

Neoliberalism in a Workers' Party Government? The case of Brazilian Labour Legislation (2003-2011)

Abstract

This paper aims to critically assess the changes to labour legislation implemented during the first two terms of the Lula's administration (2003-2011). The underlying hypothesis posits a contradictory orientation within these changes, marked by an increasing trend towards the flexibilisation of labour. Notably, the analysis highlights the relationship between the legislative modifications and the proliferation of neoliberal rationality, a characteristic of contemporary capitalism, through the legal endorsement of ongoing practices within the employer-employee relationship. It is crucial to underscore the role of the State as a central actor in the process by which competition tends to become generalised as a norm of conduct, further potentiating the "isolation effect" experienced by agents in their reciprocal relationships.

Keywords: Flexibilisation of labour; Neoliberalism; Competition; Isolation effect.

Code JEL: B50; K31; H70

Introduction

One notable aspect that characterizes the discourse on the labour market in contemporary capitalism is the advocacy for the flexibilisation of labour¹. This movement has gained momentum in recent decades due to the processes of productive and financial globalization. Within this context, reducing costs, especially labour costs, has been emphasized as a crucial factor in enhancing a firm's competitiveness and profitability (Fiori, 1999; Belluzzo, 2012; Krein, 2013; Dardot & Laval, 2014). In the Brazilian scenario, the drive towards labour flexibilisation gained significant traction during the 1990s under the governments of Fernando Collor and Fernando Henrique Cardoso.

Pastore's works (1994, 1997) exemplify the proponents of labour flexibilisation. The argument of these works is that the challenges faced by the Brazilian economy after the decline of the import substitution industrialisation model, such as high unemployment rates, are attributed to the inadequacy of current labour market regulations. This perspective argues that tight labour legislation imposes constraints on formal employment and hampers effective negotiations between employees and employers, impeding the prompt adaptation of companies to market demands. Therefore, labour flexibilisation is viewed as essential for enhancing competitiveness and productivity by granting employers more freedom to terminate workers and reducing costs related to termination benefits.

In Brazil, a significant trend of labour flexibilisation emerged during the 1990s, aligning with the aforementioned perspective. This trend led to the weakening of unions and the fragmentation of collective bargaining (Krein & Oliveira, 2001; Cardoso, 2002). During this period, notable changes were observed, including the facilitation of hirings and dismissals, intensified competition², and increased flexibility in working hours and worker compensation. It is noteworthy that this process, which took shape in the 1990s, also manifested during the first two terms of the Lula's administration (2003-2011), albeit in a contradictory manner (Krein & Biavaschi, 2015). The modifications in legislation, endorsing prevailing practices in the employer-employee relationship, played a pivotal role in expanding labour flexibilisation and were associated with the dissemination of neoliberal rationality inherent in contemporary capitalism. The State assumed a prominent role in this process

of labour flexibilisation, primarily through legislative changes, including Constitutional Amendments and Provisional Measures that amended the Consolidation of Labour Laws (CLT). These alterations contributed to reshape the capital-labour relationship (Krein & Biavaschi, 2015).

The primary objective of this article is to critically analyse changes in labour legislation that occurred during the first two terms of the Lula's administration (2003-2011), with a specific focus on the dissemination of neoliberal rationality in Brazil. As highlighted by Dardot & Laval (2014, p. 9), neoliberalism can be defined as a "set of discourses, practices, and apparatuses that determine a new mode of government of human beings in accordance with the universal principle of competition". The generalisation of competition, aimed at shaping both individuals and society, reinforces the dominance of capitalist logic in the social fabric, leading to growing inequalities and even fatalities, which are seen not as signs of weakness but rather as indications of its strength (Dardot & Laval, 2014).

Hence, this study aims to examine the concrete actions of the State manifested through the changes in labour legislation, shaping the Brazilian labour market in accordance with neoliberal rationality. Over time, this rationality has become gradually internalized in society, thereby normalizing a daily life where social relations are increasingly governed by competitive contractual arrangements between presumed equal and autonomous agents. Consequently, the advancements in terms of formal employment and wage increases, significant achievements during the Lula's administrations (2003-2011), have coexisted with the emergence of a workforce detached from class identification. This process has created an economic environment that tends to produce more flexible and precarious labour relations, especially during periods of low growth (Krein, 2018).

In an effort to comprehend this process, the article is structured into four sections. The first section offers a concise exposition of neoliberal rationality, which is grounded in competition, and its manifestation in Brazil through economic and social policies as well as labour market regulation (Krein & Biavaschi, 2015; Paulani, 2020). Emphasis is placed on the pivotal role of the State in

promoting this process, driven by the intrinsic legal-institutional nature of neoliberalism (Dardot & Laval, 2014).

Following a brief overview of the approaches taken by the administrations of Collor, Cardoso and Lula, the second section focuses on the contradictions of Lula's administrations (2003-2011) and reveals a certain "hybridity" in their economic and social policies, as well as their approach to the labour market. This section also analyses the changes in labour legislation during the Lula's administrations (2003-2011), shedding light on the contradictory nature of the measures adopted as they navigate towards labour flexibilisation amidst rising wages and job formalization.

The third section delves into an examination of labour relations in Brazil, considering the interplay between the implemented legal changes and the existing practices within the labour market. This analysis highlights the deepening of the "isolation effect" (Poulantzas, 2019) through the proliferation of increasingly flexible work relationships (Krein & Biavaschi, 2015; Antunes, 2018).

Finally, the article concludes with succinct remarks that summarize the key findings and implications discussed throughout the study.

1. The paths of neoliberalism in Brazil

1.1. First steps

For better understanding of the changes in labour legislation during the Lula's administrations (2003-2011), it is imperative to grasp key elements of contemporary capitalism as highlighted in the literature on neoliberalism (Dardot & Laval, 2014; Slobodian, 2018; Brown, 2019; Chamayou, 2021).

The intellectual origins of neoliberalism can be traced back to the early 20th century, representing a re-foundation of the dominant classical liberalism that characterized much of the 19th century (Dardot & Laval, 2014). In this context, neoliberalism as an intellectual and political project emerged as a response to the perceived "crisis of governmentality" identified by economic elites in the 1930s. Since then, neoliberalism has taken shape through a constellation of collective entities

engaged in neoliberal thinking, including the Walter Lippmann Colloquium (1938), the formation of the Mont Pelerin Society (1947), and its annual meetings, as well as the establishment of an extensive network of neoliberals think-tanks operating across multiple domains (Plehwe, 2018; Plehwe, Slobodian & Mirowski, 2020).

Beyond a mere adaptation of classical liberalism, neoliberals pursued a transformation of the values, behaviours, and principles that govern individuals and institutions. Their objective was to establish a new society not merely by means of a specific set of economic policies, but by helping to forge an underlying rationality that informs practices, discourses, and mechanisms, elevating competition as the prevailing norm of conduct for both the governed and the governing. Competition is viewed as the key element shaping individuals' behaviour, leading to a progressive isolation in terms of their class identification. Behavioural patterns commonly observed in the business sphere permeate society to such an extent that the individual's perspective is increasingly defined by their “human capital,” and contractual arrangements serve as the foundation for shaping behaviours and social relations themselves (Dardot & Laval, 2014; Chamayou, 2021; Brown, 2019).

To successfully implement a process that entails redefining the very political forms of individuals, gradually engendering “docile citizens” who internalize a life of arduous labour and incessantly strive for self-improvement – while constantly adapting to technological advancements that delineate novel forms of work – a profound “general adoption of a new normative logic” is imperative (Dardot & Laval, 2014, p. 168). This necessitates the establishment of a “global normative framework” capable of encompassing and effectively redirecting policies and behaviours towards a new trajectory (Dardot & Laval, 2014). Moreover, the attainment of such a process is intrinsically tied to a regulatory paradigm grounded in competition, with the active involvement of the State in shaping mindsets and prescribing behavioural norms (Chamayou, 2021; Brown, 2019).

Hence, neoliberal rationality can be understood as a pervasive force that permeates various social relations, influencing mindsets and shaping behaviours of individuals and institutions. While

the neoliberal rationality is observable in economic and social policies, it transcends these realms and manifests in a broader spectrum of social interactions.

The 1960s-1970s witnessed the dissemination of social and economic approaches that emerged within the aforementioned movement, propelled by the stagflation experienced in major global economies. During this period, diverse theoretical perspectives converged as “the spectres of marketism began to haunt the so-called Keynesian consensus” (Belluzzo, 2012, p. 164, our translation). Governments such as those of the United States and England began to question the efficacy of Keynesian macroeconomics, the role of state-owned enterprises, progressive taxation, social protection, and labour rights. Consequently, proponents of economic freedom increasingly advocated for reforms that aimed to restore “market mechanisms” across social fabric, considering them essential for individual freedom, stability, and long-term economic progress. This historical moment marked the inception of a conservative transition that revived — or, more precisely, redefines — the principles of liberalism (Fiori, 1999; Belluzzo, 2012).

Thus, the 1970s marked the initiation of a “march of liberalization” that advocated for the liberalization of the financial market, the flexibilisation of labour, the implementation of austerity economic policies, privatizations, and tax reductions primarily benefiting the wealthy, all with the aim of stimulating private investments (Fiori, 1999; Belluzzo, 2012). In practice, State resources and political support increasingly favoured large transnational corporations, which underwent profound transformations during this period. These corporations embarked on a process of extensive production, trade, and service fragmentation, exploiting low-cost labour from underdeveloped countries, while retaining centralized decision-making and technological development within their headquarters located in developed capitalist nations. This marked a significant reorientation in the worldwide liberal tradition, encompassing both belief systems and economic policies (Fiori, 1999, p. 72). The state plays a crucial role in this process, assuming the role of protagonist in fostering a competitive environment through changes in the legal-institutional framework of capitalist societies, thereby creating a “practical and normative coherence” that extends into everyday life (Dardot &

Laval, 2014, p. 23). Across the globe, numerous experiences highlight the diffusion of the neoliberal rationality, with underdeveloped countries often displaying its most extreme expressions (Bhattacharya, 2007; Felder & Patroni, 2018).

In Brazil, during the government of Fernando Collor de Mello (1990-1992), the spread of neoliberal rationality and its manifestation through economic reforms gained momentum as a response to the supposed limitations of import substitution industrialisation. This model was deemed inadequate for aligning Brazilian industrial development with that of advanced countries and was held responsible for monetary instability, inefficiency in the financial system, low investment, and weak markets, among other challenges (Saad-Filho & Morais, 2019). Monetary stabilization emerged as a pivotal concern, triggering significant changes in the economic and financial institutional framework. The Collor administration initiated the process of institutional and ideological consolidation of neoliberalism in Brazil through measures such as reducing government expenditures, privatizations, trade liberalization, and financial liberalization, accompanied by fiscal and social security reforms. Despite Collor's impeachment in 1992, his successor, Itamar Franco, continued the reform agenda (Saad-Filho & Morais, 2019). The planned changes during this period were based on the belief that Brazil's inflation problem could be resolved through fiscal reform, while financial liberalization would enhance domestic investment and savings. Import liberalization was expected to lower input costs, introduce advanced technology by breaking the perceived monopoly of inefficient domestic producers, and weaken the influence of labour unions. Additionally, the liberalization of capital flows was viewed as a crucial driver for attracting foreign direct investment, deemed essential for financing economic restructuring according to these perspectives (Lopreato, 2013; Saad-Filho & Morais, 2019).

It becomes evident that this structural process of transformation fundamentally encompasses a legal-institutional dimension within Brazilian capitalist society (Dardot & Laval, 2014; Slobodian, 2018; Brown, 2019; Chamayou, 2021).

The Brazilian social structure underwent significant changes accompanied by a labour market flexibilisation process (Fiori, 1999; Belluzzo, 2012). An attempt was made, although unsuccessful, during Collor's presidency through Bill No. 821 of 1991, to bring about a substantial change in union organization, primarily emphasizing decentralised collective bargaining “at the workplace level” (Krein & Oliveira, 2001, p. 147). The bill aimed to increase state control over unions, facilitating labour market flexibilisation by replacing individual contracts with flexible collective agreements. It proposed imposing fines on those obstructing collective bargaining and limited job security guarantees for union leaders. This movement was perceived as a step towards “modernization,” seen as crucial for addressing the employment crisis in the country. Consequently, during this period, there was an initial push for “opening up to the flexibilisation of rights” (Carvalho & Guerra, 2020, p. 3), driven by the “inevitable and unstoppable adaptation of the country to international competitive standards” (Neto, 1996, p. 327, our translation).

However, the administration of Collor and Itamar did not provide effective solutions to the inflation problem. After their presidencies, Fernando Henrique Cardoso (FHC) assumed office in 1994, marking a new milestone in the proliferation of neoliberalism in the country, particularly through certain features of the Plano Real (Belluzzo & Almeida, 2002; Lopreato, 2013; Saad-Filho & Morais, 2019). The Plano Real advocated that fiscal deficits were one of the main drivers of inflation, leading to a contractionary policy combined with deindexation. Furthermore, according to Lopreato (2013), what characterizes the Plano Real as a disseminator of neoliberalism are the specific procedures that the economy had to undergo to achieve the Plano's anticipated “success.”

Firstly, crucial to the economic policies were the liberalization of imports, enabling the entry of high-tech goods into the country and stimulating competition among firms and the working class. Currency overvaluation complemented this approach, facilitating the cheaper acquisition of foreign capital goods and enhancing the impact of import liberalization on inflation. In addition, measures were implemented to liberalize international capital flows, foster domestic financial liberalization, maintain high interest rates, carry out privatizations, and implement deindexation. In essence, a

formal alignment with a set of neoliberal measures shaped the economic policies (Carneiro, 2002; Lopreato, 2013; Saad-Filho & Morais, 2019).

Regarding labour relations, FHC adopted a path of less resistance compared to Collor, primarily resorting to decrees, ordinances and provisional measures. Disguised as measures to combat unemployment, these actions aimed to loosen hiring norms, working hours, and remuneration. Among FHC's unsuccessful attempts, notable mentions include Bill No. 4,302/1998, which sought to generalize outsourcing, and Bill No. 5,843/2001, advocating for negotiated agreements to take precedence over legislated rights (Krein & Oliveira, 2001).

The government of FHC ushered in a significant shift in the role of the State, aiming to bolster market mechanisms in labour relations, thus intensifying competition (Krein & Oliveira, 2001, p. 155; Pochmann, 2009; Fraile, 2009). Notable measures during this period include Provisional Measure 1,503/95, which focused on salary deindexation to revoke wage adjustment mechanisms, emphasizing direct negotiation and effectively imposing a wage control mechanism. Additionally, Provisional Measure 1,906/97 delinked the minimum wage correction from any inflationary adjustments. Another significant measure was the implementation of Profit Sharing and Results Program (PLR), which was decoupled from regular remuneration. This introduced a variable component in workers' pay that was not considered for calculating rights such as vacation pay, 13th salary, Workers' Severance Fund (FGTS), and social security contributions. This measure, as highlighted by Krein and Oliveira (2001, p. 149), replaced wage policy, flexibilised remuneration, and linked it to company interests, while also contributing to the decentralisation of collective negotiations. Nonetheless, Santos (2011) notes the dialectical aspect of the growth in collective negotiations fighting for improvements in the PLR program, while simultaneously posing a threat to the achievements of the working class regarding wages.

Moreover, in the context of the 1998 crisis, several other measures were adopted, reinforcing the trends of contract flexibility and primarily aimed at reducing company costs. These measures included the suspension of employment contracts for two to five months for professional

qualification, effectively encouraging companies to dismiss employees during periods of low production. The introduction of part-time workweeks of up to 25 hours resulted in salary reduction and the omission of rights, thus rendering work precarious. Additionally, extending the period from four months to one year, within which companies could offset owed overtime hours through a time bank, had adverse effects on workers' compensation and increased the level of flexibility in working hours (Krein & Oliveira, 2001; Costa, 2007). Hence, it can be observed that both in Brazil and globally, there was a “political and social process (...) based on the discourse and practice of the neoliberal capitalist model” (Boito Jr, 2003, p. 4).

In summary, the governments of Fernando Collor and Fernando Henrique Cardoso exerted a significant influence in the institutional and ideological realm, effectively disseminating key aspects of neoliberal rationality, despite falling short of achieving a complete flexibilisation of labour. These aspects encompassed the “deregulation” – or, more precisely, re-regulation – and liberalization of markets, criticism of the public sector and its perceived excessive spending, scepticism towards the effectiveness of trade unions, and the promotion of a “market economy” based on “free competition,” among other elements (Carneiro, 2002; Lopreato, 2013; Saad-Filho & Morais, 2019).

1.2 Lula Governments: Continuity and Changes

During Lula's governments (2003-2011), both new and familiar aspects related to the previously discussed issues came to the fore. Firstly, it is important to highlight that, in his initial term, the Lula's administration closely adhered to the economic policies of his predecessor, FHC, maintaining high interest rates, the primary surplus policy, the inflation targeting system, and the floating exchange rate regime (Carneiro, 2005; Saad-Filho & Morais, 2019). This alignment with certain kinds of neoliberal policies demonstrates one of the ways in which it manifests, coexisting with measures that pointed in different directions. Nonetheless, as external accounts improved due to increased capital flows and rising commodity prices, a trend of currency appreciation emerged. This exerted simultaneous negative pressure on inflation and enabled the expansion of consumption,

complemented by credit policies and the increase in the minimum wage. These factors, coupled with an increase in public spending, led to GDP growth, promoted domestic consumption and investment, facilitated job creation, and raised household income (Boito Jr, 2003; Boito Jr, 2006; Farhi, 2006; Da Silva, 2017; Carvalho, 2018; Paulani, 2020).

In this context, it is observed that during the Lula governments, “Bolsa Família” (Family Allowance) and the increase in the minimum wage played significant roles, contributing to a notable reduction in poverty rates in the country. Over approximately six years, the coverage of “Bolsa Família” expanded from 3.6 million beneficiaries to around 12.8 million. However, it is essential to acknowledge that social mobility was predominantly concentrated at the base of the socioeconomic pyramid, with limited overall effects on reducing social inequality in the country³ (Carvalho, 2018; Loureiro, 2019; Loureiro, 2020).

Lula's second government, however, reveals a distinct “hybrid” character in its adopted policies. While maintaining well-known “macroeconomic stability” measures such as inflation targets, high interest rates, fiscal surpluses, and a reduction in the net public sector debt, there was a clear focus on accelerating economic and social development. Notable measures include excluding public investment and strategic public companies, such as Petrobras and Eletrobras, from primary surplus targets, initiating the “Programa de Aceleração do Crescimento” (Growth Acceleration Program) that coordinated public and private investments in energy, social and urban infrastructure, and logistics infrastructure, implementing the “Minha Casa Minha Vida” program (Affordable Housing Program), strengthening domestic private conglomerates, and further expanding consumer credit (Barbosa & Souza, 2010; Morais & Saad-Filho, 2011; Teixeira & Pinto, 2012; Boito Jr & Berringer, 2013; Carvalho, 2018; Vargas, 2020). As a result of these and other measures, an assessment of Lula's administration reveals a reduction in extreme poverty, declining from 15% of the population in 2003 to 5% in 2012. The minimum wage experienced a real increase of 72%, leading to a sharp decrease in unemployment, an increase in formal employment opportunities, an annual

GDP growth rate of approximately 4.6%, and an average domestic investment of 10.5% per year (Teixeira & Pinto, 2012; Carvalho, 2018; Saad-Filho & Morais, 2019).

However, as warned by Colombi (2018), the perspectives that define the “hybridism” of Lula's second government primarily concentrate on the continuities and discontinuities of economic policies in relation to previous governments, paying little attention to the continuities or discontinuities present in labour relations. In this study, we delve into this issue, aiming to uncover concrete changes in labour legislation that align with the spread of neoliberal rationality, underscoring its foundation in the exacerbation of competition in a contradictory way.

2. Labour laws and the flexibilisation process

The literature on neoliberalism highlights the significance of a global normative framework, primarily shaped by the state through competition, which redefines social relations and influences the behaviour and conduct of the population (Dardot & Laval, 2014; Brown, 2019; Chamayou, 2021). The subsequent analysis explores a series of legal measures that, similar to the aforementioned discussion, have contributed to Brazil's adaptation to the global reorganization of capitalism. This adaptation has resulted in an upsurge in outsourcing within peripheral capitalist countries⁴. Consequently, the flexibilisation of labour becomes imperative in these regions, facilitating cost reduction, while simultaneously contributing to work precarity and fostering a division within the working class, thereby undermining their identification as a unified social class. In other words, this process amplifies competition between workers, a crucial aspect of this dynamic.

It is important to highlight the contradiction presented during the Lula governments in relation to labour, which involved a dual movement of increasing formal employment rates and real wage growth, accompanied by the constitutional flexibilisation of labour (Krein & Biavaschi, 2015). The dynamic nature of labour flexibilisation in Brazil engrain in the forms of employment, working time, space, remuneration, and conflict resolution mechanisms (Krein & Teixeira, 2014; Krein & Biavaschi, 2015; Krein & Castro, 2015; Antunes, 2021) continued in Brazil during Lula's administrations, but it

wasn't a major concern among scholars, as was the "hybridism" characteristics of economics policies (Colombi, 2018).

By emphasizing this point, the intention is to underscore the recognition that neoliberal rationality, supported by a general normative framework, especially guaranteed and monitored by the State, also shapes the conduct of the population with the creation of labour relations potentially individualized and absent of legal coverage.

Law No. 10,748/2003 holds considerable significance as it established the "Programa Nacional de Estímulo ao Primeiro Emprego para Jovens" (National Program for Stimulating First Employment for Youth). This program was designed with a specific focus on providing employment opportunities to young individuals who lacked prior work experience and came from families with a monthly per capita income below half of the minimum wage. The primary aim of this initiative was to improve the skill sets of young workers and promote their social inclusion.

However, it is imperative to highlight that Article 2-A of Law No. 10,748/2003 authorized the use of fixed-term contracts with a minimum duration of twelve months. Consequently, such contractual arrangements promoted predominantly flexible labour relations, lacking the protections typically guaranteed by the CLT. The utilization of fixed-term contracts witnessed a substantial growth of 60% between the years 1999 and 2008 (Baltar, 2010). Additionally, the legislation extended tax incentives to companies that chose to employ individuals through these fixed-term contracts (Krein & Biavaschi, 2015).

Likewise, Law No. 11,442/2007 had a significant influence on the rights of road transporters. This legislation introduced a noteworthy modification by stipulating that the worker must own their cargo vehicle, resulting in the termination of their formal employment affiliation with the contracting company (Krein & Biavaschi, 2015). Furthermore, the law governs the subcontracted and compensated transportation of goods on public roads across the national territory, establishing the operational framework and delineating the worker's responsibilities. It is important to note that Law

No. 11,442/2007 repealed Law No. 6,813/1980, thereby eliminating the requirement for exclusive exploitation of road transport to be primarily carried out by Brazilian companies.

Law No. 11,718/2008 introduced an amendment to Law No. 5,889/1973, thereby establishing a contract for short-term or fixed-term employment specifically for rural workers. This amendment also encompassed provisions related to retirement regulations for these workers. By enabling an employment arrangement in the rural sector without the need for formal ties, it was presumed that labour rights would be compensated as an additional component of the worker's remuneration (Krein & Biavaschi, 2015). It is worth noting that this law made amendments to Laws No. 8,171/1991, No. 7,102/1993, No. 9,107/1995, No. 8,212/1991, and No. 8,213/1991.

On the surface, this series of laws seems to extend legal coverage to activities that were previously not within the purview of legislation. However, it is crucial to emphasize the contradictory nature of this movement, as it ultimately contributes to the future flexibilisation of labour for the categories involved. In other words, the aim of broadening legal coverage for these categories was to foster labour relations that fell outside the protections offered by the CLT.

These first set of Laws, comprising Law No. 10,748/2003, No. 11,442/2007, and No. 11,718/2008, serves as clear examples, according to Krein and Biavaschi (2015), of how flexibility can lead to work precariousness. These measures allow for the implementation of fixed-term contracts without establishing formal employment ties. Consequently, this process disproportionately affects vulnerable segments of the population, such as truck drivers, rural workers, and young individuals, who already face challenges in terms of job quality. These laws contribute to an increased freedom for employers to hire and fire, resulting in higher turnover rates and greater job insecurity for these particular categories.

The development and formulation of a normative framework that not only establishes regulatory guidelines but also strategically allows for potential flexibilisation of labour was not solely achieved through the enactment of laws, but also through the utilization of vetoes. This is evident in President Lula's veto of Law No. 11,324/2006, which aimed to ensure that domestic workers would

be covered by the labour regulations outlined in the CLT. The law intended to grant domestic workers constitutional rights, including access to benefits such as the FGTS, a 40% severance pay in cases of unjustified dismissal, and unemployment insurance. The veto of these constitutional rights resulted in an incomplete equalization of domestic workers with the rest of the population, leading to the consolidation of flexibilised labour relations within this sector. It is noteworthy that the official justification for this veto was based on purported concerns over potential increases in unemployment and informality within the sector (Krein & Biavaschi, 2015). This veto exposes the labour relations of domestic workers to higher levels of flexibility, particularly regarding working hours and remuneration. Thus, it consolidates disparities in labour rights and protections, compromising the stability and security of domestic workers' employment.

Another stylised fact of this period is a significant increase in the prevalence of “disguised” employment arrangements, exemplified by the growing utilization of hiring workers as “legal persons” or individual microentrepreneurs (Krein & Castro, 2015). Notably, the decree of Law No. 11.196/2005 played a pivotal role in this regard, as it permitted intellectual workers to be classified as legal persons. This shift contradicts the rights of artists and scientists and involved the amendment of three decrees, twenty-eight laws, and one provisional measure, as well as the repeal of one law and certain provisions of four others. According to Krein and Biavaschi (2015), this process represents a tangible progression towards labour flexibility. In these new contracts, the previously established framework of labour regulations is transferred to the domain of civil rules, resulting in the loss of labour rights for these specific categories.

Complementary Law No. 123/2006, known as the National Statute of Microenterprises and Small Enterprises, may serve as additional evidence of a process of contractual flexibility through disguised employment relationships. This law follows a similar pattern to the previously discussed laws, amending provisions of other existing laws such as Law No. 8,212 and No. 8,213 of the CLT, while repealing Laws No. 9,317⁵ and No. 9,841⁶.

On the surface, the first paragraph of this law introduces general provisions that ostensibly offer beneficial coverage for micro and small enterprises. However, in reality, it eliminates certain obligations for these enterprises, such as maintaining records of employee vacations, enrolling apprentices in specialized programs, notifying inspection entities about collective vacations, and keeping records of employee vacations, among other aspects. These indications strongly suggest that these perceived benefits were established by non-compliance with legal obligations of companies towards their workers (Krein & Biavaschi, 2015). This follows the contradictory trend of expanding legal coverage in areas previously lacking legislation (micro and small enterprises) with an underlying dynamic that tends to facilitate flexible labour relations. Importantly, this law resulted in an increase in the number of workers declaring themselves as micro-entrepreneurs. According to Krein and Castro (2015), approximately 48% of registered micro-entrepreneurs between 2006 and 2010 were previously formal employees, with 85% of them having been protected under the CLT regime. It is crucial to note that the State's promotion of this process contributes to the growing individualization of labour relations, which offers diminished legal protection and places significant emphasis on variable remuneration as a component of income. In fact, during the 2000s, the remuneration structure witnessed a significant influence from the consolidation of the PLR. On the one hand, this new situation experienced by the working class resulted in tangible remuneration increases, but on the other hand, it also placed increasing pressure on productivity. For instance, in the banking sector, the amount received through PLR experienced annual increments that were twice as high as the nominal salary between 1995 and 2015 (Krein & Teixeira, 2014).

Law No. 11,101/2005, another measure that contributes to benefiting companies through non-compliance with labour obligations, brings about amendments to Articles 10 and 448 of the CLT. These amendments remove the requirement that changes in the legal structure or ownership of firms should not affect employment contracts. In other words, under the provisions of this law, new owners of a company that has undergone the bankruptcy process are no longer held responsible for the continuity of service provision and payment owed to workers who were previously employed by the

company. This law significantly modifies the procedure for the judicial recovery of firms, shifting the risk of bankruptcy to an increasingly lesser extent onto the employer (Krein & Biavaschi, 2015). In essence, this law stipulates that in the event of bankruptcy, salaries and compensation owed to employees are classified as privileged credit, with a limit of 150 minimum wages. Furthermore, in cases of judicial recovery, employees may have to wait for up to one year to receive their rights and are required to negotiate the receipt of these rights at a general assembly. In summary, Law No. 11,101/2005 establishes a framework where salaries and compensation owed to employees in case of bankruptcy are treated as privileged credit, but with a capped amount. Additionally, in the context of judicial recovery, employees may face delays in receiving their rights and must negotiate for their payment at a general assembly, all while ensuring preference for payment to creditors within the financial system. These legal provisions endorsed a regulatory framework that favoured companies' interests over labour rights, enabling the circumvention of labour protections and potentially exacerbating the precarity of employment for workers (Krein & Biavaschi, 2015).

Lastly, there are two laws that subtly promote the prevalence of negotiated agreements over legislative provisions in specific scenarios.

Firstly, we have Law No. 42/2007. In its Article 1, this ordinance indicates that the meal and rest intervals for workers, defined by law from Article No. 71 of the CLT, could be “flexibilised” – that is, reduced – through collective bargaining. Additionally, we also have Law No. 11,609/2007, which amends and adds elements to Law No. 10,101/2000 and aims to confirm, with the collective agreement of workers, work on Sundays and holidays for the retail sector (Krein & Biavaschi, 2015). The prevalence of negotiated agreements over legislated regulations, although not formally guaranteed through legal means and no longer considered an urgent issue by the Lula’s administration, indirectly manifested itself in Brazil. Ordinance n. 42/2007, along with Law n. 11,609/2007, contributed to the strengthening of fragmented collective negotiations within firms, leading to the flexibilisation of labour by reducing workers' rest intervals and confirming Sunday work for retailers (Krein & Biavaschi, 2015). As pointed out by Colombi (2018), labour unions'

mobilizations and negotiations were primarily focused on wage adjustments, which were based on variable remuneration and flexible working hours. Consequently, the changes achieved through collective bargaining have had limited transformative effects on the overall structure of labour relations shaped by neoliberal principles.

3. Neoliberalism and the “isolation effect”

This entire process contributed to the expansion of the isolation effect on workers⁷. According to Poulantzas (1976), in a capitalist society, the juridical and ideological structures of the State play a significant role in individualizing subjects by defining social relations through contracts of private property. This process leads to the decharacterization or obfuscation of individuals as members of a specific social class, isolating them as individuals. This isolation effect is a crucial dimension of the reproduction of the capitalist system, which is potentialized in a neoliberal context. The juridical and institutional framework of capitalism, intertwined with the economic structure, creates citizens with formally equal rights and responsibilities. These individuals engage in individualized social relations, sanctioned by contracts that are in turn upheld by the coercive power of the State.

Indeed, the isolation effect exhibits a dual movement. On one hand, it isolates and individualizes the population, fragmenting them into “individuals-persons” or “subjects of law”. On the other hand, the juridical-institutional framework of capitalism reinforces and ratifies social relations through the validation of contracts. As individuals identify themselves as “subjects of law,” the notions of individual freedom and formal equality become prominent demands for negotiating contracts. This highlights the normative nature of social relations and underscores the significance of the juridical-institutional system shaped by the State. “This effect of isolation which is designated by the term ‘competition’ covers the whole ensemble of socio-economic” (Poulantzas, 1976, p. 131).

In this regard – the interest about the nature and mechanisms of individualization promoted by the State –, it is possible to find a complementary position between Poulantzas and Foucault. According to Jessop (1999), there is a cross-fertilization between these two approaches⁸. Poulantzas

in *State Power and Socialism* (2000), for example, understood that Foucault's contributions on State's mechanisms of shaping "bodies and minds" were fundamental and complements his account on the isolation effect. As Foucault elaborated a critique on discipline, power and knowledge, his approach highlights "specific mechanisms of social control which operate in multiple, dispersed micro-sites, involve specific forms of scientific knowledge, establish individual and societal norms, survey and manage the deviations around these norms, and elaborate flexible tactics for social control" (Jessop, 1999, p. 60-61).

The legislative changes described above, particularly regarding the consolidation of outsourcing in Brazil, exemplify the amplification of this process. Antunes (2021) highlights that outsourcing is a major contributor to labour precarisation and a prominent feature of neoliberalism. Outsourced workers are largely unprotected by the legal coverage that applies to the rest of the working class (Tjandraningsih, 2013; Fernández & Valencia, 2013; Cingolani, 2019; Munck; Pradella & Wilson, 2020). Antunes further explores the subjectivity of the working class, noting that outsourced workers experience a gradual sense of isolation and a lack of connection among themselves, significantly weakening the collective identity of the class. These workers contend with fixed-term contracts, limited rights, and profound job insecurity. Coupled with the discrimination they face, this exacerbates feelings of devaluation and disposability, hindering the development of solidarity bonds.

In 2010, outsourced workers in Brazil earned approximately 27% less than formally contracted employees in the same companies. They also experienced an average increase of 3 hours per day in their working hours, excluding overtime. Outsourced workers were more likely to face job turnover, with turnover rates approximately 2.7 times higher compared to other categories of workers. They often did not receive benefits such as profit sharing, childcare, and education assistance, and their meal vouchers were typically lower than those of their counterparts. Additionally, they lacked transportation assistance and, in some cases, did not have access to company-provided transportation. Outsourced workers receive lower pay for overtime hours and are more susceptible to work-related

accidents. It is worth noting that the number of outsourced employees in Brazil saw a significant increase, jumping from 36,649 in 2003 to 146,314 in 2012. (Antunes, 2021).

This process exemplifies the enduring influence of neoliberal rationality. Despite President Lula's message No. 398 in 2003, which downplayed the urgency of Bill No. 4,302/1998 proposed by FHC to consolidate outsourcing, what have been observed was an accelerated progression of outsourcing in the country. (Krein & Biavaschi, 2015).

Outsourcing rapidly spread in Brazil during this period, and we can highlight, for example, that in 2009, at the Volkswagen Trucks and Buses factory in Resende, Rio de Janeiro, there were six outsourced companies solely responsible for vehicle assembly. Out of the 2,300 workers at the site, only 600 were directly employed by the German company. Additionally, there were 1,500 other outsourced workers involved in security, cleaning, industrial maintenance, logistics, export processing, and other areas. Although these outsourced workers belonged to different categories, their employment arrangements were the result of agreements and collective conventions. In the banking sector, the emergence of the “bank correspondents” category became prominent during the 2000s. These workers were hired as traders and worked in locations such as hypermarkets, supermarkets, lottery agencies, bakeries, and pharmacies. They received payment ranging from 1.01 to 1.5 times the minimum wage, significantly lower than the wages received by bank employees, which ranged from 5.01 to 7 times the minimum wage. These “bank correspondents” were outsourced, and in addition to significantly lower salaries, they also had longer weekly working hours, ranging from 41 to 44 hours. Furthermore, 43% of them had an average job tenure of 12 months. Finally, in the chemical industry, there was a significant increase in the hiring of outsourced workers from 2009 onwards. By 2012, the number of outsourced workers had grown by 68%, while the hiring of employees under the CLT regime saw a comparatively modest 19% increase. (DIEESE & CUT, 2014).

There are four expressions of the difficulties faced by the working class due to outsourcing (DIEESE & CUT, 2014, p. 21). Firstly, contracting companies commonly engage in neglecting to fulfil severance and other labour obligations at the termination of each contract, while also violating

labour laws throughout the contract period. The second manifestation relates to the increased risks of illnesses, accidents, and fatalities resulting from the precarious work environment experienced by outsourced workers, who often lack proper training and equipment. The third manifestation involves direct attacks on this category, including curtailed rights, reduced remuneration, and the absence of benefits. Lastly, discrimination arises due to the physical separation between outsourced workers and directly employed colleagues, leading to the denial of access to shared spaces such as cafeterias and transportation.

Final remarks

Given the continuities and discontinuities that marks the economic policy of the Lula Governments (2003-2011), regarding the structure of work organization and its changes, this study concludes that the role of the State, concerning the flexibilisation of labour, was crucial for adapting work to global competition standards (Krein & Biavaschi, 2015; Oliveira, 2018; Vargas, 2020).

It is also noteworthy that neoliberal rationality transcends governments of different spectrums and ideologies (Dardot & Laval, 2015; Saad-Filho & Morais, 2019), consolidating itself in society not only through economic and labour policies but also shaping the behaviour of the population through the imperative of competition.

As shown above, even the unions in Brazil contributed to promoting flexibilisation through collective bargaining, and their favourable stance on the shift towards more flexible remuneration serves as a prominent illustration. In conclusion, these transformations in labour relations potentiate the isolation effect and individualization, making it difficult to build bonds of solidarity and identification within the working class.

Additionally, this contribution may shed light on the reflection about the posterior period, under Michel Temer's and Bolsonaro's administrations, during which the country experienced a pronounced deepening of labour flexibilisation and significant increases in precarious working conditions.

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Notes

1 The flexibilisation of labour can be understood as “the increase in the employer's freedom to unilaterally and discretionarily define the hiring, use, and remuneration of labour” (Krein & Biavaschi, 2015, p. 48).

2 For an organic conception of competition from Marx’s work, see Palermo (2017)

3 Regarding the left's approach to “fighting against poverty,” aiming for “equity” without forsaking the defense of “individual responsibility,” Dardot and Laval (2016, p. 230) identify a trend towards

strengthening social policies that primarily target specific groups of the population, such as single mothers, extremely poor individuals, minorities, among others.

4 According to DIEESE & CUT (2014), approximately 91% of Brazilian companies that employ outsourcing do so primarily to reduce costs.

5 Law that deals with the tax regime for microenterprises and small businesses, establishes the Integrated System for Tax Payment and Contribution of Microenterprises and Small Businesses, and provides other provisions:

“Article 1: This law regulates, in accordance with the provisions of Article 179 of the constitution, the differentiated, simplified, and favourable treatment applicable to microenterprises and small businesses concerning taxes and contributions.”

Available at: <https://bit.ly/3KIC8nD>

6 Article 1: Paragraph 1 of Article 651 of the Consolidation of Labour Laws - CLT, approved by Decree-Law No. 5,452 of May 1, 1943, shall be amended to the following wording:

“Paragraph 1: When the dispute involves an agent or commercial traveller, the jurisdiction shall lie with the Labour Board of the locality where the company has an agency or branch, and to which the employee is subordinated. In the absence of such agency or branch, the jurisdiction shall lie with the Labour Board of the locality where the employee is domiciled or the nearest locality.”

Available at: <https://bit.ly/3Ogqf3d>.

7 For an analysis of the *isolation effect* from legislative and regulatory changes in labour, but also the atomization of employment contractual relations in an authoritarian neoliberal context in Spain, see Clua-Losada & Ribera-Almandoz (2017).

8 See Lindner (2011).

