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## Precariousness as Growth: Meritocracy, Human Capital Formation, and Workplace Regulation in Brazil, China and India

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**Abstract:** The place of labor regulation in contemporary development discourse revolves around the validity of the neoclassical assertion that any interference with market wage-setting mechanisms leads to a cruel twist—workers left unemployed in a less productive economy. The push for reducing individual and collective labor rights across the globe, commonly termed labor flexibilization, has been justified on the grounds that not only do “rigidities” arising from ostensibly pro-worker regulations hurt workers, they are also key and central impediment to growth. While the empirical grounds of the neoclassical assertion have become ever murkier over time, the appeal of this pro-growth assertion has been recurrent in economies of diverse incomes. For lower-income countries this has been doubly true, with pro-worker legacies cast as urgently necessary targets for reform. However, no true sustained example has emerged of a country that has unleashed employment growth through workplace deregulation. Instead, most attempts at such reform have ultimately led to political backlash when this promise has not materialized and populations have suffered the dislocations of ever-more precarious work. In this context, this paper looks at the recent discourses on workplace deregulation as applied to three of the largest global economies: Brazil, India and China. Each currently is at a different stage of what will be called “the flexibilization cycle.” In China, the Chinese Communist Party is grappling with a fundamental challenge to its legitimacy stemming from the accumulated dissatisfaction with weak workplace regulation and has rejected the flexibilization agenda. In India, workplace regulation has been promised by a new administration, but has been frustrated in attempts to combat significant backlash. And in Brazil, a new political administration has made the promise of flexibilization as foundational to reinvigorated growth after a pause in a decade of inclusive growth. Examining these case examples will expose why the cruel neoclassical twist never materializes and then leads to popular unrest. The twist’s assumptions about wage setting, especially in lower-income nations, ignores but is ultimately undermined by inherently unequal

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power dynamics in workplace institutions and the primacy of enforcement mechanisms. Further, general levels of human capital formation are far more central to actual economic development, which are in turn eroded by precarious work. The common emergence of labor flexibilization discourses during periods of economic recession is driven instead by opportunistic attempts to re-entrench elite status by diverting attention away from meritocratic reforms. By refocusing the debate on human capital development, the truly elusive growth potential of genuine meritocracy, rather than flexibilization, becomes clear as a driver of developmental success and as an explanatory factor in politics of labor regulation debates.

**Keywords:** labor, development economics, human capital, meritocracy, comparative law

## 1 Introduction

The vast range of national experiences with all manner of legal, political and economic reform over the past century has left a dizzying track record to sort through in an attempt to find that which is both valuable and generalizable. In the field of development, the search within this diversity for the objectively better lives in tension with the power of the politically expedient. Empirical methods hold out the hope that ever-greater sophistication can isolate the sources of positive change amid great social complexity and inform domestic and international debates while leaving ideological a priori aside. Yet, new recipes for reform are few and far between. New governments, new administrations and new social crises rise and fall over time, but still, at the opening of the twenty-first century, tend to recycle the social visions of the 20<sup>th</sup>.

Symptomatic of this tension has been the fall of what many called “the Washington Consensus” – a set of prescriptive reform policies ascendant in the 1990s after the fall of the Soviet Union and the euphoria of a world that had transcended history. However, the relatively quick demise of the Consensus has led to no new contenders. This has led some to criticize the idea that there are universal “best practices” in any technocratic sense,<sup>1</sup> but such criticism has not dulled the progressive search for better solutions.

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1 D. Rodrik, *Goodbye Washington Consensus, Hello Washington Confusion?* 44 *Journal of Economic Literature* (2006), 973; and John Ohnesorge, *Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience*, 28 *University of Pennsylvania Journal of International Economic Law* (2007), 219.

The lack of a commonly agreed to and holistic reform vision has led to the probing of every newly dynamic national moment for some replacement, most recently on display in energy devoted to studying the emerging BRICs nations. These attempts have proven equally difficult to divine durable lessons from – as the recent downturns in the fate of the BRICs nations in recent years have demonstrated. Following such downturns, reform agendas once considered old become new again, with old proponents newly emboldened while opponents are equally so disarmed.

This article attempts to extract the generalizable not from the failure or success of any national reform agenda, but what is absent from this cycle of old and new in the specific context of labor regulation. It will do so by looking at the persistent life of what is called “labor flexibilization.”<sup>2</sup> Flexibilization here refers to the general ideal that reducing collective and individual workplace rights, especially those tied to employee dismissal, is a lever to promote economic growth. First, the “cycle of flexibilization” discourse will be discussed, outlining the stubborn popularity of flexibilization as a development prescription, even though the underlying empirical support for its presumptions grow evermore unclear as does its lack of clear precedents of implemented success. Next, the article will look at the place of flexibilization discourse in three key emerging economies: China, India and Brazil. Each has held a particular symbolic status within flexibilization status, and has faced the re-assertion and subsequent dimming of flexibilization agendas. Third, a substitute focus on human capital formation and development will be argued to better explain both the actual role of labor dynamics in lower-income countries, and how, in fact, it better serves the aspiration for meritocracy in labor markets. The article will conclude by exposing how flexibilization discourse is deployed politically by entrenched socio-economic elites to distract away from human capital reforms that would undermine their ability to reproduce their status positions.

## 2 The cycles of flexibilization discourse

During the 1990s, part of post-Soviet geopolitics was a relatively unobvious attempt to generalize many of the economic regulatory choices of the United States as a global blueprint for reform. By this time, the U.S. had perhaps the weakest employment protections of any developed nation, and had witnessed its

<sup>2</sup> K. Van Eyck, *Flexibilizing Employment: An Overview* (ILO SEED Working Paper No. 41, 2003). More generally, D. Harvey, *The Condition of Postmodernity* (Blackwell, 1989).

levels of unionization shrink to historically low levels.<sup>3</sup> The 1994 Jobs Study by the OECD claimed that the relative economic malaise of Europe could be addressed by emulating the U.S. pattern of workplace regulation, especially as to unemployment. “Flexibilization” of employment protection laws (EPLs) became a center-piece of international financial institutions’ reform agendas, where loan conditionalities and rate indexing were tied to reducing levels of EPLs, especially regarding job tenure.<sup>4</sup>

The logic of flexibilization was itself not new, and drew, in part, on extant critiques of firing protections. One critique about “rigidities” holds that protected individual employment interfered with the Schumpeterian processes of creative destruction. This interference then leads to inefficient misallocations of workers at both the inter-firm and market levels, inhibiting reallocations from failing to dynamic enterprises and from old to new industries. On the other hand, flexibilization arguments also invoked the established neoclassical economics assertion that high levels of EPLs actually hurt workers by increasing unemployment and informality – one of its supposedly cruel twists whereby the welfare of workers was damaged by well-intentioned attempts to help them.<sup>5</sup>

The new confidence in flexibilization was supported by a generation of econometric analyses which claimed to use the global empirical record to demonstrate that any interference with market wage-setting and employer discretion in hiring and firing would lead to all the economic ills that the cruel neoclassical twist predicated.<sup>6</sup> Development economics had posited since the 1970s that formalization was taken as a natural part of the evolution of labor markets in the transition between agricultural to industrial economies,<sup>7</sup> along

3 H. Hutchinson, *Liberty, Liberalism, and Neutrality: Labor Preemption and First Amendment Values*, 39 Seton Hall Law Review (2009), 779; and L. Stevans, *The Effect of Endogenous Right-to-Work Laws on Business and Economic Conditions in the United States*, 5 Review of Law and Economics (2009), 595.

4 A. Santos, *Labor Flexibility, Legal Reform, and Economic Development*, 50 Virginia Journal of International Law 43 (2009). See, e.g., T. Koranchelian and D. Fanizza, *How Does Employment Protection Legislation Affect Unemployment in Tunisia? A Search Equilibrium Approach* (IMF Working Paper No. WQ/05/92, 2005).

5 J. Pencavel, “The Legal Framework for Collective Bargaining in Developing Economies,” in S. Edwards and N. Lustig (eds.), *Labor Markets in Latin America* (Brookings, 1999), p. 27.

6 J. Botero et al., *The Regulation of Labor*, 119 Quarterly Journal of Economics (2004), 1339.

7 This is most famously associated with Harris and Todaro’s pioneering work in the early 1970s. J. Harris and M. Todaro, *Migration, Unemployment and Development: A Two Sector Analysis*, 40 American Economic Review (1970), 126.

with a move from subsistence to the ability to balance work/leisure preferences following greater labor productivity and shrinking working populations.<sup>8</sup> Any interference with these “natural” processes would only retard the movement of labor markets towards greater worker welfare in the future. During the 1990s, the employment policies of developed but comparatively faltering European welfare states were now as subject to this analysis as were lower-income nations, both now claimed to produce confirming results.<sup>9</sup>

The force of the flexibilization agenda was felt differently in varied national milieus. In Western and Northern Europe, the ideal of “flexicurity” emerged to describe a role for the state in insulating and re-training workers caught up in movements of a labor market freed from rigidities.<sup>10</sup> Often these reforms were seen as consistent with the rejection of traditional capitalistic laissez-faire, and simply as a new instantiation of the welfare state’s reaction to the dislocation of commodification classically identified by Karl Polanyi.<sup>11</sup> Among the Scandinavian countries, Norway and Denmark were offered up as “flexicurity” examples for emulation.<sup>12</sup>

For lower-income countries, often labeled “developing,” flexicurity was far too expensive and often cast as a future available only after flexibilization has unleashed enough growth to sustain such arrangements. All of the problems EPLs presented to higher income markets was exponentially more acute for lower-income countries, where easy dismissal was seen as compensating for liquidity issues in weak credit markets.<sup>13</sup> Much more bluntly, the imperative was to simply and immediately reduce EPLs, or at least establish zones of production free from their application.<sup>14</sup> The era when the U.S. promoted its form of

<sup>8</sup> This is often referred to as a labor market reaching a “Lewis” point. W. Lewis, *Economic Development with Unlimited Supplies of Labour*, 22 The Manchester School (1954), 139.

<sup>9</sup> M. Bertrand and F. Kramarz, *Does Entry Regulation Hinder Job Creation?* 117 Quarterly Journal of Economics (2002), 1369.

<sup>10</sup> S. Buchholz and K. Kolb, “Selective Flexibilization and Deregulation of the Labour Market,” in H. Blossfeld et al. (eds.), *Globalized Labour Markets and Social Inequality in Europe* (Palgrave, 2011); and R. Wielers and M. Mills, “The Flexibilization of the Dutch Labour Market,” in *Id.*

<sup>11</sup> K. Polanyi, *The Great Transformation* (Farrar & Reinhart, 1944).

<sup>12</sup> L. Sels and G. Van Hootegem, *Seeking the Balance Between Flexibility and Security*, 15 Work, Employment and Society (2001), 327.

<sup>13</sup> H. Bennett, *Labor’s Liquidity Service and Firing Costs*, 18 Labor Economics (2011), 102.

<sup>14</sup> P. Fernandez-Kelly, *The Global Assembly Line in the New Millennium*, Signs 509 (2007), 32; C. Denman et al., “Work and Health in Export Industries at National Borders,” in J. Heyman (ed.), *Global Inequalities at Work* (Oxford, 2003), 247; and J. Brenner et al., “Neoliberal Trade and Investment and the Health of Maquiladora Workers on the U.S.-Mexico Border,” in J. Kim et al. (eds.), *Dying for Growth* (Common Courage, 2000), 261.

collective bargaining as a developmental salve was long gone by the 1990s.<sup>15</sup> Now the promise of participating in the newly ascendant U.S. economic blueprint, paired with the leverage of IFI loan practices led to, with some exceptions, a general trends towards less EPL across the globe.<sup>16</sup>

Yet, soon after the popular rise of flexibilization in the 1990s arrived not the cruel neoclassical twist among holdouts, but an ever-growing empirical uncertainty about the effects of flexibilization.<sup>17</sup> Just five short years after its 1994 Job Study, the OECD published its 1999 Employment Outlook where it found little to no effect of employment protections on unemployment, much less economic growth.<sup>18</sup> By 2004, the OECD had retreated fully into the fuzziness of the post-Washington Consensus era by arguing for “pragmatism” in labor reform.

The hope that advances in empirical sophistication would result in greater predictive power for neoclassical models has instead only yielded an ever-more murky outlook.<sup>19</sup> Other research has failed to find consistent links between EPL levels and informality.<sup>20</sup> In fact, many countries witnessed increases with informalism alongside decades of aggregate growth.<sup>21</sup> Recent scholarship often refers to the interaction of EPLs and labor markets as “dynamic,” and, thereby, of much lower generalizability.<sup>22</sup>

At the same time, national reform experiences have also varied significantly. Most “flexicurity” regimes have retained many of the employment protections often targeted in Western Europe without identifiable ill-effects, and countries have been able to significantly reduce unemployment with quite different reform

15 J. Kroncke, *Property Rights, Labor Rights and Democratization*, 46 *NYU Journal of International Law and Politics* (2013), 101.

16 S. Djankov and R. Ramalho, *Employment Laws in Developing Countries*, 37 *Journal of Comparative Economics* (2009), 3.

17 N. Campos and J. Nugent, *The Dynamics of the Regulation of Labor in Developing and Developed Countries since 1960* (IZA Discussion Paper No.6881, 2012). Also see E. Neumayer and I. de Soysa, *Globalization and the Right to Free Association and Collective Bargaining: An Empirical Analysis*, 34 *World Development* (2006), 31.

18 A. Kugler, “The Effect of Job Security Regulations on Labor Market Flexibility,” in J. Heckman and C. Pages (eds.), *Law and Employment: Lessons From Latin America and the Caribbean* (University of Chicago Press, 2004).

19 G. Betcherman, *Labor Market Regulations: What Do We Know about Their Impacts in Developing Countries?* 30 *World Bank Research Observer* (2015), 124.

20 J. Heckman and C. Pages (eds.), *Law and Employment: Lessons from Latin America and the Caribbean* (University of Chicago Press, 2004).

21 J. Charnes, “Concepts, Measurement and Trends,” in J. Jutting and J. de Laiglesia (eds.), *Is Informal Normal?* (OECD, 2009)

22 G. Betcherman et al., *Labor Market Regulation: International Experience in Promoting Employment and Social Protection* (World Bank Social Protection Paper Series No.128, 2001).

agendas. Even privatization, a central plank of the 1990s best practices agenda, has itself led to unclear market impacts,<sup>23</sup> even if definitely shifting workers from the public to the private sphere.<sup>24</sup>

The sources of this growing murkiness can partly be explained by new and better data, as well as the inclusion of non-OECD countries in research designs.<sup>25</sup> But it also expresses the historical and conceptual limitations of labor market analysis. The very rise of flexibilization studies in the 1990s witnessed a tendency for labor market analysis to engage in peak to trough comparisons in individual business cycles and national macroeconomic movements.<sup>26</sup> The many attempts to develop global labor market indexes have come up against the reality that assessing formal EPL levels conceals a great cross-national challenge of mutually interdependent institutions impacting the labor market,<sup>27</sup> as well as a variety of functional equivalents masked by past coding practices.<sup>28</sup> Much of this simply reflects the gradual recognition of classic critical points from comparative law,<sup>29</sup> where issues of enforcement and legal literacy are key,<sup>30</sup> but also newer issues of transnational law such as rapid international capital mobility.<sup>31</sup>

The controversies concerning labor regulation thus remain deep. Is there an international race to the bottom? Certainly not if you look to the content of national constitutions.<sup>32</sup> But perhaps yes if you lack political will to engage in

**23** D. Angel-Urdinola and A. Kuddo, *Key Characteristics of Employment Regulation in the Middle East and North Africa* (WB Social Protection Discussion Paper No. 55674, 2010).

**24** Djankov and Ramalho (2009), at *supra* note 16.

**25** N. Campos and J. Nugent, *Labor Market Reforms, Growth, Inequality, Labor Force Participation and Unemployment Rates* (WIDER Development Conference, 2016).

**26** C. Gorter and J. Poot, *The Impact of Labour Market Deregulation* (Tinbergen Institute Research Paper No. 99-001/3, 1999).

**27** N. Campos and J. Nugent, *Labor Market Reforms, Growth, Inequality, Labor Force Participation and Unemployment Rates*, paper given at the WIDER Development Conference (Helsinki, 2016).

**28** Sels and Van Hoetegem (2001), at *supra* note 12; and P. Dibben et al., *Pressures Towards and Against Formalization*, 154 *International Labour Review* (2015), 373.

**29** G. Bertola et al., *Employment Protection in Industrialized Countries: The Case for New Indicators*, 139 *International Labour Review* (2000), 57; and S. Streicher and J. Hirsch, *Comparative Wrongful Dismissal*, 92 *North Carolina Law Review* (2014), 343.

**30** A. Pollert, *The Unorganised Worker: The Decline in Collectivism and New Hurdles to Individual Employment Rights*, 34 *Industrial Law Journal* (2005), 217.

**31** R. Barro, "Human Capital and Economic Growth," in *The Federal Reserve Bank of Kansas City* (ed.), *Policies for Long-Run Economic Growth* (1992), 199.

**32** Ran Hirschl et al., *Economic and Social Rights in National Constitutions*, 62 *American Journal of Comparative Law* (2014), 1043.

aggressive enforcement practices.<sup>33</sup> Is there a drive towards temporary employment? Perhaps in relative numbers, but maybe not in absolute terms.<sup>34</sup> What is clear is that participation in labor markets has become more precarious – less stable, predictable and often piecemeal in nature.<sup>35</sup>

Even among more successful low-income countries, the relationship between growth and informality is still unclear as a guidepost for others.<sup>36</sup> For example, Asian Development Bank studies have been unable to consistently tie labor market policies to employment performance among the most and least successful Asian country experiences.<sup>37</sup> For developing countries where transparency and enforcement are significant challenges, studying labor market dynamics continues to be even more challenging.<sup>38</sup>

This movement towards uncertainty has re-emboldened many of the traditional critics of the neoclassical position, generally grouped together as “institutionalists.”<sup>39</sup> Perhaps the most well-known labor institutionalist of the modern era is Richard Freedman, who has consistently argued that active labor market regulation, including EPLs and collective bargaining, enhance productivity through a variety of compensatory mechanisms for market failures and relational costs.<sup>40</sup> The institutionalist position also argues that “rigidities” in labor markets improves productivity at the firm level both through externalities of longer employment tenure and by motivating companies to find longer-term competitive adaptations than simply reducing labor costs.<sup>41</sup> And for workers

**33** R. Davies and K. Vadlamannati, *A Race to the Bottom in Labour Standards?* 103 *Journal of Development Economics* (2011), 1.

**34** P. Auer and S. Cazes (eds.), *Employment Stability in an Age of Flexibility* (ILO, 2003).

**35** G. Standing, *The Precariat* (Bloomsbury, 2011).

**36** M. Bacchetta and E. Ernst, *Globalization and Informal Jobs in Developing Countries* (Joint ILO/WTO Study, 2009).

**37** J. Felipe and R. Hasan (eds.), *Labor Markets in Asia: Issues and Perspectives* (Palgrave, 2006).

**38** G. Genicot, *Bonded Labor and Serfdom: A Paradox of Voluntary Choice*, 67 *Journal of Development Economics* (2002), 101; and K. Basu, *Prelude to Political Economy* (Oxford, 2000).

**39** S. Deakin, “The Contribution of Labour Law to Economic and Human Development,” in Guy Davidov and Brian Langille (eds.), *The Idea of Labour Law* (Oxford, 2011), p. 156.

**40** R. Freeman, “Labor Regulations, Unions, and Social Protection in Developing Countries: Market Distortion or Efficient Institutions,” in D. Rodrik and M. Rosenzweig (eds.), *Handbook of Development Economics* (Elsevier, 2001), p. 4657; and R. Freeman, *Labour Market Institutions Without Blinders: The Debate Over Flexibility and Labour Market Performance*, 19 *International Economics Journal* (2005), 129.

**41** P. Aure et al., *Is A Stable Workforce Good for the Economy?* (ILO Employment Strategy Paper No. 15, 2004); D. Mayes and S. Soteri, *The Right of Dismissal and Labour Flexibility* (OSA Working Document No. 121, 1994); and Viral Acharya et al., *Labor Laws and Innovation*, 56 *Journal of Law and Economics* (2013), 997.



themselves, institutionalists note how investments in specific human capital are highly susceptible to perceived risk of employment disruption.<sup>42</sup>

The institutionalist approach also readdresses the central claim that high levels of EPLs encourages greater informality by refocusing on the bargaining position of employers and employees, whereby flexibilization leads to more temporary work but not necessarily in the formal sector.<sup>43</sup> Institutionalists offer up their own new studies claiming that the very U.S. employment dynamics which were held out to other countries as the fruits of flexibilization were again more the product of other policy arenas and whose genuine explanatory power lie in understanding the greater inequality of the US and European labor markets.<sup>44</sup> Such arguments also dovetail with arguments about the relationship of labor regulation to the promotion of aggregate demand as a driver of growth.<sup>45</sup>

The contest between the neoclassical and institutionalist approaches has pushed labor regulation studies to further refine points of contention regarding EPL design. For example, regulation that promotes easy hiring and firing differs in nature from those that restrict intra-firm reassignments or reallocation.<sup>46</sup> But as this contest continues to refine itself, what remains still puzzling is the energy this debate generates at the international level.

For all the back and forth of the how and why of labor regulations' impact on growth, what is consistent is the ever-narrowing size of the effects at issue. Even the most ambitious flexibilization studies which, for example, argue for the wholesale adoption of the U.S. regulatory complex in France only advance a potential 1.6 % change in unemployment.<sup>47</sup> Parallel studies in lower-income countries hypothesize similarly-sized impacts.<sup>48</sup> Of course, if one projects these impacts over sufficiently long periods of time, their ultimate contribution would be significant, but such projection seems ill-fit to the extant level of

42 M. Gervais and I. Livshits, *Uncertainty and the Specificity of Human Capital*, 143 *Journal of Economic Theory* (2008), 469.

43 L. Kahn, *Employment Protection Reforms, Employment and the Incidence of Temporary Jobs in Europe*, 17 *Labour Economics* (2010), 1.

44 J. Scmitt and J. Wadsworth, "Is the OECD Jobs Strategy Behind US and British Employment and Unemployment Success in the 1990s?" in David Howell (ed.), *Fighting Unemployment* (Oxford, 2005), p. 156; and B. Hobijn and A. Şahin, *Firms and Flexibility* (Federal Reserve Bank of New York Staff Reports No. 31, 2007).

45 M. Ravn and V. Sterk, *Job Uncertainty and Deep Recessions* (Society for Economic Dynamics Paper No. 921, 2003).

46 A. Tangian, *On the European Readiness for Flexicurity* (WSI Discussion Paper No. 160, 2008).

47 R. Di Tella and R. MacCulloch, *The Consequences of Labor Market Flexibility*, 49 *European Economic Review* (2005), 1225.

48 Kugler (2004), at *supra* note 18.

empirical murkiness. Such observations apply equally to pro-EPL institutionalists, whose countervailing conclusions still assert very small effects in absolute terms.<sup>49</sup>

Why then such assertiveness in claiming that labor reform is so critical a reform agenda to address informality and unemployment, and in turn growth, among high and low income countries alike? Furthermore, if the countervailing evidence is so mild, why are political and social debates over labor reform so passionate and fervent?

While economists have been focused on the aggregate affects of labor regulation on growth and markets, other disciplines have focused on understanding how flexibilization affects the workplace at the micro-level.<sup>50</sup> Though some have championed flexible work as potentially pro-worker, usually from a techno-utopian frame,<sup>51</sup> most labor sociology has highlighted the destabilizing effect that flexibilization has on individual workers and their communities.<sup>52</sup> Instead of relying on the aggregate income and wealth indicators used by economists,<sup>53</sup> qualitative and quantitative studies have shown how poorly most humans cope cognitively with uncertain income streams, especially under conditions of financialization.<sup>54</sup> Such studies do not require subscribing to value-laden theories of personal development or virtue,<sup>55</sup> but can isolate

<sup>49</sup> H. Reed, *Flexible with the Truth? Exploring the Relationship between Labour Market Flexibility and Labour Market Performance* (TUC Report, 2010).

<sup>50</sup> V. Lim, *Moderating Effects of Work-Based Support on the Relationship Between Job Insecurity and its Consequences*, 11 *Work and Stress* (1997), 251; A. Bussing, *Can Control at Work and Social Support Moderate Psychological Consequences of Job Insecurity?* 8 *European Journal of Work and Organizational Psychology* (1999), 219; David Fryer, "Unemployment and Mental Health," in Kerstin Isaksson et al. (eds.), *Health Effects of the New Labour Market* (Springer, 2000), p. 11; and Peter Warr, *Work, Unemployment and Mental Health* (Oxford, 1987).

<sup>51</sup> This is not meant to include proposals to allow flexible work time for employees who prefer atypical work patterns, especially those with family commitments. See, e.g. J. Berdahl et al., *Cultural Schemas, Social Class, and the Flexibility Stigma*, 69 *Journal of Social Issues* (2013), 209.

<sup>52</sup> K. Hewison, *Precarious Work: Origins, Development and Debates*, paper given at *Precarious Work in Asia in Comparative Perspective* (Stockholm, 2015).

<sup>53</sup> C. Senik, *Income Distribution and Subjective Happiness: A Survey* (OECD Social, Employment and Migration Working Paper No.96, 2009); and Carol Graham, "Happiness and Uncertainty," *The Economist*, 1 February 2010.

<sup>54</sup> S. Jacoby, *Finance and Labor: Perspectives on Risk, Inequality, and Democracy*, 30 *Comparative Labour Law and Policy* (2008), 17.

<sup>55</sup> K. Kolben, "Labour Regulation, Human Capacities and Industrial Citizenship," in S. Marshall (ed.), *Promoting Decent Work* (ILO, 2010), p. 35.

adverse effects as concrete as medical health indicators,<sup>56</sup> for low and high-skilled workers alike.<sup>57</sup> This change in the lived experience of workers under conditions of uncertainty is, again, why the type of work induced by flexibilization is often characterized as “precarious.”

These individual impacts also translate into firm-level dysfunctions, depending on the industry at question. Decreases in job satisfaction and performance are general trends after flexibilization,<sup>58</sup> and this acutely impacts enterprises dependent on high-level technical and creative production at the intra<sup>59</sup> and inter-firm level.<sup>60</sup> The subjective experience of workers in post-flexibilization scenarios is thus almost universally negative,<sup>61</sup> and ties into the social downsides of other structural reforms devolving from unalloyed neoclassical models.<sup>62</sup>

Thus, it is not surprising that other labor market dynamics associated with flexibilization, such as rising inequality and labor market segmentation, have been linked to scenarios of social unrest.<sup>63</sup> Flexibilization does not simply change the formal conditions of employment, its inherent uncertainty reduces

56 T. Theorell, “Working Conditions and Health,” in L. Berkman and I. Kawachi (eds.), *Social Epidemiology* (Oxford, 2000), p. 95; and N. Slopen, et al., *Job Strain, Job Insecurity, and Incident Cardiovascular Disease in the Women’s Health Study*, 7 PLoS ONE (2012), e40512.

57 G. Lovink and N. Rossiter (eds.), *MyCreativity: A Critique of Creative Industries* (Institute of Network Cultures, 2007); and G. Bruno, et al., “Temporary Contracts and Young Workers’ Job Satisfaction in Italy,” in M. Malo and D. Sciulli (eds.), *Disadvantaged Workers* (Springer, 2014), p. 140.

58 M. Kompier, “Job Design and Well-Being,” in M. Schabracq et al. (eds.), *The Handbook of Work and Health Psychology* (Wiley, 2003), p. 429; and C. Bultena, *Social Exchange Under Fire* (Diss., University of North Texas, 2004).

59 K. Van Eyck, *Neoliberalism and Democracy: The Gendered Restructuring of Work, Unions and the Colombian Public Sphere* (Diss., University of Washington, 2002); and S. Lazar, *Notions of Works, Patrimony and Production the Life of the Colon Opera House*, 21 *The Journal of Latin American and Caribbean Anthropology* (2016), 231.

60 I. Livshits and M. Gervais, *Uncertainty, Specificity and Institutions*, 143 *Journal of Economic Theory* (2008), 469.

61 A. Bronstein, “Trends and Challenges of Labour Law in Central Europe,” in J. Craig and M. Lynk (eds.), *Globalization and The Future of Labour Law* (Cambridge University Press, 2006); and P. Flavin et al., *Assessing the Impact of the Size and Scope of Government on Human Well-Being*, 92 *Social Forces* (2014), 1241.

62 B. Shoepf et al., “Theoretical Therapies, Remote Remedies,” in J. Kim et al. (eds.), *Dying for Growth* (Common Courage, 2000), p. 120; J. Gershman and A. Irwin, “Getting a Grip on the Global Economy,” in *Id.*, p. 23; and C. Afford, *Corrosive Reform: Failing Health Systems in Eastern Europe* (ILO, 2003).

63 B. Soon and R. Chew, “Human Capital Formation Through On-the-Job Training,” in J. Tan (ed.), *Human Capital Formation as an Engine of Growth* (Institute for East Asian Studies, 1999); and J. Polavieja, *Flexibility or Polarization? Temporary Employment and Job Tasks in Spain*, 3 *Socio-Economic Review* (2005), 233.

employee agency and, in turn, their relative sense of dislocation and empowerment.<sup>64</sup> For lower-income countries these dislocations are even more acute, as they lack the social insurance protections present in many higher-income countries,<sup>65</sup> some of which are themselves targeted in their early development by pro-flexibilization reform packages.<sup>66</sup>

If such dislocation helps explain some of the backlash on a social level against flexibilization policies, what then explains their strong and insistent promotion by other social actors? If the size effects at stake in labor market scholarship are so small, why would any social actor expend so much energy and risk the social and political costs involved? To tease out aspects of how the politics of flexibilization unfolds, the article will examine the recent historical experiences of the three largest emerging economies: China, India and Brazil. Each is at a different stage of cycle of flexibilization's destabilization and resistance.

China was once the poster child for flexibilization following its post-1978 market reforms, but now faces regime-threatening levels of labor unrest. India recently elected a new administration which promised labor law deregulation as a central plank in its reform agenda, but has been preemptively blocked from enacting it. And Brazil went through a round of flexibilization reforms in the 1990s, only to reverse course and elect a labor party in the 2000s, but now again is governed by an administration promising deregulation as the centerpiece of its pro-growth agenda. Each of these experiences gives insight into the relationship between the aggregate social effects of flexibilization reforms, but more directly the underlying motivations sustaining them in the face of a much more ambivalent scholarly debate.

### 3 China: Flexibilization icon or harbinger?

In certain framings, the experience of China after 1978 can be seen as a grand demonstration of the power of flexibilization. As a formally “communist” country which fully embraced the commodification of labor as part of its

<sup>64</sup> M. Quinlan et al., *The Global Expansion of Precarious Employment, Work Disorganization, and Consequences for Occupational Health*, 31 *International Journal of Health Services* (2001), 335; and K. Rittich, *Between Workers' Rights and Flexibility*, 54 *Saint Louis Law Review* (2010), 567.

<sup>65</sup> R. van der Zanden, *The Impact of Employment Contract on Workers' Well-Being* (Diss., Radboud University, 2014).

<sup>66</sup> E. Rosskam (ed.), *Winners or Losers? Liberalizing Public Services* (ILO, 2006).

liberalization reforms,<sup>67</sup> China is routinely cited as an example of pragmatic reform and developmental success.<sup>68</sup> China's gradualist reforms have in turn generated a variety of workplaces, from state owned corporations to collective village enterprises to foreign financed joint-ventures.<sup>69</sup> The long record of Chinese economic growth post-1978 has led to many attempts to divine general reform lessons from its experience, a sometimes popular retort to the Washington Consensus.<sup>70</sup> Notably, administrations with pro-flexibilization agendas point to China as an exemplar, commonly in contrast to India.<sup>71</sup>

The contemporary path of Chinese workplace regulation is just one phase in a century of turmoil for Chinese workers.<sup>72</sup> It is true that China's regulation of work is in many ways formally far more flexible than it was from 1949–1978, when full employment was a state policy. Given the politics of the Maoist era, it is another issue whether this represented any true empowerment for workers, or led the type of stability one would presume such a policy would provide. But that the creation of a labor market was a core element of China's recent developmental trajectory is undeniable.

Even so, the debate about flexibilization is not currently about whether or not to have a labor market. A key characteristic of China's reform agenda has been to keep unemployment low, and continually find ways to fully absorb the available labor pool. It was not until the 1990s that China began to aggressively deconstruct its developmental focus on state-owned enterprises (SOEs) which had provided many of China's workers a relatively safe haven from regular job turnover, especially those in urban settings. It was even until the 1990s that measuring unemployment was a key concern.<sup>73</sup> Simultaneously, these reforms led to the creation of massive informal labor markets, intensified by nearly 150 million internal labor migrants who have left agricultural areas seeking work. The formal restriction of citizens to rural or urban status, the *hukou* system, has remained the formal regulatory framework for citizens even amid this massive

67 H. Josephs, *Measuring Progress Under China's Labor Law: Goals, Processes, Outcomes*, 30 *Comparative Labor Law and Policy Journal* (2008), 372.

68 X. Li et al., *Redefining Beijing Consensus*, 2 *China Economics Journal* (2010), 297; and R. Peerenboom, *China and the Middle-Income Trap: Toward a Post Washington, Post Beijing Consensus*, 27 *Pacific Review* (2014), 651.

69 C. Lee (ed.), *Working in China: Ethnographies of Labor and Workplace Transformation* (Routledge, 2007).

70 W. Chen (ed.), *The Beijing Consensus: How China Has Changed Western Ideas of Law and Economic Development* (Cambridge University Press, 2017).

71 B. Saha, *Labour Institutions in China and India*, 1 *Journal of South Asian Development* (2006), 179.

72 J. Sheehan, *Chinese Workers: A New History* (Routledge, 1998).

73 J. Giles et al., *What is China's True Unemployment Rate?* 16 *China Economic Review* (2005), 149.

dislocation.<sup>74</sup> Much of China's growth has been attributed to the informal sector, which includes both low and high capital entrepreneurs with often both intermittent and intense relationship with formal organizations.<sup>75</sup> The pattern of capital-deepening in Chinese industry has inhibited job growth in the formal sector, while greater financialization has left many workers with greater levels of private debt. As a result, while Chinese workers have experienced aggregate income gains in recent decades, employment has stagnated in recent years, and their work is increasingly precarious while the labor share of economic production has declined even as the working population has begun to decrease,<sup>76</sup> and rural off-loading into urban labor markets has shown signs of peaking.<sup>77</sup>

The non-democratic structure of China's political system has moved the ruling Chinese Communist Party to continually validate its legitimacy through governance performance, intermixed with general nationalism.<sup>78</sup> Yet, as much as the CCP's creation of a labor market has transformed Chinese employment, its very "flexibilization" has now led to one of the core challenges to its contemporary legitimacy.<sup>79</sup> While China's economic clout has allowed it to increasingly impact, rather than receive the influence of, global norms of labor regulation,<sup>80</sup> Chinese workers are increasingly turning the CCP's claim to provide a better life for Chinese workers against the regime.<sup>81</sup>

Labor unrest has been steadily growing in China even amid continued high levels of economic growth, with an marked increased following the transfer of

<sup>74</sup> The classic work here is Dorothy Solinger, *Contesting Citizenship in Urban China* (UC Press, 1999).

<sup>75</sup> A. Park et al., *Informal Employment in Urban China: Measurement and Implications* (World Bank, 2012); and X. Meng, *The Informal Sector and Rural-Urban Migration*, 15 *Asian Economic Journal* (2001), 71. See generally, K. Tsai, *Back-Alley Banking* (Cornell University Press, 2002).

<sup>76</sup> H. Qi, *The Labor Share Question in China*, 65 *Monthly Review* (2014) Art. 1.

<sup>77</sup> Q. Li, *China's Labor Transition and the Future of China's Rural Wages and Employment*, 21 *China & World Economy* (2013), 4.

<sup>78</sup> M. Woo, "Law and Discretion in Contemporary Chinese Courts," in K. Turner et al. (eds.), *The Limits of the Rule of Law in China* (University of Washington, 2000), p. 163; R. Berring, *Chinese Law, Trade, and the New Century*, 20 *Northwestern Journal of International Law and Business* (2000), 425; and P. Potter, *China and the International Legal System: Challenges of Participation*, 191 *China Quarterly* (2007), 699.

<sup>79</sup> C. Lee, *Against the Law: Labor Protests in China's Rustbelt and Sunbelt* (UC Press, 2007).

<sup>80</sup> L. Zhang and T. Bartley, "China and the Private Governance of Global Labor Standards," in S. Kennedy and S. Cheng (eds.), *From Rule Takers to Rule Makers: The Growing Role of Chinese in Global Governance* (ICTSD, 2012), p. 89.

<sup>81</sup> Lu Zhang calls this "legitimacy leverage." L. Zhang, *Inside China's Automobile Factories* (Cambridge University Press, 2015). For a more transnational example, see Sarah Swider, "Working Women of the World Unite?" in M. Ferree and A. Tripp (eds.), *Global Feminism* (New York University, 2006).

more and more workers from public to private employment.<sup>82</sup> Even though strikes are illegal under Chinese law, a large bottom-up pressure has begun to bubble over as the extensivity and intensity of strikes have garnered international attention.<sup>83</sup> The CCP has responded by focusing its stimulus packages on improving employment,<sup>84</sup> and also by increasing EPL levels.

These recent reforms of China's labor laws have become one of the most intense of arenas of debate concerning China's future. Though it received much more international attention, the new Property Law of 2007 received 11,000 domestic comments while the new Labor Contract Law of 2007 received 191,000.<sup>85</sup> Herein, Chinese scholars articulated many aspects of the international debate on flexibilization by neoclassical and institutionalist positions among others.<sup>86</sup> Foreign scholars have also weighed in along similar lines, often making flexicurity argument undergirded by the same neoclassical prescriptions.<sup>87</sup>

Even amid concern that extending China's long run of high growth was central to its long-term survival, the CCP embraced strengthening its more European-styled system of labor contracting.<sup>88</sup> Moreover, it has embraced what is generally considered the greatest labor market "rigidity," corporatist

**82** B. Silver and L. Zhang, "China as an Emerging Epicenter of World Labor Unrest, in H. Hung (ed.), *China and the Transformation of Global Capitalism* (John Hopkins, 2009), p. 174.

**83** B. McGrath, *China: Two Hundred Foxconn Workers Threaten Suicide*, World Socialist Web Site (May 12<sup>th</sup>, 2012); H. Josephs, *Productions Chains and Workplace Law Violations: The Case of Apple and Foxconn*, 3 *Global Business Law Review* (2013), 211; and L. Zhang, "Whose Hard Times? Explaining Autoworkers Strike Waves in Recent-Day China," in L. Fink et al. (eds.), *Workers in Hard Times* (University of Illinois, 2014), p. 213.

**84** G. Schucher, *China's Employment Crisis – A Stimulus for Policy Change?* 38 *Journal of Current Chinese Affairs* (2009), 121.

**85** M. Gallagher and B. Dong, "Legislating Harmony, Labour Law Reform in Contemporary China," in S. Kuruvilla et al. (eds.), *From Iron Rice Bowl to Informalization* (Cornell University Press, 2011), p. 36; and F. Hualing, "Bringing Politics Back in: Access to Justice and Labor Dispute Resolution in China," in F. Sapio et al. (eds.), *Justice: The China Experience* (Cambridge, *Forthcoming*).

**86** Compare C. Kai, *Laoquan Baozhang yu Laozi Shuangying* [Protecting Labor Rights and Workplace Cooperation] (Ministry of Labor and Social Security, 2009); and D. Baohua, *Laodong Hetong Fa de Zhengming yu Sikao* [Debate and Deliberation on the Labor Contract Law] (Shanghai People's Publishing House, 2011). Also see Liu Xiangge et al., *Laodong Hetong Fa Dui Zhejiang Minyingqiye Zhi Yingxiang* [The Impact of the Labor Contract Law on Private enterprise in Zhejiang], 21 *Jiaxing Xueyuan Xuebao* [Journal of Jiaxing University] (2009), 137.

**87** Y. Fu and S. Gabriel, *Transitions to Private Employment: Earnings Determination, Worker Employment Preferences, and Job Turnover in Urban China* (USC Finance & Business Economics Working Paper No. 01–21, 2001).

**88** H. Josephs, *Labor Law in a 'Socialist Market Economy': The Case of China*, 33 *Columbia Journal of Transnational Law* (1995), 559.

union wage bargaining.<sup>89</sup> It has actively expanded the influence and penetration of its state-run union, the AFTCU,<sup>90</sup> into all private companies, foreign and domestic.<sup>91</sup> And these reforms led to an initial increase in urban, and even migrant workers, with formal work contracts.<sup>92</sup>

The continued surge in Chinese labor unrest in response to these trends itself shows the complexity of formal labor regulation reform in a lower-income economy. The decentralized nature of the Chinese state has led to a tension between promulgations of labor law reforms at the national level in response to unrest,<sup>93</sup> which was then followed by resistance to implementation by local governments with close corporatist ties to industry.<sup>94</sup> Similarly, while the ACFTU has been allowed to let some level of local experimentation unfold,<sup>95</sup> it is still a formal organ of the state whose grassroots leadership is commonly drawn from the owners of enterprises,<sup>96</sup> and whose primary function continues to be depressing, rather than channeling, worker unrest.<sup>97</sup> Contrary to formal expectations, state-owned enterprises, and ACFTU organized workplace, often more aggressively use contingent and temporary workers.<sup>98</sup>

<sup>89</sup> E. Hui and C. Chan, *The Development of Collective Bargaining in China*, 217 *The China Quarterly* (2013), 221; X. Wen and K. Lin, *Restructuring China's State Corporatist Industrial Relations System: The Wenling Experience*, 24 *Journal of Contemporary China* (2015), 665; and E. Friedman, *Economic Development and Sectoral Unions in China*, 67 *Industrial and Labor Relations Review* (2014), 481.

<sup>90</sup> B. Taylor and Q. Li, *Is the ACFTU a Union and Does it Matter?* 49 *Journal of Industrial Relations* (2007), 701; and M. Qingqing, *An Urge to Protect is Not Enough: China's Labor Contract Law*, 2 *Tsinghua China Law Review* (2010), 159.

<sup>91</sup> R. Traub-Merz, *Wage Strikes and Trade Unions in China – End of the Low-wage Policy?* (Friedrich Ebert Stiftung, 2011).

<sup>92</sup> M. Gallagher et al., *China's 2008 Labor Contract Law: Implementation and Implications for Chinese Workers*, 68 *Human Relations* (2015), 197.

<sup>93</sup> Lee (2007), at *supra* note 79. Also see M. Pei, *China's Trapped Transition* (Harvard University Press, 2006).

<sup>94</sup> E. Friedman, *The Insurgency Trap* (Cornell University Press, 2014).

<sup>95</sup> M. Liu, *Union Organizing in China: Still a Monolithic Labor Movement?* 64 *Industrial and Labour Relations Review* (2010), 30; C. Chen, *The Politics of Labor Protection in Authoritarian Systems: Evidence from Labor Law and Enforcement in Post-Reform China* (Diss., UC San Diego, 2011); Y. Fan and P. Gahan, *What Are Chinese Unions Doing? Explaining Innovation and Change in Grassroots Unions* (SSRN, 2012); and A. Chan, *Trade Union Elections in Foreign-Owned Chinese Factories*, 13 *China: An International Journal* (2015), 94.

<sup>96</sup> M. Gallagher, *Time Is Money, Efficiency Is Life: The Transformation of Labor Relations in China*, 39 *Studies in Comparative International Development* (2004), 11.

<sup>97</sup> A. Halegua, "Strike a Balance," *South China Morning Post*, 26 February, 2015.

<sup>98</sup> X. Liu, *How Institutional and Organizational Characteristics Explain the Growth of Contingent Work in China*, 68 *Industrial and Labour Research Review* (2015), 372.



At the same time, Chinese citizens have been active in attempting to litigate their formal employment rights,<sup>99</sup> and have had some successes.<sup>100</sup> Yet, even for those who have formal labor contracts, this can involve paying an employer a bond for potential future costs.<sup>101</sup> There is a continuing lack of consistent and fair mechanisms for remedying workplace violations of formal law,<sup>102</sup> and this then feeds back into the unabated growth of labor unrest.<sup>103</sup>

Even with these moves, both precarious and informal work have remained on the rise.<sup>104</sup> The large presence of the informal market has continued to undermine formal workers' power to assert their legal rights.<sup>105</sup> Again, the CCP has subsequently approved revisions to the Labor Contract Law to try and address various enforcement avoidance techniques developed by employers, such as subcontracting<sup>106</sup> and abuse of student "internships."<sup>107</sup>

In practice, China's combination of increasingly precarious labor and formally more restrictive laws reflects how the low cost of EPL violation drives informality in the Chinese labor market rather than a theoretical increase in the

**99** T. Webster, *Ambivalence and Activism: Employment Discrimination in China*, 44 *Vanderbilt Journal of Transnational Law* (2011), 643; J. Chan, *Meaningful Progress or Illusory Reform? Analyzing China's Labor Contract Law*, 18 *New Labour Frontiers* (2009), 42; R. Brown, *China's Employment Discrimination Laws During Economic Transition*, 19 *Columbia Journal of Asian Law* (2006), 361; and V. Ho, *From Contracts to Compliance? An Early Look at Implementation Under China's New Labor Legislation*, 23 *Columbia Journal of Asian Law* (2009), 35.

**100** Z. Cheng et al., *The Impact of China's New Labour Contract Law on Socioeconomic Outcomes for Migrant and Urban Workers*, 68 *Human Relations* (2015), 329.

**101** A. Chan, *Globalization, China's Free (Read Bonded) Labour Market, and the Chinese Trade Unions*, 6 *Asia Pacific Business Review* (2000), 260.

**102** Y. Zhang, "Law and Labor in Post-Mao China," in S. Zhao (ed.), *Debating Political Reform in China* (Routledge, 2006); Sean Cooney, *Making Chinese Labor Law Work: The Prospects for Regulatory Innovation in the People's Republic of China*, 30 *Fordham International Law Journal* (2007), 1050; Y. Zhao, *China's New Labor Dispute Resolution Law: A Catalyst for the Establishment of Harmonious Labor Relationship?* 30 *Comparative Labor Law and Policy Journal* (2009), 409.

**103** F. Chen, *Privatization and Its Discontents in Chinese Factories*, 185 *China Quarterly* (2006), 42; and S. Frenkel and C. Yu, *Chinese Migrants' Work Experience and City Identification: Challenging the Underclass Thesis*, 68 *Human Relations* (2015), 261.

**104** Z. Liang, *Informal Employment in China* (IZA Discussion Paper No. 10139, 2016).

**105** Y. Zhou, *The State of Precarious Work in China*, 1 *American Behavioral Scientist* 1, (2012), 1.

**106** V. Ho and H. Qiaoyan, *The Recursivity of Reform: China's Amended Labor Contract Law*, 37 *Fordham International Law Journal* (2014), 1. P. Ngai and L. Huilin, *A Culture of Violence: The Labor Subcontracting System and Collective Action by Construction Workers in Post-Socialist China*, 64 *China Journal* (2010), 143.

**107** Y. Sharma, *Vocational Students Face Exploitation in Sweatshops*, 209 *China Labour Bulletin* (Feb. 19<sup>th</sup>, 2012); and J. Chan et al., *Interns or Workers? China's Student Labor Regime*, 13 *Asia Pacific Journal* (2015), 1.

cost of regulation itself.<sup>108</sup> Such reality is reflected in the lack of genuine resistance by even foreign owned companies to the push for AFTCU expansion,<sup>109</sup> or other increases in employment rights.<sup>110</sup> Even in sectors of the Chinese economy where wages are rising, the uncertain conditions of work have led to the same levels of social dislocation experienced elsewhere.<sup>111</sup> This is doubly true for retirees with far less agency to address unpaid health or pension benefits, and again migrant workers who local governments are even less responsive to.<sup>112</sup>

How then can China's experience over the last 35 years be characterized? As flexibilization? As rigidification? While China has pursued greater formal "rigidification" of its labor markets, it has in practice established quite intense de facto informalization, even for previously insulated urban industrial workers.<sup>113</sup> Most acutely, the massive migrant labor population in China continues to be an essential part of the functioning of China's labor market.<sup>114</sup>

Highly formalistic studies by economists unfamiliar with China can still predict all the cruel neoclassic twists of higher inflation, informality and inequality that greater workplace protections will provide.<sup>115</sup> More sensitive

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**108** X. Zeng et al., *Working Time in Transition: The Dual Task of Standardization and Flexibilization in China* (ILO Conditions of Work and Employment Series Paper No. 11, 2005); and Zhang (2006), at *supra* note 102.

**109** B. He and Y. Xie, *Wal-Mart's Trade Union in China*, 32 *Economic and Industrial Democracy* (2011), 1.

**110** W. Hurst et al., "Implementing China's Labor Law Reforms: Interests and Obligations at the Firm Level," in J. Garrick (ed.), *Law and Policy for China's Market Socialism* (Routledge, 2012), p. 18; and A. Halegua, *The Debate over Raising Chinese Labor Standards Goes International*, 1 *Harvard Law and Policy Review* (Online) (2007).

**111** Hong Kong-based NGO China Labour Bulletin ([www.clb.org.hk](http://www.clb.org.hk)) is the best clearinghouse for updates on reports of actual working conditions and violations in China.

**112** A. Halegua, *Getting Paid: Processing the Labor Disputes of China's Migrant Workers*, 26 *Berkeley Journal of International Law* (2008), 254; Q. Yang, *ILO Fundamental Conventions and Chinese Labor Law: From a Comparative Perspective*, 2 *Chinese Law and Policy Review* (2007), 18; Na Lan, *Is There New Hope in Labor Rights Protection for Chinese Migrant Workers?* 10 *Asian-Pacific Law and Policy Journal* (2009), 482; and M. Woo et al., *Migrant Access to Civil Justice in Beijing*, 4 *Loyola University of Chicago International Law Review* (2007), 167.

**113** L. Zhang, *Lean Production 'with Chinese Characteristics'*, 45 *International Journal of Sociology* (2015), 152.

**114** S. Kuruvilla et al. (eds.), *From Iron Rice Bowl to Informalization: Markets, Workers, and the State in a Changing China* (Cornell University Press, 2011); and S. Swider, *Building China: Precarious Employment among Migrant Construction Workers*, 29 *Work, Employment and Society* (2015), 31.

**115** G. Allard and M. Garot, *The Impact of the New Labor in China*, 6 *Revista Direito GV* (2010), 527.

studies can make similar predictions though also call for flexicurity-type investments.<sup>116</sup> But this all presumes clear answers to unclear questions. Did China flexibilize its labor market after 1978 or simply progressively informalize it? Certainly formal increases in China's EPL levels are not the motor force of China's slowed growth in recent years, even as social insurance spending has steadily increased over this extended period of growth.<sup>117</sup> Philip Huang has cogently summarized how China's experience has acted at odds with the traditional models of development economics, and traced the stubborn resistance to change based on the complexities found in China and elsewhere.<sup>118</sup>

How confidently then can any of China's growth be attributed to changing labor regulations, especially at the margins of transparency and enforcement? If one sees China's labor regulations as too restrictive, then one would have to argue that China could have had more growth than it already historic run. Yet, the one thing the CCP seems convinced of is that asking workers to accept even fewer protections is increasingly off the table. The regulatory implications of which continue to appear unclear.

## 4 India: Has flexibilization's time come?

If post-1978 China is routinely held out as a model for flexibilization, then modern India is just as routinely held out as an example of a country in critical need of it. From the very outset of its post-independence era, India has passed a raft of pro-worker statutes. Almost iconic in neoclassic labor critiques is the Industrial Disputes Act, which beginning in 1947 required government approval of layoffs at any enterprise with 100 or more workers, and also required 21 days notice before changing the working conditions of any employee. Other legislation, including the Factories Act, imposes occupational safety standards on operations at all but the smallest businesses.

However, the current Indian administration led by Prime Minister Narendra Modi came into power in 2014 after a landslide victory, and while promoting a

<sup>116</sup> W. Lam et al., *China's Labor Market in the 'New Normal'* (IMF Working Paper No. 15/151, 2015).

<sup>117</sup> "A Complete Guide to China's Minimum Wage Levels by Province, City, and District," China Briefing, 28 Jan., 2013; M. Frazier, *After Pension Reform: Navigating the 'Third Rail' in China*, 39 Studies in Comparative International Development (2004), 45; R. Guthrie and M. Zulfa, *Occupational Accident Insurance for All Workers: The New Challenges for China*, 3 East Asia Law Review (2008), 1; and "Beijing to Increase Municipal Minimum Wage, Pensions and Welfare Benefits," China Labour Bulletin, 28 Dec., 2010.

<sup>118</sup> P. Huang, *China's Neglected Informal Economy*, 35 Modern China (2009), 405.

strong flexibilization agenda. The forces behind Modi's victory were manifold, as in any national election impacting a fifth the world's population, but fed in part on a sentiment that India was stagnating economically, and failing to compete internationally.

Debates over the vitality of Indian growth are contested, but while Indian has enjoyed systemic growth at an average of 7% in the last decade, job creation rates have not kept up.<sup>119</sup> Part of Modi's reform agenda was predicated on the proffered success of labor reforms enacted while he was Chief Minister of the Indian state of Gujarat, which had amended its own labor legislation to reduce EPL levels and to establish special economic zones generally exempt from traditional regulations. The "Gujarat model" had been argued to be a solution to India's generally low levels of foreign direct investment and a motor for bringing India's growth in line with that of China. Other states run by Modi's Bharatiya Janata Party have also made similar attempts at workplace de-regulation.<sup>120</sup>

It became an early objective of Modi's administration to generalize these reforms to India at the federal level. Such reforms would substantially raise the size threshold for companies requiring prior approval for layoffs, institute statutes of limitations for employment disputes, making union certification more onerous, and weaken mandates regarding the employment of apprentices.<sup>121</sup>

Modi's reform agenda resonates with much of the neoclassical recipe for labor regulation. For while India has stringent labor regulations on the book, the vast majority of its population is employed informally, both in rural and urban labor markets. This means that it is ready to be cited as evidence of the cruel neoclassical twist – raise EPL levels too high and informalization will follow. Indeed, only a small fraction of India's workers can claim to be effectively covered by current labor regulations, and the number has been rising, not falling, in recent years.

While India has long been cited to this effect, the most widely cited modern pro-flexibilization study is Besley and Burgess's 2004 analysis of regional variations in EPL levels among Indian states from 1948–1992. Besley and Burgess claim that states which had higher levels of worker protection in the early

<sup>119</sup> A. Mitra, *The Indian Labour Market: An Overview* (ILO Asia-Pacific Working Paper Series, 2008).

<sup>120</sup> S. Motiram and K. Naraparaju, *Unemployment Burden and its Distribution: Theory and Evidence from India*, paper presented at the IARIW 33<sup>rd</sup> General Conference (Rotterdam, 2014).

<sup>121</sup> "Prime Minister Narendra Modi Eyes First Labour Overhaul in Decades to Create Jobs," *The Economic Times*, 30 June, 2014.

post-independence decades gradually lost their initial lead in manufacturing output by 1990 to states which they coded as “pro-employer.”<sup>122</sup> Moreover, “leftist” states had high poverty, and pro-worker legislation led to no discernible increase in wages for workers.<sup>123</sup>

Yet, the neoclassical position on India suffers from much of the same progressive empirical confusion at that regarding China.<sup>124</sup> India’s economic growth has occurred during an era of mass informalization, where actual employer costs are very low and where they face little difficulty hiring and firing workers. Again, the vast majority of Indian workers do not receive regular wages, and even those in formal employment have short-term contracts – including government workers. At the same time, if pro-worker legislation has not led to discernible impacts on wage growth for workers, what precisely is the problem that current levels of Indian EPL pose to growth? Even if lowering formal EPL levels encourages formalization, this would lead to a consistent equilibrium of effective employment costs.

A great deal of recent scholarship on Indian labor markets has moved from simply quantifying informalism as a deficiency in India’s economy to discovering its own complex dynamics.<sup>125</sup> What this work has shown is that the informal economy been capable of generating both significant agglomeration effects outside of the state,<sup>126</sup> but also that informal workers have little to no power in bargaining with employers. However, the extensivity of Indian informality has also given rise to its own political activism, much of which calls for greater enforcement of rights, and see little possibility that lowering EPL will induce employers who face no enforcement costs to formalize.<sup>127</sup>

Much like China, the formal status of India’s labor regulation appears unmoored from the realities of Indian employment not because of its relative

122 T. Besley and R. Burgess, *Can Labor Regulation Hinder Economic Performance?* 119 *Quarterly Journal of Economics* (2004), 99.

123 *Ibid.*, at 121.

124 See, e.g., R. Hasan et al., *Trade Liberalization, Labor-Market Institutions, and Poverty Reduction: Evidence from Indian States*, 7 *Indian Policy Forum* (2006), 71. The subsequent commentary represents the difficulty of generating conclusions from the intra-national complexity of India’s labor markets.

125 S. Bhowmik, *Labor Sociology Searching for a Direction*, 36 *Work and Occupations* (2009), 126.

126 E. Ghani and R. Kanbur, *Urbanization and (In)Formalization* (World Bank Policy Research Working Paper No. 6374, 2013); and A. Basole, *Informality and Flexible Specialization: Labour Supply, Wages, and Knowledge Flows in an Indian Artisanal Cluster* (UMass Boston Working Paper No. 07, 2014).

127 R. Agarwala, *Reshaping the Social Contract: Emerging Relations between the State and Informal Labor in India*, 37 *Theoretical Sociology* (2008), 37; and R. Agarwala, *The State and Labor in Transnational Activism: The Case of India*, 54 *Journal of Industrial Relations* (2012), 443.

levels of hypothetical protections, but because of the quality of India's enforcement capabilities. Earlier eras of employment reform have led consistently led to increased informalism, due to the weakness of India's social insurance capabilities,<sup>128</sup> and also the resources devoted to labor inspection. Employers have relative impunity in violating minimum wage and other statutory minimums, enabled in part by the fact that the actual number of factories visited by labor inspectors has decreased significantly in the past thirty years, from 63 % in 1986 to 17 % in 2008. Widespread illegal practices such as labor debt bondage and child labor continue to be far from the reach of the state.<sup>129</sup> Thus, informalism, as in China, seems to be driven by limited levels of enforcement, and not the levels of protection formally offered by law.

Even for urban workers covered with formal contracts, job turnover is not uncommon, running as high as 20 % in recent years. And within collective bargaining, there are more lockouts than strikes in union bargaining. Other studies have shown that both "pro-worker" judges and states have not inhibited formalization,<sup>130</sup> and in India often have higher levels of formalization.<sup>131</sup> Many of the regions in India with the highest levels of EPL have almost completely vacancy-driven job-matching, implying that unemployment is demand, rather than supply, driven.<sup>132</sup> To wit, only 15 % of Indian firms in a recent World Bank study identified labor regulations as major obstacles to their performance – even if they found them less than ideal.<sup>133</sup> Moreover, institutionalists have, again, produced their own studies again asserting that to the extent that labor "rigidities" are effective in India, they force employers, to some degree, to productively adapt in other arenas or production<sup>134</sup>

This enforcement reality recasts intra-national studies like Besley and Burgess as simply illustrations of the force of capital mobility and its increasing ability to engage in aggressive wage and EPL arbitrage within India. As industrial relations is a concurrent subject under the Indian constitution, state labor

**128** G. Nair, *Post-Reform Labor Market Paradoxes in India*, 14 *International Review of Business* (2008), 396.

**129** D. Finn, *Bonded Labor in India*, 7 *Human Rights and Welfare* (2008), 6.

**130** S. Fagernäs, *Labour Law, Judicial Efficiency and Informal Employment in India*, 7 *Journal of Empirical Legal Studies* (2010), 282.

**131** K. Bhirdikar et al., *Understanding Labour Market Flexibility in India: Exploring Emerging Trends in Employment*, 13 *Journal of Social and Economic Development* (2011), 1.

**132** W. Lee, *Labor Market Flexibility and Different Job-Matching Technologies Across Regions in India: An Analysis of State-Level Disaggregate Matching Functions* (KIEP Working Paper No. 04, 2014).

**133** Betcherman (2015), at *supra* note 19.

**134** A. Adhvaryu et al., *Firing Costs and Flexibility: Evidence from Firms' Employment Responses to Shocks in India*, 95 *Review of Economic Statistics* (2013), 1.

laws can vary significantly, and it is not surprising that manufacturing strongholds witness both pro-worker political mobilization or that capital responds by shifting to states with lower EPL levels. Again, there is a fuzzy mechanical logic to using this dynamic to argue that state-level convergences in manufacturing output are tied to aggregate dampening of manufacturing output.

Not surprisingly then, few macro-economic analyses of India cite levels of EPL as causal factors in India's varying levels of growth. If effective levels of EPL in India have fallen or remained the same in recent decades, this seems to simply affirm the generally progression of the scholarship on workplace regulation towards empirical murkiness and marginal size effects. In fact, deeper inquiry in Modi's "Gujarat Model" has revealed no job creation explosion, though special economic zones were created through large scales exercises in eminent domain and a great deal of government involvement in day-to-day industrial management.<sup>135</sup> Further, labor exemptions were also extended to environmental protections, leading to several of Gujarat industrial zones becoming among the most polluted in India and world. These social dislocations have fueled religious polarization in Gujarat, even as its comparative growth and FDI levels have failed to consistently outperform states following very different developmental paths.<sup>136</sup> The performance of other attempts at regional deregulation has led to enterprise relocation, but little systemic impact on simple aggregate growth.<sup>137</sup>

As such, the very same dislocations that Chinese and other workers have suffered following greater precarity seem very apparent to Indian workers, and have generated the same political and social unrest that precarity routinely produces. Even if workers have enjoyed benefits from India's recent wage growth, they did so while these protections were in place while also suffering the downsides of the precarity associated with it.

What has become clear is that the flexibilization aspects of Modi's reform agenda have been the most controversial and the most resisted. In September of 2015, over 150 million workers went on strike to protest potential reforms,<sup>138</sup> and similar strikes have been promised for 2016.<sup>139</sup> This backlash occurs even as Modi has recovered momentum in other areas of his reform agenda, most

**135** A summary of investigation into the job performance and other social indicators of Gujarat can be found at: <[www.cadtm.org/Labour-Law-Reforms-Indian](http://www.cadtm.org/Labour-Law-Reforms-Indian)>.

**136** C. Jaffrelt, *What 'Gujarat Model'? Growth without Development – and with Socio-Political Polarisation*, 38 South Asia: Journal of South Asian Studies (2015), 820.

**137** K. Sridhar, *Impact of Growth Centres on Unemployment and firm Location: Evidence from India*, 43 Urban Studies (2006), 2205.

**138** "Indian Workers Strike Over Modi Labour Reforms," BBC News, 2 Sept. 2015.

**139** "Tens of Millions of Indian Workers Strike in Fight for Higher Wages," The Guardian, 2 Sept. 2016.

notably the federal standardization of the Indian Goods and Services Tax which was an area hereto immune to reform in the post-independence era. And other issues, such as greater infrastructure investment, are still shared priorities across party lines. Ironically, these more popular aspects of Modi's agenda all involve increasing centralization and federalization of economic policy, the opposite of the aspiration in the labor arena.

The question remains then, why is flexibilization still seen as such a critical arena of reform, and why does the Modi administration seem willing to risk massive social backlash to continue to promote it? India has massive already witnessed massive *de facto* flexibilization with negligible systemic employer compliance costs. What then is exactly at stake?

## 5 Brazil: Flexibilization not once, but twice?

In March of 2011, the Economist ran an article entitled "Brazil's Labour Laws: Employer, Beware."<sup>140</sup> The article begins with an anecdote of legacy unpaid wage claims that ruined a Brazilian entrepreneur's attempt to buy a line of pharmacies. This anecdote anchors a call for EPL reduction, even as the article attempts to explain away Brazil's decade of steady formal job growth. For decades, neoclassical critiques of Brazil's labor laws as overprotective were consistently voice by legal scholars inside and outside of Brazil.<sup>141</sup>

Yet, these voices had been drowned out in recent years by the rise of Brazil as an example of what some called the "new development state," and such critique is in stark contrast to the high reputation Brazil earned among international labor activists following the key role played by the Brazilian labor movement during the 1980s democratization process.<sup>142</sup> This contrast reflects severe fault-lines in Brazilian politics, as well as battles over claiming analytic insights into Brazil's recent success in simultaneous growth and inequality reduction characterized by a proactive developmental policy seen a direct rebuke of the

<sup>140</sup> "Employer, Beware," The Economist, 10 March 2011.

<sup>141</sup> K. Rosen, *Trends in Brazilian Regulation of Business*, 13 Lawyer of the Americas (1981), 1689; and Forca Sindical, *Um Projeto Para o Brasil: A Proposta da Forca Sindical [A Project for Brazil, The Proposal of Forca Union]* (1993).

<sup>142</sup> L. Dowbor, *Economic Democracy – Meeting Some Management Challenges: Changing Scenarios in Brazil*, 8 Problems of Sustainable Development (2013), 17; and C. Tilly and M. Kennedy, *Latin America's 'Third Left' Meets the U.S. Workplace: A Promising Direction for Worker Protection?* UC Irvine Law Review (2014), 539; Contra M. Santana, *Brazil: The Swinging Pendulum: Between Labor Sociology and Labor Movement*, 36 Work and Occupations (2009), 96.



Washington Consensus.<sup>143</sup> Like China, Brazil came to be held up as a new model, and one that solved the very problems which has generated criticism of Consensus's performance.<sup>144</sup>

Yet, beginning in 2014, a decade of Brazilian success gave way to a new recession and the fall of the Worker's Party, crystallized by the impeachment of then-President Dilma Rousseff. Rousseff's former vice-President, Michel Temer, has come into office promising a reform agenda that would lead Brazil out of recession, and in contrast to promising a new developmental state, his prescriptions recapitulate long-standing critiques.

The reality of Temer's reformist agenda is now hotly debated in Brazil, with social and political polarization at their highest levels following Brazil's democratic transition. For the focus of this paper one striking aspect of Temer's proposals is labor flexibilization. New Labor Minister Ronaldo Nogueira has promised to give employers more flexibility to modify employee hours and salaries. Temer has most recently advanced programmatic to labor contracts to allow for longer employee shifts among multiple employers.<sup>145</sup> And mixed into this discourse is that the same sentiment expressed in India, that Brazil need become more like an imagined China of flexible labor relations and dynamic job turn-over.<sup>146</sup>

The very rise of the Workers Party in Brazil was preceded, and in part impelled, by an earlier era of flexibilization. Prior to 2002, Brazil had elected economically liberal presidents who had pursued many of the tenants of the Washington Consensus. As in many Latin American countries of the era,<sup>147</sup> labor market flexibilization was a policy objective that once again did not lead to great formalization or sustained job growth.<sup>148</sup>

**143** I. Carrillo, *The New Developmentalism and the Challenges to Long-Term Stability in Brazil*, 41 Latin American Perspectives (2014), 59.

**144** C. Rossi, *A China Pode Ser um Modelo?* [Can China Serve as a Model?], Folha de São Paulo, 5 June, 2014.

**145** "Governo Quer Contratos de Trabalho por Productividade e Hora Trabalhada," [The Government Wants Work Contracts by Output and Hours Worked], Folha de Sao Paulo, 8 Sept., 2016.

**146** M. Troyo, *Brasil, Chines de Menos* [Brazil, Too Little of China], available at: <imil.org.br/artigos/brasil-chins-de-menos/>.

**147** A. Marshall, *Labour Market Policies and Regulations in Argentina, Brazil and Mexico* (ILO Employment Strategy Paper No. 4, 2004).

**148** R. Maurizio, *Decline in Inequality and Formalization of Labour Market: The Case of Urban Salaried Workers in Argentina and Brazil in the 2000s* (ILO Research Paper No. 9, 2014); and J. Mayer, *The Limits of Labor Legislation Reforms: Rigidity, Growth, and Employment in Brazil (1995–2010)*, 8 Journal of Politics in Latin America (2016), 95.

In this era, outsourcing and precarious employment had already increased even without changes in formal regulation<sup>149</sup> even with new social insurance programs instituted under the Cardoso administration in the 1990s.<sup>150</sup> Though Brazil had successfully escaped the hyperinflation that had historically plagued it until the mid-1990s, popular dissatisfaction with the economy helped propel the Worker's Party to power.<sup>151</sup>

In contrast to India and China, during the 2000s Brazil witnessed a surge in formalization in lock-step with increased expenditures on enforcement and a re-emphasis on the corporatist power of Brazilian unions.<sup>152</sup> Industry-wide union bargaining became more common,<sup>153</sup> and the various policies were put into place to further entrench the elements of Brazil's commodity-heavy corporatist economics.<sup>154</sup> Social insurance was expanded and Bolsa Familia, a broad cash-transfer program, helped bring many Brazilians into the formal economy.<sup>155</sup> At this point in time, neoclassical critiques of this new enforcement regime now claimed that a lack of access to "unregulated labor" was a threat to Brazilian productivity, rather than a lack of formalization.<sup>156</sup> Others even point to the introduction of the 1988 Constitution as a driver of Brazilian informalization.<sup>157</sup>

Again, it would be difficult to tie any of these changes as underpinning the growth under the Worker's Party. Certainly they were part of the sharp decline in

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149 J. Chahad, *Non-Standard Forms of Labour Contract in the Consolidação das leis do Trabalho (CLT) and the Flexibility of the Brazilian Labour Market* (ILO, 2004); and C. Nimrichter, *Female Participation in the Informal Sector in Brazil in 1996 and in 2005* (Thesis, University of New Orleans, 2007).

150 A. de Faria, "Terceirização: Um Desafio Para o Movimento Sindical" [Outsourcing: A Challenge for the Union Movement], in H. Martins and J. Ramalho (eds.), *Terceirização: Diversidade e Negociação no Mundo do Trabalho* [Outsourcing: Diversity and Negotiation in the World of Work] (CEDI-NETS, 1994); and A. de Freitas and J. Rodriguez, *Origins and Contents of Legislative Policies Striving to Introduce Flexibility into Labor Law in Semi-Peripheral Countries*, 3 *Revista Direito Mackenzie* (2003), 197.

151 R. Bonelli, *Labor Productivity in Brazil* (IPEA Discussion Paper No. 906, 2002).

152 J. Berg, "Laws or Luck? Understanding Rising Formality in Brazil in the 2000s," in S. Lee and D. Mc Cann (eds.), *Regulating for Decent Work* (ILO, 2011), p. 123.

153 H. Zylberstajn, *Workers' Rights in the Brazilian Sugarcane Ethanol Industry* (2012), available at: <lera2012.wharton.upenn.edu/RefereedPapers/ZylberstajnHelio%20updated.pdf>.

154 M. Schapiro, *Development Bank, Law, and Innovation Financing in a New Brazilian Economy*, 3 *Law and Development Review* (2010), 77.

155 Christoph Ernst, *Recent Dynamics in Brazil's Labour Market* (ILO Economic and Labour Market Paper No. 2007/10, 2008).

156 R. Almeida and P. Carneiro, *Enforcement of Regulation, Informal Labor and Firm Performance* (IZA Discussion Paper No. 1759, 2005).

157 M. Bosch et al., *Trade Liberalization, Labor Reforms and Formal-Informal Employment Dynamics*, 19 *Labour Economics* (2012), 653.

still-high levels of Brazilian inequality, though only one piece of the Worker's Party redistributive policies. Underneath the increasing power of unions was a mixed picture of stark urban/rural divides in formality and regulatory enforcement, as well as the inclusion and exclusion of various workplaces from union bargaining.<sup>158</sup> The corporatist structure of Brazil's unions had little to no role in addressing individual workplace disputes, and had neglected much of non-urban South even after democratization.<sup>159</sup>

While formalization had increased, levels of informality were still high, with lower-wage employment having much less representation among trade unions.<sup>160</sup> Informalism is high enough to include very heterogeneous works and entrepreneurs,<sup>161</sup> but attempts to increase formalization through reducing registration costs and other employer costs have yielded little, as state enforcement capacity continues to drive levels of informality.<sup>162</sup> Some have even suggested that given employer resistance that formalization would actually increase the administration costs of social insurance programs.<sup>163</sup>

Even for workers formerly represented by unions, their position vis-à-vis informal workers is not one of universal empowerment. And the right to strike and organize was strictly held by the unions themselves, with Brazil long-resisting signing an ILO convention recognizing freedom of association in the workplace.<sup>164</sup> The tension this has generated even among workers represented by unions was on display in recent years during unauthorized strikes that were

**158** J. Krein and M. Biavaschi, *Os Movimentos Contraditórios da Regulação do Trabalho no Brasil dos Anos 2000* [The Contradictory Movements in the Regulation of Work in Brazil in the 2000s], 32 Cuadernos del Cendes (2015), 48.

**159** A. Pereira, *Regime Change Without Democratization* (Diss., Harvard University, 1991).

**160** A. Gomes and P. Bertolin, *Regulatory Challenges of Domestic Work: The Case of Brazil*, 27 International Journal of Comparative Labor Law and Industrial Relations (2011), 221.

**161** C. Williams and Y. Youssef, *Theorizing Entrepreneurship in the Informal Sector in Brazil*, 24 Journal of Entrepreneurship (2015), 148.

**162** G. Ulyssea, *Firms, Informality and Development: Theory and Evidence from Brazil* (PUC-RIO Economics Discussion Paper No. 632, 2014); D. Farris and E. Jonasson, *Determinants of Changing Informal Employment in Brazil* (MPRS Paper No. 71475, 2016); and R. Madalozzo and A. Bortoluzzo, *The Impact of Tax Exemptions on Labor Registration: The Case of Brazilian Domestic Workers* (Insper Working Paper No. 232, 2011).

**163** F. Gonzaga, *Informal Labor and the Efficiency of Social Programs* (NBER Working Paper No. 22608, 2016).

**164** A. Gomes, *The Effects of the ILO's Declaration on Fundamental Principles and Rights at Work on the Evolution of Legal Policy in Brazil: An Analysis of Freedom of Association* (Thesis, University of Toronto, 2009).

actively repressed by the Rouseff administration.<sup>165</sup> It is clear that in any contest between workers and their unions whatever preferences workers may enjoy vanishes.<sup>166</sup> And while unions remain comparatively stronger than in many other countries, their ability to weather further trade liberalization and international integration is highly suspect.<sup>167</sup>

Another flash point of contention has been the role of the Brazilian labor courts. Brazilian labor courts process over three million claims a year, and are often seen as highly biased against employers.<sup>168</sup> Foreign companies are often active sites of EPL enforcement, giving anecdotal heft internationally to contemporary critics.<sup>169</sup> Here we can see another consequence of the Worker Party's increase in labor enforcement, but also the orthogonal status of Brazilian unions to the day-to-day lives of workers. Yet, how one interprets this surge in cases depends on a variety of empirical assumptions.<sup>170</sup> For critics, this imposes a powerful drag on Brazilian workplaces by increasing the costs of employment, and for proponents it is simply a reflection of genuine engagement with systemic employer abuse. Like other areas of Brazilian litigation, appeals can stretch on for years, which place impacts low-income workers under significant long-term uncertainty.

However one may evaluate current Brazilian labor practices, the simple fact remains that no durable empirical link has been made to either pro-employer or pro-worker trends to changing economic growth in the post-1988 era. While the labor courts have resisted formal outsourcing,<sup>171</sup> voluntary turnover rates have

**165** "Rio Trash Workers Stay on Strike Through Carnival," *The Rio Times*, 24 March, 2014; and "Transport Chaos in Sao Paulo Following Second Day Running of Metro Strike," *MercoPress*, 7 June, 2014.

**166** A. Gomes and M. Prado, *Flawed Freedom of Association in Brazil: How Unions Can Become an Obstacle to Meaningful Reforms in the Labor Law System*, 32 *Comparative Labor Law and Policy Journal* (2011), 843.

**167** J. Arbache, *Does Trade Liberalization Always Decrease Union Bargaining Power?* 5 *Economia* (2004), 99; and V. Ponczek and G. Ulyssea, *Trade Opening, Enforcement and Informality*, paper presented for Trade and Employment in Development Countries (Geneva, 2015).

**168** C. Mercante, *As Raízes Autoritárias da Atual Lei Greve Brasileira [The Authoritarian Roots of the Contemporary Brazilian Right to Strike]*, 7 *Revista Direito Mackenzie* (2014), 42.

**169** N. Munshi, "McDonald's Franchisee Sued by Brazilian Unions," *Financial Times*, 24 Feb., 2015; and J. Gonçalves and M. Caporale, "Private Equity Investment and Labour: Faceless Capital and the Challenges to Trade Unions in Brazil," in M. Serrano et al. (eds.), *Trade Unions and the Global Crisis: Labour's Visions, Strategies and Responses* (ILO, 2011), p. 97.

**170** R. Filho, *Employment Litigation on the Rise? A Brazilian Perspective*, 22 *Comparative Labor Law and Policy Journal* (2001), 281; and J. French, *Drowning in Laws Labor Law and Brazilian Political Culture* (University of North Carolina, 2004).

**171** A. Droppa and M. Biavaschi, *Superior Labor Court and Outsourcing in Brazil*, 3 *Labour Science Journal* (2014), 1.

not changed significantly. While still somewhat sensitive to firing costs,<sup>172</sup> Brazil still has a very high level of involuntary turnover,<sup>173</sup> and many times higher than that of even China and India.<sup>174</sup> When sources of the current Brazilian recession are detailed, macro-economic and political causes are cited while the inescapable decline in global commodity prices is given center stage.<sup>175</sup> The policy orientations of different administration have impacts, but trying to tease out both the formal v. effective rates of EPL and informalization certainly does not add any clarity.<sup>176</sup>

Still, as unemployment grows to double-digits, Brazil is searching for solutions to its recession. Again here we are left with the puzzling question of why the new Temer administration would give labor reform such a high priority given the high political costs involved. Brazilian workers have already lived through eras of flexibilization, and little of their discontent with the Worker's Party is attributed to dissatisfaction with workplace regulation. Furthermore, those areas of work which have been flexibilized in recent years have already begun to exhibit the type of social unrest-inducing patterns witnessed elsewhere,<sup>177</sup> promising only further social resistance. As in India, and in parallel to the unrest the CCP is attempting to manage in China, Brazil's labor unions are planning nation wide protests against the regime. Even if one believed Brazilian workplace regulations were less than ideal, there seems to be no clear precedent to point to that would give confidence that the surge in growth so promised would survive the political pain that would follow.

172 G. Gonzaga, *Labor Turnover and Labor Legislation in Brazil* (PUC-Rio Economics Discussion Paper No. 475, 2003).

173 M. Oliveria et al., *Validity Evidence for the Turnover and Attachment Motives Survey in a Brazilian Sample*, 26 *Paideia* (Ribeirao Preto) [Sept./Dec. 2016].

174 D. Elkjaer and S. Filmer, *Trends and Drivers of Workforce Turnover* (Mercer 2014 Turnover Survey, 16 July, 2015).

175 J. Oreiro and L. D'Agostini, *From Lula Growth Spectacle to the Great Recession* (Central Banks in Latin America: In Search for Stability and Development, 2016).

176 J. Mayer, *The Limits of Labor Legislation Reforms: Rigidity, Growth, and Employment in Brazil (1995–2010)*, 8 *Journal of Politics in Latin America* (2016), 95.

177 S. Baraldi and M. Car, *Labor Flexibilization and Deregulation for Nursing Workers in Brazil: The Profae Case*, 16 *Revista Latin America Enfermagem*(2008), 205; H. de Souza and Á. Mendes, *A Terceirização e o 'Desmonte' do Emprego Estável em Hospitais* [Outsourcing and the 'Dismantling' of Steady Employment in Hospitals], 50 *Revista Escola Enfermagem USP* (2016), 284; and G. Druck, *Unrestrained Outsourcing in Brazil: More Precarization and Health Risks for Workers*, 32 *Cadernos de Saúde Pública* (2016), 1.

## 6 The centrality and challenge of human capital development

The functionalist assumptions of much cross-national empiricism aim to distill the predictable amid the complex. Labor regulation is no exception. The neo-classical position on labor flexibilization attempts to reveal what can be most valuable about social science: showing that comprehension requires more than reflexive common sense. If high levels of employment protection are hurting workers any fairminded reformer should take note. As much of development history relates, good intentions are a poor substitute for sober analysis.<sup>178</sup>

And perhaps the academic debate over flexibilization between neoclassical and institutionalist proponents should continue battle over the net effects of varying levels of EPL. If the empirical status of claims in the field has become muddled, this could just be a part of the normal inter-twined progress of theory and data. But if at this point in time the marginal aggregate effects at stake seem small on both sides, then scholarly support for substantial reforms should be equally modest, or defer to other considerations. If precarious work inevitably leads to social unrest, even if marginal effects on unemployment are positive, then surely the systemic costs of flexibilization should lead to such changes being approached with heady caution.

For it should be remembered that flexibilization is not a moral good in itself, but simply a tool to improve labor allocation. If it is difficult to link micro-level workplace protections to the type of macro-level allocations that should promote growth more generally,<sup>179</sup> then one should step back and see what assumptions are most suspect in the argument made. At this point in time, the link between formalization and flexibilization following the neoclassical model has too many substantial and countervailing examples to hold it out as a panacea for unemployment. Micro-level studies can help describe the heterogeneous impact of workplace regulations on firms in varied contexts, but with more targeted aspirations than establishing a link to aggregate growth.<sup>180</sup>

Here it can be recalled that much of neoclassical work in labor economics is of recent historical vintage. One of the central figures of the rise of this work in

<sup>178</sup> W. Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (Penguin, 2007).

<sup>179</sup> A. Verma and A. Gomes, *Labor Market Flexibility and Trajectories of Development: Lessons from Brazil, India and China*, 50 *Indian Journal of Industrial Relations* (2014), 51.

<sup>180</sup> M. Ayyagari et al., *Who Creates Jobs in Developing Countries?* 43 *Small Business Economics* (2014), 75.

the 1960s was Jacob Mincer, who saw the field as developing “human capital theory.”<sup>181</sup> Others working in the field, notably Gary Becker, made novel studies of education and other inputs into human capital development far afield from workplace regulation.<sup>182</sup> And embedded in flexibilization discourse is a presumption that the gains from labor allocation are sourced in capturing the returns from human capital development and differentiation.<sup>183</sup>

If we turn away from EPL to human capital measurement itself, then we find a trajectory of empirical scholarship where the relationship with economic growth is on much firmer ground.<sup>184</sup> For decades, strong links have been established between worker productivity and aggregate skills levels,<sup>185</sup> the relationship between human capital levels and technical innovation,<sup>186</sup> as well as adoption of new workplace technologies.<sup>187</sup> Rather than contracting to a battle over marginal effects, human capital studies have only spread globally, with new demonstrations in Europe,<sup>188</sup> Africa<sup>189</sup> and Asia.<sup>190</sup> Even when returns to infrastructure investments fall off, many countries have found continued returns from human capital investments.<sup>191</sup> Now one can find a proliferating

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**181** J. Mincer, *Human Capital and Economic Growth* (NBER Working Paper No. 803, 1981); and P. Teixeira, *Jacob Mincer* (Oxford, 2007).

**182** T. Schultz, *Investment in Human Capital*, 51 *American Economic Review* (1961), 1; Gary Becker, *Human Capital: A Theoretical and Empirical Analysis* (University of Chicago, 1964); and F. Welch, *Education in Production*, 78 *Journal of Political Economy* (1970), 35.

**183** V. Ojha and B. Pradhan, *Human Capital Formation and Economic Growth in India: A CGE Analysis*, 35 *Journal of Policy Modeling* (2013), 909.

**184** N. Stokey, *Human Capital, Product Quality, and Growth*, 106 *Quarterly Journal of Economics* (1991), 587; and A. de la Fuente and A. Ciccone, *Human Capital in a Global and Knowledge-based Economy* (Final Report, European Commission, 2002).

**185** R. Lucas, *On the Mechanics of Economic Development*, 22 *Journal of Monetary Economics* (1998), 3; and P. Romer, *Human Capital and Growth: Theory and Evidence*, 32 *Carnegie Rochester Conference Series on Public Policy* (1990), 251.

**186** N. Mankiw et al., *A Contribution to the Empirics of Economic Growth*, 107 *Quarterly Journal of Economics* (1992), 407.

**187** A. Foster and M. Rosenzweig, *Technical Change in Human Capital Return and Investments: Evidence from the Green Revolution*, 86 *American Economic Review* (1996), 931.

**188** E. Fernandez and P. Mauro, *The Role of Human Capital in Economic Growth* (IMF Working Paper No. 8, 2000).

**189** E. Ejere, *Human Capital Formation as Catalyst for National Development: Nigeria in Perspective*, 2 *International Business and Management* (2011), 98.

**190** J. Tilak, *Building Human Capital in East Asia: What Others Can Learn* (International Bank for Reconstruction, 2012); and B. Samar and M. Waqas, *Human Capital Formation and Economic Growth in Pakistan*, 32 *World Applied Sciences Journal* (2014), 635.

**191** B. Fleisher et al., *Human Capital, Economic Growth, and Regional Inequality in China*, 92 *Journal of Development Economics* (2007), 215.

thicket of reports, indexes and other analytical productions attempting to map and measure the many socially beneficial effects of human capital development.<sup>192</sup>

What all of these studies show is that much of what is attempted to be attributed to labor flexibilization is more easily tied to aggregate levels of human capital development. Not only does human capital help attract foreign investment, but it actualizes the long-term possibilities of economic externalities such as technology transfers<sup>193</sup> and increased domestic regulatory competence.<sup>194</sup> Notably, human capital investments have exactly the opposite effects on social unrest as does flexibilization,<sup>195</sup> while also one of the pathways by which social capital formation is tied to growth.<sup>196</sup>

This generally clearer empirical picture does not mean the human capital studies are clear of their own controversies, or have not been revised by advances in empirical methodology.<sup>197</sup> Measuring human capital has benefited from moving beyond formal indicators such as average years in school,<sup>198</sup> to more substantive indicators of the quality of educational and job training.<sup>199</sup> However, human capital studies have been bolstered, rather than weakened, by the inclusion of non-economic variables such as health and subjective well-being which destabilizing confidence in pro-flexibilization prescriptions.<sup>200</sup> This further helps reorient debates on thorny subjects such as child labor by focusing on the longitudinal development of working populations rather than simply battles over morality and synchronic efficiency.

Human capital studies have progressively given some support to the institutionalist function of labor regulations as a means of promoting intra-firm

**192** *The Human Capital Report* (World Economic Forum, 2013).

**193** K. Miyamoto, *Human Capital Formation and FDI in Developing Countries* (OECD Development Center Working Paper No. 211, 2003).

**194** M. Armenta, *The Financial Sector and Economic Development: Banking on the Role of Human Capital*, 18 *Journal of Public and International Affairs* (2007), 188.

**195** Koji Miyamoto, *Human Capital Formation and FDI in Developing Countries* (OECD Development Center Working Paper No. 211, 2003).

**196** S. Dinda, *Social Capital in the Creation of Human Capital and Economic Growth: A Productive Consumption Approach*, 37 *The Journal of Socio-Economics* (2008), 2020.

**197** Charles Jones, *Human Capital, Ideas, and Economic Growth*, in Luigi Paganetto and Edmund Phelps (eds.), *Finance, Research Education and Growth* (Springer, 2003), p. 51.

**198** D. Acemoglu and J. Angrist, *How Large Are Human-Capital Externalities? Evidence from Compulsory Schooling Laws*, 15 *NBER Macroeconomics Annual* (2000), 9.

**199** E. Hanushek, *Economic Growth in Developing Countries: The Role of Human Capital*, 37 *Economics of Education Review* (2013), 204.

**200** R. Wilson and G. Briscoe, *The Impact of Human Capital on Economic Growth* (CEDEFOP Reference Series No. 54, 2004).



human capital developments, especially in firms which benefit from more specific vocational capital, and with notable effects on trade.<sup>201</sup> In an increasingly integrated global economy, this type of human capital formation also makes international and intra-national regulatory arbitrage much more of a long-term concern.<sup>202</sup> Aggregate growth in human capital levels is short-circuited by rapid physical capital reallocation, even though it may give short-term benefits to depressed locales.<sup>203</sup> Unevenness in human capital levels at various geographic strata may not always lead to a race to the bottom, but it does place a cap on long-term growth.<sup>204</sup> Similarly, a singular focus on formal job creation, or in reducing unemployment, can be pro-cyclical if it leads to under-investments in human capital.<sup>205</sup>

Even with these more consistent results in mind, scholars of human capital have increasingly called for the same caution in trying to derive universal models of human capital formation from recent successes.<sup>206</sup> In flexibilization discourse aimed at lower-income countries, “history” is often used to argue, at a high level abstraction, why lower levels of EPL are the natural result of a unilineal concept of social evolution. But human capital studies have, in the main, instead moved to historicize multilineal strategies for HCD,<sup>207</sup> though grounded in the general progression whereby genuine “development” requires the substitution of knowledge generation for manual labor or other physical resources.<sup>208</sup> This does not mean that lower-income countries should try to leap-frog into high-tech industries by subsidizing very expensive technical expertise,

**201** H. Tang, *Labor Market Institutions, Firm-Specific Skills, and Trade Patterns*, 87 *Journal of International Economics* (2012), 337.

**202** J. Capaldo and A. Izurieta, *The Imprudence of Labour Market Flexibilization in a Fiscally Austere World*, 152 *International Labour Review* (2013), 1.

**203** T. Holmes, *The Effect of State Policies on the Location of Industry* (Federal Research Bank of Minneapolis Research Department Staff Report No.205, 1996). Also see D. Autor et al., *Does Employment Protection Reduce Productivity? Evidence From US States*, 117 *Economic Journal* (2007), F189.

**204** J. Zhao, *The Functional Definition of Government in Western Human Capital Formation*, 2 *International Journal of Marketing Studies* (2010), 117.

**205** C. Lindsay, “Work First Versus Human Capital Development in Employability Programs,” in U. Klehe and E. van Hooft (eds.), *The Oxford Handbook of Job Loss and Job Search* (Oxford, 2014), p. 558.

**206** J. Tilak, *Building Human Capital in East Asia: What Others Can Learn* (World Bank Institute Working Paper No. 37166, 2001).

**207** B. van Leeuwen, *Human Capital and Economic Growth in India, Indonesia and Japan* (Diss., International Institute of Social History, 2007); and C. Goldin, “Human Capital,” in C. Diebolt and M. Hauptert (eds.), *Handbook of Cliometrics* (Springer, 2016), p. 55.

**208** T. Schultz, *Investing in People: The Economics of Population Quality* (UC Press, 1991).

but should instead focus on lower-cost investments in aggregate educational policies.<sup>209</sup> In this way, Zorina Khan's recent study of British industrialization makes the strong claim that most "developing" countries should focus on raising average human capital levels.<sup>210</sup> Taking such a view helps lead to more productive positions towards informality,<sup>211</sup> and also helps mark out more clearly the inter-relationship between physical and human capital development.<sup>212</sup>

Yet, this focus on human capital formation and development only begs the question of why flexibilization is often cast as a crucial aspect of reform. Especially if aggregate human capital is what drives growth for lower-income countries, then the expected effects of intra and inter-firm reallocation would seem to be marginal. Completely unrestrained numerical employment flexibility would yield some inter-firm gains, but no aggregate level gains. Why then again is it so recurrently popular as a policy solution during times of economic distress?

At this point, we can return to one of the shared observations of traditional liberal and Marxist political economy: that a functional capitalist labor market should progressively undermine irrational forms of social prejudice. For liberal theorists this is a process driven from the calculative force of the profit motive that generates growth, and for Marxists the same is the grinding away of the feudal values as a way point to socialism.<sup>213</sup> A key example of this is the relatively universal embrace of formal antidiscrimination laws.

The proactive repression of still latent discrimination norms is linked by one recent study of note to explain close to a quarter of all aggregate per capital output gains in the U.S. following the enactment of legislation after the civil rights movement.<sup>214</sup> Other studies have noted how the persistence of gender

**209** F. Qadri and A. Waheed, *Human Capital and Economic Growth*, 13 *Progress in Development Studies* (2013), 89; and A. Queirós and A. Teixeira, *Economic Growth, Human Capital and Structural Change*, 45 *Research Policy* (2016), 1636.

**210** Z. Khan, *Knowledge, Human Capital and Economic Development* (LSE Economic History Working Paper No. 249, 2016).

**211** I. García, *Essays in the Evaluation of Human Capital Investment Policies* (Diss., University College of London, 2014).

**212** S. Appleton and F. Teal, *Human Capital and Economic Development* (African Development Bank Report, 1998).

**213** D. Swinton, *A Labor Force Competition Theory of Discrimination in the Labor Market*, 67 *The American Economic Review* (1977), 400.

**214** C. Hsieh et al., *The Allocation of Talent and U.S. Economic Growth* (NBER Working Paper No. 18693, 2013).

norms has undermined returns on educational investments in countries where women are excluded from market oriented activities.<sup>215</sup>

The general consensus around formal antidiscrimination laws reflects the particular consonance of utilitarian and moral support for is generally termed meritocracy. Meritocracy being the general idea that one's performance in the labor market should be a direct reflection of one's abilities, yielding individual rewards but also the social maximization of individual talents. It is from this point of rare consonance that we can begin to unravel why flexibilization discourse is so seductive.<sup>216</sup>

## 7 Flexibilization as an elite defense against functional meritocracy

Few reject the concept of meritocracy at the most abstract level, and democratic and authoritarian political regimes alike have increasingly justified state and market actions on meritocratic grounds. The ideal of the rational Weberian state is used to not only underpin notions of procedural justice, but concrete reform agendas.<sup>217</sup> Not surprisingly, many development theorists have link markets regulated by Weberian state bureaucracies with high growth rates.<sup>218</sup> Some have explained the twentieth century success of the U.S. by showing how it relative meritocracy allowed for better returns on human capital investment than Europe.<sup>219</sup> And meritocratic practices are key to the popular framework of transitioning states from extractive to inclusive institutions.<sup>220</sup>

Moreover, inequality in economic opportunity has been identified as a major drag on human capital formation, as it distorts investments in workers of various capabilities. In contrast to the dualism often proffered by neoclassical frames,

**215** M. Fafchamps and A. Quisumbing, *Human Capital, Productivity, and Labor Allocation in Rural Pakistan*, 34 *Journal of Human Resource Education* (1999), 269.

**216** C. Schmidt, "Defending the Right to Discrimination: The Libertarian Challenge to the Civil Rights Movement," in S. Hadden and P. Minter (eds.), *Signposts: New Directions in Southern Legal History* (University of Georgia, 2013), p. 417.

**217** H. Mueller, *Patronage or Meritocracy: Political Institutions and Bureaucratic Efficiency*, 25 *Journal of Theoretical Politics* (2013), 363.

**218** P. Evans and J. Rauch, *Bureaucracy and Growth: A Cross-National Analysis of the Effects of 'Weberian' State Structures on Economic Growth*, 64 *American Sociological Review* (1999), 760.

**219** I. Ehrlich, *The Mystery of Human Capital as Engine of Growth* (NBER Working Paper No. 12868, 2007).

**220** D. Acemoglu and J. Robinson, *Why Nations Fail* (Crown Business, 2012).

from a human capital perspective meritocracy posits no tradeoffs between efficiency and equity, but a synergy.<sup>221</sup>

The popularity of meritocratic norms does not mean that is it without critiques,<sup>222</sup> especially as to the moral value of genetic endowments or the implications of meritocracy for redistributive policies.<sup>223</sup> Nor does it mean that designing systems which allow for the anonymous identification of merit is easy.<sup>224</sup>

But what the relative consensus on formal anti-discrimination laws lead us is to consider how the frame of meritocracy underlies the social and political differentiations between pro-flexibilization and pro-human capital reform agendas in specific national contexts. For if the sum history of human social organization tells us anything, it is that meritocracy is not a natural process and requires an intensive institutional framework to achieve even in high-income democratic economies.<sup>225</sup> Much of the critique of meritocracy as a political norm stems from its embrace of an analytical formalism akin to that deployed in pro-flexibilization studies, where human capital is produced through purely technical, rather than social processes.<sup>226</sup>

Recall that a large political disagreement occurs when antidiscrimination norms move from negating individual workplace discriminations to establishing proactive policies to address past legacies of social discrimination.<sup>227</sup> At both the collective and individual levels, meritocracy is only a unifying norm when the social practice of human capital formation is itself deemed to be fair. While the profit motive may have some force in promoting antidiscrimination practices in markets, it is decidedly powerless to impact the social production of equal opportunity. Here synchronic and diachronic equality can diverge quite

<sup>221</sup> D. Mejía and M. St-Pierre, *Unequal Opportunities and Human Capital Formation* (CESifo Working Paper Series No. 1383, 2005).

<sup>222</sup> M. Souto-Otero, *Meritocracy and Redistribution*, 25 *Journal of Education Policy* (2010), 397.

<sup>223</sup> R. Benabou, "Meritocracy, Redistribution and the Size of the Pie," in Kenneth Arrow et al. (eds.), *Meritocracy and Economic Inequality* (Princeton, 2000).

<sup>224</sup> R. Murphy and D. Salehi-Isfahani, *Labor Market Flexibility and Investment in Human Capital* (VPI Economics Working Paper, 2007)

<sup>225</sup> D. Checchi et al., *Inequality of Opportunity in Europe: Is There a Role for Institutions?* 43 *Inequality: Causes and Consequences* (2016), 1.

<sup>226</sup> A. Lawton, *The Meritocracy Myth and the Illusion of Equal Employment Opportunity*, 85 *Minnesota Law Review* (2000), 587; T. McVeigh, *Can a Meritocratic Education System Deliver Equality?* 1 *Irish Marxist Review* (2012), 27; and L. Guinier, *The Tyranny of the Meritocracy: Democratizing Higher Education in America* (Beacon, 2015).

<sup>227</sup> A. Moreira, *Discourses of Citizenship in American and Brazilian Affirmative Action Court Decisions*, 64 *American Journal of Comparative Law* (2016), 455.

significantly if social endowments overwhelm individual capabilities in producing signals of merit.

Nowhere is this clearer than in the impact of familial investments on market opportunities, especially in countries which have attempted to enact aggressive meritocratic regimes.<sup>228</sup> The true test of a meritocratic regime is high levels of social mobility, where personal background is unmoored from individual cognitive abilities.<sup>229</sup> Yet, how to promote social mobility has been a means to more efficient human capital formations has been a recurrently stubborn problem.<sup>230</sup>

Here historical studies on human capital take on specific value. Recurrently, established socio-economic classes have resisted policies that would provide functional meritocracy, from access to education institutions to basic infrastructure for urban/rural labor migration.<sup>231</sup> The aforementioned Zorina Khan's study of British human capital formation sets oligopic social structures as the natural enemy of meritocracy.<sup>232</sup> Oded Galor incisively summarizes: "Inequality in the ownership of factors of production has generated an incentive for some better-endowed agents to block the implementation of institutional changes and policies that promote human capital formation, resulting in a suboptimal level of investment in human capital from a growth perspective."<sup>233</sup>

While premodern elites used various forms of genetic and providential logics to justify inequality, modern elites generally have to rely on assertions about meritocratic market participation. Thus, the intense familiar educational investments and social capital accumulation that reproduce inequality in modern economies have to be masked by faith in labor formalism to insulate them from true challenges to their social standing.<sup>234</sup>

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**228** D. Checchi, *The Economics of Education: Human Capital, Family Background and Inequality* (Cambridge University Press, 2008); and O. Attanasio, *The Determinants of Human Capital Formation During the Early Years of Life*, 13 *Journal of the European Economic Association* (2015), 949.

**229** Like other areas, defining and measuring social mobility can depend on any number of specific definitions. A. Armengol and M. Jackson, *Like Father Like Son: Social Network, Human Capital Investment, and Social Mobility* (ICREA Social Science Working Paper No.1243, 2005).

**230** G. Becker et al., *A Theory of Intergenerational Mobility* (2015), available at: <[www.kellogg.northwestern.edu/faculty/spenkuch/research/mobility.pdf](http://www.kellogg.northwestern.edu/faculty/spenkuch/research/mobility.pdf)>.

**231** T. Schultz, *The Formation of Human Capital and the Economic Development of Africa* (African Development Bank Economic Research Paper No. 37, 2001).

**232** Z. Khan, *Knowledge, Human Capital and Economic Development* (LSE Economic History Working Paper No. 272, 2016).

**233** O. Galor, *Inequality, Human Capital Formation and the Process of Development* (IZA Discussion Paper No. 6328, 2012).

**234** S. Dunder, *Training of Genius to Meritocracy and Elitism*, 4 *International Journal on New Trends in Education and Their Implications* (2013), Art. 12.

The core assumptions underlying the social vision of any regulatory regimes has consequences for the basic distribution of power within any society.<sup>235</sup> A presumption that regulatory analysis should strictly embrace legal formalism is generally predicated on the notion that meritocratic practices are coherent and functional. But if such presumptions are wrong, then formalism serves only to more deeply entrench existing inequality. Flexibilization reforms presume the former, while many human capital studies force us to consider the later.<sup>236</sup>

Consider a recent study on networks of Italian managerial hiring.<sup>237</sup> Italian labor laws are as commonly cited as depressing economic growth as are those in India. In contrast, a fine-grained analysis of Italian corporate decision-making shows how limitations on numerical flexibility did not constitute a core constraint on responsiveness to international competition, but instead a lack of meritocratic hiring patterns among the Italian managerial class: “In other words, familism and cronyism are the ultimate cause of the Italian disease.”<sup>238</sup> For the social class benefiting from this cronyism, labor formalism is far more attractive than the social processes by which their interests are reproduced.

Even in formally meritocratic regimes, pre-existing elites have found ways to circumvent displacement by substituting forms of educational credentialism based on private capacity for investment, classically examined by Pierre as “state nobilities.”<sup>239</sup> Bourdieu’s work has been reproduced by others, finding patterns of auto-recruitment among elites in a number of countries,<sup>240</sup> and in political and economic arenas generally considered to be highly meritocratic.<sup>241</sup> Some have produced defenses of this type of inherited privilege, pointing to social capital as a genuine asset for employers,<sup>242</sup> or more retrograde assertions about socio-biology.<sup>243</sup>

Yet, studies in human capital formation have shown powerful effects when formal schooling and education attainment are disaggregated from cognitive

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235 P. Zumbansen, *The Law of Society: Governance Through Contract*, 14 *Indiana Journal of Global Legal Studies* (2007), 191; and A. Bagchi, *The Myth of Equality in the Employment Relation*, *Michigan State Law Review* (2009), 579.

236 L. Bernal-Verdugo et al., *Labor Market Flexibility and Unemployment*, 54 *Journal of Comparative Economics* (2012), 251.

237 B. Pellegrino and L. Zingales, *Diagnosing the Italian Disease* (NBER Working Paper No. 24, 2014).

238 *Ibid.*

239 P. Bourdieu, *The State Nobility* (Stanford, 1996)

240 E. Brezis et al., *The Role of Higher Education Institutions* (CESifo Working Paper No. 1360, 2004.)

241 M. Bagues and B. Esteve-Volartm *Top Civil Service: Meritocracy or Nepotism?* (2009), <at: [www.iza.org/conference\\_files/TAM\\_08/bagues\\_m4229.pdf](http://www.iza.org/conference_files/TAM_08/bagues_m4229.pdf)>; and A. Sundell, *Nepotism and Meritocracy* (QoG Working Paper Series No. 16, 2014).

242 N. Dobos, *Networking, Corruption, and Subversion*, 98 *Journal of Business Ethics* (2015), 1.

243 P. Kamolnick, *The Just Meritocracy* (Praeger, 2008).

ability, showing how formal academic achievement no longer has any impact in human capital growth models once actual cognitive skills are controlled for.<sup>244</sup> Such analysis has transformed studies of education reform, as the meaning of educational attainment has been decomposed into more discriminating criteria.<sup>245</sup> Such frameworks help expose how societies deemed to be increasingly meritocratic have in fact regressed in social mobility while also witness labor market dynamics where social position, rather than cognitive ability, have grown in importance.<sup>246</sup>

The threat that such an emphasis on functional, rather than mere technical, meritocracy poses to existing social and economic elites is redoubled by studies that have shown how attempts to equalize educational and labor market opportunities in life are ineffective.<sup>247</sup> Instead early life interventions are far more important, and as human development science advances, the longitudinal impact of social background has become increasingly robust, as evidenced in neuroscience studies regarding the role of socio-economic status on brain development.<sup>248</sup> Moreover, studies on the impact of health and geographic mobility have raised the more politically contentious point that high levels of investments in public goods are essential not simply for equity, but for truly meritocratic utilization of individual talents.<sup>249</sup>

A large gap between formal and functional notions of meritocracy helps explain why flexibilization policies lead to unrest. Evaluations of mobility shape fundamental views of social fairness.<sup>250</sup> For more fine-grained studies of precarious employment shows how acutely they depress lower-income families'

**244** E. Hanushek, *Economic Growth in Developing Countries: The Role of Human Capital*, 37 *Economics of Education Review* (2013), 211.

**245** J. Goldthorpe, *The Role of Education in Intergenerational Social Mobility*, 26 *Rationality and Society* (2014), 265. See, e. g., E. Jimenez et al., *Stuck in the Middle? Human Capital Development and Economic Growth in Malaysia and Thailand* (WB Policy Research Working Paper No. 6283, 2012).

**246** F. Galindo-Rueda and A. Vignoles, *Class Ridden or Meritocratic? An Economic Analysis of Recent Changes in Britain* (IZA Discussion Paper No. 677, 2002).

**247** P. Carneiro and J. Heckman, *Human Capital Policy* (IZA Discussion Paper No. 821, 2003); and M. Yum, *Parental Time Investment and Human Capital Formation: A Quantitative Analysis of Intergenerational Mobility* (2015), available at: <[economicdynamics.org/meetpapers/2015/paper\\_996.pdf](http://economicdynamics.org/meetpapers/2015/paper_996.pdf)>.

**248** J. Heckman et al., *Analyzing Social Experiments as Implemented*, 1 *Quantitative Economics* (2010), 1.

**249** T. Schultz, *The Formation of Human Capital and the Economic Development of Africa: Returns to Health and Schooling Investments* (African Development Bank Economic Research Papers No. 37, 2002).

**250** A. Jaime-Castillo, *Expectations of Social Mobility, Meritocracy and the Demand for Redistribution in Spain* (Centro de Estudios Andaluces Working Paper No. 03, 2008).

human capital investments,<sup>251</sup> especially those whose risk of relapse into poverty undermines their ability to engage in long-term income arbitrage.<sup>252</sup> As a result, precarious employment decreases home ownership levels and other indices of communal investments,<sup>253</sup> and eats away at both the sources of individual psychological health group social dynamics provide,<sup>254</sup> and the production of social bonds.<sup>255</sup> Thus while there are different national cultural traditions in regards to meritocracy, most of these are endogenous given the historic levels of functional meritocracy.<sup>256</sup>

Take, for example, the outcry in Singapore when recent surveys revealed how powerful family socio-economic background had become for predicting advancement in Singapore society.<sup>257</sup> Previous studies had shown that public jobs had been relatively insulated from network inequalities based on social background, but that the private sector still gave a boost to less meritocratic but social advantaged applicants.<sup>258</sup> Now, public awareness of the growing gap between formal and functional equality of opportunity became a genuine political issue.<sup>259</sup>

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**251** D. Briggs, *Meritocracy Gone Wrong: The 'Winners' and 'Losers' of Learning in European Education Systems* (Report on Inequalities in Education, EU-CoE Youth Partnership, 2016); and E. Vera-Toscano et al., *Building Financial Satisfaction*, 77 *Social Indicators Research* (2006), 211.

**252** F. Cunha and J. Heckman, *The Evolution of Inequality, Heterogeneity and Uncertainty in Labor Earnings in the U.S. Economy* (IZA Discussion Paper No. 3115, 2007); and S. Caria and P. Falco, *Does the Risk of Poverty Reduce Happiness?* (Centro Studi Luca d'Agliano Development Working Paper No. 363, 2013).

**253** L. Diaz-Serrano, *On the Negative Relationship between Labor Income Uncertainty and Homeownership*, 14 *Journal of Housing Economics* (2005), 109; G. Pryce and M. Keogh, *Unemployment Insurance for Mortgage Borrowers*, 2 *European Journal of Housing Policy* (2002), 87; J. Ford and D. Quilgars, *Failing Home Owners?* 16 *Housing Studies* (2001), 147; S. Ross and G. Tootell, *Redlining, the Community Reinvestment Act, and Private Mortgage Insurance*, 55 *Journal of Urban Economics* (2004), 278; and C. Graham and J. Chaparro, *Insecurity, Health, and Well-Being An Initial Exploration Based on Happiness Surveys* (Inter-American Development Bank, 2011).

**254** J. Nolan et al., "Job Insecurity, Psychological Well-Being and Family Life," in E. Heery and J. Salmon (eds.), *The Insecure Workforce* (Routledge, 2000), p. 181.

**255** R. Putnam, *Making Democracy Work* (Princeton, 1993).

**256** L. Neves, *Putting Meritocracy in its Place: The Logic of Performance in the United States, Brazil and Japan*, 20 *Critique of Anthropology* (2000), 333.

**257** K. Tan, *Meritocracy and Elitism in a Global City: Ideological Shifts in Singapore*, 29 *International Political Science Review* (2008), 7.

**258** Vincent Chua, *Social Capital and Inequality in Singapore* (Diss., Univ. of Toronto, 2010).

**259** Y. Cheng, "Cultural Politics of Education and Human Capital Formation: Learning to Labor in Singapore," in T. Abebe et al. (eds.), *Labouring and Learning, Geographies of Children and Young People* (Springer, 2017), p. 1.



It is very clear that flexibilization agendas are disproportionately popular based on current socio-economic status. On both material and ideological levels this is now quite intelligible. Flexibilization policies have power intensifying effects on labor segmentation that disproportionately impacts low-wage and other marginalized workers.<sup>260</sup> Those types of aggregate gains often associated with the internationalization of labor markets are again realized with heavy losses correlated with low extant socio-economic status.<sup>261</sup> That such practices lead to unrest based on class should not only be expected but understood as historical lessons learned.

The emergence of flexibilization agendas during economic recessions acquires further intelligibility as a contest over the path dependent nature of national labor regulation. Economic downturns degrade the bargaining power of workers in capitalist labor markets,<sup>262</sup> especially for low-wage workers.<sup>263</sup> Thus, a political opportunity arises to distract from entrenched social inequalities and scapegoat measures to equalize power asymmetries in the workplace by portraying a social reality where the primacy economic conflict of interest is between existing job-holders and job-seekers.<sup>264</sup> To listen to the rise of pro-flexibilization discourse in these countries is to hear a vision of society where dispassionate market logics are the handmaidens of meritocracy. Not only is this untrue, but this illusion is systemically damaging for human capital formation and economic development. If we now return to the countries examined earlier, the cyclical promotion of labor flexibilization becomes more intelligible.

China has enjoyed considerable returns from its relatively high levels of investment in human capital development.<sup>265</sup> In turn, the legitimacy of the post-1978 reform project has rested in large part on the ideal that social mobility is a

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**260** R. Guetto and G. Cutuli, *Fixed-Term Contracts, Economic Conjuncture and Training Opportunities*, 29 *European Sociological Review* (2013), 616; M. Eslava et al., *The Effects of Regulations and Business Cycles on Temporary Contracts, the Organization of Firms and Productivity* (CEDLAS Working Papers No.154, 2014); and S. Buchholz et al., *Life Courses in the Globalization Process*, 25 *European Sociological Review* (2009), 53.

**261** M. Beine et al., *Brain Drain and Human Capital Formation in Developing Countries*, 118 *The Economic Journal* (2008), 631.

**262** J. Capaldo and A. Izurieta, *The Imprudence of Labour Market Flexibilization in a Fiscally Austere World*, 152 *International Labour Review* (2013), 1.

**263** M. Taylor, *Interrogating the Paradigm of 'Labour Flexibilization,'* 35 *Labour, Capital and Society* (2002), 222.

**264** Compare D. Kaplan, *Job Creation and Labor Reform in Latin America* 37 *Journal of Comparative Economics* (2009), 91; and B. Bercusson, *Modernising Labour Law to Meet Challenges of the 21<sup>st</sup> Century* (European Parliament Briefing No.9, 2007).

**265** J. Heckman, *China's Investment in Human Capital*, 51 *Economic Development and Cultural Change* (2003), 795.

possible and that the regime practices a form of intense bureaucratic meritocracy.<sup>266</sup> In comparison to the United States, China has in fact achieved relative levels of social mobility,<sup>267</sup> but this has slowed, rather than accelerated, following deepening market reforms.<sup>268</sup> Especially in recent years, the social belief in functional meritocracy has weakened as a distinct class with inherited social privilege becomes more publically transparent,<sup>269</sup> as elites can translate political and cultural capital into economic capital that is easier to transmit intergenerationally.<sup>270</sup> The CCP has taken this seriously enough to ban the children of China's wealthiest families, sometimes dubbed "princelings" or *fuerdai*, from participating in reality TV which exposure their lavish and undisciplined lifestyles, and sending them on state-sponsored social training programs.<sup>271</sup>

Over the past two decades, the focus on formal exam performance has held out the possibility of meritocracy, but has become increasingly driven by forms of social reproduction through familiar investments.<sup>272</sup> Even though most education is public, the CCP has been hesitant to address the tactics taken to insure that children, often only-children, reproduce their parents' status achievements.<sup>273</sup> The proliferation of higher education has dimmed the ability of credentials to signal cognitive merit,<sup>274</sup> while also pushing for reforms to emphasize quality of education over mere progression, popularly dubbed *suzhi jiaoyu* or "quality education."<sup>275</sup>

This pattern of growing inequality of opportunity have been exacerbated by the rise in precarious work which further undermines the ability of lower-income

266 D. Bell, *The China Model* (Princeton, 2015).

267 N. Khor and J. Pencavel, *Income Mobility of Individuals in China and the United States*, 4 *Economics of Transition* (2006), 417.

268 Y. Chen and F. Cowell, *Mobility in China* (2015), available at: <darplse.ac.uk/papersdb/Chen-Cowell\_(RIW15).pdf>.

269 R. McGregor, *The Party* (Harpers, 2010).

270 X. Zhou and Y. Xie, *Market Transition, Industrialization, and Social Mobility Trends in Post-Revolution China* (Population Studies Center Research Report No. 15-838, 2015).

271 See, e.g., available at: <www.pajiba.com/think\_pieces/what-is-the-fuerdai-and-are-they-the-key-to-chinas-velvet-revolution.php>.

272 J. Fan, *The Impact of Economic Capital, Social Capital and Cultural Capital: Chinese Families' Access to Educational Resources*, 4 *Sociology Mind* (2014), 272; and E. Magnania and R. Zhu, *Social Mobility and Inequality in Urban China*, 47 *Applied Economics* (2015), 4590.

273 L. Jing, *The Development of Inequality in Public School Admission: Public Discourses on Ze Xiao and Practices in Urban China* (Diss. Nagoya University, 2013).

274 J. Zhang, *Human Capital of Family and Social Mobility in Rural Areas – Evidence from China*, 12 *Journal of Integrative Agriculture* (2013), 1905.

275 D. Lin, *The Cultural Dilemma of a Knowledge Society in China: The Case of 'Education for Quality'* (Griffith Regional Outlook Paper No. 24, 2010).

families to compete in this arms races for educational credentials,<sup>276</sup> and to see returns on their investments.<sup>277</sup> The inability to make private human capital investments in themselves and their children is exacerbated by the growing exposure of Chinese workers to global shocks, which impacts lower-income workers the most.<sup>278</sup> Furthermore, while the CCP's effective relaxation of the *hukuo* system has allowed migrants to seek higher wages in urban areas, they are unable to access urban schools for their children.<sup>279</sup>

As intergenerational mobility remains a key driver of subjective reports of Chinese happiness,<sup>280</sup> all of these complications in genuine meritocracy represent a problem for the CCP both as an issue of continued human capital development and political legitimacy. Its attempts to strengthen EPL levels, even if still limited, are politically legible as it cannot hold the promise of flexibilization when it knows such will heighten the very labor unrest its *de facto* informalization has already engendered.

Such issues of human capital development and genuine meritocracy also help both the assertion and resistance to Modi's flexibilization agenda. Caste and gender discrimination is still a serious and systemic consequence of India's social and religious history, and this has long had clear impacts in Indian labor markets.<sup>281</sup> While some areas of the Indian economy have felt the traditional competitive pressures to breakdown irrational forms of social discrimination,<sup>282</sup> India has also witnessed an intense campaign by elites to legitimate inequality

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**276** This is clearly evidenced in the stress precarious work puts on the effects of the "double shift" on lower-income Chinese mothers. X. Hu, *Paid Domestic Labour as Precarious Work in China* (Diss., Simon Fraser University, 2010).

**277** K. Han et al., *Social Mobility of Migrant Peasant Workers in China*, 1 Mind (2011), 206.

**278** D. Autor et al., *The China Shock: Learning from Labor Market Adjustment to Large Changes in Trade?* (NBER Working Paper No. 21906, 2016); and F. Cai and K. Chan, *The Global Economic Crisis and Unemployment in China*, 50 Eurasian Geography and Economics (2009), 513.

**279** L. Hao, et al., *Two Aspects of the Rural-Urban Divide and Educational Stratification in China: A Trajectory Analysis*, 58 Comparative Education Review (2014), 509. *Contra* Yao Pan, *The Positive Effect of Labor Mobility Restrictions on Human Capital Accumulation in China* (2012), available at: <[www.dartmouth.edu/~neudc2012/docs/paper\\_36.pdf](http://www.dartmouth.edu/~neudc2012/docs/paper_36.pdf)>.

**280** P. Xu, *Did Social Mobility Make Chinese Happier?* Paper presented at Population Association of America Annual Meeting (San Francisco, 2012).

**281** M. Das and P. Dutta., *Does Caste Matter for Wages in the Indian Labor Market?* (World Bank Report, 2008); R. Junankar and A. Shonchoy, *The Informal Labour Market in India: Transitory or Permanent Employment for Migrants?* (IZA Discussion Paper No. 7587, 2012); and R. Jensen, *Do Labor Market Opportunities Affect Young Women's Work and Family Decisions?* 127 The Quarterly Journal of Economics (2012), 753.

**282** N. Raghunath, *The Indian IT Industry and Meritocracy* (Asia Research Institute Working Paper No. 140, 2010).

through the guise of technical meritocracy,<sup>283</sup> while still embracing caste-based evaluations of individual potential.<sup>284</sup> Studies have shown that outright discrimination has been now paired with the same familial endowment effects witnessed in other countries which have formally embraced meritocratic norms.<sup>285</sup>

This hyper-credentialism, matched with extant social discrimination,<sup>286</sup> has had the side-effect of unusually high levels of educated unemployment in India.<sup>287</sup> Both informal and formal workers now experience lower returns to their individual endowments.<sup>288</sup> The precarious nature of Indian labor has led to the formation of strong informal local risk-sharing networks,<sup>289</sup> but these have (while rational given their context) limited mobility through underinvestments in education and geographic mismatches in job skill allocation.<sup>290</sup> Again, job guarantee and subsidy programs have limited effects in comparison to early life interventions that directly affect the primary mechanism of privilege reproductions.<sup>291</sup>

In contrast to China where political legitimacy is not derived from elections, the election of Modi and subsequent resistance to his labor reforms indicates a more complex expression of political will. Indian elites have latched onto the labor formalism of flexibilization as a defensive mechanism to re-direct social unrest away from their sources of reproduction.<sup>292</sup> That some of Modi's other novel reforms have passed indicate the will for reform, but a lack of popular

**283** A. Madan, "Sociologising Merit," *Economic and Political Weekly*, 21 July 21, 2007, 3044.

**284** M. Srinivasan et al., *Do Attitudes Toward Societal Structure Predict Beliefs about Free Will and Achievement? Evidence from the Indian Caste System*, 1 *Developmental Science* (2015), 1.

**285** P. Attewell and S. Madheswaran, *Caste Discrimination in the Indian Urban Labour Market: Evidence from the National Sample Survey*, 42 *Economic and Political Weekly* (2007), 416.

**286** S. Sharma, *Does Education Determine Employment: Peculiarities of the Indian Labour Market* (Studies in Business and Economics No. 11, 2016).

**287** R. Majumder, *Unemployment Among Educated Youth: Implications for India's Demographic Dividend* (MPRA Paper No. 46881, 2013); and C. Jeffrey, *Timepass: Youth, Class, and Time Among Unemployed Young Men in India*, 37 *American Ethnologist* (2010), 465.

**288** A. Narayanan, *Informal Employment in India: Voluntary Choice or a Result of Labor Market Segmentation?* 58 *Indian Journal of Labour Economics* (2015), 119.

**289** K. Munshi and M. Rosenzweig, *Why is Mobility in India So Low?* (NBER Working Paper No. 14850, 2009)

**290** A. Mukherjee and S. Paul, *Community Identity and Skill Mismatch: A Study on Indian Labour Market*, paper given at 8<sup>th</sup> Annual Conference on Economic Growth and Development (New Delhi, 2012).

**291** M. Azam, *The Impact of Indian Job Guarantee Scheme on Labor Market Outcomes: Evidence from a Natural Experiment* (World Bank and IZA Discussion Paper No. 6548, 2012).

**292** A. Subramanian, "Recovering Caste Privilege: The Politics of Meritocracy at the Indian Institutes of Technology," in A. Nilsen and S. Roy (eds.), *New Subaltern Politics* (Oxford, 2015), p. 76.

buy-in to the scapegoating the limited labor protections most Indian workers currently enjoy.

The new assertion of flexibilization reforms in Brazil follows from similar pressures in China and India. Human capital formation has been a core area of Brazilian developmental policy, as Brazil has traditionally suffered from low levels of aggregate educational investment and low social mobility.<sup>293</sup> Much as in India, most Brazilian employers report difficulty in filing jobs, rather than an ability to enjoy numerical flexibility.<sup>294</sup>

This history of relatively low human capital development has been complicated by the various forms of social discrimination, including intense racial and sex discrimination,<sup>295</sup> and derivative statuses such as engaging in informal work.<sup>296</sup> While the Worker's Party administrations of the past decade made strides in advancing equality of opportunity through educational investments, antidiscrimination policies and the conditionalities attached the Bolsa Familia program,<sup>297</sup> Brazil has already witnessed declining returns on years of schooling for those without intergenerational educational endowments,<sup>298</sup> and the demonstrated impact of multiple aspects of early childhood status on later social outcomes.<sup>299</sup> The tension between technical and functional meritocracy has become intense enough that proponents of social inclusive reforms have tended to reject the concept *in toto*.<sup>300</sup>

**293** P. Ferreira et al., *On the Evolution of Total Factor Productivity in Latin America*, 51 *Economic Inquiry* (2013), 1; and V. Azevedo and C. Bouillon, *Social Mobility in Latin America: A Review of Existing Evidence*, 2 *Economic Analysis Review* (2010), 1.

**294** Manpower Group, *2013 Talent Shortage Global Survey* (2013), available at: <<http://www.manpowergroup.com/wps/wcm/connect/>>.

**295** C. Ribeiro, *Class, Race, and Social Mobility in Brazil*, 3 *Dados* (2007), 1; and L. Bartlett, *Human Capital or Human Connections? The Cultural Meanings of Education in Brazil*, 109 *Teachers College Record* (2007), 1613.

**296** G. Cruces et al., *Scarring Effects of Youth Unemployment and Informality* (2012), available at: <[iza.org/conference\\_files/worldb2012/viollaz\\_m8017.pdf](http://iza.org/conference_files/worldb2012/viollaz_m8017.pdf)>.

**297** N. Jurva, *Bolsa Familia's Educational Condition and Educational Inequality in Brazil* (Thesis, Tampereen Yliopisto: 2015).

**298** D. Cogneau and J. Gignoux, "Earnings Inequality and Educational Mobility in Brazil over Two Decades," in S. Klasan and F. Nowak-Lehamann (eds.), *Poverty, Inequality and Policy in Latin America* (MIT, 2009), p. 47.

**299** L. Baraldi and W. Conde, *Parent's Social Status and Children's Nutrition Influence on the University Entrance of Young Adults in the Last Two Decades in Brazil*, 17 *Revista Brasileira Epidemiologia* (2014), 116.

**300** B. Carbone, *Discourses on Meritocracy in the Formation of Identities in Brazil*, paper presented at ECPR General Conference (Bordeaux, 2013).

Similar reactive credentialism has emerged in Brazil, where direct investments in education and other subtle forms of social capital signaling have made income equality a strong barrier to further human capital formation.<sup>301</sup> The re-emergence of flexibilization discourse after the fall of the Worker's Party comes as little surprise as an attempt to undermine most inclusive social reforms which attack these forms of inequality.<sup>302</sup> The attempts by existing elites to champion technical meritocracy is the same recourse to labor formalism found now across the globe,<sup>303</sup> and in which Brazilian elites now participate.<sup>304</sup>

These three cases all demonstrate three common dynamics: an empirical track record that undermines the neoclassical twist regarding EPL levels, a demonstration of the centrality of human capital formation to development, and the assertion of rejection of flexibilization reforms following intelligible patterns of elite entrenchment. While the CCP is more constrained by the immediate pressure of its performative legitimacy to pursue greater flexibilization, for India and Brazil it has become part of the cycle of democratic political contest between existing social interests.

## 8 Conclusion

Possessing a clear theory of social/human behavior is a necessity for developing generalizable scientific knowledge, much as assuming the uniformity of physical laws is for any cosmological theory. A seemingly intransigent challenge for the social scientist is the contingency of so many perceived behaviors, whereby the effects of unaccounted for motivations and incentives can be as powerful as those tightly controlled for.

The future of labor economics may lead to more refined and precise predictive theories, but that day is not yet here. The search for theories that explain labor market behaviors has led to academic battles whose conclusions

**301** N. Kendrick, *Educação Para Todos – “Free to Those Who Can Afford It”: Human Capital and Inequality Persistence in 21<sup>st</sup>-Century Brazil*, LSE Economic History Working Papers No. 179/13 (2013); M. Barbosa, *The Expansion of Higher Education in Brazil*, 2 *Multidisciplinary Journal of Educational Research* (2012), 251; and C. Nogueira, *Income Inequality and Barriers to Human Capital Accumulation in Brazil* (Essays on Poverty No. 05, 2006).

**302** I. Soeterik, *Academic and Cultural Challenges for the Absorption of the Concept of Inclusive Education in Brazil*, 10 *Revista Innovación Educativa* (2010), 1.

**303** P. Motter, *The Role of the Media in Educational Policy Formation and Legitimation in Brazil* (Diss., University of Wisconsin-Madison, 2008).

**304** available at: <[atlasnetwork.org/news/article/students-for-liberty-plays-strong-role-in-free-brazil-movement](http://atlasnetwork.org/news/article/students-for-liberty-plays-strong-role-in-free-brazil-movement)>.

extrapolate into quite divergent recommendations. While academics can never be fully in control of how their work is interpreted politically, they are responsible for how confidently they state their conclusions and how readily they lend their support to affirming extrapolations. The net current state of studies on labor market flexibilization and rigidification alike justifies great caution in using aggregate growth as the evaluative rubric to evaluation micro-level workplace protections. However, any reform logic that prioritization labor formalization seems incompatible with flexibilization, especially when deregulatory action simply rends formal work as precarious and unprotected as informal work.<sup>305</sup> For, as of yet, no country has combined truly flexible market regulations and low precariousness of employment.

Though the global financial crisis of the late 2000s has generated skepticism towards universal development best practices, labor flexibilization still remains seductive to assert as a force to reignite depressed economies.<sup>306</sup> A different focus on human capital development inherently requires an active state, which invariably requires political choices regarding resource allocation and, if generating truly meritocratic opportunity is taken seriously, disrupting the ability of entrenched interests to reproduce their existing social positions. Even if one does not follow Plato down the rabbit hole of the Republic by absorbing all social dynamics into a meritocratic state, it has to be recognized that a commitment to meritocracy requires the socially successful in any given generation to sacrifice their immediate private interests for the public good.<sup>307</sup>

To the extent that a non-democratic regime like the CCP can truly generate this type of generational deferral of gratification, or at least better than a democratic regime, is one of the great debates about the future of authoritarian meritocracy. Labor unrest is but one area where this capacity for balancing the demands of the present and the future are acutely at question. For democratic regimes like India and Brazil, its unclear what outcome resistance to resurrected discourses of flexibilization will be, but it is clear that what is at stake is not the harsh fate predicated by the neoclassical twist, but, instead, if these

**305** C. Olmedo and M. Murray, *The Formalization of Informal/Precarious Labor in Contemporary Argentina*, 17 *International Sociology* (2002), 421.

**306** The World Bank, *Employment Protection Legislation and Labor Market Outcomes: Theory, Evidence and Lessons for Croatia* (2011).

**307** C. Beviá and L. Corchón, *Growth in Illyria: The Role of Meritocracy in Accumulation of Human Capital?* 105 *American Economic Review* (2015), 85. In the context of immigration, see J. Mijs, *Meritocracy or Plutocracy?* 1 *Amsterdam Social Science* (2008), 44. And dor an interesting personal take, see K. Oldfield, *Our Cutting Edge Isn't Cutting It: Why Public Administration Should Be the First Discipline to Implement a Social Class-Based Affirmative Action Plan for Hiring Professors*, 41 *Administration and Society* (2010), 1016.

democracies can confront the human capital challenges that a meritocratic society requires – even if to simply inspire economic dynamism rather than sustain a morally just state.

None of this is to say that labor regulation redesign is pointless, but all the more that design deeply matters.<sup>308</sup> India, China and Brazil have all passed regulatory reforms that have improved labor institution efficiency, even if they still have more work to do.<sup>309</sup> If the neoclassical point is taken that the existence of formal labor rights does not automatically lead to the enjoyment of those rights by all workers, this puts great pressure on the institutional quality of enforcement mechanisms to properly align employer and social incentives. Many of the assorted rationalizations in India labor regulation have borne fruit, even if not of the flexibilization sort. And the challenge of Brazil's economic future will involve fundamental questions about the ability of its corporatist unions to play a positive role for all of Brazil workers and be a stimulus for, rather than an inhibition on, greater social reform.

What the research on human capital development consistently recurs to is that institutional quality drives the actualization of any country's capacity for human capital formation and deployment.<sup>310</sup> To ignore the inherent attractiveness of labor formalism for extant social winners only undermines the very meritocratic assumptions upon which an ideal capitalist labor market should operate. That this blurs the line between the public and private in a much more politically and normatively complex way certainly will require much greater political will than a reversion to old reform tropes. Otherwise the cycles of flexibilization are likely to continue for the foreseeable future.

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**308** F. Schütt, *The Importance of Human Capital for Economic Growth* (Institute for World Economics and International Management Band No.27, 2003); and X. González and D. Miles-Touya, *Labor Market Rigidities and Economic Efficiency: Evidence from Spain*, 19 *Labour Economics* (2012), 833.

**309** Compare, the positive work in Brazil on the Simples Nacional campaign to reduce tax complexity and the the very flawed design of the FGTS social insurance program in Brazil. N. Paes, *Simples Nacional no Brasil*, 24 *Nova Economia* (2014), 541; and L. Catão et al., *Dependence, Formal Credit and Informal Jobs: New Evidence from Brazilian Household Data* (IZA Working Paper No.4609, 2009)

**310** U. Sunde and T. Vischer, "Beyond Balanced Growth," in U. Sunde et al. (eds.), *Balanced Growth: Finding Strategies for Sustainable Development* (Springer, 2011), p. 11.



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