatively the Brazilian export sector.

With regard to the federal government’s policy orientation, the Cardoso administration adopted a clear position on what it considered the appropriate shape for the labor market and the direction in which it should evolve. This positioning deeply impacted the labor market and labor relations in Brazil. Indeed, Cook (2007: 83) writes that “Cardoso […] indicated early on that he was willing to take a hard line with the unions” in order to, among other things, introduce flexibilization measures in labor legislation and in the practice of labor relations. This policy stance was demonstrated in the early stages of Cardoso’s mandate, as petroleiros (oil workers) decided to strike in May 1995 to resist the privatization of the state-owned oil company Petrobras. After a standoff lasting a few weeks, and marked by the Cardoso administration’s refusal to negotiate, the federal government ended the strike by sending in the army to take control of the oil fields and installations occupied by workers (Lisbôa Romão 2006: 407). Strike activities were significant in 1995 and 1996, seeking in particular to resist privatizations, but the unsuccessful petroleiros strike established the standard for the unyielding position taken by Cardoso’s administration in its dealings with organized labor. In fact, union leader Marcello Rodrigues de Azevedo of the Central Unica dos Trabalhadores (Unitary Central of Workers, CUT) claimed that

Cardoso had very antagonistic relations with unions, and criminalized labor relations. For instance, when Cardoso partially privatized Petrobras, his goal was also to destroy the union [in place].

(Personal interview)

As such, the arrival of Cardoso as the country’s president considerably transformed the political opportunity structure of organized labor and business groups. The more mobilized segments of the workers movement found themselves confronted with an assertive and often antagonistic president who was intent on implementing economic and labor reforms detrimental to their members’ interests. The government's policy
position dealt a severe blow to the labor movement’s confidence and willingness to engage in contentious political activities and labor relations. Mindful of the costs of striking and potentially losing jobs in a context characterized by low growth rates and unprecedented high levels of open unemployment and informal employment, the labor movement adopted a “defensive” stance that emphasized the safeguarding of employment (Boito 1998: 79–84; Carneiro Araujo and Veras de Oliveira 2011; Riethof 2004: 39–40). As a result, union density dropped to record levels during the Cardoso government, with an eight-year average of 16.4 percent and a low of 15.9 percent in 1998 (see Statistical Annex). Organized labor was therefore not in a position to resist or derail the flexibilizing policies adopted by the federal government. The demobilization of unions also created a propitious environment for the government’s labor reforms to yield their intended results. As such, it is doubtful that the apparent failure of flexibilizing policies to redynamize the Brazilian economy can be attributed to organized labor’s actions.

As regards Brazilian employers, it appears that they had already developed strategies to de facto circumvent the CLT’s provisions on hiring and firing before they were reformed in the late 1990s. According to Galvão (2003: 238–239), the emergence of these tactics was made possible by (i) the political climate resulting from the Cardoso government’s support for flexibilizing reforms and hardline attitude toward labor organizations and (ii) workers’ reluctance to engage in work action during an economic recession. Given that context, the more flexible procedures afforded by changes to the labor code did not have much impact on the business decisions of employers.

In the end, labor legislation reforms under Cardoso do not appear to have had the positive effect on the economy or labor market assumed by advocates of flexibilization. This is particularly remarkable since the hard line adopted by the Cardoso administration in its dealings with organized labor, as well as the strategic choices of labor organizations and the business sector (i.e. the acquiescence of the unions and the tendency of businesses to circumvent “rigid” CLT provisions), should have bolstered the effects of the labor code reforms. My findings show that this did not happen and thus contradict the assumptions of the pro-flexibilization literature. Furthermore, the changing international economic context seemed to significantly contribute to the labor market’s negative performance.
5 Reinforcing Labor Representation during Lula’s Government (2003–2010)

5.1 Pro-Labor Reforms under Lula

Lula da Silva became president in 2003 after watershed elections that, for the first time in Brazil’s history, saw a member of the lower classes chosen to head the federal government. Given Lula’s background as a high profile co-founder and leader of both the CUT and the Partido dos Trabalhadores (Workers’ Party, PT) – both of which had until then represented the main political opposition – many Brazilian and foreign observers expected his arrival to power to result in a drastic change in the federal government’s policy orientation. Several domestic and international business interest groups went so far as to claim that economic chaos would strike Brazil if Lula were elected president, predicting widespread nationalizations and the replacement of the market-oriented economic model in place by a socialist system (Kliass 2012: 19).

Those fears proved unfounded. In fact, the Lula government adopted an economic stance that was defined by strong continuity with the model developed by his predecessor. For example, he maintained high interest rates to control inflation, favored a positive trade balance to generate surplus, and limited public spending. Lula went so far as to insist on raising the state’s primary surplus above the 3.75 percent of GDP threshold set by the IMF to 4.25 percent (Baer 2014: 156). In the end, Brazil fared better economically under Lula than it had done during the 20 years prior to his election.

Lula’s main goal was clear: he wanted to reassure Brazil’s domestic and international partners about his intentions and ability to “responsibly” govern the country (i.e. to not radically diverge from the path established by Cardoso) and thus preserve investment inflows and economic stability. For instance, his first major act as president was to reform the public pension system, which had been attempted by the Cardoso administration only to be blocked in Congress – in no small part due to the opposition of Lula and the PT themselves (Marques and Mendes 2004: 7; Nakoa Nakahodo and Savoia 2008: 49–50). Lula therefore appeared to be a good student of the Cardoso model, intent on replicating its successes but also seeking to avoid its shortcomings, particularly with regard to inflation control and economic growth. These efforts seemingly convinced foreign and domestic entrepreneurs and investors as, among other things, Brazil received more foreign direct investment during Lula’s second term in office than ever before (CEPAL 2013).
Still, there were considerable variations between the Cardoso and Lula presidencies with regard to the manner in which they reconciled their economic agendas with their social policy priorities, as well as in their relations with the labor force. These differences emerged early in Lula’s presidency, but became particularly salient from the moment the 2008/2009 global economic crisis hit Brazil. These disparities stemmed from the varying perspectives taken by these two governments on the desirability of involving the state in socioeconomic matters. In general, Cardoso advocated a (limited) withdrawal of the state from the economy and social affairs, whereas Lula supported a more active role for the state.

Indeed, from the beginning of his government, Lula implemented the Fome Zero (Zero Hunger) food distribution program and the Bolsa Familia (Family Allowance) conditional cash transfer program. These social programs aimed at eradicating poverty and reducing socioeconomic inequalities. Bolsa Familia has been instrumental in helping upward of 50 million people out of poverty since its implementation and is considered one of the best-performing conditional cash transfer programs in the world (Veras Soares, Perez Ribas and Guerreiro Osório 2010: 186–187). Despite the fact that the Lula government’s tight fiscal and monetary policies did not allow for budgets that could achieve the goals originally set by these programs, they were still successful in ameliorating the socioeconomic conditions of their beneficiaries.

Another area of difference between the Lula and Cardoso administrations stems from their positions on labor market reform. Cardoso supported a pro-flexibilization perspective, whereas Lula was generally sympathetic to organized labor’s interests; this was reflected in the several instances of labor law reform pursued by the Lula administration. Arguably the most notable pro-labor measure adopted by the Lula government was the significant increase of the real minimum wage to a rate unmatched in Brazil’s contemporary history (see Statistical Annex).

Although this labor policy orientation contrasted with that of the Cardoso administration, it should be noted that Lula did not abolish or reverse the flexibilization policies adopted under Cardoso. In fact, these provisions continued untouched for the most part. Furthermore, although the Lula administration sought to modify the existing political opportunity structures within the labor market in favor of organized labor, the president took great care to establish conciliatory policies favoring the business and financial communities, thus preserving their entrenched privileges (Hunter 2014: 33). In doing so, Lula aimed to secure the political neutrality of the economic elites and their continued
support for the economic policy orientation adopted under Cardoso. He apparently succeeded in this endeavor.

Several amendments and reforms of Brazil’s labor code and Constitution (those articles pertaining to labor relations and the labor market) were proposed between 2003 and 2010 (Galvão 2008). Contrary to what had been the case under Cardoso, the proposals set forth by Lula’s government did not primarily seek to deregulate and flexibilize labor relations. Rather, they intended to transform the organizational structure of labor, thus strengthening its collective bargaining position and enhancing labor rights. Lula’s government especially targeted the removal of corporatist constraints on labor organization and collective action. For the most part, however, the Brazilian Congress did not pass these reforms – the one notable exception being the 2008 CLT reform that recognized the official and legal existence of labor centrals and validated their role as representatives of workers’ interests. This CLT reform hence ended the proscription of the horizontal integration of workers organizations that had been in place since the first Vargas government (1930–1945) and thus potentially increased the political and socioeconomic influence of workers’ organizations.

Indeed, this reform made it legal for labor central representatives to not only be present throughout collective agreement negotiations involving their affiliated unions but also to speak directly with employers’ representatives during these discussions (CLT 2014). Before 2008, labor centrals could informally organize and mobilize their affiliates, but they could not intervene directly in negotiation processes or claim a share of the imposto sindical. This was the case for the CUT and Força Sindical – two peak labor associations that emerged in 1983 and 1991, respectively. In legal terms, labor centrals such as these did not “exist” and therefore did not officially constitute a valid interlocutor for the federal government or business organizations. The 2008 amendment altered the rapport of strength in Brazil’s labor relations. From then on, individual unions – particularly smaller ones – could be accompanied during negotiations by central representatives, who would then be in a position to support their members by offering their expertise as well as the weight of their respective central’s considerable membership. In other words, workers would conceivably find themselves in a more credible position when negotiating with private and state employers.

Given the Lula government’s stance on labor policy, and given that no significant new provisions designed to flexibilize the labor market were adopted between 2003 and 2010, advocates of the flexibilization approach would expect little difference between the socioeconomic
situation that prevailed under Cardoso and that under Lula. This would particularly be the case given that the above-mentioned limited elasticity in Brazil’s real wages seemed to endure during the Lula government. In their disaggregated analysis of labor flexibility, Pereira da Silva and Monsueto (2012: 13) consider this significant degree of wage rigidity to be an acceptable indicator of the general lack of flexibility of the Brazilian labor market during the Lula government. Furthermore, Brazil’s competitiveness reportedly declined during the 2003–2010 period – arguably a factor of steady and significant increases in real minimum wages (Canuto, Cavallari, and Reis 2013: 7). Scholars advocating labor law flexibilization would consequently expect the main economic and labor market indicators to perform poorly.

By contrast, economic and social indicators paint an overall positive picture of the Lula years (see Statistical Annex). Although the GDP growth rate fluctuated wildly toward the end of Lula’s mandate (due to the 2008/2009 global economic crisis), his presidency was nevertheless characterized by substantial average annual growth of 4.1 percent, which is almost twice that managed during the Cardoso administration. Meanwhile, annual variation in consumer prices averaged a reasonable 6.5 percent. The Lula government also maintained a high budget surplus and continued to build the state’s reserves, increasing them by 83 percent between 2002 and 2010. In 2005 Brazil finished repaying its IMF loan and subsequently became a donor to the fund – a gesture of great symbolic importance aimed at confirming Brazil’s new status as an emerging economic power (Baer 2014: 199).

The available data also suggest that despite the absence of encompassing reforms seeking to deregulate and flexibilize labor relations during Lula’s presidency, the Brazilian labor market evolved significantly and positively. The unemployment rate declined markedly under Lula from a historical peak of 9.7 percent in 2003 to 6.6 percent in 2010 (its lowest level in 15 years) – for an average yearly rate of 8.3 percent. Equally remarkable is the reduction in the proportion of the Brazilian labor force active in the informal economy, which decreased steadily from 44.7 percent in 2003 to 36.1 percent in 2010. The real minimum wage also improved notably under Lula, increasing by almost 60 percent over eight years from BRL 373.17 to BRL 583.43 (in constant 2011 real). This increase is particularly impressive when compared to the very modest rate at which the real wage had grown since 1992 and when keeping in mind that the real value of the minimum wage had actually significantly regressed between 1980 and 1992. Perhaps most striking was that poverty fell drastically under Lula, from 35.8 percent in 2003 to 21.4
percent in 2009. The wealth gap was also reduced, with the Gini inequality index dropping from 58 in 2003 to 54 in 2010 – its lowest level in over three decades.

5.2 Interpreting the Results

The fact that the Lula government oversaw increased growth, decreasing unemployment, a reduced informal sector, and reduced poverty and inequality without adopting or enhancing significant flexibilizing measures calls into question the claims made in the pro-flexibility literature. As was the case with the Cardoso government, it appears there were factors other than the labor law reforms highlighted in the pro-flexibility literature that had a considerable influence on the Brazilian economy and labor market.

To be sure, the larger international economic context in which Brazil found itself during the Lula government was much more favorable (at least until the last half of 2008) than that during the Cardoso government. The 2003–2010 period was indeed characterized by a marked growth in commodity prices in the international market. This context combined with the devaluation of the real that took place at the end of the Cardoso administration bolstered Brazilian exports (of mostly unfinished and primary products) and generated significant economic growth (Baer 2014: 175). The 2008/2009 international financial crisis undeniably affected the performance of economic and labor market indicators. This is illustrated by, among other things, the Brazilian economy’s lack of growth in 2009. The crisis can also be faulted for the slight increase in unemployment as well as the recrudescence of strikes that same year. Remarkably, however, the labor force continued its migration toward the formal sector during that time. Overall, then, the international situation lent itself to a more positive economic performance under Lula than it did under Cardoso.

The main economic actors – labor and business – adopted a relatively passive stance during the Lula government. Placated by Lula’s continuation of most of Cardoso’s economic policies – which were generally favorable to their interests – entrepreneurs remained acquiescent on the whole (Hunter 2014: 33). Organized labor, presented with the historical opportunity of having one of their own leading the country, displayed a counterintuitive tendency toward demobilization and passivity. However, when they did mobilize, labor organizations were generally supportive of the government and its policy orientation (Galvão 2008; Garcia 2008: 230; de Oliveira 2006: 11). Beyond their relative passivity, which ensured a form of “labor peace,” neither actor seems to have had
a significant influence on the evolution of the labor market in Brazil during the period at hand.

By contrast, the government’s policy orientation toward poverty alleviation and the real minimum wage appears to have had an important effect on Brazil’s labor market and economy. The substantial growth in the value of the real minimum wage under Lula is often considered one of the main factors behind the reduction of the poverty rate in Brazil. The increase in the minimum wage, as well as the introduction of social programs such as *Bolsa Familia*, was likewise credited for providing lower-class families with disposable income, which, among other things, allowed them to consume more (ILO 2011).

This socioeconomic context was also singled out as chiefly responsible for Brazil’s resilience in the face of the 2008/2009 global financial crisis (ILO 2011; Kliass 2011: 20; Morais and Saad-Filho 2011: 516–519). Ricardo Berzoini – the former minister of labor and of social security, the former PT president, and the former leader of the Union of Bank Employees – claims that “Brazil survived [that] crisis” because of the social nets created during the Lula government and because people from the lower and middle classes spent their newfound disposable income, as requested by Lula, so that neither they nor the country would “be harmed by the crisis” (personal interview). Taken together, it appears that conditional cash transfer programs such as *Bolsa Familia*, real minimum wage increases, tax breaks, and fiscal stimuli adopted under Lula significantly contributed to labor market formalization, poverty reduction, and the shrinking of the lower classes and the subsequent growth of the so-called new middle class (CEPAL 2013).

Generally attributed to the Lula government’s policy orientation and to the country’s positive economic performance during that period, the reduction in the proportion of informal sector workers represents a major shift in the configuration of the labor market in Brazil (De Andrade et al. 2010: 8). Among other things, this helped reduce the economic uncertainty faced by thousands of workers, who could now contribute and gain access to state-funded social programs. This transformation was accompanied by the 2007 governmental reform that expanded the public pension system and extended social security benefits to informal (and especially rural) workers (Ansell 2011: 26). This permitted men 60 years of age or older and women 55 years of age or older, who had been mostly active in the informal sector, to receive a minimal pension funded by the state.

On the whole, then, it seems that the Brazilian labor market experienced significant changes under Lula’s presidency. But these transfor-
mations do not appear to be attributable to a deregulation and flexibiliza-
tion of Brazilian labor legislation. As shown above, the Lula administra-
tion did not adopt any significant flexibilizing reforms. Also, the 2008
reform recognizing peak associations does not seem to have had an
impact on economic or labor market indicators. Instead, it appears that
the generally favorable international context and the government’s policy
stance on poverty alleviation programs and minimum wage adjustment
had a much stronger effect on the labor market.

6 Conclusion

Overall, this paper’s findings are at odds with the expectations of a dom-
inant strand of the literature dealing with labor market dynamics, which
posits that labor code reform in the direction of increased flexibility is
key to generating (i) increased formal sector employment, (ii) rapid and
sustained growth, (iii) increased investment, and (iv) a concurrent im-
provement in the socioeconomic situation. In fact, my analysis suggests
that the Cardoso regime’s flexibilization of Brazilian labor legislation
corresponded with (a) increased formal sector unemployment, (b) a
growing informal sector, (c) weak and unsteady growth, and (d) no ame-
lioration of poverty or socioeconomic inequality. By contrast, the Lula
administration did not further flexibilize Brazil’s labor legislation, and the
labor market arguably became somewhat more rigid due to repeated
increases in binding minimum salary legislation. Nevertheless, the Lula
government oversaw (i) increased formal sector employment, (ii) an
important reduction in the size of the informal sector, (iii) significant and
fairly sustained growth (iv) record high levels of foreign direct invest-
ment, and (v) a marked reduction in poverty and inequality levels.

Given this context, I contend that other factors had a greater im-
pact on economic and labor market performance in Brazil between 1995
and 2010. The health of the international market and the federal gov-
ernment’s policy orientation are two elements that appear to have been
more influential in shaping Brazil’s economy and labor market. These
findings align well with some of the claims set forth in the neostructural-
list literature discussed above. This paper’s results therefore call for a
reorientation of the analytical focus of labor market literature and a re-
valorization of shifts in international economic conditions and govern-
mental policy orientation as central explanatory factors of evolving labor
market conditions.
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Statistical Annex: Macroeconomic and Labor Market Statistics in Brazil

Figure 1. Annual GDP Growth Rate (1984–2010)

Source: World Bank 2013.

Figure 2. Annual Variation in Consumer Prices (Inflation Rate) (1984–2010)

Source: World Bank 2013.
Figure 3. Annual Unemployment Rate (1984–2010)

![Bar chart showing annual unemployment rate from 1984 to 2010.]

Source: IPEA 2014; ILO 2014.

Figure 4. Variations in Real Minimum Salary (1980–2010), in Constant 2011 Real

![Bar chart showing variations in real minimum salary from 1980 to 2010.]

Source: DIEESE 2014.
Figure 5. Variation in Size of the Labor Force Employed in the Informal Sector (1991–2010)

Source: IPEA 2014.

Figure 6. Union Density (1992–2011)

Source: Pichler 2011; IBGE 2012.
Figure 7. Poverty Rate (1985–2009)

Source: IPEA 2014.

Figure 8. Gini Index of Socioeconomic Inequality (1985–2009)

Source: IPEA 2014.
Os limites da reformas da legislação laboral: Rigidez, Crescimento e Emprego no Brasil (1995–2010)

Resumo: A literatura sobre as dinâmicas do mercado geralmente assume que a reforma da legislação laboral tem um impacto direto sobre o desempenho econômico, a configuração dos mercados de trabalho, e a força das organizações de trabalhadores. Dentro dessa literatura uma escola predominante de pensamento propõe a flexibilização das leis trabalhistas como a chave para a criação de prosperidade econômica, a melhoria da produtividade do trabalho, o aumento do emprego no setor formal, e o combate bem sucedido contra a pobreza e a desigualdade socioeconômica. Examino essas hipóteses, analisando o caso do Brasil entre 1995 e 2010. Os resultados sugerem que as reformas visando a flexibilização do código de trabalho brasileiro não mudam significativamente o mercado de trabalho do país o a sua economia. Proponho que as transformações em contextos econômicos internacionais, bem como diferentes orientações políticas dos sucessivos governos federais brasileiras podem deter mais poder explicativo na análise de alterações no mercado de trabalho durante este período de tempo.

Palavras-chave: América Latina, Brasil, política laboral, flexibilidade, crescimento, emprego, reformas do mercado